

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

September 17, 1991

Council Chamber

Committee Members Present: Judy Wyers (Chair), Ruth McFarland (Vice Chair), Tom DeJardin, Susan McLain

Committee Members Absent: Jim Gardner

Other Councilors Also Present: Roger Buchanan

Chair Wyers called the regular meeting to order at 5:34 p.m.

1. Consideration of May 7, 1991 Solid Waste Committee Meeting Minutes

Motion: Councilor McFarland moved the minutes for the May 7, 1991 Solid Waste Committee meeting be approved.

Vote: Councilors DeJardin, McFarland, McLain and Wyers voted aye.

The vote was unanimous and the motion passed.

2. Solid Waste Updates

o General Staff Reports

Bob Martin, Solid Waste Director, presented the staff report. He distributed copies of the stipulated final order signed May 6, 1991 between Riedel and Department of Environmental Quality (DEQ) concerning the compost facility. This document has been made a part of the permanent meeting record. He outlined the requirements which stated Riedel continue working on modifications to eliminate odors by no later than December 1, 1991, after which a schedule of civil penalties would occur beginning at \$300 per day and ending at \$10,000 per day.

Mr. Martin said a meeting was held with the Washington County Steering Committee on May 6, 1991 in which procurement of a transfer station solid waste system was discussed. He said review of the Request for Proposals to go out would come before the Committee October 1, 1991. He said financing was an issue of concern, and noted the department had concluded either a tax exempt conduit financing or private financing would be consistent with the Metro policy and the Washington County Steering Committee criteria.

Mr. Martin referred to a flow control ordinance approved by the Council a year ago which would give Metro the capability to regulate the process for solid waste flow within the Metropolitan Service District, and said directed use orders had been issued to haulers for compost facility use. He said reports had been received in April that the Jack Young disposal

(Continued)

company was hauling waste to Washington for disposal at a transfer station near Orchards, and noted upon further analysis it was found Jack Young had ceased to dispose of his customary 125 tons per month at the Riedel facility. Mr. Martin said Jack Young was advised this was contrary to Metro code and to take all waste to the Riedel facility to which he complied. Mr. Martin said Jack Young was advised he was subject to the payment of user fees avoided for approximately 29 months plus a \$500 penalty per load taken to Washington in the past. Mr. Martin said Jack Young was presented with a bill for \$75,542.12, was given 20 days to pay and said Jack Young paid the full amount by cashiers check within two days. Mr. Martin said in the course of the investigation Metro noted other regional haulers disposing at the Washington facility, and said the haulers would be apprised of the fact before naming them, and said penalties would be assessed.

o Waste Reduction Program Activities

Debbie Gorham, Waste Reduction Manager, reported to the Committee regarding a recycling and waste reduction conference which staff and Councilor Knowles had attended. She reported a home composter demonstration site had washed out in a rainstorm recently, and said a composter core group had been formed and said eleven master gardeners plus five recycling advocates were in the group. She said they would be going out into the community to give presentations on home composting.

Ms. Gorham said "Deja Shoes" were not only on sale at Earth Mercantile store, but said they were also for sale at Nordstrom's at Lloyd Center.

Ms. Gorham introduced a new staff member, Andy Sloop, who was instrumental in a process resulting in a procurement program of recycled products for the Multnomah Athletic Club.

Ms. Gorham said the department did a waste audit for Oregon Catholic Press last December and reported they were currently recycling in the organization and using recycled products for their publications.

Ms. Gorham introduced staff member, Carrie Heaton, who discussed telephone directories recycling programs noting the Lions Club disbanded their program in 1988. She said U.S. West had committed to a five year program, had hired a recycling coordinator and would assist haulers with the cost of collection of the telephone books, and said the 1993 telephone directory would be manufactured recycled content.

3. Ordinance No. 91-422, For the Purpose of Amending the Metro Code to Clarify and Supplement Existing Provisions Related to the Management of Petroleum Contaminated Soils, and Declaring an Emergency

Mr. Martin said the department had developed a solid waste system program that addressed a method to manage petroleum contaminated soil, most of

which originated from the underground storage tank program managed by the DEQ. He introduced Jim Goddard, Senior Solid Waste Planner, who presented the staff report. Mr. Goddard said petroleum contaminated soils (PCS) were a special waste as defined by the Regional Solid Waste Management Plan (RSWMP), Special Waste Chapter. He said federal regulations had brought the issue to the forefront, and noted a four-fold increase in PCS's generated and disposed within the Metro area. He outlined two practices currently used to manage PCS's;

1) landfilling, which he said was the most widely used, and 2) aeration, which he noted was difficult to control and regulate. He said in aeration soil was either spread at the site of generation, or taken to another previously uncontaminated site to remove hydrocarbons. He said water and soil quality issues emerged with PCS aeration techniques. He said Ordinance No. 91-422 was drafted in response to the RSWMP directive to Metro to develop a management plan for PCS's.

Mr. Goddard said an environmentally sound, third management option which included heating the soil would be allowed by the ordinance, and said three processors were currently developing facilities in the Metro area, 1) RMAC, 2) Oregon Hydrocarbons, and 3) Sonas. In response to Chair Wyers, Mr. Goddard said the general process was termed low-temperature desorption which volatilized the hydrocarbons from the soil, followed by capturing or flaring off as a secondary treatment. He noted an additional process not currently used in the area was termed bio-remediation in which biological destruction of the hydrocarbons occurred. He said Metro met with DEQ on a regular basis, and said Metro deferred to and applied DEQ regulations and guidelines for definition of process acceptability and level of remediation.

Mr. Goddard said the ordinance defined PCS's and how they fall within Metro's jurisdiction. He said once PCS's were removed from site they become generated solid waste and placed under Metro jurisdiction. He said processors would utilize the Metro franchise code. He noted a public perception existed regarding the level of control designated to a franchised operation, and said Metro was interested in developing a competitive open marketplace for PCS processing with minimal Metro regulation. He said land use permits and DEQ permits would have been obtained prior to Metro findings. He said the department proposed to license PCS processing facilities allowing processors to operate with minimum control and providing no specific geographic area. Mr. Goddard noted the ordinance would ban off-site aeration of PCS January 1, 1992. He said PCS disposal at Hillsboro Landfill in lined cells currently provided site control, leachate systems, testing systems, and a high level of environmental control. Mr. Goddard said licensed PCS processing facilities would be exempt from the Tier I users fee since materials recovery and recycling would be a primary function.

Mr. Goddard noted past income for PCS has been minimal because of the volume based system at Hillsboro Landfill, which he said did not account

for the heaviness of PCS's. He said the weight-based system at the Hillsboro Landfill would create an impact on system revenue at the \$13 per ton user fee with the Hillsboro rate at about \$50 per ton. He added with licensed processors PCS's would be diverted from the landfill and a change in the potential income to be realized would occur, and at the same time, he said, the ban on aeration would produce an increase on PCS's entering the system. He said the tipping fee at PCS processing facilities would be approximately \$50 per ton.

Mr. Goddard said implementation following adoption of the ordinance would include working with DEQ, sending information packets to and working with generators, and finalizing franchising or licensing agreements with PCS processors.

Councilor McFarland asked if aeration could be deemed an appropriate treatment under certain circumstances. Mr. Goddard said from a DEQ standpoint defining the levels of contamination coincident with aeration proved to be too difficult to enforce. He said release of hydrocarbons to the atmosphere were not the major concern, which he said were currently released by gas stations. He noted contact with other sites, human contact and ground and water contact were concerns. Mr. Martin said soil which tested lower than petroleum contaminated defined soil would not be regulated and considered dirt. He noted although an odor would be noticeable in a neighborhood in which a PCS processing facility was located, the carcinogenic properties attributed to unregulated and unmanaged aeration and landspreading were a larger concern.

In response to Councilor McLain, staff said the Hillsboro rate included the \$13 user fee and landfill rates would be approximately the same as PCS processors' rates. Councilor McLain asked if the three facilities anticipated for licensure would have the capacity necessary for processing the region's PCS's. Mr. Goddard said DEQ aeration figures were by inference only, and said approximately one third of the material was being aerated currently. He noted the total in the system was increasing, and said Hillsboro had received 60,000 tons of PCS the first half of 1991, and expectations were for further increase with the ban of aeration. He said the combined capacity of two permitted facilities was over 200,000 tons of PCS's per year.

In response to Chair Wyers question regarding maintaining landfilling of PCS's, Mr. Goddard said department review and interpretation of the objective of RSWMP was to provide flexible and reliable PCS management as well as to ensure adequate capacity to dispose the material, and said it was desirable to preserve two options. Chair Wyers asked if people would be discouraged from taking PCS's to the landfill based on rates. Mr. Goddard noted a generator has continued liability for PCS taken to the landfill, and said such liability would be substantially reduced when the PCS's were turned over to a processor, and added processing was a quicker means of PCS treatment. Mr. Martin said the Hillsboro landfill, to make

landfilling a viable option, had developed a composite lined cell upgrading the facility to receive PCS's. Chair Wyers asked how long would it take to remediate the soil in the Metro region with processors and/or landfilling. Mr. Goddard said the federal regulations regarding underground storage tanks require that all tanks be inspected by 1993. He added he had reviewed 700 open cases in DEQ records, and said he anticipated a steady supply or slight increase over the next two to three years and then the supply would go down. Chair Wyers noted by then we would be taking PCS's from Washington state, and asked would Metro be providing an incentive to take Washington PCS's. Mr. Goddard said Metro code did not prohibit Washington soil from being accepted in Oregon for processing, and that Washington quality control guidelines were similar. Chair Wyers commented she had a concern regarding public perception of receiving PCS's from out of state. Mr. Martin noted markets for businesses within the Metro region covering a wider area would encourage business ventures. Chair Wyers asked for clarification regarding minimum control and allowing for an open market while limiting the number of processors. Mr. Goddard said PCS processing would be market driven, and limits would be applied as a safety valve only.

Councilor McLain referred to page 3 of Ordinance No. 91-422 and asked the intent of the added language. Todd Sadlo, Senior Assistant Counsel, said the ordinance updated Metro code as defined in ORS 459.387, and said he had added "petroleum contaminated soils" which were not in the ORS definition. He noted the ORS definition said "and other wastes." Councilor McLain asked for clarification regarding the use of the term solid waste and contaminated waste. Mr. Sadlo said the term "solid waste" was intended to include all solid waste potentially subject to Metro regulation, and noted not all solid waste was regulated the same way. Mr. Martin said the licensing process for contaminated soil was intended to be a license for processing solid waste, and noted all special waste was included.

John Houser, Council Analyst, noted a difference in perception between a license and franchise, and asked how would the level of regulation exercised under the license for PCS processing facilities differ from the requirements that Metro made for other kinds of similar facilities now franchised.

Mr. Martin said the license for PCS processors would be similar to flow control licensing in which applications are reviewed and if criteria and requirements are met, a license was issued. He said a franchised facility was a major system component such as a compost facility, transfer station or landfill and as such are reviewed comprehensively. He added a perception existed that the number of, or opportunity for, franchises was limited, and gives Metro a level of control to determine a point at which limited entry to operate on a portion of the waste stream should be considered. He said the ordinance before the committee was an effort to simplify the process, and noted DEQ regulated environmental impacts such as air quality and water quality in treatment of PCS's. He noted land use

siting for PCS processors would be handled by local jurisdictions. Mr. Houser asked how the level of regulation for a PCS processing facility would differ from the franchise for East County Recycling for which typical franchise restrictions, such as rate setting or confining to a particular geographic area, did not apply. Mr. Martin said East County Recycling tonnage was Metro limited, and was responsible for how much and where residual could be taken out of region as well as maintaining rates within approved levels. He added there were other provisions in East County Recycling's franchise that would not apply to licensing PCS processing facilities.

In response to Chair Wyers, Mr. Martin said Metro could exempt PCS processing facilities from certain franchise requirements. He said the proposed ordinance would make it possible to identify and recognize potential PCS processing facilities and to eliminate aeration.

Councilor McLain referred to page 4 and 5 of Ordinance No. 91-422, and said she understood under the licensing procedure Metro would authorize a facility to process PCS. Mr. Houser asked if Metro could write the criteria necessary into a franchise agreement rather than into a licensing agreement. Mr. Martin said the department was attempting to create a regulatory climate which encouraged PCS processing businesses without additional legislative review. He said the material was dirt with petroleum in it and was regulated from an environmental standpoint, and said the department objective was to prevent uncontrolled land spreading by creating a simplified regulatory path of identification and review of approvals for licensing and locating a PCS processing facility. He commented regarding a personal experience with an aquifer contaminated by an underground storage tank which proved costly. Chair Wyers asked why the Metro franchise code would be discouraging to a prospective PCS processor, and noted similar criteria were necessary for a Metro license such as a performance bond and land use permits. Mr. Martin said the outcome of a submitted franchise application would be unclear and subject to policy body review. In response to Chair Wyers, Mr. Martin noted prospective PCS processors coming from out of the Metro region would not be familiar with the workings of the Metro Council and would have the issue of obtaining financing.

In response to Chair Wyers, Mr. Sadlo said his intent was to develop language for the Metro code more specific to petroleum contaminated soil. He added there was discussion concerning the franchise code as written and the possibility of writing appropriate revisions. He said the system contained franchised facilities which could be considered legally under a license. He said PCS processors had asked if a franchise was necessary, and added they could be exempt. He said the processors inquired regarding the benefits of a franchise such as exclusivity and the regulatory burden that would accompany such benefits.

In response to Chair Wyers, Mr. Sadlo indicated renovating of the franchise code had not been undertaken, and said since Metro did not propose issuing franchises for PCS processors it was appropriate to use the term license. In response to Chair Wyers, Mr. Sadlo indicated the franchise code was an appropriate place to deal with franchises and licenses because of similar requirements. He noted Metro Council could ask for a hearing on any application whether granted or denied by the Executive Officer during the period subsequent to approval, and said constituents could bring an application to a Councilor's attention for a hearing. He noted differences between a franchise and a license, and noted a Metro franchise entailed a property right with a regulatory burden and a legislative decision, whereas a license could be issued either with the approval of a legislative body or on an administrative level.

In response to Chair Wyers, Mr. Sadlo said other facilities processing other materials could be expected to be licensed as well. In response to Chair Wyers, Mr. Martin said the department would have to come before Council before expanding licensing authority, and noted flow control licenses were currently issued administratively. He said qualifying criteria for a license were clear and appeal of the decision would come before the committee. In response to Chair Wyers, Mr. Martin said the licensing language proposed pertained to PCS processing facilities only. Mr. Sadlo said other types of processing facilities would be added separately to the language with variations as necessary.

Councilor McLain said one issue before the committee was the question of perception between license and franchise, and referred to pages 13, 14, 15 and 16 of the ordinance, and noted the language in the ordinance developed a difference between a franchise and a license for a PCS processing facility. She asked if the difference validated changing the Metro code, and asked was it efficient, would it encourage prospective businesses and did the Metro franchise code benefit by the changes. She commented a licensing procedure gave the impression that a party could go ahead on their own, whereas a franchising procedure carried a different level of consideration. She said the question of the need for Council approval of licenses as well as franchises was also an issue.

Councilor McFarland said the Council would have to become proactive regarding a licensing procedure and would not otherwise be participant in the process. She agreed it was appropriate for the administrative level to carry certain responsibilities, and said she wanted to ascertain whether or not the Council should participate. She noted as elected officials, councilors must be responsive to constituents who numbered over 80,000. She said a function and a responsibility of the Council was the right to reject an application.

Councilor DeJardin said as long as the Council's right to make a decision was reserved a policy issue has not been decided by the Council or a

standard or criteria has not been given to the staff. He commented regarding financing issues and said bankers like assurances.

Chair Wyers said she would want to know about a PCS processing facility being established in her district, would want the opportunity to review and vote, and the ability to report approval by a body of elected officials to her constituency.

Chair Wyers opened a public hearing.

George Ward, consulting civil engineer, 4941 S.W. 26th Dr., Portland, Oregon, testified as a representative for The Sonas Companies. He said his client found the ordinance acceptable as drafted. He added he did not favor zone control, and noted a portable facility could conceivably compete with a fixed facility. He noted public notice of a potential processing facility would be given through the DEQ, city and neighborhood association process. He said the aeration system was crude and undependable, involving digging up the dirt, covering it, and putting tires on the cover. He said current DEQ regulations prohibit a person treating his own PCS on his own property, and encouraged Metro staff to develop a method for licensure for such parties. He said Sonas had completed the franchise application, selected a site and were satisfied with the Metro staff and program.

In response to Chair Wyers, Mr. Ward said his client would not view Council review and approval of their application as a problem.

Charles Chisholm, President of Oregon Hydrocarbon, 1455 Washington Court, Reno, Nevada, testified and noted with him was Alexis Johnson, General Manager, who he said lived in Portland. He said his company had reviewed the program and felt it was a good program. He said his company had made a franchise application to Metro and felt the franchise process was an inducement which provided a protective umbrella. He said his company, located in Nevada, was the oldest fixed base company in the U.S. currently processing PCS's, and said he did not find the franchise procedure cumbersome. He said currently in Nevada, when his company had a problem the administrative staff were helpful in finding a resolution. He noted a licensing procedure gave a perceived certainty. He noted his company was currently involved in a \$3.2 million investment in the Rivergate area. He said quality control over the processor was an issue with a licensing procedure. He said his company had to come before DEQ which required public hearing, comments period on land use, and before the city, and noted to come before the Metro Council would not be a limiting factor. He said the technology was new and both his company's system and other systems did work. He requested that the method of licensure or franchise approval be regulated with quality controls. He said exclusivity appealed to the private sector investor, and noted banks did not typically make loans on such an investment. He said the current practices of aeration and landfilling did not solve the problem. Chair Wyers indicated the committee agreed treatment of PCS was a viable option. He said test showed his

company's treatment of PCS revitalized the dirt, and said it was waste reduction and a recycling effort. He said exempting the licensing function could be detrimental overall.

Chair Wyers said Metro Solid Waste Department staff would be found to be helpful with problems encountered locally. In response to Chair Wyers, Mr. Chisholm said his company would not be deterred from operating a facility by Council approval of licensing of PCS's processors. He reiterated his concern was that such licenses not become a common occurrence. Chair Wyers asked Mr. Martin, Mr. Houser, and Mr. Sadlo to discuss Mr. Chisholm's concern regarding exclusivity. She indicated she wanted to know if there was more exclusivity through the licensing procedure than through the franchise procedure. Chair Wyers supported Mr. Chisholm's comments that it was necessary to recapture the private investment in a short time frame.

Councilor McLain referred to pages 13, 14, 15, and 16 of the ordinance and asked Mr. Chisholm if he felt the language in the ordinance regarding exclusivity was appropriate whether termed franchise or license, approved or not approved by the Council. Mr. Chisholm agreed.

John Spencer, President of RMAC and President of SRH Environmental Consultants, testified before the committee. He said the issue was what purpose did Metro have relative to controlling petroleum contaminated remediation sites operated by PCS processors. He said his understanding from Mr. Martin was Metro wanted to know where they were, what they were doing, were controls of the air discharge, water discharge, siting issues handled. He said other agencies such as DEQ, the county or the city were overseeing those functions and Metro did not need to control in those areas as well. He said franchising implied an area of exclusivity, whereas a license did not. He said reporting to Metro as a licensed facility would not be a problem, and said he was required to report to the other agencies as well. He questioned whether licenses for PCS's should come before the Council if criteria have been met, public hearings have occurred, and suggested the Council would be serving as an administrative staff. He preferred if criteria and tests have been met, a license be awarded rather than a franchise, unless the exclusivity of a geographic area was included for a franchised facility. In response to Chair Wyers, he said he would not object to Council approval of an administratively approved license with criteria having been met but would object to subjective Council approval.

In response to Councilor McLain, Mr. Spencer said competition in the market place was beneficial and another processor develop a different process later which proved to be better. He asked if PCS processors were franchised with geographic exclusivity how would Metro handle the latter situation.

Councilor DeJardin expressed his desire to act on the ordinance. Chair Wyers commented the ordinance represented a controversial change to the franchise code, and said as the Committee chair she wished to talk with the

Presiding Officer and other Councilors. She asked the Committee to continue consideration of the ordinance. Mr. Martin agreed a two week delay would not constitute an adverse impact, and said it could be helpful administratively.

Chair Wyers indicated a request that Mr. Houser draft a memorandum which would ask for a discussion of the pros and cons of franchising vs. licensing and the issue of exclusivity, and whether or not exclusivity was important to the Metropolitan Service District at this time with regard to this item.

The committee agreed to continue consideration of Ordinance No. 91-422 to the next Solid Waste Committee meeting to be held October 1.

4. Resolution No. 91-1503, For the Purpose of Authorizing an Exemption to the Requirement for Amendment No. 2 to the Contract with R.W. Beck and Associates, Providing Additional Performance Test Monitoring for the Riedel Compost Facility

Jim Watkins, Engineering and Analysis Manager, and Debbie Gorham, Waste Reduction Manager, presented the staff report. Mr. Watkins said the department was requesting \$150,000 additional funds for additional performance test monitoring for the Riedel Compost Facility in a transfer of funds from Waste Reduction into the General Account. Ms. Gorham agreed to the transfer, noting the funds had been allocated to alternative technologies.

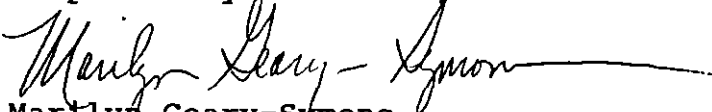
Motion: Councilor DeJardin moved to recommend Resolution No. 91-1503 to the full Council for adoption.

Vote: Councilors DeJardin, McFarland, McLain and Wyers voted aye.

The vote was unanimous and the motion passed.

There being no further business, the meeting adjourned at 7:35 p.m.

Respectfully submitted



Marilyn Geary-Symons
Committee Clerk