

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

November 14, 1989

Council Chamber

Committee Members Present: Gary Hansen (Chair), Tom DeJardin (V. Chair), Mike Ragsdale and Judy Wyers

Committee Members Absent: Roger Buchanan

Other Councilors Present: Richard Devlin, David Knowles and Ruth McFarland

Also Present: General Counsel Dan Cooper

Chair Hansen called the meeting to order at 5:38 p.m.

1. Consideration of Minutes of October 3 and 5, 1989

Motion: Councilor Ragsdale moved for approval of the minutes.

Vote: Councilors DeJardin, Hansen, Ragsdale and Wyers voted aye. Councilor Buchanan was absent. The vote was unanimous and the minutes were approved.

2. General Staff Reports

- o Jack Gray Transport Contract
- o Metro South Operations Contract

Bob Martin, Director of Solid Waste, discussed Metro South Station operations. He said design and related improvements were underway and 40 to 50 percent completed. He said improvement costs were more than staff first estimated. He said the cost increase would be balanced against possible savings when Metro South bids were returned. He said savings could also be realized on St. Johns Landfill operations. He said if savings did not materialize in either area, staff would report back on the improvements that cost more than previously estimated. He said the staff would wait until remodelling was completed for final costs.

Mr. Martin said the City of Oregon City Planning Commission voted to give Metro a conditional use planning permit with a three to two vote. He said the redesign received a unanimous vote. He said the Planning Commission perceived Metro as responsive to concern about the facility's appearance and effect on the area. He said Metro South would be closed over the Thanksgiving weekend to install the compactor.

Mr. Martin discussed the Jack Gray Transport (JGT) contract. He said the Sherman County Land Use Commission made a favorable decision on Biggs as a truck staging area. He said Gilliam County held two hearings on the land use conditional permit. He said they would make a final decision, Monday, November 17, on the issue.

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Mr. Martin discussed the Public Utilities Commission (PUC) hearings. He said the PUC held evidentiary hearings since the last scheduled Solid Waste Committee meeting. He said rebuttal hearings would begin next Monday and expected those hearings to last approximately one month.

Councilor Wyers entered letters for the record: 1) A letter to Senator Wayne Fawbush from Thomas G. Clifford, State Legislative Counsel deputy, dated November 13, 1989; 2) A letter to John Sheldrake, Oregon Department of Transportation (ODOT) from Nancy Russell, Friends of the Columbia Gorge chairperson emeritus, dated November 9, 1989; 3) A letter to Judge William Hulse, Wasco County, from Stafford Hansell, Gorge Planning Commission chair, dated October 31, 1989; 4) A letter to Richard P. Benner, Columbia River Gorge Commission executive director, from Bob Martin, Metro, dated May 3, 1989; and 5) A City of the Dalles Planning Commission meeting agenda for November 16, 1989.

Councilor Wyers said the letter to Senator Fawbush discussed whether JGT could obtain tax-exempt bonds and said the letter indicated state legislative counsel did not believe bonds if issued, would be tax-exempt, which would affect bond marketability. Councilor Wyers said state legislative counsel's opinion could affect the PUC ruling because the PUC would consider whether the contract would be profitable or not. Councilor Wyers said the City of The Dalles Planning Commission agenda contained an item on a proposed JGT staging area. She said the next hearing on the issue was scheduled for December 7, 1989. She said the original site application was submitted by Interior Motor Freight to the Commission September 15, 1988, before the Metro Council approved the contract with JGT. Councilor Wyers said the letter from Mr. Martin to Mr. Benner was an attachment to the letter to Judge Hulse and that the letter from Mr. Martin stated "The staging area for Jack Gray Transport, Inc. will not be located in The Dalles. Currently Mr. Goldberg is pursuing sites farther east near Rufus or Biggs, outside the Gorge Scenic Area." Councilor Wyers referred to Ms. Russell's letter to Mr. Sheldrake which indicated if the staging area was sited in Sherman County, traffic could be required to use the Celilo interchange which led directly back to The Dalles which might require modification of that interchange. Councilor Wyers said the latter letter also noted JGT told the PUC their intent to bid on five Seattle contracts which could further affect their use of the Gorge, staging areas and the Celilo interchange.

3. Consideration of Resolution No. 89-1169, For the Purpose of Authorizing Award of Contracts to Trans Industries for Construction and Operation of the Metro East Station (Public Hearing)

Mr. Martin said staff would report on the results of Metro's negotiations with Trans Industries (TI). Staff distributed three contracts Metro negotiated with TI: 1) The 1989 Metro Transfer Station Operation Agreement; 2) The Real Estate Purchase and Sale Agreement; and

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3) The 1989 Metro Transfer Station Construction Agreement. He said staff would report on environmental and transportation issues and indemnification and contract costs.

Mr. Martin said the Council made it clear indemnification to protect Metro was essential. He said remediation was currently being defined on adjacent properties and primarily the Gould property previously a lead battery operation. He said the Rhone-Polenc property was used in the manufacture of pesticides and had had multiple owners. He said the main question of interest was if Metro would be protected in the future if problems arose because of proximity to these contaminated properties. He said Metro negotiated a comprehensive indemnification agreement with TI to protect Metro against possible environmental litigation. He said the indemnification agreement was comprised of four parts and said Metro did not have to "step up" to the property purchase until the property had a Department of Environmental Quality (DEQ) transfer station permit. He said that assured Metro would not buy a site for \$2.3 million without regulatory certainty.

Mr. Martin said the basic permit was structured as necessary to be in hand June 20, 1990, in the purchase agreement. He said the date could be extended if Metro believed an extension would be better. He said June 20 was the deadline to secure the permit and it was understood neither Metro or TI would purchase the property until the necessary permit was received.

Mr. Martin said the indemnification's agreement's second part covered the period of time during construction of the facility before and after Metro purchased the property. He said if a problem was discovered during construction, TI would step up to the cost of investigation, the cost of necessary legal defense, and the cost of any necessary remediation as part of their general costs in providing the whole facility.

Mr. Martin said the third aspect of the indemnification agreement applied to the period of time TI would operate the facility. He said TI had the basic responsibility to secure the site and build the facility. He said the facility would be a turn-key project. He said once Metro accepted the facility after a series of tests, TI would operate the facility for a period of three to five years. He said during that period of operation, TI would indemnify Metro from any Environmental Protection Agency (EPA) or DEQ action clean-up action that could later be identified as necessary to perform on the site. He said TI would bear costs and the risk of investigation, litigation, and the risk of any remediation which could prove necessary as a result of any as yet unidentified problem that could arise after TI's period of operation. He said after TI provided the site, built the facility, and operated it for three to five years then Metro would rebid Metro East similarly to the current Metro South rebid. He said after that period of time if remediation was proven necessary by EPA or DEQ action, TI would again

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step up to the cost of investigation and remediation within their in-house resources and within the limit of \$100,000 of outside transaction costs. He said TI would share the same legal responsibility as Metro in that both would be identifiable as property owners in addition to other historical property owners. He said TI would be the owner of record and would defend themselves in the case of litigation and their defense would apply to Metro. He said the only unknown which could occur would be if a past action on the site, currently unknown despite all investigations to-date, after five years of operation on the site was discovered to exist. He said Metro would then assume responsibility for remediation of the problem discovered on-site.

Mr. Martin discussed owners of adjacent contaminated sites. He said if an adjacent site was discovered to cause contamination to the TI site, the primary party to cause the contamination would be pursued for remediation. He said Shell Oil and Rhone-Polenc were large companies with resources for remediation.

Mr. Martin said Metro would perform additional site investigation work and provide an air sampling station during remediation of the adjacent property and additional testing of lead battery casings on the property to fully identify the full extent of possible remediation to the Gould site that could affect property and to identify that remediation immediately. He said additional groundwater testing would be performed also. He said all provisions and recommendations together formed a solid indemnification agreement for Metro.

Mr. Martin explained Metro negotiated three separate contractual agreements because the facility would be developed in stages. He said the once property was acquired, staff wanted to keep property acquisition language separate from construction language, and similarly, construction language separate from operations language. He said the purchase agreement contained the bulk of the indemnification language and permit requirements. He said the construction agreement defined the relationship between Metro and TI during construction. He said it contained the guarantee that TI must be able to process solid waste by January 1, 1991. He said that deadline must be met even if an environmental problem was discovered during construction. He said the deadline meant Metro would meet contractual commitments with the City of Portland, Oregon Waste Systems, Inc. (OWS), JGT and closure of the St. Johns Landfill.

Mr. Martin explained the operating contract and its provisions. He said up to 35,000 tons received by TI per month Metro would pay \$285,250 per month and after 35,000 tons, costs would incrementally decrease. He said TI originally proposed the facility would cost \$18.3 million to build and said after final negotiations that cost remained the same. He said what Metro paid over the life of the contract depended on variables such as the timing of procurement of other facilities such as the mass composting facility; timing of the Wastech high grade facility

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upgrading; and timing related to potential Washington County facilities. He said also unknown were the effects of future recycling rates. He said staff developed best and worst case projection scenarios of how much tonnage would be processed from 1991 to 1995. He said based on staff's estimate of maximum waste flow to the facility, solid waste received would be over the 35,000 per month minimum tonnage requirement. He said the during the life of the contract, disposal would cost \$8.50 per ton. He said based on staff's estimate of minimum waste flow, which assumed higher recycling rates and proposed solid waste facilities would come on-line, Metro would pay a base amount of \$3.4 million per year. He said the fixed minimum costs would provide stability for disposal services, rate setting and the budget process.

Mr. Martin said another compensation element in the contract was the avoidance cost principle. He said if TI could avoid landfilling waste in Arlington through recycling, Metro would pay TI the cost that would have been paid to JGT and OWS for transportation and disposal respectively. He said TI proposed a 25 percent recycling rate. He said Metro would rather pay for recycling than disposal. Mr. Martin briefly discussed termination clauses.

Councilor Devlin asked if TI would receive the avoidance cost payment if they were unable to sell recyclables because of a poor market and had to landfill the waste after all. Mr. Martin said TI would receive no payment in that case.

Mr. Martin briefly discussed traffic routing and described the facility and traffic analysis done to-date. Councilor Knowles and Mr. Martin discussed the alternate access route to cross a railroad spur line. Councilor Knowles asked how the access could be considered an alternate route if it crossed a spur line. Mr. Martin said the spur line could be used with a signal. He said preliminary discussions with the PUC did not indicate a signal was necessary at this time. He said the railroad would be responsible for safety issues.

Councilor McFarland read for the record a portion of a letter she received from Craig J. Reiley, Manager, Crossing Safety Section, PUC: "With a switch only 125 feet from the access to the transfer station, you can figure on numerous interruptions to users of the transfer station during the one and a half to two hours it takes to switch the industry at that location." Mr. Martin said TI representatives had held talks with PUC officials.

Councilor Devlin said the alternate access road appeared to go through the staging area for trucks where they go to the compactor and put trailers in various spots for pick-up by JGT. Mr. Martin said traffic during part of the day would be routed through part of the facility used to shuttle trailers into position and pulling loaded containers out of the loading area for compactors. He said the area would require

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operational control during that time. Councilor Devlin and Mr. Martin discussed access and egress routing briefly.

Rich Owings, Trans Industries, said TI met with the PUC and Burlington Norther Railroad which operated the spur in question. He said the spur represented no particular problem and said TI would respond to Mr. Reiley's letter in writing. Councilor McFarland asked Mr. Owings how long he estimated it would take TI to obtain the necessary PUC permits. Mr. Owings said TI should receive the permits before the facility was on-line and would respond more fully to that question in writing also.

Mr. Martin discussed the Dames & Moore (D&M) report Metro commissioned to evaluate the American Steel/TI and adjacent sites. He said the report concluded there appeared to be no evidence of past activities at the site that caused contamination of the site except for limited contamination from underground fuel storage tanks scheduled for removal from the site during development of the property. He said contamination that originated off-site had a low possibility of future remediation. He said staff met with DEQ on the issues and he understood DEQ agreed with that general assessment. He said DEQ and D&M representatives were present and could speak to the issues. He said the D&M report concluded EPA and DEQ clean-up on the adjacent property would not impair air quality on the American Steel site. He said the D&M report recommended additional steps for Metro to take for additional site investigation. Mr. Martin said he agreed with D&M's recommendations and said if the Council adopted Resolution No. 89-1169, staff would recommend Metro perform the additional investigations. He said TI would take care of the underground storage tanks. He said tests which should be performed were sampling and analysis of that sampling and assurance on the battery casings. He said if battery casings were present on the site they would be pointed out to the regulatory agencies for clean-up in addition to the remediation already identified as necessary on the Gould property. He said the estimated costs for the research and testing ranged from \$20,000 to \$40,000.

Councilor McFarland asked how soon TI expected to receive the PUC permits necessary for operation and said she did not agree with the D&M report conclusions. Councilor McFarland quoted from Mr. Reiley's letter for the record: "You also expressed permit in the time it takes to obtain a PUC order. PUC normally takes six to nine months to process. However, this time period is controlled to a great extent by the parties in interest in the matter. If we receive a complete application and the parties are all in agreement, the process can take as little as 20 to 30 days. If parties don't respond or object to the application, the process could be protracted and could take several years."

Dan Cooper, General Counsel, said Section 5.2.3 of the Agreement required completion by the required operation date defined as 13 months from the issuance of the first notice to proceed which would be January 1, 1991. He said PUC permits listed in Section 5.5 were the

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contractor's responsibility. He said the definition of force majeure which provides the contractor an excuse for not meeting his obligations did not include PUC actions. He said force majeure was strictly limited to DEQ permits and City of Portland building permits.

Councilor McFarland asked if TI's contract would be terminated if they did not obtain a PUC permit by January 1, 1991. Mr. Cooper said the contract could be terminated and if TI could not provide movement of solid waste by that date, TI would be liable for damages to Metro.

Mr. Martin noted Metro would provide litter pick-up services around Metro East consistent with the services provided at Metro South. He said Metro would contract separately for such pick-up to and including all the north area as far as the St. Johns Bridge and all the way south to Yeon.

Mr. Martin said the contract before the Committee was stronger than it was originally estimated to be, at the original proposed cost, and that the project configuration was somewhat improved due to the alternate access provision.

Chair Hansen asked if Metro determined there was an additional impacted area not originally identified, whether the litter abatement contract could be amended or expanded. Mr. Martin said the contract could be amended and said the Linnton Community Group had expressed interest in meeting with Metro on a regular basis to discuss litter and related mitigation issues. Mr. Martin said JGT would not use the St. Johns Bridge as part of their routing.

Mr. Martin responded to a letter he received from Councilor Wyers November 13 which asked how much Metro had spent on the TI proposal to-date. He said he did not have enough time to assemble a complete financial reporting, but said up to \$350,000 was authorized for design costs since staff had been authorized to proceed with negotiations. He said Metro had not received billing for expenditures, but believed TI had spent approximately half that amount to-date on design services. He said probably \$200,000 of those funds had been spent. He said the D&M report cost \$13,000 and additional legal expenses also cost \$13,000. He said there had been a fair amount of in-house expenditure, but said not to attribute that exclusively to TI since staff would have done the same for another successful proposer. He said approximately \$226,000 had been spent to-date.

Councilor McFarland noted TI's original proposal stated the designated road for traffic approaching the site from the north would be from St. Helens Road to Balboa, Culebra and 61st Avenue through the site. She asked if that routing was in-coming or out-going traffic. Mr. Martin said there were methods of access from the north and the south but said regardless of traffic direction, traffic would be directed to use specific routing. Councilor McFarland asked if the other proposers

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could modify their proposals as TI had changed their traffic routing, or if TI would receive a special exemption. Mr. Martin said Metro would designate the access and egress routes from the facility.

Councilor Wyers referred to her November 13 letter to Mr. Martin and asked him what funds were spent by Metro on the other three proposers. Mr. Martin said no funds were spent on the other three proposers but some staff time was spent to respond to issues related to the three proposers.

Chair Hansen opened the public hearing.

Michael Sievers, Rose City Resource Recovery (RCRR) project manager, said he wished to comment on the D&M report and Metro's draft agreement with TI.

He said two months previously at a Solid Waste Committee meeting, he discussed issues he wished to reiterate at this meeting. He said the D&M report was a compilation of existing reports. He said the American Steel site had too many unknown environmental safety issues. He said Metro would put itself in the position of risk manager of a poor site. He said D&M reviewed their own previous work and included it in their report for Metro and said that represented conflict of interest. He said the indemnification agreement said Metro would only be held harmless while TI operated the facility. He asked what would happen when TI no longer owned the facility. He said \$100,000 was an extremely small amount to offer for possible future litigation. He said the American Steel site was contiguous to a Super Fund site. He said the D&M report did much more information than had already been available.

Mr. Sievers said Metro's agreement with TI was a put-or-pay agreement. He said the original proposal the four vendors responded to in April was not written as a put-or-pay agreement. He said the proposals were on a guaranteed floor of 15,000 tons per month and then a request for unit prices based on categories of waste flow to the facility. He said the proposers did not realize they were bidding for an agreement in which regardless of whether solid waste moved to that facility or not the vendor would receive a base rate per month.

Chair Hansen asked what minimum tonnage RCRR had proposed. Mr. Sievers said RCRR proposed on unit prices requested within the document which began at either 30,000 or 35,000 tons per month. He said the day after the proposals were submitted, Metro staff called RCRR and asked if RCRR could submit additional information based on their unit prices and capital costs for the minimum flow guarantee only. He said RCRR's response was to ask why that was not asked for in the original proposal document. He said RCRR took exception to Metro paying for 35,000 tons per month whether the facility processed that much or not. He said during preparation of the proposals, Metro asked proposers to not assume Oregon Processing and Recovery Center (OPRC) would expand; that there



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would be no mass composting facility; and that a west side facility would not be on-line in 1995. He said RCRR submitted its proposal based on the assumption the composter would receive 185,000 tons annually; that OPRC would take 100,000 tons annually; and said that left 265,000 tons annually in the waste stream which divided by 12 was 22,000 tons per month. He said the contract before the Committee was different than the proposals originally asked for. He said RCRR felt strongly unanswered environmental issues must be resolved; that RCRR was concerned about the base of pay related to the facility; and were also concerned about a change in the process that RCRR was not allowed to address because certain assumptions were built or not built in.

Estle Harlan, Tri-County Council of Haulers, delivered a statement of consensus from the Tri-County Council of Haulers and said Metro should answer technical hazardous waste questions. She said haulers did not plan to become involved in hazardous waste issues. She said the haulers were concerned about the 35,000 tons per month they would have to pay disposal fees and wanted to ensure the facility processed 35,000 tons per month and said flow control issues should be resolved.

Mr. Martin responded to Ms. Harlan's testimony and said there were no restrictions with regard to future hauling activities and that TI had stated it would not involve itself in the collection business. Ms. Harlan noted one of TI's parent companies, Browning-Ferris Inc. (BFI), had been in Portland presumably to bid on a large project. She said if the contract before the Committee was clear and definite, to approve it, but said Metro should make sure BFI did not intend to involve itself in hauling. Councilor Wyers asked if language could be added to the contract on this issue. Mr. Cooper said language could be added with the proposer's agreement.

Judy Rounpf, Association of Oregon Recyclers (AOR), read the AOR statement verbatim. AOR did not believe TI should be paid a materials recovery incentive on source separated recyclables except Metro-handled yard debris. AOR called for stringent reporting requirements from TI with Metro oversight. AOR did not believe TI should operate a buy-back center. AOR recommend Section 5.2.3 be replaced with language that prohibited TI from promoting or engaging in any activity that discouraged source separation of recyclable materials or activity that co-mingled source separated materials with acceptable waste.

T. R. Factor, 2109 S.E. Ash St., #7, Portland, asked why Metro did not begin with a clean site and said traffic routing was not for the proposer to decide. Ms. Factor referred the Committee to a letter she received from the PUC dated November 9, 1989, regarding JGT's routing and the proposed transfer station. She read: "Applying the N.W. 61st driving time to the planned daily driving schedule brings out mutual concern for consistent compliance into sharp focus. It appears access to the N.W. 61st facility on both of the westbound segments of a single driver shift will strain the 10-hour driving limitation. This concern

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is particularly true if both trips require use of an alternate (other than I-405) route."

Lauren Blank, Friends of Cathedral Park secretary, expressed concern about JGT's proposed routing to and from the proposed facility and said the St. Johns Bridge was in very poor condition. She asked Metro do whatever possible to mitigate these concerns.

Mr. Martin said Metro's contract with TI had nothing to do with Metro's contract with JGT. He said TI had no control over what highways JGT would use. Mr. Martin said Chair Hansen's proposed amendment of Exhibit A tied in with Metro's authority to review and approve or not to approve JGT's annual operating plan as defined in the contractual relationship. He said the amendment meant Metro would not approve an operating plan that the St. Johns Bridge as a route. He said JGT had stated they did not intend to use the St. Johns Bridge as a route. Mr. Cooper concurred with Mr. Martin and said if JGT used the St. Johns Bridge, JGT would breach their contract with Metro.

Councilor McFarland asked how relevant TI's original proposal was to the contract up for consideration at this meeting. She asked whether it was meant for informational purposes. Mr. Cooper said the proposals were used in the evaluation process to select the vendor Metro would negotiate with. He said the contract documents themselves now controlled the process. He said the documents were rewritten to rewrite the terms of TI's operations and give Metro control. He said Metro through mitigation would be able to direct traffic and that TI would deal only with building and operating the facility on-site.

Chair Hansen called a recess at 8:01 p.m. The meeting reconvened at 8:19 p.m.

Main Motion: Councilor DeJardin moved to recommend the full Council adopt Resolution No. 89-1169A.

Councilor Ragsdale referred to page 8 of Real Estate Purchase and Sale Agreement and said he wished to clarify Metro actions from closing until expiration of construction and operation. Councilor Ragsdale and Mr. Cooper discussed TI's responsibilities in the case of future litigation over potential environmental issues. Councilor Ragsdale asked why Metro did not require a Level I site assessment. Councilor Ragsdale asked D&M representatives to speak to the issues.

Mark Schultheis, Dames & Moore, said the report D&M did, when combined with all studies done before the D&M report, equalled more than a Phase I property transfer assessment. He said D&M recommended additional work be done at the site and said if that work was carried out, D&M could provide their normal recommendation on the site with regard to environmental safety.

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Councilor Ragsdale asked what additional work was required. Mr. Martin said the resolution could be amended to direct staff to contract for the work identified in the D&M report and said staff planned to seek authorization for that work. He said TI planned to apply for a site permit in advance of contract closure. He said DEQ was aware of issues related to the site and said necessary DEQ permits received before operations began would give Metro solid assurance.

Councilor Ragsdale and Mr. Cooper discussed environmental issues. Councilor Ragsdale asked what steps Metro could take if there were unexpected environmental issues. Mr. Cooper referred to Sections 5.2(a) and 5.2(c) of the Real Estate Purchase and Sale Agreement. Councilor Ragsdale and Mr. Cooper discussed a contingency clause. Mr. Cooper said the documents as written provided contingency protection. Councilor Ragsdale said he was not willing to accept the limited indemnification contained in the Agreement.

First Motion to Amend: Councilor Ragsdale moved to amend Real Estate Purchase and Sale Agreement by the addition of language to Section 6.2(a), page 8: "Seller agrees to indemnify, defend and hold Purchaser and its officers and employees harmless from any damages, penalties, costs, fines and Transaction Costs (as hereinafter defined) to the extent resulting from claims, suits or proceedings brought during the Term (as hereinafter defined) by any agency of the United States or the State of Oregon or any person..." and the addition and deletion of language to Section 6.2(b), page 9: "Seller agrees to defend [only] Purchaser in claims, suits or proceedings brought after the end of the Term by any agency of the United States or the State of Oregon or any person..."

Councilor Wyers stated her opposition to the contract and would vote nay on all votes pertaining to it.

Vote on First Motion to Amend: Councilors DeJardin, Hansen and Ragsdale voted aye. Councilor Wyers voted nay. Councilor Buchanan was absent. The motion passed.

Councilor Ragsdale discussed storage tanks on the property and said he found no language related to removal of the storage tanks on page 30 of D&M's report. He asked what intent there was on the tanks. Mr. Owings said TI would move the storage tanks first.

Second Motion to Amend: Councilor Ragsdale moved to add a section to the Real Estate Purchase and Sale Agreement to state purchase was contingent upon removal of the storage tanks and directed General Counsel to draft the appropriate language.

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Vote on Second Motion to Amend: Councilors DeJardin, Hansen and Ragsdale voted aye. Councilor Wyers voted nay. Councilor Buchanan was absent. The motion passed.

Councilor Ragsdale discussed the easement and asked Mr. Cooper to analyze easement language to ensure it was a perpetuity easement and watch for other related issues. Councilor Ragsdale asked staff who would be responsible for signalization costs at the spur. Mr. Martin said contract language said TI would be responsible for costs and to secure permits.

Mr. Martin said contract language did not require a buy-back center and said TI would need Metro's prior authorization to operate a buy-back center.

Jim Watkins, Engineering & Analysis Manager, responded to Ms. Roumpf's testimony. He said inclusion of source separated materials as part of the avoided cost was stated in the RFP. He said staff's intent was to provide incentive in the removal and separation of recyclable materials. He discussed incentives for high-grade loads other than cardboard. Staff planned to direct high-grade loads to OPRC. Councilor Ragsdale requested staff conceptually amend the 1989 Metro Transfer Station Operation Agreement, page 35, Section 6.12 Recycling Center. Chair Hansen said staff could return and explain language changes. Mr. Martin discussed the co-mingling of waste.

Councilor McFarland asked Mr. Dumeyer of D&M if D&M assessed the other sites proposed. Mr. Dumeyer said no. Councilor McFarland asked Mr. Dumeyer how D&M could evaluate TI's site if they had not evaluated the other sites and could not compare. Mr. Dumeyer said D&M merely evaluated it as a potential site for a transfer station facility. Councilor McFarland said she believed the D&M report to be prejudiced and read portions of the report for the record. Councilor McFarland read for the record portions of D&M's report page 28: "There are reasons to believe the soil and groundwater at the American Steel site contain hazardous substances which may require remediation. The matrices and contaminants are..." Councilor McFarland read the listing of contaminants for the record. Councilor McFarland discussed the report's conclusions about contaminants on-site which had originated off-site and discussed air quality and groundwater issues. Councilor McFarland cited a report to J. Lawrence Cable from James S. Kinkaid dated September 15, 1989, which said battery casings on the site would emit lead above acceptable air testing levels. Councilor McFarland noted the site was not tested for dioxin and that other appropriate tests were not performed on-site. She said only a portion of the Shell oil tanks had been tested. Councilor McFarland noted until 1972 Shell Oil dumped the remainder of tank contents directly onto the site. Councilor McFarland said until 1983 Shell Oil operated an asphalt production plant on-site and said the discharge water from that activity contained contaminants. Councilor McFarland said D&M's report was based

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on old tests, the results of which had no meaning for the site for the purpose for which it was intended now.

Mr. Dumeyer said D&M recommended a well be installed in the gap between wells from the Shell Oil property onto the American Steel property. Mr. Dumeyer said the National Air Quality Standard test (NAQS) would address air quality issues. He said that test governed how much of a particular contaminant could be in the air and that DEQ would regulate air quality issues. He said D&M had not denied there could be contamination in water from the Rhone-Polenc property. He said D&M attempted to determine whether off-site sources posed risks to the American Steel property as a transfer station site. He said D&M's opinion was that groundwater from the Rhone-Polenc property did not pose a hazard. He noted discussion at this meeting about the contract indicated Metro would be fully protected against possible liability associated with clean-up from off-site sources.

Councilor McFarland said federal law applied to lessees, tenant-lessors and tenants and doubted the indemnification protection offered in the contract would protect Metro. She said aquifers were common water and extremely difficult to clean up. Mr. Dumeyer said D&M recommended an accepted method to treat groundwater and said Rhone-Polenc did treat its groundwater. He said Metro would not take on undue risk with this contract.

Councilor McFarland asked Mr. Martin why the Council had been delayed in receiving the D&M report. Mr. Martin said staff had been overloaded. Councilor McFarland said it was essential the Council receive information on contaminants on and around the proposed site before approving the contract.

Chair Hansen asked who would be responsible if contaminated materials came onto the American Steel property and who would solve such problems. Mr. Cooper said the responsibility would lie with whoever owned and operated the property which caused the contamination. Chair Hansen said Metro should identify the nature of the groundwater entering the American Steel property to identify its source. Mr. Dumeyer noted that was one of D&M's five specific recommendations in their report.

Councilor Wyers asked Mr. Cooper who would be responsible for clean-up if federal authorities became involved in site clean-up. Mr. Cooper said whoever caused the contamination would be held responsible and said previous owners of the American Steel property could be held responsible. He said Metro would be protected when it purchased the property. He said if DEQ ordered an area-wide clean-up, Metro would not purchase the property.

Councilor Devlin noted he was one of eight Councilors who voted to authorize negotiations and said of those eight, he was one of the four who expressed reservations. He said the action proposed at this meeting

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would delegate authority to the Executive Officer to sign the contract with TI. Councilor Devlin asked why the Council should adopt the resolution before the environmental studies recommended by D&M were completed. Mr. Martin said Metro faced a 13-month construction schedule and said the schedule of events was very tight. He said any delay after December 1 meant Metro would not meet all of its contractual commitments and said results from the study would not change events and would give Metro greater assurance.

Councilor Wyers said because of information received at this meeting and previous meetings that if the Council adopted the resolution Metro would have a potential disaster on its hands. Councilor Wyers said she believed D&M would give an independent environmental assessment of what contaminants were on and around the site. She said instead D&M gave a review of existing studies some done by D&M itself. She said the report was not the independent evaluation of the site she required to make a decision to vote. She said \$20,000 was not enough to test environmental risks and said there was not enough time for the Council to make an informed decision. She said TI would pass costs onto Metro one way or another. She said the \$100,000 liability as proposed by TI for five years after Metro assumed ownership was insufficient.

Councilor DeJardin said the American Steel site compared to the other sites had a very good prognosis. He said he had no problem with the proposed contract. He said there would never be enough security and protection against environmental risks.

Councilor McFarland expressed frustration documentation was received late and that the process was tied to a small time frame for a large decision.

Third Motion to Amend: Chair Hansen moved to amend Resolution No. 89-1169A, Attachment B, section 2, with the addition and deletion of language to read: "Metro finds that the use of the St. Johns Bridge is not an acceptable [the preferred] route for use by solid waste trucks and will not approve a transfer truck operations plan that utilizes the St. Johns Bridge."

Chair Hansen said the D&M report listed chemicals on adjacent sites to the American Steel site. He said Metro would not acquire those sites and that Metro had protected itself as completely as possible from off-site contamination risks. He said other sites proposed should be remembered and said all reports indicated they were viable sites, but would have had tremendous impact on nearby citizens. He said if a good site had been available or residents near a site had been willing or a transfer station had been found elsewhere that would have impacted the surrounding area less, they could have been good options. Chair Hansen said no site like that was found and said the site in North Portland was a reasonable alternative.

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Vote on Third Motion to Amend: Councilors DeJardin, Hansen and Ragsdale voted aye. Councilor Wyers voted nay. Councilor Buchanan was absent. The motion passed.

Vote on Main Motion as Amended: Councilors DeJardin, Hansen and Ragsdale voted aye to recommend the full Council adopt Resolution No. 89-1169A as amended. Councilor Wyers voted nay. Councilor Buchanan was absent. The motion passed.

Chair Hansen called a recess at 10:08 p.m. The meeting reconvened at 10:23 p.m.

4. Consideration of Ordinance No. 89-319, An Ordinance Establishing a Plan for Financing from Time-to-Time of Various Components of the Metropolitan Service District's Solid and Liquid Waste Disposal System; Authorizing the Issuance of One or More Series of Revenue Bonds for Such Purpose Under the Provisions of Supplemental Ordinances Adopted Pursuant Hereto; and Establishing and Determining Other Matters in Connection Therewith (Public Hearing)

Chair Hansen noted Councilor Buchanan moved to recommend the full Council adopt Ordinance No. 89-319 at the joint Finance/Solid Waste Committee meeting November 2, 1989. He said that motion was carried to this meeting. He said it was necessary to entertain a motion to take the question from the table and noted that motion was undebatable.

Motion to Take the Question from the Table: Councilor Ragsdale moved to take the question from the table.

Vote on Motion to Take the Question from the Table: Councilors DeJardin, Hansen and Ragsdale voted aye. Councilors Buchanan and Wyers were absent. The vote was unanimous and the motion passed.

Main Motion: Councilor Buchanan moved at the joint Finance/Solid Waste Committee meeting November 2, 1989, to recommend the full Council adopt Ordinance No. 89-319.

Chair Hansen opened the public hearing.

Mr. Sievers testified on flow control. He stated for the record the Schnitzer Group's concern on flow control and that company's opposition to any definition or use of flow control that would limit them from marketing their recyclable commodities.

Councilor Ragsdale discussed the Metro Code definition of solid waste with Ed Einowski, Bond Counsel to Metro, and staff.

Ms. Roumpf submitted a letter which stated the inclusion of source separated recyclables in the materials Metro would send to the mass composting facility was counter to the hierarchy of waste management

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established by Metro policy and Oregon statute. Ms. Roumpf said AOR recommended all source separated recyclables be exempt from flow control.

Steve Nice, James River Corporation Converting Plant, said flow control would cost that company \$100,000 per year and asked that his company be able to go directly to the Arlington Landfill.

First Motion to Amend: Councilor Ragsdale moved to remove references to "recycled" and "recycling" from Appendix A and to add AOR recommendations as stated by Ms. Roumpf at this meeting.

Vote on First Motion to Amend: Councilors DeJardin, Hansen and Ragsdale voted aye. Councilors Buchanan and Wyers were absent. The vote was unanimous and the motion passed.

Second Motion to Amend: Councilor Ragsdale moved to add a sliding fee scale to Exhibit A and directed General Counsel to draft specific language and a list of those eligible for the sliding fee scale

Vote on Second Motion to Amend: Councilors DeJardin, Hansen and Ragsdale voted aye. Councilors Buchanan and Wyers were absent. The vote was unanimous and the motion passed.

Third Motion to Amend: Councilor Ragsdale moved to delete recycling drop centers from the list of franchise facilities, listed on page 4 subparagraph (4) of Exhibit A.

Vote on Third Motion to Amend: Councilors DeJardin, Hansen and Ragsdale voted aye. Councilors Buchanan and Wyers were absent. The vote was unanimous and the motion passed.

Vote on Main Motion as Amended: Councilors DeJardin, Hansen and Ragsdale voted aye. Councilors Buchanan and Wyers were absent. The vote was unanimous and the motion passed.

5. Consideration of Ordinance No. 89-320, An Ordinance Enacted as a Supplemental Ordinance to Ordinance No. 89-319; Establishing a Plan for Financing the 1989 Compost Project to Serve as Part of the Metropolitan Service District's Solid and Liquid Waste Disposal System; Authorizing the Issuance of the 1989 Compost Project Bonds for Such Purpose; and Establishing and Determining Other Matters in Connection Therewith (Public Hearing)

Chair Hansen opened the public hearing. No one appeared to testify and Chair Hansen closed the public hearing.

The Committee and staff discussed the ordinance briefly.



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Main Motion: Councilor Ragsdale moved to recommend the full Council adopt Ordinance No. 89-320.

Vote on Main Motion: Councilors DeJardin, Hansen and Ragsdale voted aye. Councilors Buchanan and Wyers were absent. The vote was unanimous and the motion passed.

Chair Hansen adjourned the meeting at 12:04 a.m.

Respectfully submitted,



Paulette Allen  
Committee Clerk  
SWC89.318