

Bob Gregory

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Subject: Item 65 - Anti-Lobbying Ordinance Violations / Synagro-Click Contracts

Mayor and Council Members:

Item 65 on this week's meeting agenda involves an Executive Session presentation and discussion of violations of the Anti-Lobbying Ordinance (ALO) by respondents to RFP CDL2003 for biosolids management (Synagro) and RFP JXP0501 for the sale of unscreened Dillo Dirt (Mr. Allen Click). As you may know, these two Austin Water RFPs and proposed contracts fully outsource management of Austin's biosolids (the end product of the City's wastewater stream), including the administration and effective termination of the Dillo Dirt composting program, which has been a City mainstay since 1989.

While City staff has provided us with no information, we believe Item 65 may derive from the formal [ALO complaint filed by TDS General Counsel Gary Newton on 10/3/2016](#). That complaint and the subject violations are the unfortunate result of City staff's most recent misapplication of the ALO before and following the City Council's unanimous vote on 8/10/2016 to direct both the Zero Waste Advisory Commission (ZWAC) and the Water and Wastewater Commission (WWC) to review City policy changes effected by the two RFPs and proposed contracts. In response to Council's direction, a joint meeting of ZWAC and WWC convened on 9/14/2016 and voted unanimously to create and appoint a joint working group, dubbed the Hornsby Bend Working Group (HBWG), which was given specific direction to meet over a 4-week period to consider both RFPs and proposed contracts and to return recommendations to the originating commissions for their review and consideration for recommendations to Council. The transcripts of some of these meetings are available at www.texasdisposal.com/hornsby-bend.

Meetings of the HBWG were subsequently held on 9/20/2016, 9/27/2016 and 10/5/2016. However, per the bylaws of both ZWAC and WWC, the HBWG meetings were not public meetings required to adhere to the provisions of the Texas Open Meetings Act; accordingly, no public notice of any of the three "informal" working group meetings was given. Despite this, at the 9/20/2016 HBWG meeting at which TDS representatives were present, Synagro representatives were in attendance and directly addressed HBWG members. Synagro's representatives' remarks provided information about the company's RFP response, advancing its interests as a respondent. At the 9/27/2016 HBWG meeting, with TDS representatives again present, both Synagro and Mr. Allen Click were in attendance, and both directly addressed HBWG members. Again, remarks made by both respondents provided information about their respective RFP responses, advancing their interest as respondents. In both cases, the representations made were prohibited during the ALO's no-contact period, which began on 4/4/2016 and continues today for both RFPs.

Importantly, both the 9/20/2016 and 9/27/2016 HBWG meetings attended by TDS representatives (and presumably also the 10/5/2016 HBWG meeting, whose time and place City staff declined to share with TDS) were convened and conducted, per the direction of ZWAC/WWC, by HBWG member and WWC Chairperson Susan Turrieta. Nonetheless, at the 9/20/2016 HBWG meeting, Ms. Danielle Lord, the City's authorized contact person for RFP CDL2003, who was in attendance **but did not initiate or direct the working group**, represented to TDS that her presence at the meeting sanctioned Synagro to provide information about their RFP response to HBWG members (and the numerous other present City officials) without violating the ALO. We assume Ms. Lord, who was also in attendance at the 9/27/2016 HBWG meeting, to have held the same view vis-à-vis Synagro's representations made at that time. However, as noted in the 10/3/2016

complaint, we do not believe Mr. Joshua Pace, the City's authorized contact person for RFP JXP0501, to have been present at the 9/27/2016 HBWG meeting at which Mr. Allen Click made the aforementioned representations.

Regardless, there is no reading of the ALO indicating that the simple presence of the City's authorized contact person at a private meeting convened and conducted by other City officials would allow RFP respondents to make representations otherwise prohibited during the ALO no-contact period. Once again: Neither of the HBWG meetings at which TDS representatives were present were convened or conducted by the City's authorized contact person for either RFP, but instead, per the direction of ZWAC/WWC (whose own action originated with the 8/10/2016 City Council vote), by the HBWG itself.

Indeed, the idea that any RFP's authorized contact person could simply "piggy back" onto any planned private meeting between a respondent and another City official in order to sanction prohibited representations violates not only the letter but certainly also the initial intent of the ALO, which was to promote transparency and provide a "level playing field" for RFP respondents. As noted, however, this is only City staff's most recent misapplication of the ALO, which in our strong view has been transformed from a tool for preventing favoritism on the Council dais into a tool for advancing favoritism at the staff level. Over and over again, the broad restrictions and absurdly severe penalties of alleged violations of the ALO have been exploited by City staff to limit and control the flow of information available to City policymakers and the public about proposed City purchasing contracts. This is not a benign policy failure but rather promises to come at ever-increasing expense to Austin taxpayers.

In the case of TDS, the City's largest waste and recycling partner and a recognized national leader in sustainable resource management, our locally-owned and operated family business has been forced to simply forgo responding to recent City RFPs, including the biosolids RFPs, in order to preserve our right to freely share information and perspective with policy makers and community leaders working to make important, complicated and expensive long-term policy and planning decisions. Declining the ALO's vow of absolute silence has been especially critical in the face of a recent onslaught of "policy making by RFP" proposals by City staff, including not only the Austin Water biosolids RFPs and proposed contracts but also Austin Resource Recovery's recent "Citywide Dumpster Collection Services" RFP and forthcoming proposed contract with Republic Services, which envisions an enormous shift in the City's solid waste policy, including an unprecedented municipal incursion into the commercial hauling marketplace, without any prior direction from the City Council. Unquestionably, however, in the case of each RFP that TDS has been forced to forgo responding to, policymakers have lost contracting options that might have saved Austin taxpayers millions of dollars.

(I would additionally note that City staff's misapplication of the ALO has not only limited contracting options and cost savings available to policy makers, but also undermined broader policy objectives. Witness last November's ALO disqualification of the recommended Consumer Advocate for Austin Energy customers based on a prohibited representation initiated not by the RFP respondent but by the chair of Electric Utility Commission.)

As you can imagine, given our profound misgivings about the staff's misuse of the ALO, TDS took no joy in filing the ALO complaint that we believe to be the subject of Item 65. Indeed, on 9/7/2016, Synagro had itself submitted a formal request to the Purchasing Office that the City Council vote to exempt biosolids management RFPs, bids and contracts from compliance with the ALO. While deeply concerned about both RFPs and proposed contracts – a concern that has only grown since learning much more about Synagro's history and operations elsewhere involving their proposed plans for managing the City's biosolids – TDS nevertheless expressed our strong support for Synagro's request (which we understand Synagro later withdrew), even though we had already at least twice observed Synagro and City staff in what we believed to be ALO violations. However, as long as City staff continues to misapply the ALO, TDS will not only continue to forgo responding to RFPs but also continue to do what we can to point out the reasons we believe the staff is abusing the ALO, in order to eliminate TDS from participating in important City solicitations.

Regardless of whether Synagro and/or Mr. Allen Click are ultimately disqualified from responding to the Austin Water RFPs as a result of ALO violations (which we believe would be the result of any objective enforcement of the ordinance), TDS still urges decisive Council action with regard to the "policy making by RFP" approach embedded in these two proposals and at least two others scheduled for Council consideration. In the case of

the Austin Water RFPs and contracts, rather than City staff simply giving the lowest-priced qualified bidder carte blanche – with the sole exception of landfilling – to manage most of Austin’s biosolids in whatever way they choose (as the proposed Synagro and Click contracts would do), the City should instead be working from clear, Council-established policy goals for managing Austin’s biosolids (for example, continuing or expanding the award-winning Dillo Dirt program, or specifically limiting land application of unstable biosolids sludge) and seeking the best contractor and proposal to meet those specific goals.

Indeed, TDS’ strong recommendation is the immediate termination of both Austin Water RFPs, followed by a full Council / community stakeholder consideration of Austin’s biosolids policies, and the subsequent issuance of a single Invitation For Bids (IFB) reflecting Council’s established priorities, including a prescription for achieving those priorities. This IFB should be exempted from ALO compliance in order to give policymakers as many contracting choices as possible. There is still sufficient time to accomplish this before the current Synagro contract extension expires in mid-March 2017.

Failing termination of the RFPs, a full consideration of City biosolids policy, and issuance of an IFB, at a bare minimum, the current Austin Water process should not culminate in an executed contract unless and until the full, unredacted terms of the Synagro and Click contracts (including their RFP responses) have been made public with sufficient time for vetting by policy makers and the community, including all proposed charge rates for all proposed services. In addition to releasing an unredacted contract (as Synagro promised to do at the 8/10/2016 City Council meeting), TDS would also urge that Synagro be required to identify all facilities where they currently produce the “agricultural compost” product proposed to be produced at Hornsby Bend so the City can verify representations regarding odor issues. Please note that in the past month I’ve personally visited two facilities in California where the exact same “agricultural compost” product proposed for Hornsby Bend is currently being produced. Because “agricultural compost” is produced using far less bulking agent and in a fraction of the time than conventional compost like Dillo Dirt, the odor at both facilities was far too great to even consider conducting such a partial cooking process described very loosely and inappropriately as “composting”, so close to the Hornsby neighbors, the major highway entering Austin, and the Austin airport. At a Synagro facility two hours outside of San Jose, the smell of ammonia burned my eyes and nose, the “compost” [curing pile was smoking and had visible flames on the surface of the piles, and the insect infestation](#) was worse than I have seen at a waste processing facility. It is unimaginable to me that such an operation would be tolerated anywhere in our community, let alone less than two miles from the front door of the Austin airport.

In addition, TDS believes Synagro should be required to provide some demonstration of a viable local customer base for large-scale production of its “agricultural compost” product; provide assurance that “agricultural compost” can be land applied within Travis County without running afoul of the County’s Siting Ordinance for Solid Waste Facilities, and without TCEQ permits for each land application site; and to fully address how their proposed management plan at Hornsby Bend would substantially differ from the operations that are the subject of a lawsuit filed just last month by more than 100 residents of Upper Mount Bethel Township, Pennsylvania, who allege that Synagro’s land application of Class A biosolids have compromised public health and safety, including “running noses, burning eyes, burning throats, respiratory distress, irritated skin, and rashes” as well as “airborne particulate matter ... posing the risk of infection and illnesses.” I encourage you to go to the [TDS website postings](#) on the Hornsby RFPs and see the article, court filings, transcripts and other things involving Synagro and their representatives, and their method of operation.

Finally, I would note again that, despite being forced to forgo responding to RFPs in the face of City staff’s misapplication of the ALO, the City expressly can, under the terms of our existing 30-year waste disposal contract, negotiate with TDS for the provision of solid waste, recycling and composting services, including those requested in the Austin Water RFPs, outside of the RFP process. Indeed, based on our experience as the region’s largest composter, and the current operator of two major biosolids composting facilities (San Antonio River Authority and City of Victoria), I am absolutely confident in TDS’ ability to properly compost 100% of Austin’s biosolids into Dillo Dirt, to market and sell it all, and to deliver a significant long-term cost savings to the City, without the problems associated with the controversial “agricultural compost” production process, which does not produce a stabilized finished compost, as defined by the U.S. Composting Council. If City Council members are inclined to request that City staff explore additional options, TDS would be eager to do so. Regardless, please know that our motivation in bringing forward these concerns is to try to convey to you that the staff’s concerted efforts to not do business with TDS, and their efforts to silence our ability to communicate with ZWAC and Council has unnecessarily limited valuable options available to the City to meet

and exceed our shared goals of affordably meeting the Council's Zero Waste goals. I urge you to not apply ALO restrictions on RFPs and IFBs related to solid waste, composting and recycling solicitations.

Sincerely,
Bob Gregory
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