

## Bob Gregory

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**Sent:** Monday, September 26, 2016 12:08 PM  
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**Cc:** Andrew Bosinger (ABosinger@SYNAGRO.com); Bob Gregory  
**Subject:** TCE Message to Joint Working Group 9-26-2016  
**Attachments:** 9-26-16 TCE Message to Working Group.docx

Pardon the lengthy email, but we felt that it was important that we clarify where we see this issue and what we think the most important next steps for the working group. (We have attached it as a Word document as well for your convenience.) We thank you for your service and your patience, and we hope that sending this message well in advance of your next meeting will give each of you time to clarify your own perspectives so that your efforts may have the maximum effectiveness.

### How we Got Here

The best way to understand the whole controversy is to remember how we got here in the first place. Austin Water decided that it wanted a major change in their management of wastewater sludge at Hornsby Bend. Without Council input, commission review, stakeholder engagement, or any other apparent public process they constructed an RFP that left the door open to a variety of management processes, including land application of Class B sludge. One applicant—Denali Water Solutions—proposed to land apply more or less all of the sludge and began applying for state permits to do so in Fayette and Bastrop Counties. TCE joined with neighbors in these communities to help fight these permits, which were withdrawn after public pressure and Denali’s failure to secure the AWU contract.

Nonetheless, TCE was now very interested in the future of this contract, and concerned that Synagro—a company with both good operations and environmental complaints in their background—was to be the vendor. At the Water and Wastewater Commission meeting of July 13 there were few details whatsoever revealed about the contract, and statements from AWU director Greg Meszaros implied that the company would be seeking to produce a novel product known as either “Class A Compost” or “Agricultural Compost” that was some sort of conflation of Class A sludge and compost. It appeared that this proposal was one that would sneak through even more sludge land application under a euphemistic term. Simultaneous to this was a completed RFP to sell unscreened Dillo Dirt to one Allen Click at a bargain basement price. Our understanding suggested that such a sale would threaten the future viability of the Dillo Dirt by both surrendering crucial “overs” material on the one hand and flooding the market with cheap product on the other. We felt compelled to reach out to Council for action, as we understood major policy decisions were being made without significant policymaker input. Indeed, at the Zero Waste Advisory Commission meeting on August 10 Jane Burazer from Austin Water said that this contract would be the end of Dillo Dirt.

At the Council meeting of August 11<sup>th</sup> the issue came to a head and Synagro counsel Jerry Harris told Councilmembers that Synagro would release a “full” contract for public review. Since that time Synagro has released the contract we have today—substantially available, but with redactions. The good news is that it appears that Synagro’s plan is to compost 100% of Austin’s sludge to USCC STA standards. They have communicated this with TCE and others, and we are inclined to believe them. That said, circumstances, governments, and companies can change and so both parties—Synagro and

the City— and the area residents and individuals using the Austin airport need a contract that actually ensures this highest and best use through clear contract language and definitions which allow the City to judge, through a periodic sight and smell examination of the materials being transported offsite, whether the ongoing production of compost meets the USCC STA standards. In addition, odor control compliance, must be sufficient to show that a well-run biosolids compost program is being maintained and that all processed biosolids have been fully composted, cured and screened to a standard which should eliminate undecomposed balls or clods of biosolids from being sold as finished compost. To that end, the maximum screen opening size used for the screening of the finished compost should be no larger than 3/8 inch, the same size, we understand, as used in the Dillo Dirt program over the past few decades. In addition, Synagro should maintain a log of complaints that are shared with the city. Should the complaints exceed a certain level (perhaps 5 per month), the City should require corrective action. Finally, because the USCC STA standards do not involve site visits and rely on the composter to choose small samples for monthly testing, the city must maintain the right to take samples at any time, without notice, samples that can be sent for testing for compliance with USCC STA standards to guarantee that samples are representative of the product being produced.

If samples sent by Synagro or the City should fail the USCC STA standards, Synagro must be required to take action to bring the material into compliance with those standards. These incidents must be Austin Water, Austin Resource Recovery, reported to Council, ZWAC and the Water and Wastewater Commission at each of their next meetings.

We identified several concerns with the contract that we felt left the door open to potential abuse and outlined them at the Water and Wastewater Commission meeting last week, September 14. Following that meeting Synagro representatives spoke with us and clarified several solutions to these concerns. The original concerns and their suggested solutions were:

- We wanted definitions for compost and Dillo Dirt. Synagro pointed out that the contract refers to the USCC STA standard and requires that Dillo Dirt maintain “the same high quality compost standards... as such standards are set forth by the City.”
- We were concerned that their proposal would require a permit modification at TCEQ. Austin Water staff said that they consulted with TCEQ directly and that the agency indicated that no such modification would be necessary.
- We sought provisions referring to screening, curing, odor control, and termination. Synagro represented that the first three of these would be dealt with largely with the STA standard, and the contract gives Austin Water specific power to require odor control plans, and further requires “All compost produced by the Contractor shall be screened.” There are, however, references later in the proposal to the sale of unscreened material “as the market allows.” We feel that both STA and and 3/8 inch screen size is consistent with City policy and will insure that undecomposed sludge balls and clods are not shipped offsite with finished compost.
- We asked for specific goals and timelines for reaching 100% composting, and Synagro told us that they would reach this on Day 1, because Austin Water staff still direct the program with the contracted assistance of Synagro at contracted rates. Our solution is for specific and enforceable contract language to be added and for Council to set a policy directive that sets this as an expectation and requires AWU staff to report back on the program’s status 90 days after the effective date of the contract.
- All Class B sludge landfilling and land application must be done only at AWU staff direction on an emergency basis. As it is a staff-led decision we believe that a contractual requirement and a policy directive from Council requiring swift and thorough reporting and plans for return to normal operation and for regulatory compliance should fulfill this expectation.
- We want full disclosure of the fact that these products contain biosolids at any point of sale or donation, especially charitable donation. While we said in our previous memo that a policy directive should be sufficient for this, a contractual change will be more secure.
- We also initially sought Council approval for all contract extensions. We are comfortable with only the first extension after five years being subject to mandatory Council action with the understanding, of course, that Council could disapprove any subsequent extension if such a need arose. Council should also approve all major contract amendments related to sludge processing requirements, land application allowances and rate increases.

## Redactions

The final issue of concern from this point was, of course, the redactions in the contract and proposal. Our last response used the term “immediately prior to the final Council decision on this contract.” Upon further review we do believe that these redactions ought to be seen sooner rather than later. Key questions the working group expressed on Tuesday—namely where the bulking agent would come from and how unscreened material would be handled—may be addressed in these very sections. We urge you to ask for the release of this information with enough time for critical review to ensure that there are no pieces we wished we had all seen prior to approving the deal, and that this should occur prior to the Joint Working Group and the respective Commissions making their recommendations.

### Remaining Concerns

Again, we need contractual protections to ensure that Synagro lives up to its stated values and intentions even if they go through changes in the coming years, as they have done in recent years. Reviewing the status this week there are a few additional specific protections that we believe further secure our initial demands:

- While the contract does specify that All Gro and Dillo Dirt will meet USCC STA standards, it does not actually ensure that Synagro won't sell some other product as “compost” or any other biosolids sludge related product under a different name or under no name that does not meet that standard. There should be an additional contractual restriction that Synagro will not market any product as compost or anything else that does not meet USCC STA standards under any name or no name. The 3/8 inch size of the screen should be small enough to screen out the balls and clods of undecomposed and unstable sludge.
- We are concerned that while Class B sludge land application would require AWU staff action on an emergency basis, there are no such provisions for Class A sludge land application. Synagro's understanding of the contract is that it does not allow for Class A sludge land application at all, and so they would not be involved in any land application of such materials. This would suggest that the contract should be amended to clarify that it prohibits Class A sludge land application. If Synagro does not intend to handle these materials anyways it seems as though such a provision would not affect their plans and that this prohibition would be appropriate.
- We still retain concerns about unscreened materials, and we believe that the contract should require that all material sales be screened with a 3/8 inch screen to insure that trash and undecomposed balls and clods of biosolids sludge are not in the finished compost.
- As noted above we insist that the redactions should be released to the public as soon as possible before the Joint Working Group recommendation is considered to determine if our current belief in their position is in fact well founded or if there are provisions which change that perspective. This is crucial for being able to finally support this proposal in good faith, and we will advocate to Council that they take no action until they, relevant commissioners, and public interest advocates have had a chance to adequately review these redactions.

There has additionally been late-breaking concern that this contract and others being developed are attempts by the city government to establish flow control for discards generated in Austin. We are absolutely opposed to flow control in Austin and we will fight to ensure that any policies of this sort do not come to pass. Austin Resource Recovery director Bob Gedert's September 13 memo to Council used the term, but our reading of this document is that it addresses the disposition of city-generated material. We support a more strategic policy for these materials than what exists today, but the city must absolutely resist any attempt to use this policy as an opening to mandate the flow of privately generated materials. We believe that a flat statement that the city is not seeking flow control should be part of the policy directive associated with this contract, and that contract language should clarify that the contractor is responsible for providing all bulking agent needed to compost the City's sludge.

Finally, we believe—and have believed for some time, though the issue has been obscured in recent weeks—that the Click contract is entirely unnecessary. Previous sales of the same material were done with Invitations for short-term Invitations for Bids (IFBs) which returned much better prices for the city in a more accessible process. Staff should cancel the existing RFP and reissue it as either a short-term IFB or ask Council to put the material on standard price lists at a price likely to secure a buyer and generate adequate revenue for the Utility. This sale of unscreened compost contract should not be an outlet for unstabilized biosolids products.

In the end we understand that there are additional concerns about whether this contract has been appropriately handled in regards to the Anti-Lobbying Ordinance. We believe that the current uneven interpretation of this law has helped to drive a lot of the confusion and disorder around this project and many others and we hope that Council addresses that concern as well.

### **What You Should Recommend**

As for your work in this working group, we hope that you'll consider recommending the following policies to your respective commissions and then to Council and staff:

- Synagro is asked to release an unredacted contract as quickly as possible before the final consideration of the recommendation from the Joint Working Group.
- The contract is amended to clarify that Synagro may not sell compost or any other Class A biosolids related product under any name or no name that does not meet USCC STA standards. An amendment to the contract clarifying that it prohibits Synagro land applying Class A biosolids sludge all together. Class A biosolids should also meet USCC STA standards..
- A contractual amendment clarifying that all compost or other processed biosolids materials produced under the contract will be fully disclosed as containing biosolids at any point of sale or donation
- The contract amended to require that all biosolids compost of Class A biosolids related products will be screened with a minimum 3/8 inch screen size to ensure that trash and undecomposed sludge is removed and not included in the finished compost sold.
- Amending the contract to require Council action to extend the contract after five years
- That Council pass a policy directive to support specific contract language at the time they adopt this contract that directs staff:
  - That all sewage sludge is to be composted beginning immediately after execution of the contract consistent with USCC STA standards and that staff will report back to Council 90 days after the effective date of the contract to report their progress
  - That any emergency orders to landfill or land apply Class B sludge will be memorialized to Council within 48 hours of the order and that AWU staff will report to Council, ZWAC and the Water and Wastewater Commission at each of their next meetings about the emergency and their expected timeline to return to normal operations
  - That nothing in this contract is to be construed as a flow control policy and that the Council does not endorse flow control of privately generated materials. Further, that the contactor bears the responsibility to supply all bulking agent not made available by the City from City facilities and right of ways.
- Cancel the Click RFP and proposed contract and issue either a short-term Invitation For Bid or put the City's cured but unscreened Dillo Dirt on the material price list at a rate likely to secure a buyer.

These recommendations are consistent with our previous positions and we hope that upon adoption and execution of each of them we will have a contract that protects all parties and ensures that for the first time ever Austin is recycling all of its sewage waste. We look forward to that day, and are happy to answer any questions.

Yours,

Andrew Dobbs  
Austin Program Director

Robin Schneider  
Executive Director