

MINUTES OF THE COUNCIL SOLID WASTE COMMITTEE  
OF THE METROPOLITAN SERVICE DISTRICT

March 1, 1988

Council Chamber

Committee Members Present:

Gary Hansen (Chair),  
Sharron Kelley (V.  
Chair), Larry Cooper, Tom  
DeJardin, Jim Gardner,  
Corky Kirkpatrick, George  
Van Bergen

Chair Hansen called the meeting to order at 5:40 p.m.

1. Consideration of Minutes of February 10, 1988

Motion: Councilor Cooper moved, seconded by Councilor Kelley, for approval of the minutes of February 10, 1988.

Vote: The vote was unanimous and the motion passed.

2. Consideration of Ordinance 88-240A, Adopting an Updated General Purpose Landfill Chapter to the Solid Waste Management Plan (Public Hearing)

At the Council Solid Waste Committee meeting February 18, 1988, the Committee recommended the full Council adopt Ordinance No. 88-240A. Since no one appeared to testify regarding the Ordinance at the meeting in session, Chair Hansen announced a public hearing would be held at the full Council meeting when Ordinance No. 88-240A would be scheduled for final consideration.

3. Consideration of Resolution No. 88-864, Securing General Purpose Landfill Disposal for Solid Waste from the Portland Metropolitan Region

The Councilors received copies of a letter from Mr. Rick Daniels, Vice President, Oregon Waste Systems, Inc. (OWS), to Executive Officer Rena Cusma which stated Metro would be charged the same waste disposal rate as that of other public or private users of the Arlington site if those users were charged lower rates.

Mr. Rich Owings, Director of Solid Waste, distributed to Councilors information packets with a cover memorandum dated March 1, 1988, to Chair Hansen titled "OWS Additional Information." Mr. Owings summarized the contents of the packet to the Committee and reviewed the Oregon Revised Statutes which require haulers to handle recyclables. Mr. Owings noted the Dun & Bradstreet credit review of Waste Management, Inc. (WMI), which revealed that officers of WMI owned 6 percent of that company.

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Mr. Owings introduced Mr. Bob Martin, Engineering Manager, who explained transportation, rail, barge and trucking schematics. Councilor Van Bergen objected to the complexity of the proposed schematics options. Councilor Kirkpatrick agreed and said each time waste was handled disposal costs increased.

Chair Hansen said since a large volume of information had been presented to the Committee at this and other meetings by staff, agenda items would be considered at this meeting, but that the Committee would take no action until the next meeting scheduled for March 15, 1988. The Committee would need more time to assess the data distributed regarding the various solid waste options, Chair Hansen said. Chair Hansen specifically asked staff to submit reports no later than the Friday before a scheduled meeting in order, he said, to give the Committee time to read all materials related to agenda items. Councilors agreed with Chair Hansen's request.

Councilor Kelley said she had questions for staff to respond to. Councilor Kelley said she had yet to receive a summary of the ECO Northwest report, as well as a report which would define the cost differential between the Bacona Road and Arlington landfill sites. Councilor Kelley expressed concern whether a landfill scheduled to last only 20 years was viable for Metro. She said 20 years from the present time Metro would have to locate a new site or negotiate with the vendor in charge of the Arlington site. Councilor Kelley believed there would be an economic imbalance because the vendor would own the landfill and a majority of the hauling industry. Councilor Kelley was concerned, also, about future recycling efforts. She asked how recycling would be enforced according to state statutes. Councilor Kelley asked staff to inform her on the differences between privately and publicly-owned landfills. Councilor Kelley advocated rate incentives to encourage recycling.

Mr. Owings asked how the Committee would decide what information should be submitted by staff. Chair Hansen said he hoped because of the importance of the issues involved, that individual requests for information would be handled, as well as Committee requests as a whole. Councilor Kirkpatrick said if questions raised could not be answered within a week, discussion could be deferred until the next regularly scheduled meeting. Councilor Cooper agreed with Councilor Kirkpatrick because of the seriousness of the issues involved. He did not feel the Council was under a drastic timeline to award the contract under discussion within the next few weeks.

Chair Hansen said consultants could be hired to relieve staff's responsibility to provide data. Councilors Kirkpatrick and Kelley concurred. Councilor Kirkpatrick agreed with Councilor Kirkpatrick's request that privately-owned landfills in other regions should be investigated.

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Councilor Van Bergen discussed the bid documents and asked for a legal briefing from Mr. Dan Cooper, General Counsel. He felt the bid documents provided did not answer all possible questions. He mentioned the ECO Northwest report and said he would appreciate a written summary of that report by staff also. Councilor Van Bergen asked how staff policy decisions originated. He wondered why a private company was required to operate the landfill. He suggested Metro designate a proprietary company that would operate the landfill on Metro's behalf.

Chair Hansen said solicitation of landfill bids had been discussed by the Council Solid Waste Committee in the fall of 1987. Chair Hansen said the issues raised by Councilor Van Bergen would be answered by requests to staff made by Councilor Kelley. Mr. Cooper said the report requested by Councilor Van Bergen would be ready the next day.

Councilor Kirkpatrick said the Committee did have an opportunity to review and revise some of the bid language, but it had been made clear to the Council the bid was not their responsibility. Councilor Kirkpatrick had her own concerns about the contract in question, not the least of them which was Councilor Kelley's concern, about the future of recycling in the region. Councilor Kirkpatrick hoped for public comment from haulers and other concerned parties to help the Committee and full Council come to a resolution of the issues. Councilor Kirkpatrick said she was appalled by the News/Sun Sentinel articles on Waste Management, Inc.

Councilor Van Bergen was concerned about Metro only having received one viable bid. He recalled the Browning-Ferris Industries bid for the St. Johns landfill several years ago and said the situation was similar although the financial amount involved then was much smaller.

Chair Hansen asked Councilor Gardner if he had any comment to make on the favored-nations policy proposed by OWS in their letter delivered to the Committee earlier that day. Councilor Gardner noted two options were given in the letter from Mr. Rick Daniels, Vice President and General Manager of Oregon Waste Systems, Inc. He said one option assumed credits would be given to Metro on a ton-for-ton basis for small communities for less than 75,000 tons per year; and the other option would give a total rate adjustment for large communities for over 75,000 tons per year, but less than the Metro volume. He asked what would happen if another community purchased landfill services at a volume greater than Metro's volume. He said the letter seemed careful to exclude that possibility from being covered by the proposed favored-nations/favorable-rate amendment.

Mr. Owings said that possibility had not been discussed. He assumed there would be no rate adjustment if another community had a larger volume of waste. Councilor Gardner asked Mr. Cooper if the use of

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arbitration always meant that such arbitration was binding on both parties. Mr. Cooper said yes. Councilor Gardner wondered if the favored-nations policy was intended by the company to be turned into a contractual commitment which would become part of the agreement which would provide for binding arbitration on any dispute with certain limitations, or whether it would be a separate, undefined procedure. How to define policy and understand how it would work needed to be explored, Councilor Gardner said.

Councilor Van Bergen asked what type of arbitration was under discussion. Mr. Owings understood OWS would suggest actual contract language, but that it had not yet been prepared. In lieu of prepared contract language, they delivered the letter in question to the Committee.

Chair Hansen asked Mr. Cooper to provide the Committee with questions to answers raised at this meeting, or to meet with OWS and ascertain exactly what the meaning of the letter was. Chair Hansen asked when the letter had been delivered. Mr. Owings said at approximately 3:30 p.m. Chair Hansen said there had not been time to provide an analysis or to answer questions raised by the letter itself. Chair Hansen asked Mr. Owings to explain what the contract language related to default meant. He asked what sanctions Metro would have or how Metro could invoke condemnation of the property.

Mr. Cooper said two separate types of default were delineated. One type of default was the refusal to accept waste delivered at their front door for a period longer than 24 hours. The second type of default was any other breach of any of the terms of the agreement. The failure to accept waste at the door with a short time period would allow Metro a 24 hour notice to immediately seek injunctive relief in the appropriate courts for specific performance to open up the gate and deliver the waste. He said there were no provisions which would allow Metro to assume ownership of the property. There was merely the obligation for that property, and any subsequent purchaser or mortgagee, would be on notice that this contract was an incumbrance on the land. Any other default, or failure to properly keep records, billing concerns or any other concern regards monetary damage was subject to a longer notice provision of Metro's giving notice as to what the problem was and an opportunity for them to cure it and provided for binding arbitration of any and all disputes that would arise from such a situation.

Chair Hansen asked what remedies would be available if the Department of Environmental Quality (DEQ) attempted to shut the landfill down because of operating violations. Mr. Cooper said if the landfill was having regulatory problems, but was still taking Metro waste, the vendor would deal with DEQ and the Environmental Protection Agency (EPA) and pay for legal costs. Chair Hansen asked what would result if

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an injunction were against them for accepting waste and Metro forced them to accept it. Mr. Cooper said it would be up to the judge presiding over the case.

Councilor Kirkpatrick asked if it were true that the contract had no provision for Metro to take over operations. Mr. Cooper concurred. Councilor Kirkpatrick said that would be a problem in an emergency situation. Chair Hansen and Mr. Cooper discussed the \$5 million bond to begin construction.

Councilor DeJardin asked if it would be appropriate to take over operation or have a back-up company with access to landfill capacities waiting in the wings. Mr. Owings said the bid document was constructed to give Metro that option. Mr. Owings said the bid had originally submitted two options; one option that the vendor would take all Metro waste, and secondly that the vendor would take half of Metro's waste. Councilor Van Bergen discussed arbitration and any remedies should the company become insolvent. He urged the Committee to go over the contract thoroughly and resolve all doubts.

Councilor Gardner asked if there were no provision in the contract for Metro to assume the landfill; would that mean Metro could exercise any condemnation authority outside of the Metro region. Mr. Cooper said he would want to research Councilor Gardner's question carefully before he answered the question.

Mr. Owings asked for a recap of Councilors' questions. He understood Councilors wanted to know what the process would involve if Metro were to pursue a publicly-owned landfill in Eastern Oregon, and how Metro would search for such a site. Councilor Kirkpatrick said the Committee needed to know if that option was possible or not and what the timeline would be. If the timing involved was too long, it would not be a viable option to pursue. Councilor Kirkpatrick said staff would need to decide what a realistic timeline would be. Mr. Owings asked the Committee if they wanted staff to pursue researching other privately-owned landfills. Councilor DeJardin said it would be reasonable to consider central Washington for a landfill site also. Chair Hansen said southern Idaho could be investigated, also.

Councilors and staff discussed the various options further. Chair Hansen said he thought the Committee had raised all the issues which needed to be addressed. He said the Committee had had a month in which to raise them and time to gather the facts. Chair Hansen said it was imperative the Committee analyze all the possibilities. He said it was time to decide which waste disposal options Metro should choose.

In answer to Councilor Van Bergen's query, Councilors and staff discussed the Functional Plan and the Solid Waste advisory committees; the Technical and Policy Committees. Chair Hansen said the policies

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which had assisted Metro up to the present time for the landfill, were policies that the Council had acted upon, or policies that staff had recommended. Chair Hansen asked for any further comments on Resolution No. 88-864. There being none, the Committee moved onto the next agenda item.

4. Consideration of Resolution No. 88-865, Notifying the Oregon Environmental Quality Commission that the Bacona Road Site is Not Needed

Mr. Owings referred to Item No. 6 of staff's packet "OWS Additional Information," which was a letter from Mr. Steve Greenwood, Manager, Solid Waste Section of the Hazardous and Solid Waste Division of the Department of Environmental Quality. Mr. Owings said Mr. Greenwood was not present and summarized his letter which stated what DEQ and the Environmental Quality Commission (EQC) would do if Metro requested DEQ to cease testing of the Bacona Road site. Mr. Greenwood had stated in his letter it would be likely, in the event of Metro selecting a site other than the Bacona Road site, that DEQ would stop testing Bacona Road and charging Metro for said tests.

Chair Hansen asked, since DEQ would suspend leachate and landslide testing, if DEQ would still pursue that work while Metro pondered what landfill site to select. Mr. Owings said DEQ had had to begin the first \$200,000 expenditure of a project which would ultimately total \$500,000, but that their research was on hold at the present time.

Councilor Gardner asked Mr. Owings if he had had any discussions with Mr. Greenwood and whether passage of the Resolution would call a halt to any further work. Mr. Cooper said the interim order entered by DEQ stated upon execution of a contract, and Metro finding that Bacona Road was not needed, that they would then take action. Mr. Greenwood's letter pointed out that the interim order referred to all waste. Technically, the contract did not deal with all waste. It would take more than passage of the Resolution, it would take execution of the contract as well, to trigger action by DEQ, Mr. Cooper said.

Councilor DeJardin asked if this meant to be able to drop the Bacona Road site, Metro had to accept the contract with OWS or find another acceptable site. Mr. Cooper said that was correct. Chair Hansen announced the Committee would listen to public testimony on the issue.

Mr. Steve Misner, Rt. 1, Box 222B, Banks, Oregon: said he lived near the proposed Bacona Road site. He said the EQC had to make a decision on whether the Bacona Road site would be an environmentally sound site to dispose of waste. Mr. Misner said that the Arlington site was environmentally sound for solid waste disposal purposes. He felt, therefore, that the issue of public versus private ownership was irrelevant. Mr. Misner said 20 years in the future there would still

be the possibility that Bacona Road residents would be threatened again with a possible landfill site. He asked that the EQC designate an Eastern Oregon site and absolve all parties concerned.

Councilors discussed the payments to DEQ further. Chair Hansen said he understood if Resolution No. 88-865 were adopted; the Bacona Road site bypassed; Metro signed the 20-year agreement for an out-of-region landfill; that at that point, if DEQ were to vacate the order on Bacona Road the issue would be resolved. Mr. Owings said legislation adopted last year stipulated the site could not be officially abandoned for two years. Mr. Owings said Chair Hansen's statement was correct.

Councilor Gardner felt the Resolution logically followed the contract decision and discussion on Resolution No. 88-865 was not needed until the contract was signed or not signed.

Councilors and staff discussed the Resolution, payments made and any possible future action made by DEQ. Mr. Owings said since DEQ was made aware of Resolution No. 88-865, they did not plan to spend any more funds. Councilor Van Bergen said DEQ still had the authority to spend the funds under the Oregon Revised Statutes. After discussion and because Mr. Greenwood was not present, the Committee moved to defer action.

Motion: Councilor Gardner moved, seconded by Councilor DeJardin, to defer consideration of Resolution No. 88-865 until action has been taken on Resolution 88-864.

Vote: Councilors Cooper, DeJardin, Gardner, Hansen and Van Bergen voted aye. Councilors Kelley and Kirkpatrick were absent. The motion passed unanimously.

Chair Hansen called for a recess. The recess began at 7:38 p.m. and the meeting reconvened at 7:55 p.m.

5. Consideration of Resolution No. 88-835A, Adopting a Policy to Establish that the Metro East Transfer & Recycling Center(s) May be Privately Owned and Operated, and that Notice be Posted to Request that Potential Vendors Obtain Land Use Permits for Proposed Transfer Station Sites

The Committee discussed whether to consider Resolution No. 88-835A since Councilors Kelley and Kirkpatrick left the meeting to attend other meetings. Councilors DeJardin and Gardner were willing to postpone consideration but wished to discuss the Resolution.

Councilor Cooper, who authored the Resolution, was willing to defer consideration of the Resolution to a later date when the full Committee could discuss it. Councilor Cooper asked the Committee for input

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regarding an amendment to the Resolution which would preclude any party that owned a landfill or hauling business to bid on a transfer station(s). He wished to go on record that he opposed a single vendor controlling waste in the Portland metropolitan area. Chair Hansen asked Mr. Owings to prepare amendment language to Resolution No. 88-835A.

Councilor Van Bergen said three years ago, staff wanted the public to own transfer stations. Now the trend seemed to be, he said, towards privatization. To the five questions drawn up by Chair Hansen and Mr. Owings, Councilor Van Bergen felt two more questions should be added. The sixth question should ask what would be gained by public ownership and the seventh question should ask what would be lost by public ownership, Councilor Van Bergen said.

Councilor Gardner concurred with Councilor Van Bergen about his added questions. He felt some issues ignored were what was to be gained or lost, by private ownership and also by public ownership and private operation. He said the questions and information received, including the White Paper and the report by ECO Northwest, did not distinguish greatly between the advantages and disadvantages of the operational side and also the question of ownership. He felt the term "privitization" was misapplied because Metro had been "deeply into privatization." He said the change in policy the Committee was dealing with was that of private ownership. Councilor Gardner had an amendment to the Resolution he wished to propose also. He said he would propose an amendment that would stipulate the ultimate decision regarding private or public ownership of a transfer station could be based on more than cost comparison; other factors could play a role in Metro's decision with regard to what would be the best over-all decision for the region. Councilor Gardner served notice that when Resolution No. 88-835A would be officially considered, he would propose such an amendment.

Chair Hansen said the Resolution would establish a privately-owned and operated transfer station. He did not think it necessary to reform the whole issue of private-versus-public before the Resolution were forwarded to the full Council. He said hopefully there would be several bidders, and after the bid process, then costs and benefits to the community could be analyzed.

Mr. Owings said the longer the proposal took to be issued, the less vendors would be available to bid because of decreased availability of sites. Chair Hansen said the Committee would have to juggle prices, competition, and the decisions they would be trying to make in the context of over-all planning. He said there were specific time restraints based on the closure of the St. Johns landfill. Chair Hansen said the closure of the St. Johns landfill was definite; the time at which a transfer station would open would not be. Chair Hansen

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said interim facilities or the Clackamas Transfer and Recycling Center might have to be used as replacements.

The Committee discussed the issue further. Councilor Cooper said with regard to his amendment he would also like to stipulate that joint ventures be precluded, majority or minor ownerships, and management contracts.

All business on the agenda having been attended to, Chair Hansen adjourned the meeting at 8:19 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Paulette Allen".

Paulette Allen, Clerk  
SWC88.061/d. 1