

LOSS OF COMPOSTING IN SONOMA COUNTY

“Due to Non-Collaboration of Sister Agencies” (interviewee)

SUMMARY

This investigation was initiated by a citizen complaint to the 2015-16 Civil Grand Jury. The 2016-17 Civil Grand Jury decided to research the complaint about the lack of a local composting site, the significant cost to haul green waste out of the county (out-haul) and the important consequences for the citizens of Sonoma County.

BACKGROUND

This report explores the history and the closure of Sonoma Compost. It reviews the contractual relationships and the Master Operating Agreement (MOA) between Sonoma County, Republic Services Inc. (Republic), and their primary subcontractor, The Ratto Group (Ratto). The history of how the MOA among these entities was negotiated and implemented is long and complicated. We looked at the MOA and the effects it has had, including closure of Sonoma Compost, on the ratepayers of Sonoma County.

Republic operates the central landfill, is responsible for all operations and liabilities at the Meham Road, Petaluma site, and four closed landfill sites throughout the County. Ratto is the major hauler and operates four active transfer stations, (Healdsburg, Annapolis, Guerneville, and Sonoma). A transfer station is a collection and sorting area where recyclable and green waste are separated from garbage going to the central landfill. Due to the closure of Sonoma Compost in 2015 all green waste is trucked out of county to be composted.

METHODOLOGY

The Civil Grand Jury pursued four primary methods for this investigation: initial research, interviews, detailed research, and site visits.

The investigation included 21 interviews of current and former public officials from the following: Sonoma Compost, Sonoma County Waste Management Agency (SCWMA), Sonoma County Transportation and Public Works (Public Works), Sonoma County Board of Supervisors (BOS), County Administrator, and Renewed Efforts by Neighbors Against Landfill Expansion (RENALE) and Sonoma County Integrated Waste Division (SCIWD).

The Civil Grand Jury also:

- Toured the Central Landfill On October 25, 2016 and interviewed Republic managers on site
- Interviewed former landfill managers
- Reviewed minutes of the SCWMA meetings
- Reviewed Internet information from <http://www.recyclenow.org>
- Examined financial reports of SCWMA

DISCUSSION

Early History of the Landfill

The Central Landfill opened in 1972 under the management of the Sonoma County Transportation Department and Public Works. It is located on a 398.5-acre site on Mecham Road, north of Petaluma.

AB939 (Integrated Waste Management Act) of 1989 was a statewide effort to reduce the amount of material put in landfills and to regulate handling of household hazardous waste. A key goal of AB939 is diversion of green waste to composting facilities, with the requirement that each county be responsible for creating a local agency to oversee and monitor the provisions of the bill.

In 1992, a partnership between Sonoma County and nine local cities created a Joint Powers Agreement (JPA) forming the Sonoma County Waste Management Agency (SCWMA) to create and manage the mandates of AB939. A year later, the SCWMA entered into a green waste processing agreement with Sonoma Compost, a local company and Redwood Empire Waste Management, a local hauling company.

For the next 10 years composting and landfill operations existed side by side.

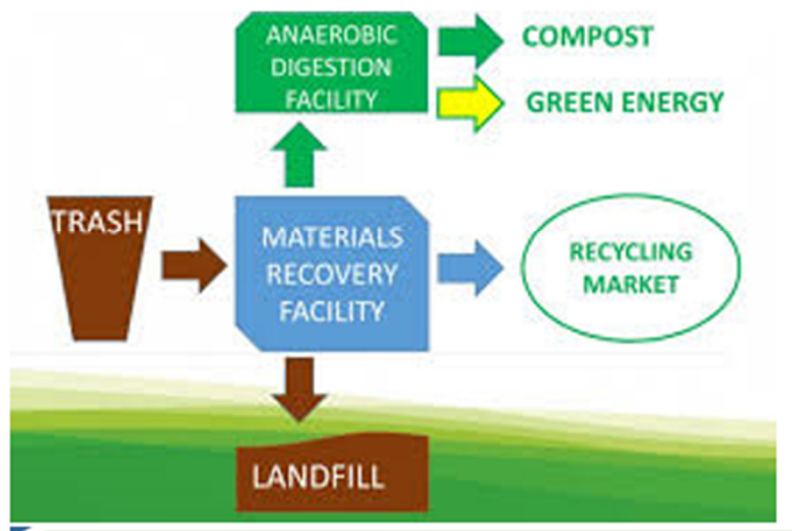


Figure 1. Garbage Flow

In 2005, Sonoma County closed the Central Landfill due to fears of groundwater contamination resulting from the possible failure of the containment liner. Republic later determined that the liner did not fail. A daily covering of waste with dirt was the cause of the leachate found at the liner edge. This practice did not follow the California Integrated Waste Management published best practices for landfill operations.

Because of the closure, the County began out-hauling all non-recyclable waste to sites out of the County. The compost and household hazardous waste drop-off site continued operating at the central landfill site.

The potential for groundwater contamination raised long-term liability concerns for the County. Estimates of the closure costs for the central landfill were in excess of \$110 million. At the time, the BOS had set aside reserves of only about \$14 million. The BOS began looking for a long-term solution for disposing of non-recyclable waste and minimizing the County's post closure liabilities. They retained consultants to assist in this deliberation. Following the consultant's recommendation, the BOS attempted to sell or divest the central landfill to a private waste and recycling company.

With the decision to sell/divest, the BOS then proceeded to determine the conditions of sale, and identify qualified buyers. This process took two years during which the landfill remained closed.

In March of 2009, the Sonoma County Public Works Department began final negotiations to sell the landfill to a buyer who would operate the landfill and take on all operating and post closure liabilities. After six months of hearings and interviewing candidates, the BOS came to a tentative agreement to sell the landfill to Republic.

On October 2, 2009, in a separate but related development, with little or no public input, the BOS awarded The Ratto Group (TRG) a 20-year franchise agreement to pick up garbage in the unincorporated areas of Sonoma County and operate the four transfer stations. Press reports at the time questioned the circumstances of this agreement, in particular, the lack of a competitive bidding process.

On October 6, 2009, the BOS held a public hearing to discuss the sale/divestiture of the central landfill. This hearing lasted three hours with more than 30 opponents speaking against the divestiture. The main waste hauler in the County, TRG, played a central part in marshalling this opposition. They were joined by Sonoma Compost and Service Employees International Union (SEIU), who shared TRG's concern that divestiture, jeopardized their economic interests. Despite the opposition, after the hearing, the BOS held a non-binding straw vote of 5-0 in support of the divestiture.

On October 28, 2009, the BOS held a formal vote on divestiture. Despite the previous unanimous straw vote, the divestiture failed to pass. This failure was a major setback to sell and reopen the central landfill site.

Shortly after the failed vote, a diverse group of individuals from the business community, environmental community, staff members from cities and County, as well as elected officials, began meeting to discuss solutions for solid waste disposal in Sonoma County. This group named themselves the "No Name Garbage Group" and focused on retaining local control and supporting business in Sonoma County. The BOS officially recognized and empaneled this group as an ad hoc committee under the new name of Sonoma County/City Solid Waste Advisory Group (SWAG). In February 2010, SWAG held their first meeting and began formulating recommendations for increased diversion/recycling, economic efficiency and local control.

One main recommendation that SWAG submitted to the Board of Supervisors was to develop a mixed waste processing facility at the Central Landfill. This facility would add capacity to separate recyclable materials in order to achieve the waste diversion goals set by the County to comply with AB939. Planning for the facility, known as the Materials Recovery Facility (MRF), began quickly but became bogged down in a legal battle with a local neighborhood group. It was finally built by Republic and operated by Ratto but only recently opened.

In June of 2010, SWAG further proposed reopening the landfill under a partnership between Republic Services as the operator and The Ratto Group as the hauler and operator of the transfer stations. The County adopted this recommendation and in August 2010, the County entered into an interim agreement with these two companies to reopen the Central Landfill.

The landfill had been closed for five years due to fears of groundwater contamination. Almost immediately Republic was able to identify the problem caused by the County's daily cover practices. In September 2010, the Landfill reopened after removing much of the soil used for daily cover and repairing the containment liner to alleviate the threat of groundwater contamination.

The County then began two and one-half years of negotiations to retain a private sector operator who would assume the future closure and post-closure liabilities that the County was trying to avoid by selling the central landfill site. This led to the Master Operating Agreement (MOA) with Republic as the main contractor and Ratto as the primary subcontractor. This was a time-consuming negotiation, because Republic required a minimum-guarantee flow of waste material. The County needed to convince the eight cities (Santa Rosa, Rohnert Park, Cotati, Sonoma, Healdsburg, Sebastopol, Cloverdale, and Windsor) to commit to providing minimum tonnages to the landfill for a 20-year period. (Petaluma manages its solid waste independently)

Weakness in the Master Operating Agreement (MOA)

The MOA, completed in April of 2013, was supported by a report from a private sector consultant who attested that the County was receiving a fair and equitable return on the transfer of landfill operations to Republic. The report did not adequately identify potential future economic impacts of important contract terms. For example:

- The Consultant weighed in on the onsite power plant. This plant was developed by the County to capture and convert methane generated by the landfill to produce electricity. The consultant's report valued revenues from this plant at about \$1.5 million a year. This estimate was based on the (then existing) output of the plant. Methane production is directly related to landfill input, but that had ceased due to the closure. The report does not consider the increased power output potential of renewed and/or increased landfill operations.
- When Republic reopened the landfill, they quickly upgraded the gas system and increased production. The power output from the plant was being sold to the Sonoma County Water Agency, which was getting a discounted rate. Instead of renewing that contract, Republic went to the open market and is now selling the power at market rate to a Southern California utility. The Sonoma County Water Agency must buy their power on the open market, while Republic achieves increased sales volume at prevailing market prices. In the MOA the County agreed to protect Republic from increases in diesel fuel costs which are the most significant operating expenses. A more carefully crafted MOA might have factored in a reciprocal protection for the County when Republic gained revenue from improving the gas system operations.
- The consultant certified that Republic's profit margins, under the terms of the MOA, were fair and reasonable. The consultant did not offer any assessment of possibilities in which Republic could operate the landfill in a more efficient manner. The more garbage one can compact into a landfill the more profitable it is and, the longer it can operate.

- Since Republic took over the landfill they have increased compaction rates by 30-40%. This operational improvement may translate into increased profits for Republic. At the very least, it extends the useful life of the landfill and the associated methane production.

During MOA negotiations, Republic gained two years of operational experience at the Central Landfill. Republic got a two-year 'test drive' and was therefore well positioned to understand all the issues and profit opportunities of continued operation as well as the risks associated with closure at the end of the landfill's capacity.

Legal Efforts to Shut Down Landfill

The MOA was criticized almost immediately by County employees, who feared job losses under Republic management, and by a local neighborhood group called Renewed Efforts by Neighbors Against Landfill Expansion (RENALE).

In April 2013, RENALE filed a lawsuit alleging the inadequacy of the Environmental Impact Report (EIR) for the Materials Recovery Facility (MRF) that SWAG had recommended and the County had retained Republic/Ratto to build and operate at the central landfill.

In April of 2014, a settlement was reached between RENALE, Sonoma County, Service Employees International Union and Republic who agreed to the construction of the Materials Recovery Facility (MRF) in exchange for landfill operating concessions from Republic. These concessions included modification of operating days and hours that trucks could access the Landfill. Sonoma Compost was required to follow these same operational restrictions. The settlement also included a payment by Republic of \$83,000 for RENALE'S legal fees. Republic also put an additional \$60,000 into a trust fund for RENALE to use for future legal action, which RENALE had planned, but not filed.

The Federal Clean Water Lawsuit

On March 14, 2014, a major storm caused the holding pond at the compost site to overflow. This overflow was avoidable if Sonoma Compost had been granted permission to pump and outhaul the runoff for treatment. However, the RENALE Settlement agreement stipulated that Sonoma Compost's trucks were not allowed access to the landfill on Sundays and after normal operating hours.

The regulatory agency responsible for monitoring runoff from landfill operations - The North Coast Regional Water Quality Control Board (NCRWQCB) - notified the County and SCWMA that incidents like the March 14 discharge had to be addressed and required that a zero discharge plan be put into place.

In late June 2014 RENALE, using the trust fund money from the previous lawsuit, announced they would pursue a Federal Clean Water lawsuit against Sonoma County, SCWMA and Sonoma Compost, which they proceeded to file in August of 2014.

The County, as the owner of the Central Landfill, exercised their right to require that SCWMA indemnify both the County and Republic and pay all legal fees to defend the RENALE lawsuit. After extensive and acrimonious negotiations, the SCWMA acceded to this demand. This was

formalized in a contractual Indemnity agreement on March 6, 2015 and SCWMA began reimbursing the County for its legal fees.

The End of Composting

With back-to-back lawsuits filed in less than a year, Republic decided it was vulnerable to liabilities they had not anticipated. Republic believed that the compost facility was at the center of these lawsuits. In December of 2014, Republic notified the County that if they were not given certain additional indemnifications they would need to renegotiate the MOA. The BOS initiated steps to force the closure of Sonoma Compost.

In January of 2015, two members of the BOS organized a meeting with the mayors of the nine cities who were partners in the SCWMA. The purpose of this meeting was to make the case for why the Sonoma Compost facility should be closed. The County representatives argued that this would eliminate the Federal Clean Water Suit liability exposure and preserve the MOA with Republic. The meeting was held without public notice or reporting.

In this meeting, County officials argued that concluding the MOA with Republic to preserve orderly waste processing in Sonoma County was the priority for all participants. At that meeting, the County officials failed to mention correspondence from the NCRWQCB. The correspondence stated that as long as Sonoma Compost and SCWMA were making progress on a zero discharge plan to remain in compliance with waste discharge permits, compost operations could continue.

SCWMA and Sonoma Compost proposed a zero discharge plan that the NCRWQCB required. This plan, endorsed by a private-sector environmental consultant, called for the construction of a containment pond that could hold all the discharge and runoff in the event of a major storm. Both SCWMA and Sonoma Compost believed this plan complied with all existing use permits and would lead to settlement of the lawsuit and allow continued composting operations.

Upon learning that SCWMA was proceeding with plans for construction of the new holding pond, the office of the County Counsel requested the County Permit and Resource Management Department (PRMD) expert on the California Tiger Salamander (CTS) to review the SCWMA consultant's report. The PRMD expert surveyed the pond site for CTS. He found that there were several potential areas for CTS habitat in the planned construction zone.

In the March 6, 2015 Indemnity Agreement, the County had imposed an October 2015 deadline on the completion of the new containment pond. Any effort by SCWMA/Sonoma Compost to dispute or mitigate the alleged presence of CTS would not have met the October 2015 deadline. With the containment pond no longer an option, SCWMA and Sonoma Compost could not defend themselves from the lawsuit. They agreed to settle with RENALE and close the compost operation at the central landfill.

This settlement was the end for Sonoma Compost, the County's largest compost producer. The expenses incurred in responding to the lawsuit and developing the zero discharge plan cost SCWMA and thus wasted Sonoma County ratepayers more than \$1.1 million.

The settlement included a requirement that the Waste Management Agency pay the plaintiff's attorney fees of \$131,000, and an additional \$100,000 to the Oakland-based Rose Foundation to restore Stemple Creek and the Bodega Bay watershed.

In addition, The Sonoma County Waste Management Agency incurred at least \$500,000 in attorney's fees and, was forced to cover Sonoma County's legal fees of \$375,000.

All green waste is now out-hauled to sites in other counties, adding 4,000 truck trips per year, costing ratepayers an additional \$2.5 million per year.

Some two years later SCWMA is no closer to opening a compost facility within Sonoma County.

FINDINGS

- F1. While the County attempted to negotiate the best Master Operating Agreement possible, it appears they did not have the industry-specific expertise that Republic Services demonstrated. The County consigned to Republic the heavy equipment and methane gas plant before the full extent of the potential value was determined. The County did not identify, and therefore lost, the financial benefits of below market electricity for the Sonoma County Water Agency, increased methane yields, improved compaction rates and the increased longevity of the landfill itself.
- F2. The County's failure to adhere to industry best practices in the operation of the landfill led to a 5 year closure that Republic resolved in a matter of months
- F3. The Board of Supervisors issued The Ratto Group an unusual, no bid, 20-year franchise of the waste hauling and transfer station contract.
- F4. The BOS effort to preserve the MOA placed it in conflict with SCWMA and its mandate to promote and manage composting as called for by AB939
- F5. Ratepayers will continue to bear the \$2.5 million annual cost of out-hauling green waste. Until the Sonoma County Waste Management Agency permits and supports a new compost operator, citizens will bear the impact of the pollution and wear and tear associated with over 4,000 diesel truck trips annually.
- F6. The County and partnered cities successfully transferred their significant post-closure liability exposure to Republic Services.
- F7. Republic Services has operated the central landfill in an efficient manner. With the addition of the Materials Recovery Facility, they will increase diversion of waste material and extend the life of the landfill.

RECOMMENDATIONS

The Civil Grand Jury recommends that:

- R1. When entering into long-term agreements, the Board of Supervisors require independent audits be done every three to five years to insure the terms remain fair to all parties to the agreement. [F1,F3]

- R2. The County review and reinforce its internal policies for reviewing contracts, operations, and interagency cooperation.[F1, F2, F3, F4, F5]
- R3. The BOS and SCWMA make it a high priority to bring composting back to Sonoma County. [F4, F5]

REQUIRED RESPONSES

Pursuant to Penal Code Section 939.05, The Civil Grand Jury requires response from the following:

- R1, R2 and R3 - Board of Supervisors,
- R2 and R3 – Director of Department of Transportation and Public Works, and Executive Director of Sonoma County Waste Management Agency

The governing bodies indicated above should be aware that their comments or responses must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

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- Letter from Susan R. Klassen, Director Sonoma County Department of Transportation and Public Works to Henry Mikus, Executive Director SCWMA April 14, 2015, re: Presence of California Tiger Salamander habitat at Central Landfill
- Letter from North Coast Regional Water Quality Control Board to Henry Mikus Executive Director SCWMA, Comments on SCWMA July 2014 Plan and Schedule to Cease All Discharges of Compost Wastewater to Receiving Waters, August 8, 2014
- Letter from North Coast Regional Water Quality Control Board to Michael Lozeau, Lozeau Drury, LLP, Response to your Petition to the Regional Water Board to Take Actions to Enforce Violations of Order No. R1-2013-0003 at Central Disposal Site’s Composting Facility, August 8, 2014
- Letter from Michel Caprio Area President, Republic Services to Susan Klassen, re: Indemnity and liability limitations in the MOA from discharges from the Compost Facility, December 16, 2014

- Letter to Republic Services, Request for Proposal to provide Green and Wood Waste and Household Hazardous Waste Program Services, from Susan R. Klassen, Director Transportation and Public Works, April 30, 2015
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GLOSSARY

BOS Board of Supervisors

CEQA California Environmental Quality Act

NCRWQCB North Coast Regional Water Quality Control Board

RENALE Renewed Efforts by Neighbors Against Landfill Expansion

SWAG Solid Waste Advisory Group

Ad-Hoc group of industry and County officials formed to find a solution to divestiture of the landfill site.

SCIWD Sonoma County Integrated Waste Division

SCWMA Sonoma County Waste Management Agency.

Formed to create and manage the programs outlined in AB 939.

TRG The Ratto Group.

MOA Master Operations Agreement

Leachate liquid that may extract toxins from the substances through which it passes

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Civil Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.