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## Synagro execs knew of payments, records show Company denies wrongdoing, says it's not a target of government probe

BY JENNIFER DIXON

FREE PRESS STAFF WRITER

For years, two corrupt Synagro Technologies salesmen courted Detroit power brokers with cash, Vegas getaways, booze, even a \$1,200 strip-club outing as the company sought a \$1.2-billion city contract for sludge disposal.

Both men were caught and sent to prison for bribery. No one else at Synagro has been

charged.

But documents reviewed by the Free Press indicate that at least four Synagro executives – including the CEO at the time – were aware of thousands of dollars in questionable spending by the salesmen, James Rosendall and Rayford Jackson, with some executives approving payments on several occasions.

Taken together, the records portray top Synagro executives as being so eager to close the Detroit deal that they set aside ethical concerns over payments and perks to then-Mayor Kwame Kilpatrick, his father, Bernard Kilpatrick, Councilwoman Monica Conyers and others.

Late Friday, Synagro Executive Vice President Joseph Page issued a statement saying Synagro's board hired an outside law firm to "conduct an investigation. Nothing in that review established that senior management knew of or approved unlawful payments."

U.S. Attorney Barbara McQuade, whose office prosecuted Rosendall and Jackson, said the federal investigation of the Synagro deal continues.

Authorities have used wiretaps, subpoenas, grand jury testimony and interviews to gather evidence in the bribery scandal. One Synagro executive's calls were picked up on wiretaps.

The executive told authorities that Synagro was determined to keep its questionable dealings invisible.

Pressure was high to get deal

It was fall 2007, and executives at Synagro Technologies had plenty to sweat about.

What promised to be the company's most lucrative deal -- a \$1.2-billion blockbuster for sludge disposal -- was coming to a vote in Detroit, with no guarantee of passing.

For these executives, failure would be especially fraught: The Carlyle Group, a private equity firm, had bought Synagro in a \$772-million deal earlier that year, based largely on millions of dollars in profits it anticipated from Detroit.

Within this pressure cooker, Synagro's Michigan representatives -- Rosendall and Jackson -- spread cash, donations and lavish perks among politicians, their aides and others to ensure approval of the Detroit contract. Prosecutors would later label some payments as bribes. The two are now in prison for that.

From the start, Synagro has distanced itself from Rosendall and Jackson, saying the company is cooperating with prosecutors and is not a target of the investigation. But documents reviewed by the Free Press indicate high-level Synagro executives knew of their activities. Some executives approved questionable payments or tried to hide them.

According to previously undisclosed records, Rosendall and Jackson got approval to:

- Give money to Bernard Kilpatrick after declaring such payments inappropriate. Synagro

arranged for Kilpatrick to secretly profit from the Detroit contract, even as the executives acknowledged that he had no relevant skills. It's unclear how much, if anything, he received from the contract, but court records show Rosendall gave him at least \$25,000, some for so-called loans that were never repaid.

- Allow Jackson to lobby Councilwoman Conyers, even after learning her aide Sam Riddle had demanded money for her vote. She was later convicted of accepting bribes from Jackson.
- Contribute to the campaigns and pet causes of Detroit politicians in explicit return for their support of the Synagro contract.

The executives who knew of or approved some questionable spending included CEO Robert Boucher Jr., Chief Financial Officer J. Paul Withrow, General Counsel Alvin Thomas II and Pamela Racey, vice president for business development, documents show.

The executives did not return messages left over several weeks, or could not be reached for comment. All but Racey have left Synagro.

Synagro and Carlyle officials declined interviews. Synagro requested, then refused to answer, written questions.

Late Friday, Page, Synagro's current general counsel, said in a statement that Synagro's board hired an outside law firm, Debevoise & Plimpton, to investigate. "Nothing in that review established that senior management knew of or approved unlawful payments," he said.

Synagro spokeswoman Darci McConnell said the review was launched in 2008.

In a statement last week, Synagro said it has cooperated fully with federal prosecutors and "it is our understanding that Synagro is not a target of the investigation."

Neither Synagro nor its executives has been accused of wrongdoing by authorities or charged in the bribery scandal.

Jackson and Rosendall declined interview requests.

"It's hard to explain why charges weren't filed against the company, given the turning of a blind eye by senior executives," said Wayne State University law professor Peter Henning, an ex-federal prosecutor and white-collar crime expert. "There are any number of cases in which companies have been charged for this kind of conduct, when you have the involvement of more senior employees."

Henning said he suspects the company was saved from charges because it cooperated.

"This is where prosecutors have the ultimate discretion. There's no judicial review, there's no record, there's nothing to explain the reason," Henning said. "The decision not to charge is unreviewable and largely unknowable ... and sometimes it's hard to fathom."

McQuade, whose office is investigating public corruption in Detroit, declined to talk about specific executives but said the "investigation into the Synagro contract is continuing."

"I think it is appropriate to charge not only the public officials who accept bribes but

also the private contractors who pay bribes because they all poison the system," she said.

McQuade also noted that there is a difference between wanting to charge and being able to successfully prosecute someone. "You can't view bits of information in isolation," she said, "but instead you have to look at the big picture as a jury would."

This report is based on interviews, court records and evidence obtained by federal authorities investigating city corruption. The government has used wiretaps, video surveillance, witness statements, subpoenas and grand jury testimony to win four convictions so far in the Synagro bribery scandal.

Synagro's reps start feeling the heat

In October 2007, seven weeks before the Detroit City Council was to vote on the sludge-hauling contract, Rosendall was feeling heat from Synagro headquarters.

In a phone conversation with an aide to Kwame Kilpatrick, Rosendall complained of getting his butt kicked by his bosses in Houston. Executives, he said, were feeling pressure because they had promised the Carlyle Group that the Detroit deal was in the bag.

Detroit was to be Synagro's largest municipal sludge-disposal contract, bigger even than New York City. The company expected profits of up to \$5 million a year for 25 years from annual revenues of \$47 million.

Carlyle, one of the world's largest private investment firms, bought Synagro months earlier, largely because of the potential in Detroit.

Rosendall, Synagro's point man in Michigan, and Jackson, a Detroit businessman hired by Synagro to build community support for the company, had launched an aggressive final push to sell the city on the sludge contract. The men were acutely aware that only four of nine City Council members favored a deal. The race was on for a fifth vote.

On Nov. 5 -- 15 days before the vote -- Jackson and Rosendall arranged a meeting in the Renaissance Center with Rosendall's boss, Pamela Racey, from the Baltimore office, and General Counsel Alvin Thomas II, from Synagro headquarters in Houston.

Also invited were the Rev. Wendell Anthony, head of the Detroit Branch NAACP, Rasul Muhammad, a Detroit minister with the Nation of Islam, and mayoral aide Kandia Milton.

In an interview, Anthony confirmed the RenCen meeting, where they discussed community involvement. He said Synagro assured him the company would be a good citizen in Detroit and would hire women and minorities.

That same day, Anthony wrote the City Council on letterhead of the Freedom Institute, a nonprofit he founded, backing Synagro. Anthony said he was not paid but that Synagro may have bought tickets to an institute fund-raiser. Muhammad did not respond to messages left by the Free Press. Milton has pleaded guilty to bribery conspiracy in an unrelated case.

Trying to lock up Monica Conyers' vote

By that time, Conyers -- who had opposed the Synagro contract -- already had received at least \$7,000 in Synagro bribes, and was aggressively angling for more.

As Conyers' criminal case later made clear, Jackson orchestrated five illegal payments in return for her vote.

What has not been revealed, until now, is that Synagro executives knew that Riddle, a Conyers aide, had demanded a bag of money for her vote back in summer 2007.

Rosendall relayed the demand to Racey, who told the Michigan reps to steer clear of Conyers, records show. No meetings. No conversations.

In more than two decades in the business, Racey had never witnessed this level of city corruption, records show.

By that October, with the vote still uncertain, Jackson pleaded with Racey to be allowed to talk to Conyers.

Racey said she relented, reluctantly, but told Jackson to avoid any funny business.

Instead, he arranged more bribes to Conyers -- including one at Detroit Metro Airport in mid-October. Minutes after he paid the bribe at Metro, he called Racey.

"How's Monica?" Racey is overheard on a wiretap asking Jackson.

"She's happy," Jackson answers. "She's not gonna flip. ... She's says we got her vote."

Racey later told authorities she had a hunch Jackson was paying Conyers bribes, records show.

She was never told directly, she said. But in the back of her mind, she suspected as much.

#### Dealing with Bernard Kilpatrick

Synagro faced a similar problem with Bernard Kilpatrick, the then-mayor's father.

For years, Racey and Rosendall had lobbied Kwame Kilpatrick to allow Synagro to handle sludge disposal from the city's wastewater treatment plant.

In 2004, the mayor told Rosendall to work with his father, a political consultant, according to Rosendall's plea deal.

Racey was initially resistant to any financial deal with the mayor's father. She consulted Thomas, Synagro's lawyer. He agreed it was inappropriate.

Once it became clear Synagro would not hire him, Bernard Kilpatrick introduced Rosendall to Jackson, court records show. But the elder Kilpatrick did not leave quietly.

Instead, those records show, Bernard Kilpatrick periodically pressured Rosendall for money, including loans. While he had no official role in city government, the mayor's father intimated he had the clout to gum up the Synagro deal, perhaps by holding up permits, records show.

Rosendall appeared to take that clout seriously, handing Bernard Kilpatrick at least \$25,000 from 2004 to 2008.

Racey told authorities that she informed headquarters -- Boucher, the CEO, and Thomas

-- of Kilpatrick's demands, records show.

Records also show she instructed Jackson to pay Bernard Kilpatrick a finder's fee. He could pay him from the money Jackson was getting from Synagro, or find a way to get him a contract with the company.

Racey told federal authorities that Synagro was willing to set aside its misgivings about paying Bernard Kilpatrick to ensure that five years of work for the Detroit contract didn't unravel.

But Racey warned Jackson, documents show, to make sure his dealings with Bernard Kilpatrick could not be traced back to Synagro.

Payment is delayed; Kilpatrick is grumpy

On Dec. 4, 2007, two weeks after the Synagro contract was approved, Rosendall and Jackson met with Bernard Kilpatrick and his business associate Akunna Olumba at a Birmingham restaurant. Authorities taped the conversation.

Rosendall discussed a subcontract for Bernard Kilpatrick and Olumba, but Kilpatrick's name would not appear, records show. He and Jackson would each get 45%, she would get 10% of the deal.

As Christmas approached, Bernard Kilpatrick was itching to be paid. Rosendall assured him he would get a \$5,000 wire transfer, with Boucher or Thomas signing off on it, records show.

New Year's came and went. Kilpatrick was still waiting for his money, documents show.

He was grumpy.

So was Racey.

Referring to Bernard Kilpatrick by code words such as the partner or the other guy, Racey again instructed Jackson to pay him, but to keep the arrangement invisible.

That didn't sit well with Jackson, who was reluctant to share his money from Synagro with Bernard Kilpatrick, even though Kilpatrick had brought him into the deal. Besides, Jackson said on a call to Rosendall, he still had to pay money to some council members who voted for the Synagro contract.

Rosendall was frustrated, too -- with his bosses.

On Jan. 2, he complained on a recorded call that headquarters had allowed the Kilpatrick problem to fester. Instead of taking care of Bernard Kilpatrick, he said, Boucher had passed on the problem to Withrow, the financial officer, and Racey.

Kilpatrick and Olumba did not return calls seeking comment.

A bribe by any other name is still a bribe

In all, Rosendall stood to collect \$3 million from Synagro for passage of the Detroit contract.

He was willing to spend hundreds of thousands of dollars of his own money to ensure his big payday. Not previously known was the willingness of Synagro executives to reimburse

Rosendall for questionable payments he made in Detroit.

As the vote neared, records show Racey approved political contributions to Detroit officials for their vote.

Racey told federal authorities that she believed it was legal for Synagro to contribute to campaigns or pet causes in explicit return for their vote, so long as Synagro stayed within campaign spending limits.

Henning, the former prosecutor, disagreed, saying such arrangements can be prosecuted as bribery, even if the money went to the candidate's fund, not the candidate. "That's a quid pro quo," he said.

"The official doesn't have to receive the benefit directly," he said. "A campaign contribution does not immunize it from the bribery laws, and the Supreme Court has made that clear."

Trips to the Strip and to strip clubs

Racey also told authorities her bosses pre-approved a \$25,000 weekend in which Rosendall chartered a plane to take Kwame Kilpatrick and his staff to Las Vegas in 2003.

Execs also agreed to pay \$4,000 for another Vegas trip involving the mayor's staff, and for a \$1,200 restaurant tab in Washington, documents show.

Racey told authorities that she watched Rosendall lose his moral compass, going out three nights a week, visiting strip clubs, partying with mayoral aides like Derrick Miller and Kandia and DeDan Milton.

Rosendall's expenses were more than double those of other regional executives and were busting Racey's budget.

She told authorities she complained to Boucher and others. She said her bosses shared her frustration but accepted the expenses as a cost of doing business in Detroit.

Racey said she was concerned that the mayor's aides made constant demands that Rosendall contribute to the mayor's campaign and the tax-exempt Kilpatrick Civic Fund.

In summer and fall 2007, as the council vote neared, Jackson discussed having Racey wire an unspecified amount of money to a bank account to be passed out to civic or religious groups. He also said he donated to council members' favorite causes and campaign funds.

Racey told the feds Rosendall and Jackson were acting like criminals, but her bosses didn't want to delve too deeply to confirm their suspicions, records show.

She consulted another vice president, and she said he told her they just had to hold their noses, records show.

Time and again, Racey told the feds, Rosendall went over her head when she balked at lavish spending on Detroit politicians. Instead, Rosendall went directly to Boucher or Thomas, the general counsel, and the expenses were approved, records show.

At other times, Racey seemed eager to spend money in Detroit. In one wiretap, Racey told Jackson to compile a list of what council members wanted. Perhaps, she said,

Synagro could donate to one of their favorite organizations.

In all, Racey told federal authorities, Rosendall contributed roughly \$200,000 to Detroit-area politicians, their campaigns or causes, records show.

Synagro did not directly reimburse Rosendall for political contributions. But Racey said her bosses were willing to raise his commission rate to compensate him for his spending. So were Synagro's lawyers, according to prosecutors.

Prosecutors wrote before Rosendall's sentencing that Synagro "attorneys reviewed some aspects" of lobbying expenses Rosendall forwarded to headquarters for approval and "determined they were not prohibited by the city's ill-defined ethics laws, but instead fell into what they characterized as a 'gray area.' "

With bribes, 'you can't be the ostrich'

Jackson's lawyer, Richard Morgan Jr., and Riddle, who pleaded guilty to a bribery and extortion charge, have publicly questioned why they were prosecuted while Synagro and its top execs were not charged.

"It is clear that Mr. Jackson worked for Synagro, performed duties for Synagro and all of his actions were either sanctioned or at least tacitly approved by Synagro," Morgan argued last fall. Yet neither Synagro "nor any of its officers, other than James Rosendall, are before this court. ... Synagro is a party to this conspiracy ... and yet, for some reason, they are not here."

Legal experts say corporate executives can be charged if they had knowledge of their employees' illegal conduct -- or deliberately ignored it.

"You can't get off by saying ... 'I know enough to know I don't want to know about that,' " said New York University law professor Harry First, who researches business crime. "You can't be the ostrich."

In some instances, First and Henning said, a company can be prosecuted even if management was not aware of an employee's illegal behavior, so long as the company benefited.

"Companies can easily get into trouble for this, and should," First said. "People wouldn't be able to get bribes if people weren't willing to pay them."

Jennifer Arlen, an expert in corporate criminal liability and a law professor at New York University, said the Justice Department has been less receptive to charging a corporation itself because that can hurt innocent shareholders.

"The best way to deter corporate crimes is to make sure the individuals who commit them are convicted. And the best way to bring a strong case against the individuals is to enlist the corporation's aid in self-reporting crimes and cooperating with the government," Arlen said.

She said a company's board of directors has an incentive to cooperate with prosecutors, even if it means implicating an executive, because the board's fiduciary duty is to the corporation -- not the executives.

Scandal cost firm, city and taxpayers

Rosendall, who cooperated with prosecutors, pleaded guilty to conspiracy to commit bribery and entered a federal prison in Ohio on June 15 to serve 11 months behind bars.

Jackson pleaded guilty to conspiracy to commit bribery in June 2009. He did not cooperate and received five years.

Thomas, Boucher and Withrow have left Synagro, which would not discuss their departures.

Racey remains at Synagro's Baltimore office.

Racey told authorities that Carlyle was unhappy with the demise of the Detroit contract, and up to \$5 million a year in lost profits.

The City of Detroit and the 3 million wastewater customers of the Detroit Water and Sewerage Department are losers, too, department spokesman George Ellenwood said. The city and Synagro mutually agreed to terminate the contract in January 2009.

Environmentalists, union leaders and community activists in southwest Detroit raised objections to the Synagro deal. But Ellenwood said the contract's demise has forced the city to maintain aging incinerators and truck sludge to landfills, driving up sludge-disposal costs.

"We have to use our incinerator when we were planning not to use it," he said. "Do we upgrade it, replace it altogether? It means another capital expenditure and investment."

Contact JENNIFER DIXON: 313-223-4410 or [jbdixon@freepress.com](mailto:jbdixon@freepress.com)  
(<mailto:jbdixon@freepress.com>)