From: Robin Kersey
Sent: Tuesday, March 16, 2010 4:22 PM
To: MYO-Mayor; Swandel, Justin; Clement, Bill; Fielding, Scott; O'Shaughnessy, Mike; Pagtakhan, Mike; Steeves, Gord
Cc: 'bmcbride@winnipeg.ca'; Drohomerski, Darryl; Park, Jo-Ann
Subject: "Put or Pay"

Attachments: 0084291_submission_March_16__2010_NEW.pdf
Mayor Sam Katz/Members of Executive Policy Committee -

We represent Johnson Waste Management Ltd. ("JWM").

Due to the tremendous amount of misinformation which has been circulated with respect to the "Put or Pay" recommendation which you have received from the Committee on Infrastructure Renewal and Public Works, we have prepared and we will be submitting to you at the EPC meeting tomorrow the attached Submission which, we hope, will dispel the two myths which have been advanced by those who wish to derail the recommendation for their own business purposes.

As you may be aware, it has been suggested by those who are either not completely aware of the relevant facts (or are aware of them but choose to ignore them) that the recommendation you have received could somehow harm small waste haulers in this City and/or have a negative affect on recycling. As is made clear in the attached Submission, both of these points are without any foundation for a variety of reasons, including the following:

1. **Small Haulers** - JWM is simply not in the same business as the small haulers. To "put its money where its mouth is", JWM is prepared to ensure that the position of the small haulers is protected by entering into Non-Solicitation Agreements with those haulers, which would commit JWM to not soliciting their customers. Nothing could make it more clear that Johnson's focus is not on those customers and, as a result, the recommendation you have received would not have any impact on the small haulers.

2. **Recycling** - JWM has a contractual commitment with Versatech which commits JWM to supporting and increasing recycling volumes to the extent that JWM has agreed to cover any losses incurred by Versatech in its recycling operation. In the result, it is preposterous to suggest that JWM would take items to the landfill which it could submit for recycling - such an action would not be in the commercial interest of JWM, as doing so could result in a direct cost to it. Those who suggest that the recommendation you have received could have a negative affect on recycling are choosing to ignore the fundamental fact that this recommendation is simply about diversion of waste from the BFI landfill to the City's landfill.

I look forward to appearing before you tomorrow to address the points set out in the document attached below.

Robin Kersey

Robin M. Kersey*
Thompson Dorfman Sweatman LLP
Barristers and Solicitors

***The services of Robin Kersey are provided through the Robin M. Kersey Law Corporation.**

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SUBMISSION OF

JOHNSON WASTE MANAGEMENT LTD.

TO

THE EXECUTIVE POLICY COMMITTEE

"PUT OR PAY"

March 17, 2010

SUBMISSION OF JOHNSON WASTE MANAGEMENT LTD. TO THE EXECUTIVE POLICY COMMITTEE OF THE CITY OF WINNIPEG WITH RESPECT TO THE "PUT OR PAY" RECOMMENDATION OF THE STANDING POLICY COMMITTEE ON INFRASTRUCTURE RENEWAL AND PUBLIC WORKS

Introduction

Johnson Waste Management Ltd. ("JWM") appears before this Committee to support the recommendation which you have received from the Standing Policy Committee on Infrastructure Renewal and Public Works (the "Public Works Committee") concurring in the following recommendation of the Winnipeg Public Service:

> "1. That the Chief Administrative Officer be delegated the authority to approve Put or Pay Agreements, including the amount of the preferential tipping fee, with private waste haulers and other municipalities.
>
> 2. That the Proper Officers of the City be authorized to do all things necessary to implement the foregoing."

As this Committee will be aware, a somewhat different recommendation of the Winnipeg Public Service was initially approved by the Public Works Committee on October 13, 2009. That recommendation was as follows:

> "1. That Council delegate authority to the Chief Administrative Officer to approve Put or Pay Agreements with high volume private waste haulers and other municipalities.
>
> 2. That the Proper Officers of the City be authorized to do all things necessary to implement the foregoing."

When the matter came before Council on October 28, 2009, Council referred the matter back, with directions that the administration undertake industry consultations. On November 10, 2009 the Public Works Committee did issue such direction to the Winnipeg Public Service and, as a result, a broad consultation did occur, with a wide range of interested parties making submissions.

After taking into account such submissions, the Winnipeg Public Service made the new recommendation quoted above. Last week, the Public Works Committee concurred with such recommendation.

The Waste Hauling Market in Winnipeg

The starting point in considering the recommendation you have received is to examine the waste hauling market in Winnipeg. The reality is that that market is essentially "BFI ... and everyone else". In that regard, set out below is a chart which sets out the best estimates of JWM as to the shares of the overall waste hauling market in Winnipeg:



As will be noted, with the inclusion of residential waste, it is estimated that BFI has roughly 70% of the market in this city. That percentage has been increasing in recent years, which is not healthy for competition in this City.

If residential waste is removed from the equation and only commercial and industrial waste is considered, BFI dominates that market as well, with approximately 45% of the market:



The BFI Landfill

In addition to dominating the waste hauling market, BFI has one overwhelming advantage over every other commercial hauler in the city - the fact that it owns the only landfill owned by a business also providing disposal services. BFI is

operating its landfill (known as "Prairie Green") as a significant profit center, with the result that it currently dominates the landfill market as well as the waste hauling market.

Prairie Green provides a great advantage to BFI, in three respects:

1. It disposes of the waste it hauls at a very preferential rate, in the sense that most of its waste is disposed of by incurring only the marginal operational costs of its own landfill, rather than paying $33.50 per tonne;

2. It receives significant revenues from other haulers. Its competitors in the hauling industry pay BFI to dispose of the waste they are hauling; and

3. It benefits from a waste swap with the City of Winnipeg. BFI has in place a very beneficial arrangement with the City of Winnipeg whereby it is permitted to dispose of 12,000 tonnes per year of waste, not paying anything to the City during the year for such disposal.

It should be made clear that JWM is not opposed to that swap, because it simply makes good business sense, for both BFI and the City.

Put or Pay

In the same spirit, a Put or Pay arrangement also makes very good business sense for the City. Almost all successful businesses are prepared to grant a major customer a volume discount. Indeed, the Mayor commented in a discussion with Mr. Johnson several years ago on this subject to the effect that he was not aware of any business that did not offer a volume discount. Such an observation was undoubtedly correct. In fact, JWM already receives a discount from Mid-Canada, the other landfill which is competing with the City.

The Put or Pay concept is considerably more beneficial to the City than what it would achieve if it offered a mere volume discount, in that the party disposing of the waste is committed to paying irrespective of whether it actually hits the targeted minimum quantity. To use the example referred to in the Administrative Report, $480,000 would be paid to the City above and beyond what is being paid by JWM currently, even if JWM did not bring the City a single additional pound of waste. In short, the City would have a guaranteed new revenue stream.

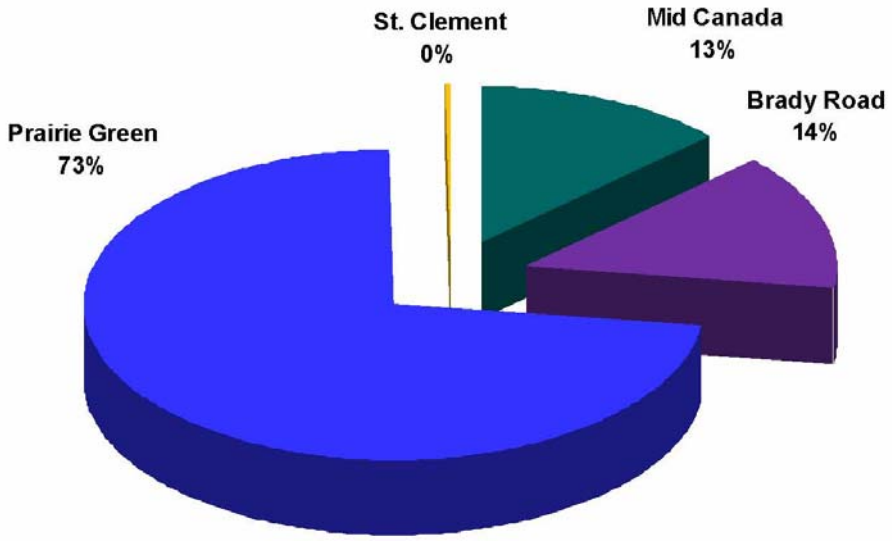
Why would JWM consider such a step? The answer is that it is confident that it can transfer from the waste it is currently hauling to the BFI Landfill sufficient volume so as to result in achievement of that guaranteed volume; however, if it does not, that would not be a problem for the City, since it would receive its guaranteed payment.

Set out below are statistics as to the amounts which JWM spent last year on waste disposal in Winnipeg

Disposal Summary		Total
Mid Canada	$	260,909
Brady Road	$	287,242
Prairie Green (BFI)	$	1,451,187
St. Clement	$	8,135
TOTAL	**$**	**2,007,473**

As you will read, over $2 Million was spent by JWM on disposal, but what was the City's share of that amount? Less than 14.4%!

JWM Landfill Costs



The recommendation before you would encourage JWM to bring waste to the City's site and move the Brady Road share of the waste disposed of by JWM closer to 50%.

Those who suggest that the recommendation you have received could have a negative affect on recycling are choosing to ignore the fundamental fact that this recommendation is simply about diversion of waste from the BFI landfill to the City's landfill.

The cost to the City to receive such additional tonnage would be modest - according to the Administrative Report, the estimated operational costs of the landfill are only $7.75 a tonne. The other $2.25 per tonne referred to the Report is a fee paid to

Take Pride Winnipeg, so the result of this proposal would be an additional $54,000 to be paid to that organization.

JWM, a local family owned company, would prefer to pay that amount to support the activities of Take Pride Winnipeg, rather than paying BFI (a corporation headquartered in Toronto) for the use of its Landfill.

Although BFI is, as could be expected, not a supporter of this recommendation, BFI will not "suffer" under this proposal, since it will still receive from JWM a very significant amount in disposal costs. It should be noted that BFI reported revenues in 2009 of over $1 Billion (over 100 times the revenues of JWM). - it is "Goliath" to JWM's "David".

Risk for the City?

The reality is that there is simply no risk to the City in adopting this proposal, since JWM is prepared to make a multi-year commitment but at the same time agree that the City can end the arrangement at any time at the end of a year. In other words, the City can try this arrangement out for a year or more and only continue with the arrangement for so long as it works to the City's satisfaction.

It has been suggested that adopting this proposal could lead to BFI simply matching the price, with the City not gaining volume; however, that simply could not occur, because JWM would be locked in by the agreement. The City would have the option to terminate, but JWM would not. Whether BFI decided to match the price would be irrelevant, since such an offer could not be accepted.

Small Haulers

It has been suggested that somehow this proposal could negatively impact small haulers. That is not correct, for at least three reasons:

1. JWM is simply not in the same business as those haulers in that the focus of JWM is on commercial and industrial business, not "casual" (one-off) and other hauling. Indeed, it currently refers work to small haulers. As a result, from a competitive standpoint, JWM wishes to win business currently held by BFI and Waste Management, not the small haulers.

2. The recommendation before you specifically permits beneficial arrangements to be made by the City with those haulers as well. The language of the recommendation has been amended from the original recommendation which was advanced last October, in that the City Administration would be authorized to enter into arrangements with all haulers, not just "high volume" haulers.

3. To demonstrate its sincerity with respect to its conviction that this arrangement would have no impact on small haulers due to the fact that JWM is focused on different aspects of the market, JWM would be prepared, if the arrangement is entered into by the City, to enter into Non-Solicitation Agreements with respect to those haulers' significant customers.

It should be noted that the City has already crossed the bridge of considering what is best for the City, irrespective of its impact on anyone else in the waste hauling business. The waste swap with BFI could be argued to be "unfair" to all other haulers, big and small, since BFI receives the benefit of disposal of a significant amount of waste at only its landfill operating cost; however, that was simply a good, business-like decision on the part of the City (even thought there is no question that it favours BFI over all other haulers). BFI receives that benefit because it is the only one with a landfill - the reasoning which justifies such a move on the part of the City is no different than larger haulers receiving the possibility of a preferential rate because they have larger volumes

Could this Recommendation Harm Recycling?

It has been suggested that such a proposal could in some way harm recycling efforts. There is no logic which supports such an argument. The professionals who are employed by the City have considered that argument and concluded that it is appropriate to proceed with the recommendation before you.

It should be appreciated that the material which would be taken to the Brady Road landfill is simply waste which would otherwise go to BFI's site - this would not be "new" waste and any suggestion that it is material that would otherwise be recycled is, frankly, preposterous. The adoption of this recommendation would simply lead to diversion to Brady Road of waste that would otherwise go to Prairie Green.

JWM is a significant supporter of recycling in this city. As of February 1 of this year, it entered into a 20 year agreement with Versatech to supply recyclables for processing. That agreement carries with it a very significant commitment, in that JWM has agreed to guarantee all operating costs of Versatech for the next 20 years. As a result, it is not in the interest of JWM to do anything which would damage recycling. This proposal would simply have no negative impact on those efforts

Is this Approach Used Elsewhere?

It should be emphasized that the approach recommended to you is hardly revolutionary. As an example, in Windsor, the Essex-Windsor Solid Waste Authority has volume discount arrangements in place with several haulers, including BFI. Attached as Appendix "A" to this document is a copy of a report of that Authority showing the volume discount provided to BFI. As will be noted, another hauler there made a larger commitment (and received an even better rate). In Essex-Windsor, the "regular" tipping fee is $53.00, with BFI paying $41.00 for a 10,000 tonne commitment

and another hauler paying $28.00 for committing to 40,000 tonnes, a $25.00 (over 47%) discount for volume.

Could Brady Road Become "Full"?

The Administrative Report before you notes that Brady Road has an expected life of 100 years. The proposal before you represents a very modest incremental change in the total waste taken to that site. The Administrative Report states that Brady Road has lost 18% of its tonnage. In 2010, Brady Road will lose the waste which it had received from Kenora, which will have the result of increasing that loss. This is an opportunity to reverse that trend.

Summary

Applying the example in the Administrative Report, the City has an opportunity to generate $480,000 (24,000 X $20.00) in additional revenue, at a cost of $186,000 (24,000 X $7.75), with the result that $54,000 would be devoted to Take Pride Winnipeg and a further $240,000 per year would be added to the City's bottom line. Contrary to the assertions of those who could be expected to be opposed due to their own self-interests, there are no negatives for the City.

In summary, JWM respectfully supports the concepts set out in the Administrative Report and submits that this Committee should concur in the recommendation made to you.

AGENDA

ESSEX-WINDSOR SOLID WASTE AUTHORITY

Essex County Civic and Education Centre
Room "C"
Tuesday, October 6, 2009
4:30 pm

		PAGE
1.	**CALL TO ORDER**	
2.	**DECLARATION OF PECUNIARY INTEREST**	
3.	**DELEGATION**	
4.	**APPROVAL OF MINUTES**	
	A) EWSWA Board Meeting – September 1, 2009	1-10
5.	**BUSINESS ARISING FROM THE MINUTES**	
	A) Landfilling of Contaminated Vines from Greenhouses	11-12
	B) City of Windsor Strike and 2009 EWSWA Budget	13-16
6.	**CORRESPONDENCE**	
7.	**WASTE DISPOSAL ISSUES**	
	A) BFI Canada Request	17-19
8.	**WASTE DIVERSION ISSUES**	
9.	**GENERAL ISSUES**	
	A) 2010 Budget Schedule	21-22
10.	**ANY OTHER BUSINESS**	

Moved by Wayne Hurst
Seconded by Ron McDermott
THAT the interim report on the impact of the City of Windsor Strike be received for information purposes.

--CARRIED

Mr. Francis indicated that he was surprised by the suggestion by some that the City of Windsor would have any obligation whatsoever to the deficit incurred over the duration of the City of Windsor labour disruption. He is under the impression that the cost savings accrued by the City have nothing to do with the Authority or any of the agreements that are in place.

Considerable discussion took place with regard to the labour disruption.

Mr. Schmidt noted that there are fixed costs of operating the waste programs and the Authority still has to operate regardless of any labour dispute. The disposal of waste is only one aspect.

Mr. Francis conceded that further discussion may be necessary to fully examine the complexity of the issue.

DRAFT

6. CORRESPONDENCE

A) AMO – 2009 Ontario West Municipal Conference

Moved by Ron McDermott
Seconded by Rob Schmidt
THAT the AMO 2009 Ontario West Municipal Conference notice be received by the Authority and that we entertain the possibility of board members attending the conference.

--CARRIED

7. WASTE DISPOSAL ISSUES

A) Windsor Disposal Services – Proposed Agreement

The Manager of Finance and Administration outlined the report and noted that Windsor Disposal Services currently has a contract for waste, but this new agreement would result in additional waste and additional revenue for the Authority. He noted that the recommendation was that the Board approve the proposed agreement.

Moved by Rob Schmidt
Seconded by Percy Hatfield
THAT administration That the Chair and Acting General Manager be authorized to sign an agreement with Windsor Disposal Services Ltd. to deliver at least 40,001 tonnes of refuse per year for the period September 1, 2009 – August 31, 2012 at a Year 1 rate of $28/tonne.

CARRIED

Ms. Gignac questioned whether the additional waste would be local waste?

The Manager of Finance and Administration confirmed that yes it is locally generated waste.

8. WASTE DIVERSION ISSUES

A) Proposed Recycling Route Changes – County of Essex

The Manager of Finance and Administration briefly outlined the report and noted that the Manager of Waste Diversion was present to answer any questions that may arise on this issue.

DRAFT

Mr. Hurst questioned whether there would be notices going out to the public to this regard? He noted that it would be his preference that multiple notices take place in varied methods of announcements or advertisements.

Mr. Hatfield questioned if the 3 week span on collection for Amherstburg was an isolated occurrence or if that collection was going to be regularly every 3 weeks?

The Manager of Waste Diversion noted that it was a one time 3 week span and that regular 2 week intervals would resume following the regular schedule.

Moved by Wayne Hurst
Seconded by Ed Francis
THAT the report on the proposed new recycling collection routes be approved.

--CARRIED

9. GENERAL ISSUES

There were no general issues discussed.

Essex-Windsor Solid Waste Authority

REPORT

September 29, 2009

file: EW General BFI Assignment

TO: Board of Directors, Essex – Windsor Solid Waste Authority

FROM: Eli Maodus, Acting General Manager and Manager of Finance & Administration

MEETING DATE: October 6, 2009

RE: **BFI CANADA ASSIGNMENT REQUEST**

PURPOSE

The purpose of this report is to recommend that assignment rights not be granted to BFI Canada regarding the delivery of refuse for disposal at Authority facilities.

BACKGROUND

BFI is under contract with the Authority for 2009 to deliver 10,000 tonnes of refuse at a rate of $41/tonne for a total contract value of at least $410,000. As part of the contract BFI was granted assignment rights whereby Countryside Disposal, Waste Management and CTS Ltd. (Coxon's) could deliver waste to Authority facilities but have the tipping fees assessed to BFI. BFI in turn would invoice these three companies. Had these three companies not been allowed to be assigned to the BFI account they would have been assessed a fee of $53/tonne directly by the Authority. BFI is looking to enter into another agreement with the Authority for 2010 with the same assignment rights.

DISCUSSION

The Board will recall that as part of the re-drafting of the boilerplate language for large volume waste haulers the "assignment" clause was re-written in order to allow the Board the responsibility to decide on assignment rights. The new language is as follows:

"Assignment – No portion of the rights of the Contractor hereunder shall be assignable, in whole or in part, to any other person or corporation without the prior written consent of the Board of Directors of the EWSWA. Requests for assignment shall be made in writing and addressed to the Board for consideration at one of its regular meetings."

According to BFI, without the inclusion of the other three companies' waste they will not be able to attain the 10,000 tonne level in order to qualify for a reduced tipping fee rate. For the last full year 2008 BFI delivered 8,358 tonnes of refuse in their own vehicles to Authority facilities while Waste Management delivered 3,308 tonnes, Countryside delivered 1,603 tonnes and Coxon's delivered 35 tonnes for an overall total of 13,304 tonnes. The 2009 total is projected at 11,500 tonnes with the BFI portion estimated to be approximately 9,000 tonnes.

Authority administration is recommending that assignment rights not be granted to BFI, or any other large volume waste hauler, at this time. The Authority entered into a three year contract with Windsor Disposal Services (WDS) on September 1, 2009 for 40,000 tonnes per year. This contract did not contain any assignment rights. Authority staff is currently engaged in negotiations with another large volume waste hauler. That waste hauler has been advised that they will need to seek board approval regarding assignment. If assignment rights were to be granted to these large volume waste haulers it is expected that refuse that is already coming to Authority facilities would be re-directed through these accounts at lower rates.

Authority administration believe that it is in the best interest of the Authority to have BFI, Countryside, Waste Management and Coxon's deliver whatever refuse they may have in 2010 at the Regional Landfill's gate rate which is currently $53/tonne if they are unable to enter into an agreement for 10,000 tonnes or greater. A 5,000 tonne tip fee is also available at the 2009 rate of $46.

As a matter of information BFI Canada operates its own landfill in Chatham-Kent. It is possible that should the BFI Windsor District find Authority tipping fees unfavourable the refuse historically delivered to Authority facilities may be re-directed to BFI's landfill in Chatham-Kent.

RECOMMENDATION

That the Authority not grant assignment rights for 2010 to BFI Canada.

SUBMITTED BY

Eli Maodus

Eli Maodus
Acting General Manager and
Manager of Finance & Administration

Attachments: -BFI Letter

September 23/09

Essex Windsor Solid Waste Authority
360 Fairview Ave W., Suite 221
Essex, ON N8M 3G4

RECEIVED
SEP 2 5 2009
E.W.S.W.A.

Attn: Mr. Ilija Maodus
Acting General Manager

Dear Mr. Maodus,

BFI Canada currently has an agreement with EWSWA to deliver 10,000 metric tones of waste to the Regional Landfill for calendar year 2009.

We have secured assignment rights with several other waste service providers which assist us to our annual tonnage goal. The waste service providers are:

Waste Management
Countryside Disposal
CTS Ltd.

The tonnage they deliver is relatively low but it is still an important component of our obligation.

Respectfully we request the same assignment rights for calendar year 2010.

As per your new tipping fee schedule and revised conditions, kindly submit our request to the Board of Directors for review and approval.

Respectfully,
BFI Canada Inc.

Michael Paré
District Manager
Windsor District

Cc: Mr. Martin Irish
Regional Vice President, Ontario
BFI Canada Inc.

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