

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET TG-120331
)	
CLARK COUNTY,)	ORDER 01
)	
Petitioner,)	
)	
Requesting an Order Approving the)	ORDER APPROVING
Execution of a Second Amendment to)	EXECUTION OF SECOND
Disposal and Settlement Agreement in)	AMENDMENT TO DISPOSAL
Commission Dockets TG-2325, TG-)	AND SETTLEMENT
2326 and TG-2327)	AGREEMENT
.....)	

BACKGROUND

- 1 For over fifty years, the Leichner Landfill (Landfill) was Clark County’s (County) primary disposal site for solid waste. The landfill had been in continuous operation from 1939 until December 31, 1991, the date specified for closure by the Washington Department of Ecology (Ecology). The County, the City of Vancouver, Washington (City) and Leichner Brothers Land Reclamation Company (LBLRC) signed a “Disposal Agreement” on December 27, 1988, which set forth obligations and responsibilities relative to the operation and future closure of the landfill. The County was designated the trustee responsible for the landfill reserve funds created for self-insurance (liability) and post closure monitoring and maintenance.

- 2 At the time of the Disposal Agreement, the total cost of closure was estimated at \$26.1 million. The Commission regulated solid waste collection service to 61 percent (approximately 31,800 customers) of the customers whose waste was disposed at the landfill. Regulated ratepayers’ share of the \$26.1 million was calculated at \$15.9 million.

- 3 On June 21, 1990, the Commission, in its Third Supplemental Order in Dockets TG-2325, TG-2326 and TG-2327, approved a settlement agreement in the consolidated rate cases for Clark County Disposal, Inc. d/b/a Twin City Sanitary Service, Vancouver Sanitary Service (G-65) and Buchmann Sanitary Service, Inc. (G-79); referred to collectively in the settlement as the “Affiliated Haulers,” because the Leichner Brothers owned these companies. The County and the City were parties to the settlement which also modified and absorbed the earlier Disposal Agreement as a single document titled; Disposal Agreement and Settlement Agreement.

4 On July 9, 1996, in its Fourth Supplemental Order in those dockets, the Commission approved a “First Amendment to Disposal Agreement and Settlement Agreement” (First Amendment). Among other things, the First Amendment re-established the funding mechanisms for the remediation of the landfill and the management of the landfill reserve fund, and called this fund the Financial Assurance Reserve Fund (FARF). The First Amendment also addressed the issue of any excess funds that may be left in the FARF after remediation was complete. In Section 9, “Excess Funds” any excess money in the FARF “after compliance with the Consent Decree”, plus additional Washington State Department of Ecology (Ecology) requirements, and after closure and “post-closure” costs, etc. would be split whereby 70 percent would reduce tipping fees and 30 percent would support the Clark County Solid Waste Management Plan. If it was not practical to reduce tipping fees, then the 70 percent share was to be given to the regulated carriers to be directly passed through as a rate credit to customers.

5 In May of 2011, the City and the County signed a purchase and sale agreement for the County to purchase the landfill properties from LBLRC for \$1.5 million. Of the \$1.5 million purchase price, \$349,000 will come from non-FARF funds provided by the County’s Public Works Department for 11-acres to extend a street along the northern boundary of the landfill. The remaining \$1.2 million would come from two FARF sources:

- \$1.09 million County source funds originally dedicated for long term maintenance of the landfill and not subject to requirements of any prior settlement or agreement; and
- Approximately \$110,000 of regulated ratepayer source funds from the liability self-insurance account.

The \$10.66 million balance left in the FARF is projected to be sufficient to fund ongoing costs of the landfill through the year 2025.¹

6 On July 17, 2012, the County filed a petition with the Commission seeking an order approving a “Second Amendment to the Disposal Agreement and Settlement Agreement” (Second Amendment). The Second Amendment calls for the parties (including the Commission) to agree that the portion of the Commission’s requirements in the Settlement Agreement are “fulfilled” and the Commission would not participate any further in “any proceedings arising from the terms of this Agreement.” The Second

¹ Exhibit A of the County’s petition contains a detailed budget for environmental compliance through the year 2027. The budget projects a positive balance in the fund through 2025.

Amendment also releases LBLRC from its responsibilities with respect to the landfill under any previous settlement or agreement.²

- 7 On September 20, 2012, Clark County filed replacement pages to the Second Amendment modifying Section 10 regarding the release of excess FARF funds. The modified section requires the Commission approve any change to how excess funds will be used if and when Ecology has declared an end to post-closure activities and compliance with the Consent Decree and any other requirements it has imposed on the Leichner Site.
- 8 Consent Decree 96-2-03081-7 (Consent Decree) was signed by the Clark County Superior Court (Court) and filed on July 17, 1996. The Consent Decree specifies and governs post closure monitoring and maintenance of the landfill. Clark County has drafted a Second Amendment to the Consent Decree which requires approval from the Court and the parties to the Consent Decree; LBLRC, County, Washington State Attorney General's Office and Ecology before the sale of the Landfill can close.
- 9 Staff consulted with Ecology's Mohsen Kourehdar, Site Manager for the Leichner Landfill, on the possibility of a rebate to ratepayers envisioned under the First Amendment. He confirmed that the chance of a rebate is extremely remote and will likely require the County to use its rate setting authority under RCW 36.58 to replenish the FARF.³
- 10 Commission Staff (Staff) recommends the Commission approve the Second Amendment, conditioned on approval of the Second Amendment to the Consent Decree, for two reasons. First, the Second Amendment fulfills the Commission's role to monitor compliance by LBLRC to remediate the landfill. The Second Amendment accomplishes this by effectively transferring compliance responsibility to the County. Second, the Second Amendment fulfills the Commission's role of monitoring the ratepayer funds in the FARF.

² Included as a party to the Second Amendment is the successor to the Affiliated Haulers, Waste Connections of Washington, Inc. (G-253) (Waste Connections), which would also be released of any further obligation regarding the landfill. As successor, Waste Connections' role would have been to distribute excess FARF funds to regulated ratepayers if the landfill would have been released by Ecology from post-closure maintenance and monitoring.

³ First Amendment to the Disposal Agreement and Settlement Agreement, Page 10, Section 9.

FINDINGS AND CONCLUSIONS

- 11 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington and has jurisdiction over the subject matter of this pleading and the parties thereto.
- 12 (2) This matter came before the Commission at its regularly scheduled meeting on September 27, 2012.
- 13 (3) In accordance with WAC 480-07-370 (b), Clark County petitioned the Commission to approve a proposed Second Amendment.
- 14 (4) Given the passage of time and changes to the solid waste system, the Commission finds the remedy regarding the use of excess funds in Section 9 of the First Amendment is impractical to implement.
- 15 (5) The Second Amendment terminates the roles of LBLRC, Waste Connections of Washington, Inc. and the Commission in management of the landfill and any funds dedicated for the remediation of the landfill. It also authorizes the early release of FARF funds and requires the County to use its rate setting authority under RCW 36.58 to augment FARF funds, if they prove insufficient. If there are excess funds in the FARF when landfill remediation is complete, the Second Amendment would apply the excess to any of the following four uses: Master planning and redevelopment of the landfill site for a public use; Off-setting future capital costs associated with the regional County transfer system; and Support for the implementation of County Comprehensive Solid Waste Management Plan.
- 16 (6) A Second Amendment to the Consent Decree has been drafted, but not approved by the Court and the parties to the Consent Decree.
- 17 (7) After reviewing the County's petition, the Commission finds the proposed Second Amendment is consistent with the public interest and should be approved and adopted in its entirety.

ORDER

THE COMMISSION ORDERS:

- 18 (1) The Second Amendment to the Disposal Agreement and Settlement Agreement, as modified on September 19, 2012, is approved and adopted in its entirety, conditional and effective upon approval by Clark County Superior Court and the parties; Washington Department of Ecology, Clark County, City of Vancouver, Washington, and Leichner Brothers Land Reclamation Company of the Second Amendment to the Consent Decree 96-2-03081-7.
- 19 (2) The Commission retains jurisdiction to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective September 27, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner