H.E.W. & Solid Waste Committee Meeting

January 13, 2009

Tentative Minutes

1. Call to Order: In the absence of Chairman Jason Bauer, County Board Chairman Ed Rice called the meeting to order at 4:05 p.m. Present: Fred Horner, Lynne Kilker, Jim Barnes, Dennis Williams and Dan Janes. Others: ROE Superintendent Amy Jo Clemens, Health Dept. Administrator Doreen O'Brien, Solid Waste Director Steve Rypkema and Dr. Champley with Animal Control. Absent: Jason Bauer and Dorothy Bowers.

2. Approval of Minutes: December 9, 2008: Motion by Horner, 2nd by Kilker to approve the minutes. Motion carried.

3. Public Comment: None

4. Regional Office of Education:
    a. Monthly Invoices: Motion by Horner, 2nd by Kilker to approve the bills in the amount of $1,674.88. Motion carried.
    b. Annual Report: Superintendent Clemens distributed a copy of the annual report and gave a brief explanation.

5. Health Department:
    a. Monthly Report: Health Dept. Administrator O'Brien distributed various hand-outs.

    b. Kings Sewer Update: Health Dept. Administrator O'Brien stated she recently mailed out a salary survey to the residents and the process is still moving slow.

6. Animal Control:
    a. Monthly Invoices: Motion by Horner, 2nd by Kilker to approve Animal Control bills in the amount of $9,796.01. Motion carried. Motion by Kilker, 2nd by Horner to approve the Pet Population bills in the amount of $1,158. Motion carried.

7. Solid Waste Department:
    a. Monthly Invoices: Motion by Janes, 2nd by Horner to approve the bills in the amount of $21,366.45. Motion carried.

    b. Financial Report: It was noted the expenditures are at 6% YTD with this being the first month of the new fiscal year.

    c. Waste Reduction/Recycling Grant Applications: Rochelle Community Hospital Association: Motion by Horner, 2nd by Kilker to approve the grant application in the amount of $1,757. Motion carried.

    Byron Forest Preserve: Motion by Horner, 2nd by Kilker to approve the grant application in the amount of $1,918.40. Motion failed.

    d. Status of Rochelle Host Agreement: Solid Waste Director Rypkema updated the Committee about the agreement and distributed copies of 2 letters received from John Holmstrom with William Charles, Ltd.

e. Solid Waste Plan Update: Still in progress.

f. Christmas Tree Recycling: Numbers were down and a report will be ready next month.

8. New Business:
   a. Board of Health Interview: The Committee conducted an interview with Estelle Ann Shippert for the vacancy. Motion by Kilker, 2nd by Williams to recommend Estelle Ann Shippert for the Board of Health vacancy. Motion carried with voice vote (Barnes present).

   b. Mental Health 708 Board: The Committee conducted an interview with Harold F. Best for the vacancy. Motion by Horner, 2nd by Janes to recommend Harold F. Best for the Mental Health 708 Board vacancy. Motion carried with voice vote (Barnes present).

9. Old Business: None

10. Adjournment: Since no further business was before the Committee, County Board Chairman Rice declared the meeting adjourned. Time: 5:36 p.m.

William Charles, Ltd.

January 9, 2009

Stephen J. Rypkema
Ogle County solid Waste Management Department
105 South Sixth Street
Oregon, Illinois 61061

Dear Steve,

1401 North
Second Street

I enclose an executed copy of the Settlement Agreement between Rochelle Waste Disposal, LLC and Ogle County relating to the Host County Agreement covering the Rochelle Landfill No. 2. I also enclose checks for the following:

a) $25,277.88 representing the Graduated Host Fee payable for the period from May 6, 2008, through June 30, 2008;
b) $51,483.76 representing the Graduated Host Fee payable for the period July 1, 2008, through September 30, 2008;
c) $81,008.18 representing the Flat Host Fee for the period July 1, 2008, through September 30, 2008;
d) $50,000.00 representing the One Time Host Fee provided for in Section 4.4(c) of the Restated City Host Agreement.

Rockford
Illinois 61107

The enclosed Graduated Host Fee payments include an amount based on the tonnage of "Shredded ACM Material" received at the Rochelle Landfill in the relevant time periods which is: (a) exempt from the State Solid Waste Management Fee and the corresponding City/County surcharge; (b) accepted at the Rochelle Landfill at no charge; (c) used exclusively as daily cover or in the construction of internal roads or turnaround areas and not otherwise disposed of in the landfill. It is the position of Rochelle Waste Disposal that this material is not subject to the Graduated Host Fee (or the City of Rochelle Host Fee). Nonetheless, we have executed the Settlement Agreement and forwarded the enclosed payments to avoid further delay in the County's receipt of its fees and to demonstrate our continuing commitment to working with the County in good faith.

815.963.7400
Fax 815.963.7415

In the event that it is determined that the Shredded ACM Material described in items (a) through (c) of the preceding paragraph is not subject to the Graduated Host Fee, we will credit the overpayment against the Graduated Host Fee payable for the final quarter of 2008 in the manner provided in the Host County Agreement.

Thank you very much for your assistance.

Very truly yours,

John Holmstrom

www.williamcharles.com

Rochelle Landfill
2008 Tonnage Report

	Total Tonnage	City of Rochelle Trash	IEPA Tonnage Exclusions	IEPA Fee Tonnage (Flat Host Fee)	Total Tonnage less City of Rochelle Trash (Graduated Host Fee)
January	-	-	-	-	-
February	-	-	-	-	-
March	-	-	-	-	-
1st Quarter	-	-	-	-	-
April	-	-	-	-	-
May 6th on	11,539.56	482.67	1,857.12	9,682.44	11,056.89
June	28,757.24	839.67	4,979.00	23,778.24	27,917.57
2nd Quarter	**40,296.80**	**1,322.34**	**6,836.12**	**33,460.68**	**38,974.46**
July	33,610.60	690.21	5,825.94	27,784.66	32,920.39
August	24,654.28	567.64	5,486.28	19,168.00	24,086.64
September	22,684.43	690.92	5,851.12	16,833.31	21,993.51
3rd Quarter	**80,949.31**	**1,948.77**	**17,163.34**	**63,785.97**	**79,000.54**
October					
November	-	-	-	-	-
December	-	-	-	-	-
4th Quarter	-	-	-	-	-
2008 YTD	**121,246.11**	**3,271.11**	**23,999.46**	**97,246.65**	**117,975.00**

Rochelle Landfill Host Fees Summary
Ogle County Fee Payment Summary

Month/Year 2008	Graduated Waste Tons Received	Average Tons/Day (5.5 days/week or 23.83 days/mo)	Graduated Quarterly Tonnage	Graduated Quarterly Host Fees	Flat Host Fee Tonnage	Flat Host Fee	Ogle County Portion of Flat Host Fee	Rochelle Portion of Flat Host Fee	Creston Portion of Flat Host Fee
Jannuary	-	0.00							
February	-	0.00							
March	-	0.00	0.00	$ -	0.00	$ -	$ -	$ -	$ -
April	-	0.00							
May	11,056.89	463.99							
June	27,917.57	1,171.53	38,974.46	$ 25,277.88	33,460.68	$ 42,495.06		$ 42,495.06	
July	32,920.39	1,381.47							
August	24,086.64	1,010.77							
September	21,993.51	922.93	79,000.54	$ 51,483.76	63,785.97	$ 81,008.18	$ 27,109.04	$ 36,039.07	$ 17,860.07
October	-	0.00							
November	-	0.00							
December	-	0.00	0.00	$ -	0.00	$ -	$ -	$ -	$ -
						One Time Host Fee	$ 50,000.00		
Annual Totals	**117,975.00**	**412.56**	**117,975.00**	**$76,761.64**	**97,246.65**	**$ 173,503.24**	**$ 77,109.04**	**$ 78,534.14**	**$ 17,860.07**
		(Annual Daily Average)							
Tieout	117,975.00		117,975.00	$ 76,761.64	97,246.65				
	-		-	$ -	-				

OC Total: $153,870.68

William Charles, Ltd.

December 2, 2008

John B. Roe
State's Attorney of Ogle County
106 South 5th Street, Suite 110
Oregon, Illinois 61061

Alan Cooper
Holcomb Bank Building
233 E. Route 38, Suite 202
Rochelle, Illinois 61068

Dear Ben and Alan,

1401 North
Second Street

In the process of calculating the host fees payable to the County under the Rochelle Landfill Host County Agreement, a question has arisen with respect to the base on which the Graduated Host Fee is determined. Since the same base is used for the determination of the Host Fee payable to the City of Rochelle under the City Host Agreement, I thought I would describe our position to both of you. (I have also sent a copy of this letter to Steve Rypkema.) For convenience purposes, I will refer to the two Host Agreements as the "Host Agreements" and to the Graduated Host Fee (County) and Additional Fee and Supplemental Host Fee (City) as the "Host Fees" where no distinction is required by the context.

Rockford
Illinois 61107

As I understand it, the question relates to the treatment of what we refer to as "shredded Alternate Cover Material" or shredded ACM. This material consists of shredded construction debris which is processed by construction debris recycling operations. Rochelle Waste Disposal accepts shredded ACM when and as we need it for daily cover and for the construction of internal roads and turn-around areas. We do not charge a tipping fee or other charge for accepting this material, and we have not paid Host Fees on the shredded ACM material that we take in.

The Host Agreements both describe the base on which the Host Fees are computed as "tons of solid waste disposed of at the landfill." The City agreement uses the phrase "...ton of waste received and disposed of." The County agreement uses the phrase "...Solid Waste disposed of."

815.963.7400
Fax 815.963.7415

Throughout our operations, we have received various materials which are used in the landfill as "alternate daily cover." These materials include such things as contaminated soil, lime sludges from public water treatment facilities, and foundry sand. We charge our customers a tipping fee for these materials and we have paid the City Host Fees on the tonnage of these materials that we receive. More recently, we have also been accepting shredded ACM as an alternate daily cover material. It consists of primarily of wood with some other inert C&D material mixed in. It is processed by the recycler, shredded by the recycler, and transported to the Rochelle Landfill and other landfill facilities. This shredded material is now commonly used in landfills for daily cover and for other on-site uses.

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We use shredded ACM to construct internal haul roads and "turn-around areas" at the landfill and as daily cover. Rochelle Waste does not charge for the material; it is accepted for

free. This material is referred to in our IEPA permit as "shredded construction and demolition debris" and its use for daily cover, internal roads, and turn-around areas is specifically allowed in our operating permit. The shredded ACM is typically exempt from the state tax and local surcharges under a specific statutory exception, Section 22.15(j)(3) and/or Section 22.16a.

To be subject to the Host Fees, material must be a "waste" and it must be "disposed of" at the landfill.

In *Alternate Fuels v Illinois Environmental Protection Agency*, 215 Ill. 2d 219 (2004) Alternate Fuels took triple rinsed plastic containers, shredded them, and sold the shredded plastic to Illinois Power Company as a fuel. The Agency took the position that the Alternate Fuels operation was a pollution control facility, requiring local siting and various other waste treatment permits. The Illinois Supreme Court determined that the material was not a "waste" because it had not been discarded but was "processed and returned to the economic mainstream in the form of raw materials or products."

The key to the *Alternate Fuels* decision is the definition of recycling in the Illinois Act. Under the Act, recycling is a "process by which materials that would otherwise be...discarded are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products." Materials that are "collected, separated or processed and returned to the economic mainstream in the form of raw materials or products" are not waste (they are not discarded) but are recycled.

Two other recent cases have addressed the definition of "waste." In comparison to the *Alternate Fuels* case, *People v Lincoln, Ltd.*, 383 Ill App 3d 198 (1 Dist 2008), involved a property that was used as a construction and demolition debris landfill. The property owner took the position that he was developing a mound that would someday be used for all-seasons downhill skiing and snowboarding. By the time that they were cited by the IEPA, the mound was 70 feet tall and it covered 26 acres. The property owner argued that the material dumped at the site was not a waste because they were recycling it into a recreational facility. Not too surprisingly, the Court determined that the material was a waste and that the property owner was simply running a landfill without permits. In discussing the recycling argument, the Court noted that the owner's activities did not constitute a commercial transaction with a third party through which *material was transformed into a usable form, transported off-site, used by an unrelated party, and returned to the economy.* Instead the owner here just piled the material up. "Hoarding material indefinitely is not the same as returning raw materials or products to the mainstream of commerce."

The Second District reached a similar conclusion in reviewing the IEPA citation received by Northern Illinois Service for accumulating trees in its Roscoe Quarry, *Northern Illinois Service Company v EPA*, 381 Ill App 3d 171 (2 Dist 2008). There, the Court noted that the fact that the trees would have value as mulch has no bearing on whether they are a "waste." They were not processed, but were simply accumulated indefinitely.

The second question in determining whether the shredded ACM that we receive is subject to the Host Fees is whether the material is "disposed of." We accept it for free. It is weighed at

the scalehouse. It is then used as cover material or in the construction of on-site roads and turn-around areas. Under our permits, up to 5000 cubic yards of this material can be stockpiled on site. It is our position that we are ***using*** the material in the conduct of the business of the landfill and are not ***disposing*** of it. We would make the same argument if we were accepting dirt or roadstone from nearby construction sites and using the material for daily cover or internal haul roads. The dirt used for cover or for the construction of interior haul roads should not be considered "disposed of" at the facility.

There are other "waste" materials that we accept (or could accept) for a use at the landfill that would not constitute "disposal." We could receive landscape waste and land apply it within the landfill facility. We may receive wood mulch from grinding landscape waste and use it in landscaping, cover, or similar uses. We may take in crushed concrete and use it for internal roadways or for erosion control on banks or waterways. We could take in asphalt millings and use them for the same internal roads as those constructed with ACM. It is very likely that excess soil, roadstone, and similar material generated during the required improvements to Mulford Road will be used at the landfill for cover, internal roads, and similar purposes.

We have accepted other Alternate Daily Cover material, like contaminated soil, which we use it as a daily cover material in the same manner as we use the shredded ACM. These other materials have not been processed by the generator into a reusable form. They cannot be used for internal haul roads or turn-around areas. Rochelle Waste charges our customers a tipping fee for these other materials and we have been paying the City Host Fee on the tonnage that we receive. No tipping fee is imposed for shredded ACM. Shredded ACM is essentially no different in this respect than soil or recycled asphalt or roadstone brought on-site for use as daily cover or in the construction of internal haul roads.

Disposal is a defined term under the Act, Section 5/3.185. It is defined as the "...deposit...dumping...or placing of any waste...into or on any land...such that such waste or any constituent thereof may enter the environment..." This definition is essentially circular. Under this definition, even the land application of landscape waste and the use of off-site soil generated from construction activities would constitute disposal. I have been unable to find any cases that distinguish disposal from reuse.

Section 22.15(j)(3) of the Act exempts from the State Solid Waste Management fee "Waste from recycling, reclamation, or reuse processes which have been approve by the Agency as being designed to remove any contaminant from wastes so as to render such wastes reusable...." This section clearly contemplates that materials which may be considered wastes can be processed and reused. Even assuming that the construction and demolition debris which is processed to create shredded ACM was a "waste" at some point, the material is processed to make it reusable. It is then reused by Rochelle Waste Disposal. It is our position that this reuse does not constitute disposal.

From a common sense standpoint, Rochelle Waste Disposal is in the business of disposing of non-hazardous solid waste. The company's principal asset is the air space available for waste disposal, and the company generates its revenues by charging customers for the disposal of their wastes in the available space. It does not make any commercial sense to dispose

of waste material at no charge. If it were not a useful product for the operations of the landfill, why would Rochelle Waste accept it without charge?

In the operation of the Rochelle landfill, Rochelle Waste Disposal receives shredded ACM material without charge. This material is used for various purposes in the landfill. Because this material is processed by the recycler, received at the landfill at no charge, and is used productively in the normal operations of the landfill, it is our belief that it is not a waste "disposed of" in the landfill. Because the material is processed for re-use and is accepted at no charge, it should not be subject to the City Host Fees or the Graduated Host Fee under the County Host Agreement.

I would be glad to discuss the characterization of this shredded ACM material with you if you would like.

Very truly yours,

John Holmstrom

JH/cap

Cc: Steve Rypkema
Charles F. Helsten