

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

July 7, 1992

Council Chamber

Committee Members Present: Judy Wyers (Chair), Ruth McFarland (Vice
Chair), Sandi Hansen, George Van Bergen

Committee Member Absent: Roger Buchanan

Acting Chair McFarland called the regular meeting to order at 5:31 p.m.

1. Consideration of Solid Waste Committee Meeting Minutes of February
18, 1992 and March 3, 1992

Motion: Councilor Hansen moved to approve the February 18, 1992 and
March 3, 1992 Solid Waste Committee Meeting minutes as
submitted.

Vote: Councilors Hansen, Van Bergen and McFarland voted aye.

The vote was unanimous and the motion passed.

2. Solid Waste Updates

o Waste Reduction Program Activities

Debbie Gorham, Waste Reduction Manager, introduced Jim Goddard, Senior Solid Waste Planner, who gave an update on recycling and salvage on the new Metro headquarters building. Mr. Goddard gave a slide presentation and said 80% of the building remained after recycling and salvage operations. He said calculations by the design builder suggested \$4 million out of pocket cost differential would have been incurred to get to the current stage of project development had the building been started from the ground up. He said 4.5 thousand tons of salvage material had been removed from the building, and said 4 thousand tons of sorted rubble had been removed and transported to the St. Johns Landfill as a substitute for what Metro was paying \$3.44 per ton to have hauled to the landfill. He said such an option was open to other construction demolition projects in the area as well.

Mr. Goddard credited the construction site superintendent for Hoffman Construction Co., Don Nail, with making the salvage recovery program a success. Among the recovered salvage, Mr. Goddard listed bathroom fixtures, doors, door hardware, carpet, tongue and groove paneling, 20 tons of hardwood flooring, and he noted 184 tons of wood has been recycled. Mr. Goddard said about 485 tons of material was recycled which he noted included metal and wood, and he said about 35 tons was salvage. He said only about 132 tons of garbage had gone out for

(Continued)

disposal. Mr. Goddard noted recycled paint from Metro's Household Hazardous Waste facility was being used on ceilings and as primer, and he mentioned a recycling system was going to be built into the building for in house recycling.

Mr. Goddard said a \$30,000 grant from the EPA had been obtained to facilitate coordination of an effort to document and track the materials recovery operation at the new headquarters building, and he introduced Pat Merkle, who he noted had been assigned to coordinate such an effort. Mr. Goddard said a type of "how to" guide would be developed as a result of the salvage and recycling operation and tracking project at the building.

In response to Chair Wyers, Mr. Goddard indicated Ms. Merkle was filling a half-time position for a year in duration.

Councilor Van Bergen asked several questions of staff: 1) were there new solid waste tonnage figures; 2) what was the status regarding the Riedel compost facility; and 3) what was the status of the Wilsonville facility bid?

Ms. Gorham indicated she would not be able to answer questions regarding the compost facility or tonnage flows in the absence of the Solid Waste Director. She said she believed bids were due July 8, 1992 for the Wilsonville site. Mr. Houser said according to Senior Solid Waste Planner Chuck Geyer bids were due Monday, July 14, 1992. Mr. Houser said he understood the Solid Waste Tonnage Report for May, 1992 would show similar data to the months preceding with regard to tonnage short fall as compared with the 1991. Mr. Houser said conversation with Dan Cooper, Legal Counsel, regarding the compost facility indicated Credit Suisse was reviewing a number of possible candidates for operation of the facility and that no selection had been made as yet.

In response to Councilor Van Bergen, Mr. Houser indicated he sat in on the meetings of the reviewing body for the previous transfer station bid proceedings, and said he would, at the behest of the Committee, request of Mr. Martin that he sit in on the meetings of the current reviewing body for the Wilsonville site. Councilor Van Bergen indicated he wanted Mr. Houser to retain a vote in the proceedings. In response to Chair Wyers, Mr. Houser said he did not believe the RFF contained language concerning the make up of the review panel or membership vote. He said he would address the issue with Mr. Martin should the Committee so desire. Mr. Houser believed a precedent was set for staff acting that such a capacity in that Donald E. Carlson, Council Administrator, sat on the review panel for the Metro Headquarters building and served as a voting member in review of proposals pertinent to the project.

3. Informational Presentation by Todd Sadlo, Senior Assistant Counsel, Concerning the Current Status of the Two Initiatives Recently Adopted in Yamhill County and a Recent U.S. Supreme Court Decision Affecting Local Jurisdictions Authority to Limit Wastes Entering Local Disposal Facilities

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Todd Sadlo, Senior Assistant Counsel, presented a report and said on June 8, 1992 Riverbend landfill filed an appeal with the Land Use Board of Appeals of the initiative which limited waste from out-of-county to 25% of in-county volume. He said the case could be decided by mid-September, but said should there be objections to the record it could take longer. He said Yamhill County was planning to file a declaratory judgement action specifically asking the court to decide whether Riverbend was subject currently to the 25% limitation. In response to Councilor Van Bergen, Mr. Sadlo said he had presented a memorandum to the Metro Council on May 28 outlining the two initiatives: 1) an initiative from Citizens Against Pollution to limit construction of new landfills and modification of existing landfills which would be accepting more than 25% of the volume of in-county waste from out-of-county. He said Riverbend currently had approximately 60 thousand tons coming from inside Yamhill County, which meant that out-of-county waste, could possibly be limited to 15 thousand tons per year. He said currently the landfill received 75 thousand tons from the Metro region, approximately 68 thousand tons of which came from the AC Trucking facility. He said a contract existed with Columbia County in Riverbend to deliver 15 thousand tons of out-of-county waste, which could potentially cut the Metro region contribution to zero. He said however the initiative was not clear, and said it stated the act was expressly prospective in application and did not apply to any existing facility or complex currently licensed or permitted under federal or state law so long as they were operating within their permits. Mr. Sadlo said that section along with other ambiguities in the act had led Riverbend to conclude that the act did not apply to them at this time, and said Riverbend had not curtailed the amount of waste received by them from out of county. He said he was told by the county attorney they did not believe it applied to Riverbend. Mr. Sadlo said he sent a letter stating Metro would continue to allow waste to go to the AC Trucking facility and from there to Riverbend, and asking them to immediately advise Metro should that change. He noted that he had received no response, and said discussion with county counsel continued. Mr. Sadlo said the declaratory judgement planned for filing would specifically ask whether or not the 25% limitation applied to Riverbend, and said the question would be answered by the circuit court in Yamhill County. Mr. Sadlo indicated he expected the decision on the action before the Land Use Board of Appeals could predate the Yamhill County circuit court. He said constitutional issues were also raised by the matter. He said he intended to continue to negotiate with Riverbend related to establishing a contract to take the 10% of general waste from the Metro region that did not have to go Columbia Ridge. He added court decisions would be considered as pertinent to contracts, and said he did not recommend Metro participation in the current lawsuits or the declaratory judgement.

In response to Councilor Van Bergen, Mr. Sadlo said he had seen any distinction between household waste or construction waste in the initiative.

Mr. Sadlo said another initiative was placed on the ballot by Riverbend which contained a cap and reflected the intentions of the county in negotiations for a new franchise. He said, in response to Councilor Van Bergen, the Citizens Against Pollution passed by a wider margin, 2-1, than the Riverbend initiative, although, he noted, both passed.

In response to Chair Wyers, Mr. Sadlo said contingency plans based on outcome were in developmental stage in the Solid Waste Department but said he did not have detailed information.

Mr. Sadlo said on June 1, 1992 the U.S. Supreme Court handed down two commerce clause cases involving solid waste in which similar principals occurred. He said in a Michigan case a solid waste management act had been adopted which required each county to estimate the amount of solid waste it would be generating and to make provisions for disposal. He said in 1988 Michigan adopted amendments to the act stating a landfill could not accept waste not generated in the county in which it was located unless specifically allowed by the local solid waste management plan. He said landfill owners attempted to obtain county permission to accept 500 thousand tons of waste per year from out-of-state, but, he said the county denied permission even though the landfill guaranteed capacity for the next twenty years. He said the landfill lost in the lower courts and said the Supreme Court treated it as a ban on out-of-county waste and overturned it as a violation of the commerce clause on its face and in its plain effect. He said the Court based its decision on the Philadelphia vs. New Jersey in 1978 in which New Jersey attempted to specifically ban importation of waste, much of which was coming from Philadelphia at the time. He said in that case they stated that New Jersey could not advance its own commercial interest by curtailing movement of articles in interstate commerce. He said also stated whatever New Jersey's ultimate purpose was, it could not discriminate on out-of-state commerce unless there was some reason other than the origin of waste. He said the Court specifically stated the Michigan case was recognized as a ban on out-of-county waste, that the county in question was to treat waste from other Michigan counties no differently than it treated out-of-state waste, that it was an even-handed approach for that reason, and that the burden on interstate commerce was not excessive in relation to local benefits obtained by the county in the matter. He added the Committee might recall that Metro prevailed in the Ninth Circuit Court with a similar claim in 1987 in succeeding in curtailing waste deliveries to St. Johns Landfill from outside the tri-county area. He said the Supreme Court disagreed with Michigan stating the commerce clause cannot be avoided by curtailing commerce through subdivisions of the state any more than it could through the state itself. He said the ruling stated it didn't care that some Michigan counties continued to

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accept out-of-state waste and that did not distinguish it from Philadelphia vs. New Jersey. He noted the Court continued to say it would not allow economic protectionism, presumably, he noted for both state and local governments, they could both continue to impose health and safety regulations. He said the Court stated Michigan could limit the amount of waste landfill operators might accept each year if desired for articulated health and safety reasons, but, he said, stated there was no health or safety reason for allowing from inside a county but prohibiting it from elsewhere. Mr. Sadlo said he felt the ruling sounded reasonable. He said the conclusion he drew from the case was that Yamhill County failed in the cap initiative in limiting the out-of-county waste to 25% of in-county as there was no articulated reason for doing so.

In response to Councilor Van Bergen, Mr. Sadlo said it appeared to be reasonable to place a burden on out-of-state waste that recycling regulations similar to Oregon state regulations be applicable to that waste for it to flow in interstate commerce. He summarized the decision indicated out-of-county or out-of-state garbage did not differ from in-state or in-county garbage, no basis for difference had been articulated, and that the Court felt no basis for difference could be articulated. He noted one case arose in which a particular bug was found present making it different and it was not allowed, but, the Court said they did not see anything like that in this case.

Mr. Sadlo said in another case in Alabama in which a hazardous waste facility accepting 788 thousand tons per year in which 90% was from out-of-state, the only provision under review was the additional of \$72 per ton on out-of-state hazardous waste, noting the base fee was about \$28. He said the Court found the additional fee on its face discriminated against out-of-state commerce as well as in practical effect and stated no evidence existed that out-of-state waste was more dangerous than waste originated within the state. He said the Court stated if too much waste was entering the facility the state could limit the total waste going into the facility equally for in-state and out-of-state or impose an across-the-board fee increase to cover the increased health and safety monitoring effects the state might suffer.

Mr. Sadlo offered to present his comments in writing to the Committee should the Committee request so. The Committee declined.

4. Proposed RFP for Design Services for Replacement of the Roof at Metro South Station

Rob Smoot, Senior Engineer, presented the staff report, and said an engineer had inspected Metro South the previous year for roof damage. He said the conclusion was the entire roof needed to be replaced, and said further analysis was necessary on several of the structural members to determine the extent of replacement necessary and whether some could

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be repaired in place. He said the proposed RFP was to contract with the consulting engineer to complete the analysis on the structural members and to prepare drawings and specifications in order that repairs to the roof might be bid before winter.

Mr. Smoot referenced two memorandums in the matter, one of which was from Mr. Sadlo to the Committee Chair and members dated July 7, 1992. This document has been made part of the permanent meeting record.

Councilor Van Bergen noted no warranties appeared to be involved as to the quality of design according to the report from staff. He said he was concerned that in bid proceedings review be given to the dust suppression sprinkler system at the facility.

Mr. Smoot said he did not believe the moisture problem could be alleviated, noting the facility had a metal roof, no protective barrier or insulation, and said condensation would continue to exist. He said one engineer had suggested ventilation might rid the moisture problem, but, he noted he was not convinced that was accurate. He noted the dust suppression system was under evaluation for possible improvement and felt the mist was not fine enough to produce the desired effect. Councilor Van Bergen felt proper ventilation would be beneficial. Mr. Smoot said the RFP would include ventilation systems.

There being no further business, the meeting adjourned at 6:29 p.m.

Respectfully submitted,

Marilyn Geary-Symons
Committee Clerk

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