



Minutes of December 5, 2012 Adjourned Regular Meeting

The Sonoma County Waste Management Agency met on December 5, 2012, at the City of Santa Rosa Council Chambers, 100 Santa Rosa Avenue, Santa Rosa, California

Present:

City of Cloverdale	Nina Regor, Chair
City of Cotati	Susan Harvey
City of Healdsburg	Mike Kirn
City of Petaluma	Dan St. John
City of Rohnert Park	John McArthur
City of Santa Rosa	Jennifer Phillips
City of Sebastopol	Sue Kelly
City of Sonoma	Steve Barbose
County of Sonoma	Susan Klassen
Town of Windsor	Debora Fudge

Staff Present:

Counsel	Janet Coleson
Staff	Patrick Carter
	Karina Chilcott
	Henry Mikus
	Lisa Steinman
Recorder	Debra Dowdell

1. Call to Order/Introductions

The meeting was called to order at 9:03 a.m. by Chair Regor.

2. Agenda Approval

Susan Harvey, City of Cotati, moved to approve the agenda. Susan Klassen, County of Sonoma, seconded. City of Sonoma absent. Agenda approved.

3. Public Comments (items not on the agenda)

None.

Consent

4.1 Minutes of October 24, 2012 Adjourned Regular Meeting

4.2 Manpower Agreement for Mandatory Commercial Recycling – Cycle 2

Sue Kelly, City of Sebastopol, moved to approve the consent calendar. Jennifer Phillips, City of Santa Rosa, seconded. City of Sonoma absent. Consent calendar approved.

Steve Barbose, City of Sonoma arrived at 9:06 a.m.

Regular Calendar

5. **Joint Powers Agency Discussion**

Henry Mikus, Executive Director, gave a PowerPoint presentation on the activities that the Agency does with Compost, Household Hazardous Waste (HHW), Planning and Reporting, Education and Outreach, and Finances. The benefits of extending the Agency term were discussed.

Board Discussion

Dan St. John, City of Petaluma, inquired about the amount in the compost reserve and how would the funds be distributed if the Agency were to disband. Mr. Mikus responded there is approximately five million dollars in the Organics Reserve and there has been no discussion about disbursement of the funds.

Jennifer Phillips, City of Santa Rosa, asked about the disposal HHW and E-Waste materials collected by the Agency. Ms. Steinman answered the Agency includes down the line disposal options in every Request for Proposal and resulting contract with all of the contractors used for these two programs. Particular attention is paid to meeting all local, state and federal requirements. All contractors are monitored for compliance with disposal conditions throughout the term of the individual contracts.

Ms. Phillips asked if performance measures have been established for education and outreach. Mr. Mikus responded that the Agency tracks the types of inquiries that come in to the Eco-Desk and website. A document in the Board packet details the Agency education efforts and what the franchise haulers are required to do per their agreements with the cities and county. The Agency reaches out to thousands of residents where as the haulers claim tens and twenties residential and business contacts.

Ms. Phillips asked why the Agency thought it would be difficult to maintain the cost structure of if compost were to be privatized. Mr. Mikus replied a fee is assessed at the gate, which is used to pay the contractor and fund the program. If the dynamics are changed so Republic would compost, using a private company, then cost would go up to include a fee to Republic for their participation.

Ms. Phillips asked for clarification on the statement in the staff report about the Master Operations Agreement (MOA) contractors need to control all activities at the landfill if they would be held accountable for improved waste diversion rates. Mr. Mikus answered it was his understanding the waste diversion rates were going to be the performance measure for the contractor and therefore would need control over every part of the operation.

Ms. Phillips asked why the Agency has quality concerns about compost if the same contractor will be used. Mr. Mikus answered when pressure is put on somebody to increase and divert material concerns arise. He stated that SCC currently is very careful about what they can accept to make an Organic product, but that there is a segment of material that can be composted, but is not necessarily Organic. Agency staff is concerned that the pressure to increase diversion could result in taking substandard nonorganic materials and thereby could dilute the product. Ms. Phillips asked what the concerns were for 10% that goes to the member agencies for free. Mr. Mikus said the free compost could be negotiated, but it carries an expense that might not want to be taken on.

Steve Barbose, City of Sonoma, asked how continued operation of compost and the HHW by this Agency would fit with a MOA. Mr. Mikus replied that currently the Agency has three-party agreements with the County, but there are discussions about changing those to leases (two-2 party agreements). That mechanism would allow the Agency to have a similar arrangement

with a contractor. Mr. Barbose stated the two party agreement for the site would be with the Master Operator and the Agency. Mr. Mikus confirmed yes.

Mr. Barbose reported in discussions at the Solid Waste Advisory Group (SWAG) there has been recognition for the need of oversight in assessing whether the diversion goals are being met. He asked if the Agency could play a role in that. Mr. Mikus responded it could, but he has concerns.

Susan Harvey, City of Cotati, said it was stated the Agency could insist on using the same contractor for HHW, but if this operation gets included in with the rest of the MOA there is no option for the Agency to decide on contractors. Mr. Mikus replied the Agency would have no ability to decide, but he didn't know if cities would because the MOA has not been made public.

Dan St. John, City of Petaluma, felt it would be helpful to know the revenue that is generated from each jurisdiction.

Public Comment

Pam Davis, Sonoma Compost Company (SCC), commented that the proposed compost site incorporates a facility that will allow two streams, one organic and one not. SCC recognizes in order to meet the diversion goals of the SWAG and the County, SCC is going to have to accept materials that are not currently accepted.

Ken Wells, Guiding Sustainability, said there are some major advantages to a public agency that are not available to a private contractor. The most important is public process with transparency. Private means profit is the priority goal. The Agency can establish an ordinance for Extended Producer Responsibility (EPR), making the producers responsible for their hazardous waste. As a Joint Powers Agency, there exists the authority to establish flow control for waste products in this county. The best and most direct method to determine the effectiveness of the Agency's HHW, composting and education is to do a waste characterization study, which has not been done since 2006.

Rick Downey, Republic Services, said he would like to clear up some misconceptions. Republic wants to see the JPA extended. If the MOA goes into effect, Republic is going to have to start increasing diversion numbers from day one. SCC has an organic product, but the remaining material not being diverted needs to be included in the composting operation. Republic would have to look at a solution to handle the material because ultimately it would be Republic's responsibility.

Another issue is the liability and indemnification of the cities under the MOA. In the proposed agreement Republic Services is taking over the indemnification of the current landfill site as well as all the ground underneath the landfill. Any operations not controlled by Republic would need to be carved out for that. SCC and the Agency need to be aware that they would assume that above ground liability. He acknowledged it is not much different than it is right now. Republic Services in joint effort with the County has been working on repermitting the landfill. There's going to be a draft Waste Discharge Requirement (WDR) released shortly which will show a basic draft of the permit. One requirement included in the WDR is to have the compost facility under zero discharge; the new facility and the old one. Republic would like to see the JPA extension approved and SCC continue on as they are.

Mr. Barbose asked if SCC was working at a zero discharge now. Mr. Downey replied no. Mr. Barbose asked what would have to change. Mr. Downey answered that the zero discharge means that any storm water would have to be contained whether that means pumping it off site or going into the leachate pipeline. Currently it goes into a pond which will no longer be

acceptable. In the new WDRs the deadline for a plan is May of 2013 with implementation by October 2013. Because there are so many conditions, Republic was able to get the Water Board to pull that implementation date out for now.

Mr. St. John commented that it sounded like he would be an advocate for the JPA extension. Mr. Downey replied absolutely. Mr. St. John asked him what he thought would be the benefits of extending the JPA. Mr. Downey said he thinks there are a couple of issues involved. I believe the JPA has been performing a great service to the citizens of this county. The JPA is a way to get all the cities together to do something. The problem is the unanimous vote, which makes it hard to govern.

Mr. St. John asked if compost and HHW were at another site this would not be an issue. Mr. Downey said there would absolutely be no issue but that being said they would still be responsible for diversion rates. Mr. St. John said he's having trouble making sense out of why this has to all be wrapped up in an agreement with Republic. Right now there are separate contracts with Ratto and other C&D haulers. Mr. St. John asked that with all of the current decentralization, why does this aspect have to be centralized? Mr. Downey said it doesn't have to be centralized. He could work with the Agency to make this diversion rate happen.

Mr. Barbose added there is a misconception that HHW has to move off the site and that is not the case. Ms. Harvey said this MOA has been characterized as sort of an all or nothing deal for Republic. Mr. Downey said that is incorrect. He doesn't believe there is a need for Republic to take on everything at the landfill.

Board Comment

Mr. Mikus said he found out about the zero discharge just a week ago. There have been conversations with SCC and their engineers about how to achieve that. One possibility is having the waters discharge into the pipeline system that goes from the landfill to the Laguna Plant.

Susan Klassen, County of Sonoma, said the arrangement that the County is negotiating with Republic is not a lease. It's a Master Operations Agreement. Therefore, they will be getting control of the entire County owned property. The County will be maintaining ownership of the property. Any future leases for HHW or compost would be with the County, not Republic.

In terms of the programs she has no issue with planning and reporting and no issue with education and outreach. The contractual issue that was brought up was about how the HHW and composting vendors deal with materials. Contractually the County would not care to control who the vendor is; disposal of material can be contractually controlled.

Ms. Klassen stated that the County is not discussing moving the HHW facility. The Agency isn't involved in collection or hauling of organic materials. The County's thought process was if these programs are rolled together there could be expansion because there is an incentive on the collector to separate the materials appropriately. It requires the hauler to completely change how they collect. There would be a wet route and a dry route. The wet route would go to the food waste composting program and the dry route would feed the new Material Recovery Facility (MRF) which is going to be built as a part of this project. So having the collector along with the processors and diversion folks all combined and working towards the same incentive will maximize that diversion and recycling. The County looked at the Agency not having control over collection and hauling as a problem.

The issue with the Central property is that all the storm water is ultimately mixed together and the operator is required to comply with the water requirements. The contractor can't be held responsible for the storm water compliance when there's a big aspect that they can't control.

The only way to achieve zero discharge at the existing location or the new location is for use of the leachate pipeline. That pipeline will be the responsibility of the contractor. The draft MOA will have language in it where all the cities can now look at the language and the liability carve outs.

The Cities and the County will have 12 to 18 months to go through the process of what the future of this Agency looks like. At any point, the JPA will be able to negotiate with Republic on the Compost and HHW programs. It is flexible at this point and is not included in the MOA.

The County is looking at the commercial food waste as a County-wide program that could start immediately with the MOA. Republic is looking at diverting some of the material to the worm farm and some to their existing food waste composting facility in Richmond initially, as soon as the wet/dry routes get implemented for collection. The MOA and the waste delivery agreements allow for all the jurisdictions to direct that flow.

Chair Regor said it seemed to her that the focus of the discussion today should be on the time frame of the extension of the JPA and whether that discussion happens now or after the MOA is resolved.

Mr. St. John complemented Mr. Mikus and staff on the excellent job they did on writing this agenda item. He believes that the decision to extend the JPA is independent of what happens to compost and HHW. In fact there may be some benefit in the future clarification of some of these operational issues in the MOA if the JPA were extended now and everybody knew what the status of the Agency was going to be come 2017 and beyond. He is convinced the Agency is needed.

Ms. Phillips asked who's financially responsible for the new discharge requirements that are going to be placed on the existing compost facility. Mr. Mikus responded that that needs to be figured out but that the Agency is the permit holder.

Mr. Barbose said he completely agrees with Mr. St. John's views. There have been a number of times in the SWAG meetings where the uncertainty as to whether or not the JPA would be extended was cited as a reason for taking a particular approach. He believes the Board of Directors should go on record saying that all of the jurisdictions want to extend the life of this Agency knowing that there will be different voting rights, knowing that the settlement agreements that will be coming to the cities will deal with some of the issues that will affect this Agency. He's in favor of moving forward.

Ms. Phillips said she is supportive of the Agency, its staff, and the work that it does, but she does not have enough information to move forward with her council about the options they could have. She's not prepared to move forward with this item.

Ms. Kelly commented that she supports what Mr. St. John said. As a small city, Sebastopol would not want to and would not be able to do what the Agency does.

Ms. Fudge said there have always been problems, but the Board needs to start making some decisions. She's in favor of moving forward. She is willing to bring this forward to her council in terms of a recommendation to extend the JPA.

Ms. Klassen said the idea of trying to get the information they need and all the jurisdictions on the same page about the extension of the Agency is a great thing. Given that all the jurisdictions have not looked at the liability issues associated with the actual language in the contract and how that would be settled amongst all the cities she believes this compost issue is a thorny one. She's concerned that they're setting themselves up to extend a JPA with all

the same programs, but some parts should be reconsidered. She had concerns about the Agency having to possibly go out to the cities and county twice to present.

Ms. Harvey commented that coming from a small city she agrees with Ms. Kelly that they could not do all the wonderful things that the Agency does nor do they have the capacity to. She acknowledged it may be difficult but this needs to move forward.

Mr. Kirn, City of Healdsburg, said he thinks the Agency does a great job but he's concerned with the liability issues and uncertainties that will present going forward. If the Agency is requesting to step in an indemnification role then Healdsburg's Council has to weigh in. He's not ready to say yes the Agency should move forward because of that. If there are opportunities for those indemnifications to be relieved and placed on somebody else then that's a huge consideration. For those reasons he's not ready to say yes, but the draft JPA agreement should move forward.

Mr. St. John asked the Boardmembers that were not ready to move forward with the existing draft if they thought it would be better to go twice or not go at all.

Mr. Barbose said commented that the existing agreement that runs through 2017 requires unanimous voting to change any of the terms. It provides that this Agency will provide the composting function until 2017. Actually moving forward with the agreement will give everybody a lot more flexibility on this issue because as it stands right now this MOA could move forward and it finally comes back to this Agency because we need to modify the JPA agreement to remove compost and one jurisdiction can shut that down. He suggested that no one wants to see that situation so the issue must move forward. There may be more than one visit to each city.

Janet Colseon, Agency Counsel, pointed out that the existing agreement leaves a lot to be desired. One of things she was looking forward to was having the ability to provide more certainty in answers to questions. An example is if someone asks her, "Are the individual members liable for what the Agency does?" It would be a qualified no. Section seven, page 47, of the new draft clarifies that issue. There are a number of other issues in the draft that now provided certainty and clarity. Working with this draft of the agreement would be so much easier and provide much more certainty and benefit.

Chair Regor, asked Ms. Phillips to characterize the additional information she needs in order to bring the agreement forward to her council. Ms. Phillips said her expectation was to have all the information necessary to go before her council to be able to respond to their questions and bring this item forward.

Mr. Mikus stated he can provide the information she needs. Looking back on how the bag ordinance was managed, staff did start with a rather broad palette of choices and open information. Staff navigated the process, sometimes going several times to some of the councils to obtain input.

Ms. Regor asked Mr. Mikus if the Board had approved a draft ordinance for the plastic bag ban or did they just say yes this is a good draft to move forward with. Mr. Mikus responded that the Board said this is a good draft to move forward with because it had choices. He added that the Agency presented the first time to get everybody thinking about it, received input, held stakeholder meetings, developed an ordinance on the feedback and then went back to the councils with a draft.

Mr. McArthur said he supports the idea of extending the JPA, but is not prepared to go forward with this as it is, as a final document. Compost is a core function of this Agency and it appears this function is being discussed through other parties that the Agency has little control over.

Ms. Klassen noted that the draft did have voting options clearly spelled out so when this draft is taken to the various jurisdictions those options are listed. She would prefer to have options related to compost or HHW included into this draft. For that reason she is not prepared to take this draft to the Board of Supervisors.

Ms. Coleson explained that this JPA agreement doesn't need to include all these other options; it has to be a document that the Agency can use to move forward. One of the options for voting will stay in the draft, but an option for compost will not necessarily stay in the draft agreement so it is not necessary. Mr. Barbose asked if the draft agreement is adopted and after that at some point in time the Board decided that compost is not going to be something that the Agency continues to do then the Board could vote upon having that the policy of this Board. Ms. Coleson answered that currently the JPA can only be changed by a vote of all the members.

Ms. Harvey added that part of the reason to take this out to the different councils is to get feedback on it. This is not the final draft. Without feedback the item cannot move forward.

Steve Barbose, City of Sonoma, moved the draft agreement as written be presented for discussion and input among the various city councils. Susan Harvey, City of Cotati, seconded. Motion carried.

6. Carryout Bags Revised Ordinance

Item continued to the January 2013 Agency meeting.

7. Carryout Bags Public Distribution Plan

Item continued to the January 2013 Agency meeting.

8. Sonoma County/City Solid Waste Advisory Group (SWAG)

Item continued to the January 2013 Agency meeting.

9. Attachments/Correspondence

Chair Regor called attention to the Director's Agenda Notes, Reports by Staff and Others; November and December 2012 plus January 2013 Outreach Events.

10. On File with the Clerk

Chair Regor noted resolutions approved in October 2012, on file with the clerk.

11. Boardmember Comments

None.

12. Staff Comments

None.

13. Next SCWMA Meeting, January 16, 2013.

14. Adjournment

Meeting adjourned at 11:39 a.m.

Respectfully submitted,

December 5, 2012 SCWMA Adjourned Regular Meeting Minutes

Debra Dowdell

Copies of the following were distributed at this meeting:
PowerPoint of JPA presentation