

MINUTES OF THE METRO COUNCIL SOLID WASTE COMMITTEE

March 15, 1994

Council Chamber

Committee Members Present: Ruth McFarland (Chair), Sandi Hansen, Susan McLain, Rod Monroe, Judy Wyers

Councilors Absent:: Roger Buchanan (Vice Chair)

1. Consideration of March 1, 1994 Solid Waste Committee Meeting Minutes

Motion: Councilor Monroe moved to approve the March 1, 1994 Solid Waste Committee Meeting minutes as submitted.

Vote: Councilors Hansen, McLain, Monroe, Wyers and McFarland voted aye. Councilor Buchanan was absent.

The vote was unanimous and the motion passed.

2. Solid Waste Updates

• General Staff Reports

Terry Petersen, Planning and Technical Services Manager, reported to the Committee concerning the planned kick-off of the Solid Waste Policy Advisory Committee objective to update the Regional Solid Waste Management Plan (RSWMP) at its next meeting to be held March 16, 1994 starting at 8:30 a.m. at the Metro Regional Center in Room 370 A/B. He said the Committee would be setting out a process to achieve the related goal, and he said a workbook had been prepared and would be presented to the SWPAC for its use.

3. Ordinance No. 94-536. An Ordinance Amending Ordinance No. 93-487A Revising the FY 1993-94 Budget and Appropriations Schedule for the Purpose of Funding a Request From the North Portland Enhancement Committee to Provide Grants From the Rehabilitation and Enhancement Fund, North Portland Enhancement Account, For New Construction to Fund An Improvement Project at Delauney Family of Services and For Project Start-Up of the Multnomah Community Development Corporation; and Declaring an Emergency

Roosevelt Carter, Budget & Finance Manager, and Katie Dowdall, Community Enhancement Coordinator, presented the staff report, and said the action would authorize adjustments to the Rehabilitation and Enhancement Fund, North Portland Enhancement Account in the total amount of \$85,000 in transfers from Contingency to Materials and Services. Ms. Dowdall explained the monies would be used to provide a grant to the Delauney Family of Services for assistance in construction of a new facility in North Portland and a grant to the Multnomah Community Development Corporation for a start-up of a community commercial center benefiting the Portsmouth community of North Portland.

Motion: Councilor Hansen moved to recommend Ordinance No. 94-536 to the full Council for adoption.

Chair McFarland opened a public hearing. No citizens appeared before the Committee to testify. Chair McFarland closed the public hearing.

Councilor Hansen explained that other grantors were on line and the Metro monies had been somewhat delayed in process.

Vote: Councilors Hansen, McLain, Monroe, Wyers and McFarland voted aye. Councilor Buchanan was absent.

The vote was unanimous and the motion passed.

4. Resolution No. 94-1921, For the Purpose of Appointing John A. Hilton to Fill a Vacancy on the North Portland Rehabilitation and Enhancement Committee

Councilor Hansen introduced John A. Hilton to the Committee, and said the resolution proposed that he be appointed to serve the vacant term left by Jeffrey Kee, who had moved out of the enhancement area. The term of office expires December 30, 1996.

Motion Councilor Hansen moved to recommend Resolution No. 94-1921 to the full Council for adoption.

all aye

Vote: Councilors Hansen, McLain, Monroe, Wyers and McFarland voted aye.

The vote was unanimous and the motion passed.

5. Ordinance No. 94-532, For the Purpose of Granting a Franchise to Pemco, Inc. For the Purpose of Operating a Petroleum Contaminated Soil (PCS) Processing Facility and Declaring an Emergency

Motion Councilor Hansen moved to recommend Ordinance No. 94-532 to the full Council for adoption.

Phil North, Senior Solid Waste Planner, presented the staff report, and said PEMCO, Inc. had applied to Metro for a franchise to operate a facility for the processing and treating of petroleum-contaminated soils (PCS) by a process called "thermo desorption". He noted their contract did not provide for renewal, and noted the processor under Metro Code would not be subject to user fees. He said the applicant had requested a variance from Metro rate-setting, based on the nature of the facility, the need to respond rapidly to marketplace requirements, and the contributions made to Metro's objective related to PCS.

Mr. North noted that both Marion County and the Department of Environmental Quality had stated that receipt of PEMCO waste would not affect the ability of the Marion County Landfill to receive waste from current users in the future. Mr. North said it was the conclusion of staff that the applicant possessed the qualifications to operate the proposed facility in a manner consistent with the provisions of the Metro Code, and that the facility complied with Metro's RSWMP.

In response to Councilor McLain, Mr. North said one other facility of this nature, Oregon Hydrocarbon, was franchised by Metro for similar work.

In response to Councilor Monroe, Mr. North read from the Marion County conditional use permit from their findings, "The proposed soil remediation operation will actually assist in future restoration of the property. As noted earlier the County will retain all clean soil which has been treated for the proposed process." Mr. North noted some of the soil was proposed to be used for purposes of landfilling property adjacent to the facility. Mr. North said the agreement duration with PEMCO was for three years to coincide with the agreement Marion County had with PEMCO. Mr. North indicated Metro did not obtain revenue from the agreement.

Chair Monroe opened a public hearing. No citizens appeared before the Committee to testify. Chair Monroe closed the public hearing.

Vote: Councilors Hansen, McLain, Monroe, Wyers and McFarland voted aye. Councilor Buchanan was absent.

The vote was unanimous and the motion passed.

6. Resolution No. 94-1926, For the Purpose of Authorizing an Exemption from Competitive Bidding and Issuance of a Request for Proposals for the Design and Manufacture of Compost Bins and Development of a Public Education Program, and Authorizing the Executive Officer to Enter Into a Multi-Year Contract

Motion: Councilor McLain moved to recommend Resolution No. 94-1926 to the full Council for adoption.

Leigh Zimmerman, Market Development Manager, presented the staff report, and said the request would authorize the use of a Request for Proposals to procure home compost bins, develop a public education program and enter in a multi-year contract.

Chair McFarland opened a public hearing. No citizens appeared before the Committee to testify. Chair McFarland closed the public hearing.

Vote: Councilors Hansen, McLain, Monroe, Wyers and McFarland voted aye. Councilor Buchanan was absent.

The vote was unanimous and the motion passed.

7. Committee Discussion and Public Hearing Related to Proposed Amendment to the Oregon Waste Systems Contract for Disposal Services at Columbia Ridge Landfill

Chair McFarland referenced proposed Resolution No. 94-1904, For the Purpose of Authorizing the Executive Officer to Execute an Amendment to Metro's Contract with Oregon Waste Systems. She noted the proposed resolution was being introduced by the Executive Officer. This document has been made a part of the permanent meeting record.

Motion: Councilor Hansen moved to recommend Resolution No. 94-1904 to the full Council for adoption.

Chair McFarland seconded the motion.

Chair McFarland indicated a public hearing would be opened on the matter.

Rena Cusma, Executive Officer, addressed the Committee and advocated the Council's support of the proposed resolution. Ms. Cusma's testimony was made a part of the permanent meeting record. Ms. Cusma noted to date six public hearings had been conducted as well as three public reviews in the Solid Waste Advisory Committee (SWAC) and two hearings in the Rate Review Committee. She emphasized her concern that a decision be made to act now, and said should the Solid Waste Committee find itself unable to make a recommendation on the issue, that what she termed "legislative gridlock" would have arrived at Metro. Ms. Cusma reminded the Committee that an opportunity to realize \$38 million in savings was at hand, that OWS was apparently unwilling to consider other terms, and that approval after April 1st would lose \$1 million of the savings should the amendment remain on the table, and that the analysis done by a competitor saying we would save more by rejecting the amendment was what she termed a "high risk gamble." Ms. Cusma strongly recommended the amendment be passed out of Committee with a recommendation to the Council to adopt at its next meeting to be held March 24, 1994.

Councilor Wyers asked Ms. Cusma regarding her position on the potential for what she termed "pulling this back to the Executive side." Councilor Wyers indicated she had heard this discussed in other quarters, and said she had not had an opportunity to inquire directly of the Executive Officer. She said she understood the Committee had been asked to deliberate on the matter in good faith, and she asked Ms. Cusma whether she intended to stay with

that commitment. Councilor Wyers expressed concern that should the result be other than that desired by the Executive, that at that point the Executive would not want the Committee to deliberate and decide.

Ms. Cusma commented regarding what she termed "the rumor mill" and noted she had received a number of phone calls on the matter. She said her response was that the matter was still on the table and in front of the Committee tonight. She said the question was not whether or not she was willing to let the matter continue, but said she felt it was time to make a decision.

Councilor Wyers said she did not believe the Councilors were confused, and did understand the issue. She said the Councilors were not stalling, and said they were hoping for additional information that might serve to convince them. She said it was possible that there might not be support for the amendment.

Executive Officer Cusma said if the Councilors were not confused, then it was important that they vote on the matter, move it forward, and then vote on it in the Council meeting on March 24, 1994.

Councilor Wyers noted that even though the Committee might vote on the matter, it could vote the matter down.

Councilor McLain commented she believed the decision would be made by the Councilors based on good information and in good faith as public representatives carrying the public trust.

Councilor Wyers commented on the length of time, she noted approximately 15 months, that the proposed contract amendment had been in the negotiation process which had not been open to the public. She noted the process in Committee, which was before the public, had been ongoing for approximately three months, which she felt was not very much time to have a full public review. Councilor Wyers about the discussion at the SWAC meeting. Chair McFarland noted no position had been yet taken by SWAC on the matter. Councilor Wyers asked the Executive Officer and Mr. Martin if it would be helpful for Public Financial Management group to meet with Deloitte & Touche to attempt to bring their analyses together. She said it was understanding that such a discussion had begun but had ceased.

Executive Officer Cusma did not agree the matter should be pursued at that level and felt it was possible that such discussion bordered on being unethical.

Bob Martin, Solid Waste Director, addressed the Committee, and said the Department represented savings to date available to Metro under the proposed amendment at about \$27 million. Mr. Martin said an adjustment in the manner in which the CPI was used would increase savings to approximately \$38 million. Mr. Martin said inflation rate assumptions would affect the savings, but felt comfortable with the projections.

Councilor McLain asked if it were true that the proposed savings would only occur with regard to the Forest Grove tonnage if the tonnage were not bid out. Mr. Martin said the savings from Forest Grove would be realized if the flow from Forest Grove were directed to the Oregon Waste Systems landfill. He said it was not mandatory to send the flow to the Columbia Ridge landfill. He said the opportunity to do so was still resident in the new version of the amendment, and noted a greatly reduced price would be available for all Metro tonnage.

Mr. Martin said the original agreement provided for a \$.65 reduction in Metro's overall rate starting July 1, 1994, increasing to \$1 January 1, 1995. He said the revised proposed moved that time frame up to start at \$1 July 1, 1994, if the decision were made soon enough to allow the compactor to be put into place and if the waste started to move to Columbia Ridge by that date.

Councilor McLain asked for confirmation from Todd Sadlo, Senior Assistant Counsel, regarding whether or not, according to the language in the amendment, that the price for the tonnage could be maintained should the tonnage be bid out. Mr. Sadlo said there was nothing in the amendment that said Metro could not bid the tonnage out and not take advantage of the production in the amendment.

Mr. Martin said Metro was not restricted from bidding the tonnage out, and said, if bids from competing interests were not liked, Metro was free to accept the price in the proposed amendment. He said, however if, in the process of bidding out, the July 1, 1994 time frame were exceeded, some revenues would be lost. If, he added, it were to go to some other company than Waste Management, the savings would be lost.

In response to Councilor Wyers, Mr. Martin a bid or proposal document would be put out that would be aimed at getting that 10% of the waste or the waste going from Forest Grove to Riverbend currently delivered to a landfill at a price and under terms and conditions that were at least as financially beneficial as those obtained through direct negotiation.

Councilor Monroe asked Mr. Martin about a dispute with Waste Management over their alleged violations to the 90% rule. Mr. Martin concurred the dispute was based on different interpretations over definitions of acceptable waste, and said the contract before the Committee did not entirely clear up those definitions.

Mr. Martin said the proposed amendment would clear up the possibility of any claim over alleged past violations of the 90% rule. He said Waste Management had essentially agreed to wipe the slate clean on the years 1991, 1992 and 1993. In response to Councilor Monroe, Mr. Martin said however that decision was not independent of whether or not the Forest Grove tonnage was bid out. Mr. Martin said Waste Management had, indeed, made it clear that if the Forest Grove tonnage were bid out and were to go to someone else, their claims would not be waived after all. Mr. Martin said if the amendment were accepted, and if the Forest Grove tonnage went to Columbia Ridge, then Metro would indeed be sending 100% of all acceptable waste according to his definition and interpretation leaving Metro in very little jeopardy of ever coming close to a violation of the 90% rule. Mr. Martin said he did not believe it was a good option to reject sending waste to Columbia Ridge landfill.

Councilor Monroe said he was concerned about the past dispute and over the definition of what was acceptable waste. He believed it was timely to clear that issue up.

Mr. Martin said the process began with the purpose of resolving the issue of what is and what is not acceptable waste and said it was a difficult and complex process. He noted state legislated definitions entered the picture more recently, further muddying the waters.

Councilor Monroe asked Mr. Martin if he could construct language defining acceptable waste.

Mr. Martin referred the question to Mr. Sadlo, and indicated it was extremely difficult to do.

Mr. Sadlo indicated that the matter of defining acceptable waste had been at the center of negotiations. He said the negotiation before the Committee was the result. He said he did not know if there was a resolve possible at this time.

Councilor McLain commented that she understood Mr. Martin to believe that Waste Management did not have a case concerning the referenced claims. In response to Councilor McLain, Mr. Sadlo said, regarding the number of claims, there were six.

Councilor McLain asked what was Metro's liability in the matter per year. Mr. Sadlo said he did not think it advisable to go into risk of liability without going into Executive Session.

Councilor McLain felt if the term acceptable waste could not be defined, how could Metro guarantee a percentage of the waste stream consisting of acceptable waste. She said it was difficult to come to a decision without the information concerning possible liability.

Mr. Sadlo said the way the solution was structured to obtain a deal for the other 10% of waste that was delivered from Metro facilities so that we would not have a problem in the future. He said the kinds of waste were then defined much more specifically in terms of the kinds of facilities in the area that would have to deliver to waste to

Waste Management. He said in doing so a number of different facilities with which there was a conflict were excluded.

Councilor McLain felt other claims could arise in the future without a proper definition of acceptable waste. Mr. Sadlo said the conclusion was that the risk was slight because of the amount of waste that would then be going to Oregon Waste Systems from this region.

Councilor McLain explained she had to balance the proposed solution against her personal philosophy regarding a free marketplace and bidding the tonnage out. Councilor Wyers said she concurred with Councilor McLain's concerns.

In response to Councilor Wyers, Mr. Sadlo said there was an attempt to change the language originally and said Waste Management did not agree. He said the solution before the Committee was an attempt to assure being able to go forward and realize the cost savings in the rest of this amendment without stalling the matter because neither could agree on a proper interpretation of the 90% clause. In response to Councilor Wyers, Mr. Sadlo said if Metro did not take the option of delivering the Forest Grove waste, there would be an ongoing continuous question as to whether or not 90% of the waste was being delivered until such time as an arbitrator was sought for a remedy. Mr. Sadlo said he assumed once an arbitrator was sought, the matter would be resolved to the satisfaction of one party or the other, and the parties would not be allowed to do what was now being done. He said this was an attempt to avoid that situation.

Councilor Wyers referenced a draft document dated March 7, 1994 entitled Proposed Amendment to OWS Disposal Agreement and attached Option A Draft dated March 10, 1994, as well as a memorandum dated March 15, 1994 from herself, Councilor McLain, and Councilor Gates regarding Possible Amendments to the Proposed Changes in the OWS Disposal Contract. These documents have been made part of the permanent meeting record. She referenced page 4 of the March 10 Draft document, Option A (Contract Amendment No. 4), no. 7. Waiver of Claims and Clarification of Contract Terms: a. (1) and (2). Mr. Sadlo said he did not have a problem with the "general purpose landfill" definition as referenced in 7a.(2), but noted he had not talked with Waste Management about their viewpoint. He said regarding 7a.(1), that the language presented some of the same problems encountered earlier on in negotiations and could be unacceptable to Waste Management, in which case they might choose to seek an arbitrator. He said it would not clear up some of the problems in determining what types of facilities or what types of waste must be delivered by Metro to Columbia Ridge Landfill. Councilor Wyers suggested the language might clear up the problems very well. Mr. Sadlo disagreed.

Councilor Wyers requested Oregon Waste Systems respond to each one of the proposed amendments as referenced in the Councilors' joint memorandum of March 15, 1994.

Councilor Wyers asked why the old claims would not be dealt with coincident with the contract amendment, and asked if that were not standard practice. Mr. Sadlo referenced Exhibit A, of proposed resolution 94-1904, Contract Amendment No. 4, Section 1, and said Oregon Waste waived its claims against Metro for 1991, 1992, and 1993.

Councilor Wyers expressed concern that approval of the proposed amendment could be followed by Oregon Waste Management having to have the lowest bid because of the way the process would be structured.

Councilor Monroe asked whether or not any liability would remain for past grievance FY 1991/1992/1993 should the Forest Grove tonnage be bid out and Oregon Waste Systems be kept at 90%. He noted he understood Mr. Martin to say that would be the case.

Mr. Sadlo said that would not be the case, and reiterated the amendment waived those claims. Councilor Monroe emphasized, no matter what was done with regard to the Forest Grove tonnage, which Mr. Sadlo confirmed. Mr. Sadlo said he understood Mr. Martin to say that if Metro didn't send the waste from Forest Grove to Columbia

Ridge under this amendment, there was still some risk that 90% of the waste that Metro delivered to any general purpose landfill would not be delivered to Columbia Ridge in the future.

Mr. Martin agreed he was incorrect, and he indicated he was recalling a letter from Waste Management in which they suggested that should the Forest Grove tonnage be bid out and should they not be successful, they weren't sure they would want to give Metro the waiver. He said the way the amendment was currently worded the waiver was secure.

Councilor Monroe commented a problem could arise in the future. Mr. Martin agreed.

Mr. Martin said he did not say Waste Management did not have a case, but rather, he said he believed their case did not have a lot of merit.

Councilor Monroe commented he was concerned about a situation in which a past problem might be fixed, but in which a future problem could still occur.

Councilor Hansen commented the recommendations could be adopted, save about \$38 million, and the possibility would exist for legal claims in the future. On the other hand, she said, the matter could be left at status quo, without the potential for \$38 million in savings, and the possibility for legal claims in the future would exist.

Mr. Martin noted the \$38 million savings would be realized only if the proposal to send Forest Grove waste to Columbia Ridge was approved. He noted the prospect of dealing with a 90% issue in the future should that occur would be remote.

In response to Councilor Wyers, Mr. Martin said this was not to be considered flow control. Mr. Sadlo said he did not see flow control in the proposed contract amendment, but noted there were many ways to define flow control. Mr. Sadlo said the general way of looking at flow control was how it was delivered to the facility, not what facility it was going to.

Councilor Wyers asked what would happen if the term "100 percent" in Exhibit A, 4. were changed to "90 percent". Mr. Martin said the contract amendment would need to be renegotiated with Waste Management to find out what would happen, but said the rate reduction to Metro of \$1.00 per ton was based on the "100 percent" clause.

Mr. Sadlo said the idea was to describe a statement of how much waste Metro would deliver to Columbia Ridge in order to take advantage of a \$1 off per ton on all Metro tonnage.

Councilor McLain indicated some Committee members were interested in passing the matter out to the Council, and said the concern was if there was not a clear direction by the Committee it could get to the Council and not be able to pass. She said the signal from some Committee members was to Waste Management that what was before the Committee was not protection enough for maintaining the flexibility to bid out the Forest Grove tonnage. Councilor McLain said she did not believe the contract amendments improved the contract due to the potential for future liability and felt the definition problems were still existent.

Mr. Martin said if the amendment were accepted and if Forest Grove waste were sent to Columbia Ridge, he did not believe the 90% problem would be raised as an issue again. He added the price Metro for sending the waste to Columbia Ridge was overwhelmingly in Metro's favor. He said also he did not believe Metro was giving up flexibility, and said Metro retained the ability to direct no more than 90% to Columbia Ridge. He said should it happen that subsequent to sending Forest Grove tonnage to Columbia Ridge, if that were the case, it was determined that was not a good enough deal or there were problems, the course could be changed.

Councilor Hansen recommended the matter be moved out of the Solid Waste Committee and onto the full Council for consideration. She felt it was time to bring the matter before all the Councilors for a full discussion as

information was coming to the Committee, as well as being requested from the Committee, from other Councilors who were not on the Committee.

Councilor Wyers commented the Committee was the place where the work on the matter should be accomplished until a document the Committee was able to recommend could be obtained, although, she noted that might not occur.

Councilor Wyers said it was difficult for her as a Councilor and expressed concern about not being able to get an unbiased view from Department Staff. She said she was prepared to ask for a response and comment from Mr. Martin and Mr. Sadlo regarding the draft amendments suggested by the Councilors Gates, McLain and herself.

Chair McFarland said she did not feel it was fair for Councilor Wyers to characterize as biased the opinion from Department Staff. She said it might be a personal viewpoint, but felt it should not be noted in this forum. Councilor Wyers said it was not her intent to cast aspersions, but wanted her statement on the record that it had been difficult for her as a Councilor.

Councilor Wyers indicated she would like to move the amendments as previously referenced from the March 15, 1994 memorandum and Draft Option A dated March 7, 1994.

Councilor Hansen called for a point of order.

Chair McFarland noted the procedure that was her intent included a staff report from Mr. Martin, a report from Mr. Houser, and then to take public testimony followed by Committee action. She indicated she would accept Councilor Wyers' amendment, but asked Councilor Wyers to wait until after the public hearing to do so.

Mr. Martin indicated he wished to comment on the amendments drafted by Sanifill.

Chair McFarland asked Mr. Martin to address the matter currently before the Committee and wait until the amendments were moved to address those issues.

Mr. Martin responded to a previous question from Councilor Monroe, and said the question of who had a vested interest at stake and who did not should be asked. He said Department Staff did not have a vested interest, and said the question of credibility should be raised, i.e. who knows the field. He said the Solid Waste Department Staff had been working full time with solid waste issues in the Pacific Northwest region for in excess of six year, and by virtue of that fact had expertise. He said accountability was a factor to consider as well. He noted Department Staff would continue to deal with, and be accountable to, the Council concerning the results of a position that was presented. He indicated it would not behoove Department Staff convince the Council to make a decision that eventualized in a financial disaster. He said the same questions should be asked concerning the other parties; e.g. Deloitte & Touche and Sanifill Corporation. He suggested the possibility that the Metro Council hire Deloitte & Touche as their independent outside consultant to create an arena of accountability if the amendment was rejected. He commented regarding lawsuits filed against Deloitte & Touche for audits performed in connection with several savings and loan associations which failures. Councilor McLain admonished Mr. Martin for questionable tactics.

Mr. Houser noted minor language changes in Exhibit A and noted Waste Management was a Delaware corporation, and was not incorporated in Oregon. He noted another change on page 2, Exhibit A, 6.(a) and said the original language did not clarify that the intent of sub(a) was that Metro would get the \$1.00 off starting July 1, 1994 if waste were actually delivered to Columbia Ridge before July 1. He said the original language appeared to imply that all that was necessary was that Metro make a decision to send it there by July 1, 1994. He said the new language clarified that waste would have to be delivered before July 1, 1994 to obtain the \$1.00 off. He said that appeared to be the original intent of the negotiation and there was a need to clarify that language.



Councilor Monroe clarified the decision would have to be made 90 days prior to July 1, 1994 in order for the \$1.00 off to kick in. Mr. Houser said he had been told that period could be as short as two months, and concurred 60 to 90 days would be necessary.

Mr. Sadlo reference page 3 under 7.(b) the phrase "per municipality" had been removed, and said it had been changed to "community".

Chair McFarland recessed the Committee at 5:40 p.m.

Chair McFarland reconvened the Committee at 6:24 p.m.

Chair McFarland opened a public hearing.

Diana Godwin, attorney representing Regional Disposal Company, owners of the Roosevelt Landfill in Klickitat, Washington, testified before the Committee. She said Warren Razorre, President of the company, had said no deal was pending between Regional Disposal Company and Oregon Waste Systems. She said Mr. Razorre did not believe Waste Management would do business that would result in enhancing his company's business position in the Pacific Northwest.

Councilor Monroe confirmed with Ms. Godwin that nothing was pending between her client and Waste Management. Ms. Godwin said she could not speak for other regional landfills nor preclude her client from future potentialities. In response to Councilor Wyers, Ms. Godwin said the going rate in recent contracts had been from \$18.75 per ton to \$21.00 per ton for a smaller waste stream or one that required special handling.

Councilor Wyers pointed out Metro was paying more than that in its current arrangement with Waste Management and said she felt the issue of percentage of tonnage was in part responsible.

Jay Waldron, representing Columbia Resource Co. and Finley Buttes Landfill, testified before the Committee and offered suggested revisions to language in the proposed resolution. He said the proposed amendment language in the contract could arguably require the residue from Wastetech to no longer go to Finley Butte, but rather, he said, to Arlington. He referenced a letter from Neal A. Hueske, Schwabe Williamson and Wyatt, Attorneys at Law representing Wastetech to Mr. Sadlo dated March 15, 1994. This document has been made a part of the permanent meeting record. He read a proposed amendment to Section 4.: "(c) The guaranteed delivery of solid waste provided for in this Section does not include mixed solid waste containing at least 30 percent, by weight, of recyclable materials delivered to a material recovery facility pursuant to a valid Metro franchise, or to the residue from acceptable mixed solid waste delivered from such a facility under the terms of a valid Metro Non-System License." He said there was an argument that the proposed language currently under consideration could abrogate Wastetech's Non-System license and preclude Wastetech from taking the residue subsequent to recycling and sending it to Finley Butte's and otherwise making it part of the guaranteed tonnage flow to Arlington.

Mr. Sadlo indicated he was not comfortable with the language. He said those who negotiated the contract were not aware that Wastetech either processed or intended to process more than 5% of putrescible waste at their facility. Mr. Sadlo suggested that all mixed solid waste contained at least 30% recyclable materials and probably more than that. Chair McFarland concurred and noted it was about 39%. He said there were policy implications in the matter. Mr. Sadlo believed the franchise with Columbia Resource Co. was the appropriate place to deal with the matter, and said language in the contract would need to be reflective. Mr. Sadlo noted decisions made by Metro were based on Mr. Waldron's facility not accepting or processing anything but dry waste, not a mixed solid waste processor or a transfer station. Councilor McLain asked that the matter be revisited.

Mr. Waldron said there was no argument about practices or changes in operations not to be a transfer station, but he said he believed the language in the proposed contract amendment affects the franchise in a manner that no one intended. He understood negotiation could be done in another arena, but felt the matter should be pointed out.

Councilor Monroe confirmed Mr. Waldron's concerns, and understood that clarification was being sought.

Mr. Waldron said it was his company's concern that the legal language match up. Mr. Waldron said his company was permitted to do things beyond 5%, but said they did not, and reiterated his concerns about that portion of the waste stream having to go to Arlington rather than Finley Buttes

Councilor Monroe felt that the language defining waste was important in order to protect from future lawsuit potential.

Lee Frease, resident of McMinnville and member of Citizens Against Pollution (CAP), addressed the Committee and read her testimony into the record. This document has been made a part of the permanent meeting record, and in her testimony she enumerated 10 reasons why Metro should stop sending 10% of the waste stream to Sanifill's Riverbend landfill. Ms. Frease left articles and other correspondence for the Committee. These documents have been made part of the permanent meeting record.

Robert R. Geisen, Independent Consulting Engineer, addressed the Committee and read his testimony into the record. Mr. Geisen did not support the proposed amendment. This document has been made a part of the permanent meeting record.

Duane C. Woods, Legal Counsel for Sanifill, addressed the Committee and noted the Department of Environmental Quality (DEQ) held a detailed record regarding the concerns of the CAP citizens. He said DEQ had not made a statement that no landfills should be sited west of the Cascades. He said DEQ commended Riverbend for its double lined protective cell, and said the innovative poplar tree leachate system used at the landfill won an award from the Council of Consulting Engineers of Oregon and hopes were for its positive environmental qualities. Mr. Woods discussed other matters having to do with the facility, and recommended the waste stream under discussion be put out for bid.

In response to Councilor McLain, Mr. Woods said Riverbend landfill had a limited capacity of under 4 million tons remaining with no area for expansion. He said at the current volume of waste the capacity would be met in 20 years. He said the landfill had all necessary permits and that no legal action affecting the permitting was pending. Mr. Woods said Riverbend landfill would be receiving a waste stream whether or not the remainder of the waste stream was bid, but rather, such action would have a major impact on ratepayers of Yamhill County.

Councilor Wyers noted a conversation prior to the meeting with Mr. Woods in which Mr. Woods had indicated a scenario wherein it might not be within the purview of the Executive Officer to take this contract away from the Council and just approve it. She asked Mr. Woods to describe that matter in further detail in order that Mr. Sadlo might hear his answer and respond.

Mr. Woods responded that, having looked at Mr. Sadlo's original analysis in which the full amendment was contemplated which included the assumption that Metro would unilaterally direct the Forest Grove waste to Waste Management resulting in \$1 off the tip fee and other certain savings, with the Most Favored Rate Agreement with its proposed credit back. He said if those two issues were divided and Riverbend was bid, then a release of the Most Favored Rate Agreement would occur in return for an agreement to pay a credit on volumes above 75 thousand and a smaller credit on volumes lower than that. He said the question was: would that have an impact on the existing approved Metro budget. He said without Adams County not available in 1995 and perhaps 1996, the economic benefits to Metro could be measured under the current agreement as compared with the proposed amendment and make a determination regarding impact on projected revenues and budget. He said that analysis might impact the analysis of whether the Executive would have the right to unilaterally execute the amendment.

Councilor Wyers asked Mr. Sadlo to respond. Mr. Sadlo said the analysis was contained in a memorandum to Councilor Wyers dated December 22, 1993 from Mr. Sadlo in which he stated the Executive Officer had the authority to execute this amendment without further action by the Metro Council. Mr. Sadlo said he concluded by saying that by addressing the question of the Forest Grove deliveries, even though the money would be collected

by the Forest Grove and paid through to Metro, in order to receive the payments for disposal and to move that money through the system and to turn it over to Oregon Waste Systems, Metro would need to have that taken care of in the budget. He said if that were to happen this year, it would need to be done through a budget amendment. He said if it were done in the next fiscal year, it would have to be built into the budget. He said he stood by that analysis, and said he did not believe any of the other impacts Mr. Woods was talking about would impact the Executive Officer's ability to sign the agreement. He said to the extent that the amendment would save Metro money and was not spent, it would go into the unappropriated balance and would be carried over to the following fiscal year.

In response to Councilor Wyers, Mr. Woods said he did not know anything about any contract disputes Metro and Waste Management prior to 1991, 1992, or 1993.

Mike Coyle, McMinnville citizen, commented he could view the landfill from his home, but said he was not concerned primarily with the landfill. He said he was concerned with the liability to the citizens of McMinnville faced with dump clean up problems. Mr. Coyle recalled a statement made at a previous meeting by Chair McFarland in which she expressed concern about leaving future Councils with a 'bear by the tail,' with reference to St. Johns Landfill. Mr. Coyle read from an article regarding a clean up situation in California. He said the article stated studies estimated the clean up cost could be as high \$800 million in the California landfill.

Annette Madrid, citizen of Carlton, Oregon, addressed the Committee and commented that transport trucks in Forest Grove were at about 23 to 26 trucks passing her house daily. Ms. Madrid said there was no citizen support in Yamhill County for this landfill who had voted 2 to 1 against accepting out of county garbage. She said the Board of Commissioners Chair overturned that vote. She said it was not a regional landfill. She supported trucking the waste to Arlington.

Councilor McLain was interested in Ms. Madrid's comments regarding the amount of trucks passing her house daily, and said she would personally look into the matter.

Thomas R. Benke, representing the owners of Lakeside Reclamation Facility, expressed concerns regarding impacts of the contract amendment on his client's facility. He felt Metro's efforts in limiting the amount of solid waste generated in the area could be inhibited to the extent that Metro's efforts in increasing the amount of material recycled or reclaimed began to threaten the violation of the flow fluctuation provision. He asked Department Staff to give consideration as to whether or not the matter should remain in the contract.

Councilor Wyers asked if any representatives from Waste Management were present and would care to address the Committee.

Chair McFarland indicated she had received no cards completed by representatives of Waste Management to testify.

Chair McFarland closed the public hearing.

Councilor Monroe discussed the problem with the definition of acceptable waste, noting the new amendment did not solve the problem of that definition. He felt the language must be cleaned up. He recommended the Committee postpone action and allow Metro Legal Counsel and Mr. Martin and the representatives of Waste Management as well as other interested parties time to make sure that language was drafted that would not be litigable in the future or cleaner than the current language, or he recommended the Committee move the matter out of Committee without recommendation. He said given the time until the matter was heard at the full Council level the matters of language could be addressed. He said he would ask Chair McFarland and the maker of the motion at the appropriate time which of those two options they would prefer he pursue.

Councilor Hansen reminded Councilor Monroe there was a motion on the floor.

Councilor Monroe indicated he would not support the motion to recommend Resolution No. 94-1904 as a do-pass recommendation. Councilor Monroe suggested the possibility of a friendly amendment.

Councilor McLain indicated she favored the matter stay in Committee for further discussion, and did not support the motion.

Councilor Wyers indicated she favored the matter stay in Committee for further discussion and would not be able to support the motion on the floor. She felt the issues should be resolved in Committee. She said she was not convinced Waste Management had not been able to compete for other contracts, and she said had Waste Management been present to testify she would have requested proof of that fact. Councilor Wyers requested Department Staff, Council Staff, Legal Counsel and Waste Management review the amendments previously referenced in the March 15 memorandum from herself, Councilors Gates and McLain.

Councilor Hansen commented it was the function of the Staff to negotiate the contracts and was not the function of the Committee. She commented that business competitors had been allowed to come before the Committee and said philosophical issues were involved in the discussion. Councilor Hansen felt the discussion should be heard at the Council level.

Vote: Councilors Hansen and McFarland voted yes. Councilors McLain, Monroe and Wyers voted no. Councilor Buchanan was absent.

The motion failed.

Councilor McLain commented there was still division among the Councilors and felt discussion should go forward regarding the definitions that were left unclear. Councilor McLain felt a better product would go to Council when more of the issues at hand were resolved. She hoped the Committee would hear the matter again at its next meeting.

Councilor Wyers agreed with Councilor Hansen that the matter should not be one of negotiation in Committee, but felt further crafting of the language could be beneficial to take to Waste Management to use in negotiations.

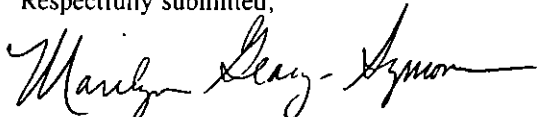
Councilor Wyers referenced a letter from herself suggesting people in the region who might be good people to help Metro negotiate if that were a direction the Council would care to take.

Councilor Hansen felt the language had been looked at, and said the question was how many times could Metro ask for renegotiation. She indicated she believed the point of no return had been reached. Councilor Hansen indicated a perfect document was not before the Committee, but she felt the document should be moved out as it stood and felt it was what she termed, as good as it got.

Councilor Monroe did not agree, and was concerned about the threat of litigation.

There being no further business, the meeting adjourned at 8:08 p.m.

Respectfully submitted,



Marilyn Geary-Symons  
Committee Recorder