Minute No. 282
Report – Standing Policy Committee on Infrastructure Renewal and Public Works – March 9, 2010

Item No. 2 **Put or Pay Agreements with High Volume Private Waste Haulers and other Municipalities - Delegated Authority to the Chief Administrative Officer**
eFile WT-1

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the matter of proposed Put and Pay Agreements with private waste haulers and other municipalities be filed.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – March 9, 2010

DECISION MAKING HISTORY:

Moved by Councillor Clement,

That the recommendation of the Executive Policy Committee, that the item be filed, be adopted.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 17, 2010, the Executive Policy Committee did not concur in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and submitted the following to Council:

1. That the matter of proposed Put and Pay Agreements with private waste haulers and other municipalities be filed.

Further on March 17, 2010, the Executive Policy Committee received from Robin Kersey, Thompson Dorfman Sweatman, representing Johnson Waste Management Ltd., documentation dated March 17, 2010, in support of the proposed Put or Pay Agreements with private waste haulers.

Also on March 17, 2010, the Executive Policy Committee received from Richard Doyle, President and CEO, Versatech Industries Inc., a brochure titled “Working To Build Lives, Versatech in action.”

STANDING COMMITTEE RECOMMENDATION:

On March 9, 2010, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and to Council.

Further, on March 10, 2010 the Standing Policy Committee on Infrastructure Renewal and Public Works received from Jeff Johnson, Johnson Waste Management, and Robin M. Kersey, Thompson Dorfman Sweatman, communications entitled "Agenda - Essex-Windsor Solid Waste Authority", "Winnipeg Waste Market", "Winnipeg Commercial Waste Market", and "Johnson Waste Management 2009 Landfill".

On February 9, 2010, the Standing Policy Committee in Infrastructure Renewal and Public Works laid the matter over to its meeting on March 9, 2010.

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – March 9, 2010

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION (continued):

On November 10, 2009, the Standing Policy Committee on Infrastructure Renewal and Public Works directed the Winnipeg Public Service to undertake industry consultation regarding this matter, and that the delegations registered to speak at the Council meeting of October 28, 2009 be included in the consultation, for report back within 90 days.

COUNCIL:

On October 28, 2009, Council referred back Item 3 of the Report of the Standing Policy Committee on Infrastructure Renewal and Public Works dated October 13, 2009, with instructions that they direct the administration to undertake industry consultation regarding this matter, and that the delegations registered to speak to this matter today be included in this consultation.

ADMINISTRATIVE REPORT

ISSUE: APPROVAL OF A "PUT OR PAY" AGREEMENT FOR BRADY LANDFILL AND DELEGATION OF APPROVAL AUTHORITY FOR FUTURE "PUT OR PAY" AGREEMENTS

Critical Path: Standing Policy Committee on Infrastructure Renewal and Public Works – Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
D. E. Drohomerski, C.E.T. Manager of Solid Waste	D. P. Sacher, P. Eng. Acting Director, Water and Waste	M. Ruta	A. Robinson Deputy CAO

RECOMMENDATIONS

1. That Council delegate authority to the Chief Administrative Officer 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.

IMPLICATIONS OF THE RECOMMENDATIONS

- The first proposed put or pay agreement would provide additional revenue of $480,000 per year. There would be additional operating costs, including a longer running time for equipment, additional scale transactions, use of landfill space, a contribution to the Brady Landfill Reserve and a contribution of $2.25 per tonne to Take Pride Winnipeg. The total of these "marginal" costs would be about $10 per tonne. Overall, the solid waste utility would experience a net increase in revenue of $240,000 with this agreement.
- Small haulers that were consulted were very concerned that this proposal, in effect, provides a reduction in cost for one or more large competitors in the industry. They argued that it will decrease their business and even put some of them out of business. Their view is that the only way to make a level playing field is to charge large and small landfill customers the same tipping fee.

- Small haulers made several other assertions including:
    - The scheme will not increase revenues for the City because the other landfills will duplicate the system to keep market share.
    - This will lower the average landfill rate, thereby reducing the incentive for recycling.
    - If this process was very successful and caused another landfill to go out of business, Winnipeg would lose the competition among landfills, causing both haul costs and tipping costs to rise.
    - Additional haul distances by put or pay parties will cause increased wear and tear on roads, and increases in greenhouse gases.
    - The system penalizes loyal customers that already bring their waste to the Brady Landfill, in that the reduced rate is for incremental waste only.
    - If the concern is revenue, the City should just raise tipping fees.
    - Customer service should be improved at the Brady Landfill to attract more waste hauler business.
    - Small haulers could not agree to a put or pay agreement because they can't afford to take the risk of having to pay but not having customers.
- A representative of Johnson Waste indicated that their firm does not compete in the market that the small haulers serve, so the put or pay concept can proceed without affecting small haulers.
- A representative of BFI also spoke against the proposal, indicating that it would result in an uneven playing field and it would reduce the average landfill disposal cost.
- The Public Service recognizes the above concerns. In defence of the put or pay recommendation, Tthe intent is not to reduce disposal costs but to compete with other landfills by at least partially compensating haulers for longer haul costs that the hauler will incur to divert waste from a competitor to the Brady Landfill. In every industry, some sort of volume discount or incentive is commonplace. The landfill operates in a competitive environment and is a business. These type of put or pay agreements are commonplace in the business.
- As per the recommendation, the concept of put or pay can be expanded to smaller haulers, and the Public Service is willing to meet with these users on an individual basis to discuss put or pay agreements.
- A decision by the City not to proceed with Put or Pay agreements such as this may further decrease the competitiveness of the Brady Landfill. This would decrease revenue to the Solid Waste Utility, which will, in turn, increase pressure on residential tipping fees, the funding of other programs such as recycling, the monitoring of the City's 34 closed landfills and other waste diversion activities.
- The Public Service agrees that there is a risk that this type of arrangement could be duplicated by other landfills in order to regain market share. This could lead to downward pressure on landfill tipping fees. This is not seen as a major risk at this time because this is already happening to an extent.

- Should Council elect not to proceed with put or pay agreements, some may consider it to be inconsistent to continue the current waste swap with BFI, which, in effect, lowers BFI's costs by letting them use the Brady Landfill at their marginal cost at Prairie Green. This allows them a competitive advantage versus other haulers. However, the City gains significantly from this agreement. Not continuing with the waste swap would cost the City about $100,000 per year to haul residential garbage from the north part of the City to the Brady Landfill, instead of to the BFI Landfill north of the City.

HISTORY

- A private company approached the Public Service in 2009 with a proposal to deliver 24,000 additional tonnes of commercial waste, pursuant to a Put or Pay Agreement subject to a lower rate than the current tipping fee.
- Other medium and large private waste haulers have expressed interest in a similar Put or Pay agreement for their business coming to Brady Landfill.
- A Put-or-Pay Agreement is a legal contract that a party (in this case a hauler of commercial garbage) will bring an additional pre-determined amount of garbage to the Brady Landfill, in exchange for a preferential tipping fee rate. The hauler pays the total contract price, regardless if they have disposed of the agreed upon total.
- The objective of a put or pay agreement, in this case, is to compensate a hauler for transferring waste from the catchment of one landfill to another. This allows one landfill to compete against another landfill using marginal cost of disposal.
- Council sets and approves the tipping fee rates for the Brady Landfill.
- In addition, pursuant to Section 211 of The City of Winnipeg Charter, the City of Winnipeg may enter into agreements to provide services in the City; however, Council approval would be required for any agreement. An amendment to the Solid Waste By-Law 1340/76 would also be required.
- On January 11, 2010, as directed by Council, the Public Service held an industry consultation with commercial waste haulers. The results were included above and a report on the session is attached.
- On November 10, 2009, the Standing Policy Committee on Infrastructure Renewal and Public Works directed that the Public Service consult with industry and that the delegations registered to speak at the Council meeting on October 28, 2009, be included in the consultation, for report back within 90 days.
- In March 2008, Council raised the commercial tipping fee rate from $22.50 to $33.50 per tonne, which took effect on April 1, 2008. While overall revenue increased for commercial tipping fees in 2008, actual tonnes of commercial waste have decreased 18%. This material has been diverted to other landfills, due to their ability to set variable pricing with commercial customers. In 2008, the City share was about 86,000 tonnes or 36%.
- On January 28, 2004, City Council approved a different, but somewhat similar, type of agreement with BFI called a waste swap. That agreement allows the City and BFI to deliver

a set amount of waste (10,000 tonnes per year) to each other's landfill throughout a calendar year at no cost. This agreement provides an advantage to BFI (and to the City) to reduce operating costs. The benefit to the City was cited as $74,000 per year in that report.

- Brady Landfill is one of three landfills operated in the Capital Region that compete for a share of the commercial waste market.
- The actual commercial waste market is unknown since other landfills do not publish quantities disposed. However it is estimated to be about 240,000 tonnes per year. The City's share of this market fell from over 90% to less than 10% from 1996 to 2000. The City reduced tipping fees at that point to regain market share to about 40% through 2007.

FINANCIAL IMPACT

Financial Impact Statement

Date: February 5, 2010

Project Name:

Delegation of Authority to enter into "Put or Pay" Agreements at Brady Landfill

First Year of Program **2010**

	2010	2011	2012	2013	2014
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 120,000	$ 240,000	$ 240,000	$ 240,000	$ 240,000
Less: Incremental Revenue/Recovery	240,000	480,000	480,000	480,000	480,000
Net Cost/(Benefit)	$ (120,000)	$ (240,000)	$ (240,000)	$ (240,000)	$ (240,000)
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (120,000)	$ (240,000)	$ (240,000)	$ (240,000)	$ (240,000)

Additional Comments: Agreement is subject to annual renewal by both parties and revenues beyond 2010 are not guaranteed.

"Original signed by D. Capp, C.G.A. for"
L. Szkwarek, C.G.A.
Acting Manager of Finance & Administration

CONSULTATION

In preparing this Report there was consultation with:
Legal Services (as to legal issues)
Solid Waste Industry

SUBMITTED BY

Department: Water and Waste
Division: Solid Waste Services
Prepared by: Darryl Drohomerski, C.E.T.
Date: February 25, 2010
File No. 011-15-10-03-01


Put or Pay Feedback Form REPORT.pdf

Winnipeg
Water and Waste Department

PUT OR PAY AGREEMENTS CONSULTATION FEEDBACK REPORT

January 2010

For more information on this survey, please contact:

Tiffany Skomro
Public Consultation & Research Officer
112 – 1199 Pacific Ave
Ph: 204.986.4838
Fax: 204.986.3745
E-mail: tskomro@winnipeg.ca

TABLE OF CONTENTS

EXECUTIVE SUMMARY **3**

1.0 BACKGROUND AND METHODOLOGY **4**

2.0 RESEARCH RESULTS **5**

2.1 Understanding of Information Presented 5
2.2 Satisfaction with Current Service at Brady Road Landfill 6
2.3 Impact of Recommendation 7
2.4 Additional Comments 8

APPENDIX A Feedback Form **9**

APPENDIX B Invitation Letter **11**

APPENDIX C Letter from Concerned Stakeholders **14**

APPENDIX D List of Attendees **16**

EXECUTIVE SUMMARY

In October 2009, City Council considered a report recommending that the Solid Waste By-law be amended to allow the City of Winnipeg to set up legal agreements with haulers of high volumes of commercial garbage and other municipalities.

Council referred the report back to the Standing Policy Committee on Infrastructure Renewal and Public Works with instructions that industry be consulted.

Most haulers felt that the recommendation would impact their business a lot.

Haulers were also split with their level of satisfaction of service at Brady Road, leaving a significant proportion dissatisfied with current service.

1.0 BACKGROUND AND METHODOLOGY

A feedback form was administered at an information session that was held on January 11, 2010. The objective of the feedback form was to capture stakeholders' opinions of the proposed Put or Pay Agreements.

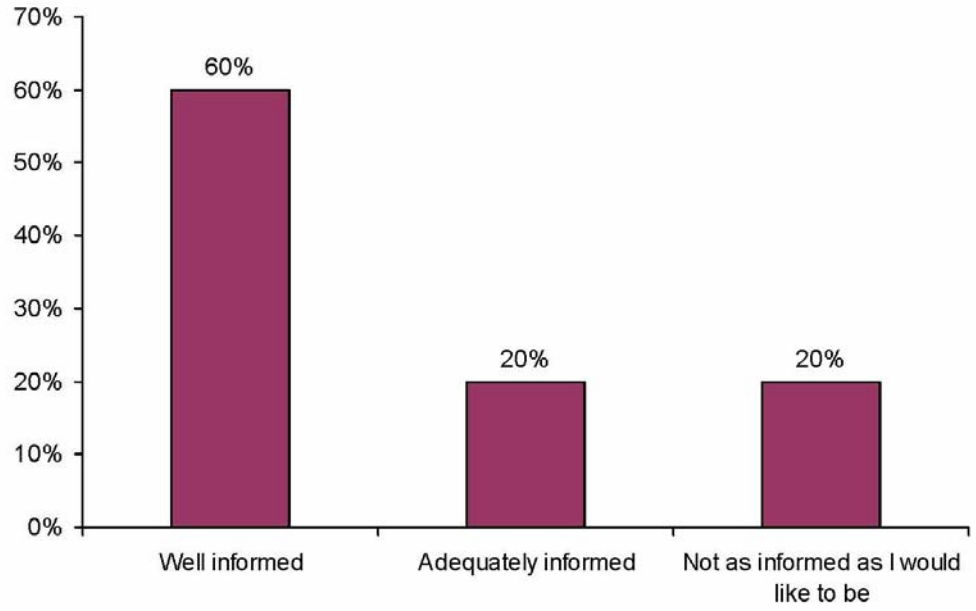
There were 36 haulers of commercial garbage that were invited to the information session, of which 15 companies attended. 5 surveys were returned, resulting in an overall response rate of 33%. Results of the survey are accurate with ± 37 percentage points, 19 times out of 20, and only represent companies who attended the information session.

2.0 RESEARCH RESULTS

2.1 Understanding of Information Presented

Most (60%) haulers were well informed about the recommendation.

"How informed do you feel about the recommendation presented?" (n=5)[*]

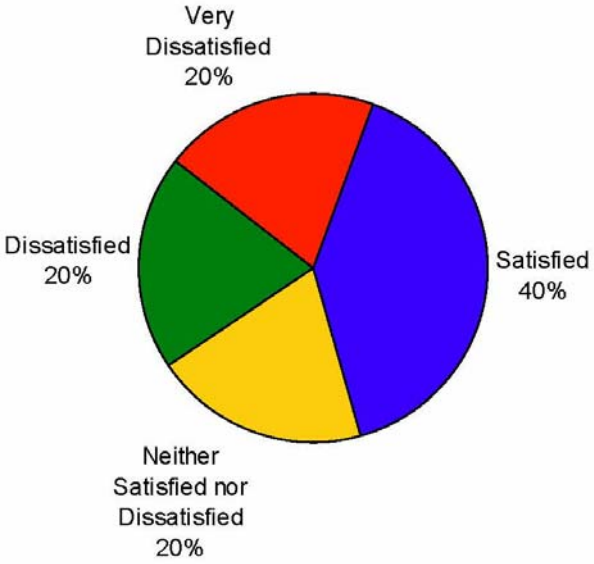


[*] n represents the number of responses received for that question

2.2 Satisfaction with Current Service at Brady Road Landfill

Haulers are split with their level of satisfaction at Brady Road. Only 40% are satisfied, 20% are dissatisfied and 20% are very dissatisfied. 20% were neutral, while no one was very satisfied.

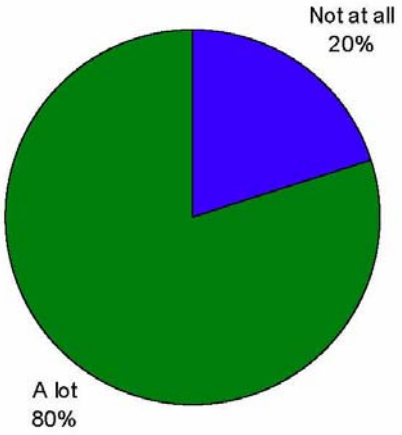
"Overall, how satisfied are you with the current service at Brady Road Landfill?" (n=5)



2.3 Impact of Recommendation

Haulers have polarized opinions on how the recommendation would impact their business. Most (80%) felt that the recommendation would impact them a lot, while 20% felt it wouldn't impact them at all. No one felt it would impact them a little or somewhat.

"How much do you expect the recommendation to impact your business?" (n=5)



2.4 Additional Comments

Some additional comments were provided:

- "Think long-term 3rd generation recycling and energy plant, beyond making money, but creating JOBS and saving valuable Canadian resources."
- "Clean-out is necessary for me to bring it to your dump."
- "This proposal is only going to help the 2 large haulers which don't need any help."
- "Darryl's presentation was very good, still however, I don't think the majority of the people in the room understood that the concept of "put or pay" volume discount. BFI enjoys the lowest commercial landfill rates in Winnipeg and uses them to compete very aggressively both for City of Winnipeg residential contracts and commercial business. For the long term commercial viability of JWM and possibly WM it is extremely important that some form of volume discount be made available in order to somewhat level the commercial playing field.

APPENDIX A

FEEDBACK FORM

Winnipeg
Water and Waste Department

PUT OR PAY AGREEMENTS CONSULTATION FEEDBACK FORM

Name of Company (optional): _____

1. Overall, how satisfied are you with the current service at Brady Road Landfill?

Very Satisfied	Satisfied	Neither Satisfied nor Dissatisfied	Dissatisfied	Very Dissatisfied
☐	☐	☐	☐	☐

2. How informed do you feel about the recommendation presented?

Well informed	Adequately informed	Not as informed as I would like to be
☐	☐	☐

3. How much do you expect the recommendation to impact your business?

Not at all	A little	Somewhat	A lot
☐	☐	☐	☐

Please let us know any other comments you have:

_____

_____

_____

_____

If you would like to speak with someone about your concerns, please give your contact information.

Name: _____ Phone: _____

Thank you for participating.

Please return survey to: Tiffany Skomro; c/o City of Winnipeg Water and Waste Dept.; 112-1199 Pacific Ave.; Winnipeg, MB; R3E 3S8; Fax 986-3745; e-mail: tskomro@winnipeg.ca

APPENDIX B

INVITATION LETTER

Winnipeg

Water and Waste Department • Service des eaux et des déchets

December 23, 2009

Attention: Haulers of Commercial Garbage

On October 28, 2009, City Council considered our report recommending that the Solid Waste By-law be amended to allow us to set up legal agreements with haulers of high volumes of commercial garbage and other municipalities.

Council referred the report back to the Standing Policy Committee on Infrastructure Renewal and Public Works with instructions that our department consult with industry.

Under the agreement (called Put or Pay), haulers would:

- receive a reduced tipping fee,
- haul a predetermined additional weight of garbage to the Brady Road Landfill, and
- be required to pay the total contract price even if they don't haul the volume of garbage outlined in the agreement.

The purpose of this initiative is to remain competitive with other landfills and sustain or build the revenue generated at the Brady Road Landfill.

You are invited to our industry consultation

We invite you or a representative of your company to an information session on the Put or Pay Agreement. There will be an opportunity for you to comment on the recommendation. We will include your feedback in our report to City Council for consideration in March 2010.

Date: Monday, January 11, 2010

Location: Canad Inns Polo Park, Room K, 1405 St. Matthews Avenue, Winnipeg

Registration and coffee: 3:00 p.m. - 3:30 p.m.

Presentation: 3:30 p.m. - 4:00 p.m.

Question and answer period: 4:00 p.m. - 5:00 p.m.

To confirm your attendance, please contact Sherry Richardson **by January 7, 2010**, by phone at 986-5311 or by email at srichardson@winnipeg.ca

see over

If you cannot attend the session, you can give us your comments **by Monday, January 11, 2010**:

- by email at wwdfeedback@winnipeg.ca, or
- by mail to 109-1199 Pacific Avenue, Winnipeg MB, R3E 3S8, Attention: Put or Pay Consultation, Solid Waste Division

You can see the report at winnipeg.ca/waterandwaste/garbage/projects

If you have any questions about the information session or the report, please contact Darryl Drohomerski, Manager of Solid Waste Services, by phone at 986-4484 or by email at ddrohomerski@winnipeg.ca

We hope to see you there.

APPENDIX C

LETTER FROM CONCERNED STAKEHOLDERS

TO: CITY OF WINNIPEG, WASTE AND WATER DEPARTMENT

RE: PUT OR PAY PROPOSAL

I oppose the proposed amendment to the Solid Waste By-law recommended by the department which would allow the department to set up legal agreements (called Put or Pay) with haulers of high volumes of commercial garbage and other municipalities.

My opposition is based on the following:

- The proposed change represents a radical shift in the business of commercial hauling of garbage.
- Smaller commercial haulers have been able to develop their businesses in large part because the current tipping fee represents a level playing field with respect to one of the major costs involved in operating such a business. The tipping fee is the same whether you are a large commercial hauler or a small commercial hauler.
- Smaller commercial haulers do not have the ability to haul high volumes of commercial garbage and therefore would not be able to receive the discount which large commercial haulers would receive.
- In addition, I would not be in a position to "pay up front" as would be required under the Put or Pay agreement.
- A reduction in the tipping fee to large commercial haulers would allow them to pass on the savings to customers thereby making the large hauler more competitive.
- My small business would simply not be able to compete with the large commercial haulers if they receive the benefit of a preferential tipping fee based on volume. Accordingly, my business will suffer and will likely not survive.

January 11, 2010 [signed by multiple haulers]

APPENDIX D

LIST OF ATTENDEES

LIST OF PUT OR PAY AGREEMENTS CONSULTATION ATTENDEES

1. BFI
2. Klippenstein Hauling
3. Haulright
4. Monk Goodwin
5. Branko Demolition & Disposal
6. Industrial Container Service
7. Omar's Bobcat & Containers
8. Johnson Waste
9. Greensite Recycling
10. Ace Disposal
11. Bristol Hauling
12. Waste Management
13. Kincade Trucking
14. Mr Garbage
15. Versatech Industries