

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

March 15, 1988

Committee Members Present: Gary Hansen (Chair),
Sharron Kelley (V.
Chair), Tom DeJardin, Jim
Gardner, Corky
Kirkpatrick, George Van
Bergen

Committee Members Absent: Larry Cooper

Other Councilors Present: David Knowles

Chair Hansen called the meeting to order at 5:39 p.m.

1. Consideration of Minutes of February 18, 1988

Motion: Councilor Kelley moved, seconded by Councilor DeJardin,
for approval of the minutes.

Vote: The vote was unanimous and the motion passed.

2. Consideration of Resolution No. 88-883, Appointing Citizens to the
Metropolitan Service District Solid Waste Rate Review Committee

Mr. Ray Barker, Council Assistant, told the Committee the Solid Waste Rate Review Committee was composed of five citizen members and three citizen terms had expired. Under the bylaws of the Rate Review Committee, Executive Officer Rena Cusma had recommended three nominees. Mr. Barker said the three members whose terms had expired were Mr. Edward Gronke, Mr. George Hubel and Mr. Douglas Plambeck.

Mr. Barker said the appointment length was for two years and the terms were staggered. Councilor Van Bergen asked if the three nominees represented geographic diversity for the Metro area. Mr. Barker said they did. Mr. Barker submitted the nominees' resumes to the Committee.

Ms. Judith Mandt, Assistant to the Director of Solid Waste, introduced the three nominees who told Chair Hansen their interest in serving on the Solid Waste Rate Review Committee. Ms. Colleen Greer Acres said she was asked to serve and would like to because she had an academic as well as a personal interest in the public infrastructure. Ms. Acres said to serve on the Committee was a personal and professional choice.

Councilor Kirkpatrick asked Ms. Acres how she would fulfill her duties. Ms. Acres said she would read all data available, would depend on staff for materials, and use her judgment and other organizational resources.

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Mr. Andrew D. Thaler concurred with Ms. Acres' statement and said his previous experience had been as Treasurer of Multnomah County.

Mr. Milton F. Fyre said he served on the Tigard Planning Commission and he hoped to serve on the Rate Review Committee. Councilor Kirkpatrick told the nominees she hoped they would rely on the Council for policy direction.

Motion: Councilor Kelley moved, seconded by Councilor DeJardin, to recommend appointment of nominees Ms. Colleen Greer Acres, Mr. Milton F. Fyre and Mr. Andrew D. Thaler by the full Council to the Solid Waste Rate Review Committee.

Vote: The vote was unanimous and the motion passed.

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

Chair Hansen asked the Committee if they received the information they requested at the March 1, 1988, meeting in a timely manner. Councilor Kelley said she had not received the report she requested about other jurisdictions which have landfills managed by owners who own hauling businesses as well.

Chair Hansen said he would like to give Oregon Waste Systems, Inc., (OWS) an opportunity to respond to the issues raised regarding their parent corporation's conduct at previous Committee meetings. Councilor Van Bergen asked if there would be a motion on the floor and also public testimony. Councilor Van Bergen announced he did not intend to vote to recommend Resolution No. 88-864.

Chair Hansen asked for a motion to approve the Resolution. Councilor Gardner moved to approve Resolution No. 88-864. Chair Hansen asked for a second. Councilors did not second the motion, so Chair Hansen passed the gavel to Councilor Kelley for purposes of seconding the motion.

Motion: Councilor Gardner moved, seconded by Councilor Hansen, to approve recommendation of Resolution No. 88-864 to the full Council.

Acting Chair Kelley asked if the Committee would like to discuss the motion.

Mr. Richard Daniels, Vice President of OWS, thanked the Committee for the opportunity to speak. Mr. Daniels said there were many reasons to approve Resolution No. 88-864. He said support in Gilliam County was

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strong and that OWS had gone to Gilliam County, held meetings there, and had listened to citizen concerns about dust and noise. Mr. Daniels displayed a slide show of the proposed Arlington landfill site. Mr. Daniels recommended the Committee speak to Gilliam County residents and gather their opinion. An OWS staffperson distributed a materials information packet to the Committee.

Mr. Daniels said the contract would be one-sided in Metro's favor guaranteeing a 20-year fixed price with a no-materials guarantee. Mr. Daniels said it was not a "put-or-pay" contract and summarized contractual details, provisions, and other requirements of the contract including performance bonds. Mr. Daniels said in the event of liability, Metro would not be held responsible; OWS would be. He also said OWS would defend Metro in any litigation on any environmental problem. Mr. Daniels said Metro had the right to terminate the contract and that any fault or contractual breach could be arbitrated.

Mr. Daniels assured the Committee that no suspicious waste would knowingly be accepted. Mr. Daniels said the Arlington site also had an advantage because it was sited "across the fence" from a hazardous waste disposal site. Mr. Daniels said OWS had complied fully with Metro's demands and said Metro was not obligated to send all Metro waste to the Arlington site. Oregon Waste Systems, Inc., encouraged recycling, Mr. Daniels said. Mr. Daniels said the contract rules were very strict and not common in other landfill contracts around the rest of the country.

Mr. Daniels said if Metro continued its recycling efforts eventually only 50 percent of all Metro area waste generated would be landfilled. Mr. Daniels pointed out negotiations were continuing with Combustion Engineering for a burner in Columbia County and negotiations were also continuing with Riedel for a composting plant. Mr. Daniels concluded his presentation and said OWS had tried to comply with Metro's requirements in every possible way.

Chair Hansen asked Mr. Daniels what the relationship was between OWS and Waste Management, Inc. (WMI). Mr. Daniels said WMI possessed five wholly owned subsidiaries, one of which was Waste Management of North America. Waste Management of North America was the backbone of the company, Mr. Daniels said. That company had been divided into nine regions throughout the country. One of those nine regions had been designated the Western region. Within the Western region five districts were created. Mr. Daniels said his company's district was the Northern California district. Mr. Daniels said he and one other staffperson staffed OWS at present. Mr. Daniels said he reported to a district manager who reported to Waste Management of Oregon. The general manager of Waste Management of Oregon was Mr. Doug Ogden, Mr. Daniels said. Mr. Ogden operated hauling companies in Portland,

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Milwaukie and Gresham and owned approximately 4 percent of the local market. Mr. Daniels said the purpose of creating OWS was a "sensitivity to the relationships between landfill and hauling companies."

Chair Hansen asked if there were any citizens who would like to testify on Resolution No. 88-864 before the Committee.

Mr. George D. Ward, 4941 S.W. 26th Drive, Portland; said he was an environmental consulting engineer. Mr. Ward made a request contingent upon whether Metro signed the contract with OWS. Mr. Ward asked the Committee to stipulate that WMI clean up an illegal chemical dump made by Chem-Nuclear, the previous name of Chem-Security, in Alkali Lake in Lake County. Mr. Ward said 25,000 55-gallon drums of toxic waste had been dumped there 10 or 15 years ago by Chem-Nuclear. He spoke to then Governor Victor Atiyeh, who said there were no state funds to clean up the site. Mr. Ward felt WMI should clean up Alkali Lake because they had purchased the Chem-Security site in Arlington from Chem-Nuclear.

Chair Hansen asked why the Department of Environmental Quality (DEQ) had not pursued Chem-Nuclear or its successors. Mr. Ward said the matter was an embarrassment for DEQ because a DEQ employee had authorized the dumping and when the dumping was completed, that DEQ employee had been hired by Chem-Nuclear. Mr. Ward said he raised the issue with the Environmental Quality Commission (EQC) and that there was a record of his testimony regarding the case.

In response, Mr. Daniels said WMI had acquired the site owned by Chem-Security of Arlington and would provide whatever information the Committee needed regarding the site in question. Mr. Daniels said there was now a tax on hazardous waste to finance toxic clean-ups.

Chair Hansen asked if anyone else would like to testify. No one else appeared to testify; Chair Hansen declared the public hearing closed.

Councilor Van Bergen entered items for the record. He entered 1) the information packet submitted by OWS at this meeting to the Council Solid Waste Committee; 2) the speech delivered by Executive Officer Cusma at the February 11, 1988, Council meeting in which she stated (page 2) that staff had researched OWS and found nothing that disqualified them from being a "loyal, eligible and reputable bidder for landfill services;" 3) the Waste Disposal Service Contract document dated December 1987; 4) a letter from Mr. Dan Cooper, General Counsel, dated March 10, 1988, which summarized the contract; 5) a series of articles, including the series "Titans of Trash" from the News/Sun Sentinel and two Wall Street Journal articles; 6) a letter from Mr. Cooper dated March 4, 1988, regarding ORS 279.037 and information Mr. Cooper had gained on the background of WMI; 7) two letters submitted to

the Council Solid Waste Committee at this meeting: One from Mr. Robert S. Hurley, President, Environmental Waste Systems, Inc.; and the second from Mr. Wesley J. Hickey, Executive Vice President, Tidewater Barge Lines, Inc.; and 8) the memorandum from Mr. Owings to Chair Hansen entitled "Favored Nations Agreement."

After submitting those items for the record, Councilor Van Bergen said his position on WMI was two-fold. He said he found it difficult to be associated with WMI. Councilor Van Bergen said the contract was a one-bid arrangement for one landfill with no competition. He found it hard to approve a bid which would require payments of \$5,000 per day to have access to the landfill. Councilor Van Bergen said that cost did not include transportation costs and transfer stations required to process waste. Councilor Van Bergen said the process was not cost-effective.

Councilor Van Bergen said his other objection was to WMI itself. He said he could not believe it was not included in the contract both parties would agree to abide by state and federal laws and that any breach of those laws would be a default. Councilor Van Bergen said he did not care to see the State of Oregon in association with the company. Councilor Van Bergen closed by saying the appropriation and price were not acceptable. He said there were other sources which could provide landfill sites.

Councilor Hansen asked Councilor Van Bergen why he had not objected to the Browning-Ferris Industries (BFI) contract to manage the St. Johns landfill. Councilor Van Bergen said his objection to the bid before the Committee was because there was only one bid present for the current contract. The BFI contract, he said, had been different because staff had recommended not bidding at all, but merely extending the contract. Councilor Van Bergen said eventually it had been bid. Councilors discussed the criteria to disallow a contract further.

Councilor Kirkpatrick said her concerns were similar to Councilor Van Bergen's. She felt it was unfortunate Metro did not have a competitive landfill bid. Based on that alone Councilor Kirkpatrick said, the Council could reject the bid. Councilor Kirkpatrick felt the Council erred by not participating in policy decision before the bid went out. She was concerned about future regional recycling efforts. If there were to be an Arlington landfill, she thought waste would be out-of-sight and out-of-mind for the next 20 years. Councilor Kirkpatrick said she would vote nay on Resolution No. 88-864.

Councilor Gardner explained why he made the motion to recommend approval of Resolution No. 88-864. Councilor Gardner also did not like the measures Metro had used to seek vendors. He felt the Request for Bids (RFB) should have been structured for more than just landfill services and should have allowed more vendor participation. He felt

the process had not worked when only one bid had been accepted and that there had been no competitive atmosphere at all. He said this meant Metro would pay the capital costs of developing a landfill at the proposed site, and then OWS would be able to sell landfill space to other customers at Metro's cost.

Councilor Gardner felt that OWS had responded well to that possibility with the "favored-nations" agreement outlined in Mr. Owings' memorandum to Chair Hansen, dated March 11, 1988. He said that memorandum addressed his concern that Metro would be charged too much. Councilor Gardner said he chaired the Council Solid Waste Committee when the Committee discussed the bid process. He said they were only discussions and the Committee had not sanctioned the bid process at all. Councilor Gardner felt there had not been much choice in the bid process, but felt it was one way of discovering real landfill costs while also evaluating other resource recovery proposals. Councilor Gardner said the RFB's for landfills was presented to Councilors as Administration's method of receiving landfilling costs. Councilor Gardner said Resolution No. 88-832 ensured the Council would be involved in bidding negotiations in the future. Councilor Gardner said because of the favored-nations agreement, he was prepared to approve Resolution No. 88-864. Councilor Gardner said community support in Gilliam County was strong and that environmental conditions there were ideal.

Councilor Kelley concurred with Councilors Van Bergen and Kirkpatrick. She said the Committee's responsibility was to approve or not to approve the Resolution, or to find other options for waste disposal. Councilor Kelley said the Committee's duty was to be informed so they could brief the full Council. Councilor Kelley said she was not prepared to approve Resolution No. 88-864 at the present time.

Councilor Kelley moved to table Resolution No. 88-864. The motion was not seconded.

Chair Hansen said the motion to table was not debatable. Councilor Gardner asked whether a motion to table was acceptable when a motion for approval had already been made. Mr. Cooper said for a motion to table, a second was required. Once the motion to table was made, the matter was nondebatable and took precedence over all other motions made.

Chair Hansen asked for a second to Councilor Kelley's motion. No second was received.

Councilor DeJardin did not have evidence to present against WMI. He respected statements made by Councilors but saw no reason to vote nay on Resolution No. 88-864. He hoped the Committee would be able to

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present other waste disposal solutions to the Council as well as the Arlington landfill proposal.

Chair Hansen said Resolution No. 88-864 was the first "major piece of work" to come through the Council Solid Waste Committee. Once the Committee finished with this specific piece of legislation, many issues would have been raised, he said. Chair Hansen said the Committee had looked at contract language, rebidding, timelines, and other contractual aspects. He said there were other alternatives, but a decision would have to be made. Chair Hansen said legislation to decide on transfer stations and functional planning would soon be before the Committee. He felt future legislation was dependent on Metro siting a landfill. Chair Hansen said resolving the issue at hand took precedence.

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

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

Mr. Cooper said the Committee could recommend the Council adopt Resolution No. 88-865 if the Council adopted Resolution No. 88-864. Because of the language in Resolution No. 88-865, it would not be effective unless Metro entered into the contract with OWS.

Councilor Van Bergen asked Mr. Cooper when DEQ had been directed to undertake this action. Mr. Cooper said the statute ensured that any order entered in the present proceeding to find a landfill could not terminate before July 1, 1989.

Councilor Gardner noted Resolution No. 88-865 at the fourth "Whereas," said, "Pursuant to Chapter 679 Oregon Laws 1985 provides that in the event Metro finds that the Bacona Road site is not needed then all authority for the Department of Environmental Quality to establish a site under the order shall expire." Mr. Cooper said the interim order entered by the EQC contained that language verbatim. If Metro entered into a landfill contract on a long-term basis which would take care of all its landfill needs then DEQ's authority to site should expire, Mr. Cooper said.

Councilor DeJardin asked if DEQ would not be able to spend Metro funds if the Committee approved the Resolution. Chair Hansen said approval of Resolution No. 88-865 would clarify Metro's intention to DEQ to stop spending funds on testing. Chair Hansen said it would be a two-

step process and Metro would have to sign a 20-year landfill agreement and instruct DEQ not to go proceed with the Bacona Road development.

Motion: Councilor DeJardin moved, seconded by Councilor Gardner, to approve Resolution No. 88-865 contingent upon final decision of securing general purpose landfill site.

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

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

Chair Hansen asked for a motion after discussion. Councilor DeJardin moved for approval. Chair Hansen passed the gavel to second.

Motion: Councilor DeJardin moved, seconded by Councilor Hansen, to recommend the full Council adopt Resolution No. 88-835A.

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

Councilor Gardner noted the the agenda copy of Resolution No. 88-835A contained amendment language authored by him.

Motion: Councilor Gardner moved, seconded by Councilor Hansen, to amend Resolution No. 88-835A by approving deletion of the word "cost" from paragraph 1., and to add amendment language, "with consideration given to factors other than cost, including but not limited to operational characteristics, amount and method of materials recovery, capability of modifying operations based on changing conditions or changing policy directives and issues related to service quality."

Vote: Councilors DeJardin, Gardner and Hansen voted aye. Councilor Van Bergen voted nay. Councilors Cooper, Kelley and Kirkpatrick were absent. The motion passed and Resolution No. 88-835A was amended.

After further discussion, the Committee had no clear consensus for support of Resolution No. 88-835A.

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Motion: Councilor Gardner moved, seconded by Councilor Van Bergen, that Resolution No. 88-835A as amended be forwarded by the Council Solid Waste Committee to the full Council without recommendation.

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

6. Consideration of Resolution No. 88-885, Initiating a Proposal and a Site Search for a Publicly-Owned East Transfer and Recycling Center(s)/Depot(s)

Councilors discussed the Resolution briefly.

Motion: Councilor Gardner moved, seconded by Councilor DeJardin, to recommend the full Council adopt Resolution No. 88-885.

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

7. Consideration of Resolution No. 88-886, Adopting a Policy for Vendor Qualifications for the Metro East Transfer and Recycling Center(s)

Since Councilor Cooper who authored Resolution No. 88-886 was absent, the Committee deferred this agenda item till the next Council Solid Waste Committee meeting when Councilor Cooper could introduce it himself.

All items on the agenda having been attended to, Chair Hansen adjourned the meeting at 8:09 p.m.

Respectfully submitted,



Paulette Allen, Clerk
SWC88.075/d.1