

MINUTES

SOLID WASTE ADVISORY COMMITTEE:

CAPITAL AREA COUNCIL OF GOVERNMENTS
6800 Burleson Road, Building 310, Suite 165
Austin, TX 78744

December 8, 2009
9:00 AM

Attendees:

SWAC Committee Members

Comm. Maurice Pitts, Lee County - Chair
Jack Ranney, LCRA – Vice Chair
Gerry Acuna, City of Austin
Pete Correa, Williamson County
Dr. Orlynn Evans, Williamson County
Kyle Hahn, Private Industry Rep.
Jeff Hauff, Hays County
Steve Jacobs, Private Industry Rep.
Richard McHale, City of Austin
Comm. Tom Muras, Fayette County
Comm. Henry Parker, Llano County
Comm. Joe Roland, Caldwell County
Lynn Sheffield, Burnet County
John White, Travis County
Ralph Wueller, Private Industry Rep.

CAPCOG Staff

Kelly Freeman, Solid Waste Program Coordinator
Ashley Fisher, Regional Environmental Coordinator
Betty Voights, Executive Director

Guests

Debbie Gernes, Travis County WCID #17
Stephanie Albright, Lloyd Gosselink Attorneys at Law
Robin Lloyd, Lloyd Gosselink Attorneys at Law

- 1. Welcome and Introductory Remarks** **9:00 am**
Commissioner Pitts called the meeting to order and welcomed attendees.
- 2. Approval of November 19, 2009 Minutes** **9:05 am**

P. Correa made a motion to approve the minutes; the motion was seconded by L. Sheffield and approved by acclamation.

3. Consideration of FY10 Funding Appeal

9:10 am

K. Freeman gave an overview of the background of the solid waste funding recommendation appeal by Travis County WCID #17, and procedures for reviewing the appeal.

K. Freeman: A proposal was submitted by Travis County WCID #17 for equipment to support their composting operation. Subsequently a protest was submitted by Texas Disposal Systems and their sister company Garden-Ville (TDS). TDS contends that the WCID proposal is in violation of the legislative restrictions placed upon the program to ensure that projects or services funded under the program must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services. This restriction is included in the legislation that created the program, in the contract between CAPCOG and TCEQ, in the CAPCOG Regional Solid Waste Management Plan, in the CAPCOG Regional Solid Waste Management Program Funding Plan, in the Texas Health and Safety Code, and in the Texas Administrative Code. At (the SWAC) meeting to review project proposals on November 19, 2009, the CAPCOG Solid Waste Advisory Committee (SWAC) considered the private industry protest submitted by TDS/Garden-Ville. WCID was present and made a statement in defense of their proposal. After discussion, the SWAC voted in support of a motion, with one vote in opposition, determining that under RSWMP guidelines (including legislative restrictions) the WCID proposal was not fundable. The protest by TDS/Garden-Ville was upheld, and the WCID proposal was not scored after being declared ineligible.

There are three components to the Legislative requirements, which are that projects or services funded under this program. The first is that the project must promote cooperation between public and private entities. Travis County WCID No. 17's proposal appears to meet this requirement, as they have received verbal and written indications of support from area solid yards, some of which have expressed a willingness to work with them. TDS does operate a composting facility in Travis County and a sewage sludge composting operation in San Antonio. TDS has indicated that they would be willing to accept material from WCID for processing at their San Antonio facility. An analysis of the cost and logistical implications of this service has not been conducted. TDS does also market their materials that are produced at the San Antonio facility here in the CAPCOG region. The third component (of the legislative requirements is that a project) may not create a competitive advantage over a private industry that provides recycling or solid waste services. TDS currently operates a sewage sludge composting operation. What you are considering today, is that funding provided to local government operations to cover operational costs may create a competitive advantage over a comparable private industry operation which is not eligible to receive RSWMP funding to recover similar operational costs.

Regarding the private industry review process, the SWAC meets and carefully reviews each project to ensure that all projects meet the legislative restrictions in order to be eligible for funding under the (Regional Solid Waste Grants) program. CAPCOG has contacted TCEQ to request additional guidance; additional guidance provided is that where conflict should arise, it is up to the CAPCOG SWAC to determine whether a project meets the legislative restriction, with CAPCOG Executive Committee review of the SWAC recommendation. If it comes to this point, the applicant may appeal the Executive Committee recommendation directly to the TCEQ.

The procedure for private industry to submit opposition includes two options. If the private industry opposes the application because they would like the opportunity to provide the service, they would be required to submit a service plan that details how they would provide that service within one year, as required by our RSWMP Funding Plan. There is an additional option, which is that the private industry opposes the application for any other reason than that they would like to provide the service. TDS did submit their protest under this provision. Therefore they did not submit a service plan, as they contend that this provision is not applicable because they already provide the service.

Next, TDS will have the opportunity to respond to the appeal that was submitted, and WCID will also be given the opportunity to make comments. Then (the SWAC) will be asked to make a recommendation. If the SWAC decides to uphold the existing recommendation that the project is ineligible, then that recommendation will be submitted to the Executive Committee tomorrow, along with the full slate of the FY10 recommendations. WCID will have the opportunity to make comments during the Executive Committee meeting if they wish to do so. If information is presented today which merits a reversal of your previous decision, you can go back and score the WCID proposal. Because each proposal is scored upon its own merits based upon established criteria, you can score the WCID proposal today if you decide to do so. What we would do is give you some time to go back and review the application, and we have everything prepared for that eventuality. WCID would make their presentation, SWAC would score the application, and then we would drop (their score) into the existing FY10 funding recommendation matrix, recalculate rankings, and resubmit the revised recommendations to you for your approval. Those revised recommendations would then be submitted to the Executive Committee tomorrow, at which time TDS would also have the opportunity to appeal the recommendations to the Executive Committee as well as TCEQ.

Ralph Wueller: Let me start by saying my argument today really isn't any different than my argument was when they submitted the grant, from the grant scoring. I do want to correct one piece of what Kelly said; we can do the screening and that kind of thing here, it doesn't have to go to San Antonio. We just don't do biosolids composting here, we do that type of composting in San Antonio, and we ship that material here to the CAPCOG region and elsewhere. I want to reemphasize the fact that I think this is a fantastic project and I hope they do it. I hope that they continue to do the composting. I think it's a meaningful project, and any material that we can get out of the landfills is a good idea. The basic premise, the problem that I have with this particular grant, is that we have companies – not just us, but we have companies that sell this type of material in this market. You can't get around the fact that if I'm a business and I can get \$70,000 for a trommel screen that some other business can't get, that give me an advantage competitive wise over that business. I can sell that product for less because I didn't have to pay for the trommel screen. It's that simple. One of the things I want to make sure everybody understands is that there is already some precedent for our position here. City of Austin at one point put in a grant for some equipment to be use at their biosolids recycling facility. We protested that, and kept that from being funded. City of Pflugerville has come not once but twice for funding for equipment for their biosolids composting operation, and they had to agree that they would not sell the material and that they would not give the material away, which would hurt other markets. So we already have some precedent set that this is not the kind of stuff that we fund. If they were in a part of the CAPCOG region that nobody was selling product in, and nobody was doing this kind of project, I would be the first one to vote for this, but that's not the case. And my question to you is, if we decide to fund this project, how do you tell the next guy who comes in that you can't fund his. That's all I have.

Debbie Gernes: Thank you to all the Committee members for coming in today, and giving us the opportunity to have another crack at this discussion, we really appreciate it. As Kelly indicated, we've all read the statements that I made at the last meeting. We know what the issues are, but as Kelly indicated, this grant does promote cooperation between entities. Travis County and other local MUDs, as well as other local providers, none of whom had any objections. Mr. Wueller makes a good point, that we are going to be selling compost. As I said at the last meeting, that is a single product. He would have a very good point if this grant were allowing us to set up an open to the public garden center, that was going to compete with Garden-Ville, but it does not. Again it's a single product, they sell hundreds. The thing you have to ask yourself, does this give what I believe the statute says is an unfair competitive advantage. He says that it's because I would get a trommel screen for \$70,000; I don't have any screens right now except a little one operated by (inaudible). Would that give the district, a non-profit public entity, some kind of unfair competitive advantage over Garden-Ville? I find this argument to be ludicrous. As I made the argument last time about the apple seller being able to put a leg on his apple cart being protested by HEB located 11 miles away because it was too competitive. It doesn't make sense. There is no unfair advantage here. Garden-Ville probably has a hundred trommel screens. The fact that a district, non-profit public entity would get a single trommel screen is hardly an unfair competitive advantage. It's ridiculous. The other thing I'd like to say is that while we are talking about selling product, the sludge compost, the important part of what the District's project is doing is providing the composting in the area. Selling is only the by-product of the service, we are providing the composting in the area, where nobody else is. Garden-ville does theirs in San Antonio. City of Austin has it's own, City of Pflugerville has its own. Out is west Travis County, the District is really in many areas the only local government. There really is no other County entity around there that is going to take this over. The District has established the only type of service in that area that is composting. I understand his point about sewage sludge selling; the only selling we're going to do is to get rid of the project, and to defray some of our cost. We have already paid some cost using taxpayer and rate payers money because the board of District 17 feels that this is an important project and we need to establish composting program and by gosh we did it. I feel that the District deserves this grant, and TDS has not provided any evidence – they provided a protest letter but they did not provide any written evidence – as to how this is going to compete with Garden-Ville. Possibly because they can't, other than to say well you're selling sewage sludge and I'm selling sewage sludge. They have probably a dozen other land application products that we don't. That concludes my comments, please reconsider this application, we feel that the District certainly deserves your consideration.

J. Ranney: This is (a question) to anybody, if you get this grant do you think it's going to allow you to increase your production capacity? And you want to sell the end product to off-set your cost. Is it plausible that when you sell that product, that you're going to offset sales for other companies, specifically Garden-Ville? (Is it plausible) that somebody may choose your product over theirs?

D. Gernes: That's hard to answer but I think it's doubtful. Our product is probably going to be inferior to anything they have. Just because their screening capability is going to be so much greater, and their whole operation is so much different from ours. We're a single (inaudible) operation, which is currently run by my personnel who have a lot of other things to do. My guess is that our product is probably going to be inferior, (inaudible) grainier, it's going to take me longer to produce it because of the personnel factor, I'm guessing but I can't really say.

R. Wueller: It's going to be cheaper. We don't have hundreds of screens, but I think we paid \$250,000 for the last trommel screen we bought. Because we (have a) large production system. But we paid for our trommel screen. We paid for it. I don't have any problem with them doing this. I have a problem with paying for their trommel screen and then selling it to the same people, the same utility districts, the same cities, the same customers that we have people going out and marketing to. Right now they're not selling any of it to the public, but I think at some point - especially if they grow this the way they actually want to, which I hope they do - they will be selling it to the public, the general public. But we market to the same groups that she's going to market to.

P. Correa: Ralph you're saying we're setting a precedent if we consider this because we've turned down City of Austin and City of Pflugerville?

R. Wueller: Right.

P. Correa: They have come for grants?

R. Wueller: We've either turned them down or they've had to change their application in order to qualify for the funding.

K. Hahn: Because they are producing product, right?

R. Wueller: They are producing product.

D. Gernes: A lot more than we are.

R. Wueller: A lot more, a lot more. Well, I don't know about City of Pflugerville, but City of Austin for sure.

D. Gernes: They're huge.

P. Correa: You're saying TDS bought their own with \$250,000 of your own money?

R. Wueller: Yes sir.

G. Acuna: Where is the nearest Garden-Ville in comparison to the (District)?

R. Wueller: Eco depot on 620.

D. Gernes: About 11 miles away.

K. Freeman: For clarification, while TDS submitted the protest, part of what this body must consider is the effect on private industry in general. So while it is important to consider the effect on TDS, there is a larger question.

J. Ranney: It seems like you won't know to any measurable degree what level of competition it could provide at this stage you have to look at could it plausibly provide competition.

Comm. Muras: Does it provide any competition.

D. Gernes: The question is does it provide unfair competition.

K. Freeman: There is no word (in the statute) “unfair”, it is just competition.

D. Gernes: So it’s competitive advantage.

K. Freeman: Correct.

D. Gernes: So would it give the district a competitive advantage over a multi-million dollar company.

K. Hahn: I am trying to get some clarity on this. Deborah I am hearing you (say) today and you have said before that they make hundreds of products and you only make one. But it’s not an issue (of that). To me the question here is not if it’s one, five, or ten. It’s sort of like saying, I’m doing this that’s against the rule, but it’s only one thing against the rule. I can’t accept that justification. Does anybody else have issue with that?

D. Gernes: The rule doesn’t say there can’t be competition, it says would it create a competitive advantage.

K. Hahn: I understand, and that’s what’s on the table, but I’m trying to understand if it’s just one thing, or they’re too big of a company, where’s the limit?

R. Wueller: I’m going to use her example of the apple cart. She suggested that what she’s doing is she’s putting a leg on the apple cart and that’s not really competition with HEB. And I would agree if she was putting a leg on the apple cart it wouldn’t be, but that’s not what she’s doing. She’s buying apple trees to grow the apples to compete against HEB, who buys their own apple trees. So if she doesn’t have to pay for the apple trees, is it logical that the apples that she sells will be cheaper than the apples that HEB sells?

K. Hahn: That’s my concern. Without being rude to TDS, I don’t think that (the District) is going to put TDS out of business. I’m not worried about that. And I’m hearing the sort of David and Goliath argument, but it’s also four or five other places.

R. Wueller: There are some smaller soil companies around that we sell to; they use our organic compost to build their soils, to mix other stuff with to make their soils. I know that we market the biosolids compost to them. So I can understand why some soil companies, who either don’t carry the product, wouldn’t care whether they sell it or not because they’re not going to sell it anyway. They’re not competing with them. It’s not going to necessarily directly in their view hurt their product sales.

R. McHale: Ralph does TDS sell to any of the 5 or 6 companies that didn’t have an issue with this?

R. Wueller: I don’t know that for a fact, but I suspect that we do sell material to probably all of those companies.

Dr. Evans: There are two issues here, and I really never got into this issue, in fact it never occurred to me when I was doing my grading. I did grade this request very low because as I looked at their business plan, I would not invest in it because there were so many questions I had. I was pleased when there was some evidence that there might be some cooperation, because I think this is an important project. I think it would be a shame to dump that sludge in Williamson County Landfill.

R. Wueller: I do too.

Dr. Evans: I was quite disappointed that apparently those negotiations, whatever those negotiations were, broke down. I tend to believe that reasonable people who have respect for each other can solve problems. I don't know how other people graded this, but if I were to turn in my original grade, it would come in below Smithville, and I'd hate to see that be the reason that this thing was terminated. The whole controversy is unfortunate. I think I recognize the legal aspects, of course I'm a newbie and may not know all the ins and outs, but I didn't even consider it when I did my original grade. So I think there are two issues here, one of which I'm not very confident to deal with.

R. Wueller: Let me just say this, I made this offer the day we did the scoring, and I'll make it again. We are happy to work with (the District) any way we can to help them achieve what they want to achieve. I just have a problem with funding this grant under this scenario.

Dr. Evans: One of the things I think they said they wanted to achieve was to be able to reduce the cost to the customers in the District, so that's another goal.

R. Wueller: I am willing to do anything I can to help them achieve their goals. I'm not saying that I can necessarily do it for free, but I am saying that we are certainly willing to work with the District any way we can.

Dr. Evans: And if they cannot achieve that goal then we are asking them to bear an expense that it would be cheaper to bring it to Williamson County Landfill and I don't like that idea either, so there needs to be, if we're going to encourage this kind of thing, there needs to be cooperation with private industry. As I understand it that's one of the goals here.

D. Gernes: What I'm hearing is that in order to get a grant, no one can get a grant for composting because of this clause, that would be the net result. You say the City of Austin couldn't get one, Pflugerville couldn't get one, District 17 can't get one, then you shouldn't advertise that you can get grants for composting because you're not going to get them.

K. Freeman: That is incorrect, there have been grants provided to multiple entities for composting projects. One of the common threads through several, at least several of those projects if not all, is that the product was being used only on-site for those entities. That was the arrangement I believe that Pflugerville reached for their project. Same thing for the Travis County composting project grant which was just given out in FY09, in the last round.

D. Gernes: The City of Pflugerville owns a lot more property than a small entity like District 17. I don't have enough property to get rid of all this product on my own property, otherwise I would. If I

could use it all, I would use it all, but there's no way I can do that. Again, we're not a city, we're a small water utility, and backyard composting was great, but that's a hang your clothes on a mulberry bush but don't go near the water argument. I can't get rid of it on my own property. If I want to cooperate with other entities (inaudible), if I want to meet that part of the grant requirement, cooperation with other entities, I have to make my operation larger so I can take sludge from Lakeway MUD, from Brushy Creek MUD. But if I only compost what I produce and use, and try to get rid of it on my own property, I can't do that because my grant would be denied on that, that I'm not cooperating with other entities.

R. Wueller: Well, that's not completely true, I think had you been able to say – yes, we will only use it on District property – your grant would have been scored. Or it certainly wouldn't have drawn my protest.

K. Hahn: Maybe if we give a different example so that we're not bogged down on the compost issue. If you take my recycling company, it's in San Marcos. If City of San Marcos came to the board and said we want to increase aluminum can recycling, that would be ok. If they said, we would like to get a \$30,000 baler and we would like to have drives to collect those cans to make some money for other recycling, that would probably still be ok. If they said, we would like to get a baler so that we can pay more for cans than Green Guy Recycling does, because it doesn't cost us anything to bale the cans, the machine is free because we got grant money for it. Then I can't pay the same dollar amount; it's kind of a reverse scenario. It becomes an advantage. So do we want the cans to get recycled? Yes. Could they do it and collect cans for free? Yes. With a machine that was funded? Yes. But they couldn't come in and have an advantage over use.

R. Wueller: They couldn't come in and buy the cans, which competes with you.

K. Hahn: Exactly, if they came in and did the same scenario with Styrofoam, let's say, something that I don't do and don't have the capability of, and they wanted to pay the public for it somehow, they could do that.

R. Wueller: Because that service doesn't exist.

K. Hahn: Only if there isn't somebody already there doing that. It begins to take away from that business. It would be great, City of San Marcos could probably take that can money and offset wastewater bills, or trash service, but that's where the fine line is. The issue still is not the composting, it's not what you're doing. Like he was saying it is a pretty good project up to a point. But when it gets to where you can't use it any more at your facility and you start selling it, then competition starts to kick in at that point.

R. Wueller: Although, I think I would argue with you about the San Marcos taking the cans (for free), because that still hurts your market.

K. Hahn: I wouldn't be real excited about that, but it would be harder for me to protest that then somebody coming and saying, we know that you pay fifty cents a pound and if we get this machine we could pay sixty (cents a pound). Of course they could because I've got ten cents in baling and they don't. That's where the problem comes in.

Again I say, is it a real advantage or not. In this case, clearly is not a competitive advantage.

R. McHale: When I voted last time, I was the lone vote in opposition to this because I felt, first of all, that they had made a good faith effort to contact private companies, and most of the companies didn't have an issue with it. So my reasoning was that those companies didn't feel that this was unfair competition, or competitive advantage. Yes City of Austin, probably back in 1995 or so, had request a loader to move wood chips and that was protested. And in retrospect, I have less of an issue with that because we are large enough to be a true competitor of TDS. I think I would still have to vote for this project. Not necessarily scoring wise, I don't know how I'd score, but at least make it eligible to be scored. TDS and Garden-Ville, if you look at their responses in the beginning, both of those responses were favorable. It wasn't until toward the end of that process that TDS submitted a letter of opposition, so I think that it's a bit unfair. We're all short on resources as governments, and they went through the whole process of putting this application together. I think if TDS has an issue, then they should have said that up front. So that was one of the issues that I voted in opposition last time. Do I think it would create a competitive advantage? Not so much with the District, perhaps the other companies that might get the material in that area might have a competitive advantage with TDS because it gets some of their market share. But I don't think the governmental entity would gain an advantage.

K. Hahn: Kelly could we address, what are the guidelines for contacting people and getting a response? Do you just have to contact them and it doesn't matter if somebody responds? Because I saw quite a few things in our scoring packets where a letter was sent to so-and-so but there wasn't a response, or a response letter. Or, we've talked about this before, if you call over to Gerry's place and say – hey do you guys care if we apply for a grant to help recycling? – and the wording isn't even necessarily very specific, and his office help says - sure we're all for recycling – and there's no details. Then he finds out three weeks later that they're going to put something in right next door and have all this equipment, and he didn't want that to happen. Do we have some pretty clear guidelines that it gets to the right person that really is a decision maker, and is there a requirement just to notify, or do they have to have a response of some type?

K. Freeman: The guidelines from TCEQ require that applicants show documentation that they've made a good-faith effort to contact relevant private industry service providers. Those guidelines, and our guidelines, do not require that they receive a response. The burden is on private industry service providers with an interest once they know. CAPCOG staff makes an effort in several ways to notify private industry service providers. One is that we do our best to maintain a list of the appropriate contacts. We send a hard copy letter with a list of the grant applications directly to private industry service providers. We also make available in our lobby copies of all grant applications for at least ten business days, with then another five business day gap between that and the scoring so that they can come view those and then make copies if they wish. If they request an email copy of a particular application then we are glad to do that as well. Something else that we did this year to assist with the process was providing all applicants a list of private industry service providers, again of which we were aware, with the appropriate contact name. But again, the burden is on the private industry service provider. There are not very specific guidelines for what type of information the applicant has to provide to the service provider when they make that contact. They are not required to submit the full application; they can give them a reasonable understanding, I believe is the verbiage, a reasonable understanding of their project. But again they are not required to submit the full application. It may be

that what happens is that the explanation that is provided by the applicant in the initial contact doesn't contain some of those details that trigger a private industry protest. Then when the private industry provider does look at the full application, that there may be information there that triggers a protest.

K. Hahn: So Ralph is that what happened here? Because I saw that and I was confused a little bit, because I did see contact was made with Garden-Ville and there didn't seem to be a problem, then we received the protest.

R. Wueller: Let me tell you exactly what happened. Debbie wasn't actually the one making contact directly with me. She had her assistant making some calls as I'm sure she was out making calls on the folks that are right there on 620. Her assistant called and told me what they were planning, and I told her, I think the project is a terrific project but I have a concern. I would like to vote for this, I would like for you guys to do this, and I probably did something that I shouldn't have done. I told her, when you make all your contacts with all the other solid companies around you, because there's a number of them out there, call me back and let me know what they said. Because I would like to look the other way, if you will, I think it's a terrific project, but I have a real concern about it. And I never heard anything back. There's no joy for me in protesting this. It's a good project; it's a good thing they're doing. I hope they continue to do it. The problem is, it does give (a competitive advantage over) us and anybody else who may be coming into the market, it gives (the District) a competitive advantage because they don't have to pay for equipment that they use to produce a product that they can then sell for less money than anybody else who does have to pay for equipment, who produces that same product. It's that simple, for me.

J. Ranney: Do you sell bulk material?

R. Wueller: Yes, sir. We sell bagged material, bulk material.

R. McHale: Deborah, this material, or this product, does it actually go to the Williamson County Landfill, any that's left over?

D. Gernes: I believe we're hauling it to Manor. We'll still be able to do some composting. The fact that we don't get this piece of equipment, we'll still be able to do composting. We will probably still have to haul, because it just takes me too long to screen it. Right now I just have a tiny screen, and it takes too much time from my personnel. My personnel are doing water district stuff, wastewater, operating the wastewater plant, doing lift station and other stuff. Composting is not the District's business; the District is doing this because the board things it's the right thing to do, and the board of directors told me "go do it" and so I have done so. We've laid out a lot of money; hundred foot slabs are not cheap, and putting a roof over them is not cheap. We've already laid out a lot of money, specifically for this project the much money is going to composting, it's not going to water district business like running the lift station or running the water plant. All we're asking, this is not a primary business, this is a side business that we're getting into specifically to remove this stuff from the landfill because my board feels that this is the right thing to do, and they have taken the ratepayers and taxpayers money to start up this operation. I need this one more piece of equipment to complete our operation, and that's pretty much it for us. We are not Garden-Ville, we are not in the garden business. I'm getting rid of it because I have to, not because I want to compete with Garden-Ville or anybody else, or any of the places on 620. I've gotten statement of support from the places on 620. But pretty much that's where

we are is we have to get rid of this stuff, and it'd be great if the taxpayers and rate payers could win one for a change.

Comm. Muras: Are you hauling now?

D. Gernes: Yes, intermittently. I compost as much as I can, and then when I can't do any more and I'm getting too much sewage sludge coming in and I can't store it, then I have to haul it.

R. McHale: And when you say haul it to Manor, are you land applying it?

R. Wueller: They're land applying it.

D. Gernes: It's for land application.

R. McHale: So not landfill.

D. Gernes: No.

R. Wueller: They're not landfilling.

D. Gernes: But the less I compost, the less I can take of Travis County's brush. It's small, we're a really small operation.

Comm. Muras: When you said a couple weeks ago that if you got to screen you would go ahead and start taking more and doing more, and then you'd have more compost. That's kind of what turned me the other direction. It told me that you were planning on getting bigger.

D. Gernes: Bigger is a relative term.

Comm. Muras: It is, but it just didn't sound right. You're getting into business.

Dr. Evans: That's why I called this a business plan, because there is here a really good opportunity for somebody to start a business, to start small and grow, but that takes capital. That's why I used the word business plan. I've seen business plans that were worse than this.

D. Gernes: Again, we're not a business we're a taxpayer, ratepayer funded entity. Believe me, composting is not our business, it would not have been my first choice to get into this business because I don't have the personnel and I have a lot of other jobs to do. We are a water utility, we are in wastewater, that's what we do. This is a completely side issue.

J. White: Just to be sure I understand clearly, at this point you are composting some sludge?

D. Gernes: Yes sir.

J. White: And what is the fate of that when it's composted, what do you do with it?

D. Gernes: Right now, I am giving it away. The facility is located within Steiner Ranch which is a large residential area. They have a single large landscaping and grass-cutting company that the homeowners association uses. They're about 5,000 homes, so it's a large community. They're using that to do all their (landscaping) in Steiner Ranch.

J. White: What volume are you producing now?

D. Gernes: It's hard to say, I can probably produce four truckloads a month maybe? Maybe 5 truckloads a month?

R. Wueller: What's a truckload?

D. Gernes: Six yards.

Comm. Muras: Are you getting rid of all your compost now?

D. Gernes: No, not quite, I can compost a little of it, but I can't compost every single thing. I'm having to haul a little bit of it. I compost as much as I can, and then haul the rest.

J. White: For clarity, so you've got some sludge that you're not composting and that is being taken to Manor for land application.

D. Gernes: Correct.

J. White: How much of that is going there?

D. Gernes: I wouldn't want to give you an exact figure, I don't have that data in front of me, I could probably get it.

J. White: So then, if you were to compost everything, you would have a certain volume of material you would come up with, and I guess you'd need to understand what that is. And then I'd be interested in the various outfits that are in existence right now, what is the volume of material that they are selling and can we seriously believe that they are going to have a decrease in sales, or would this simply be reaching out to additional opportunities. So the question is whether it truly is competition.

D. Gernes: The only company in the area that actually composts their own stuff is Garden-Ville. Everybody else is just a re-seller. So what Mr. Wueller is well they're not going to buy from him, they're going to buy from him instead. Possibly.

Comm. Muras: Ralph could (TDS) buy her stuff?

R. Wueller: Yes.

Comm. Muras: It seems to me the taxpayer would be ok if Ralph would give you whatever it cost them to do theirs, or whatever it is, just to get it off your hands and you could do all of it. But you would not sell it.

R. Wueller: But I want you all to think about something. If that works out, I would be the recipient of some good fortune. But if there aren't any now, I promise you in the future there's going to be somebody who goes into business down there who sells biosolid compost, and then I'm going to have an unfair advantage over him, because I'm getting her compost at less than what he can produce it for. That doesn't go away simply because I'm getting it.

D. Gernes: If I agree to sell it at the same price Garden-Ville sells it for, then that would eliminate the unfair competition.

Comm. Muras: No, I mean, she doesn't get the money, but you agree that you take everything off her hands. Could you take everything? Would that work?

R. Wueller: I'm willing to do that without funding the project. I'm still willing to talk with them, to sit down and see if we can't work this out so that we can do that without funding the project.

Comm. Muras: I don't plan on voting on funding the project, I can tell you that because however little advantage it creates, it creates an advantage in my mind. You're going to have to face that down the road no telling how many times over, and where is that line going to be drawn. Once you step across the line – once you go past 70 miles per hour you're speeding. I hate to say it's black and white, but to me it creates an advantage.

R. Wueller: I've talked to some of the guys in our office, and they're not absolutely certain but they think there may be funding out there that (the District) could go to, but not through this. There might be other funding sources that they can go to.

D. Gernes: I would like to know where those are, because I have searched the entire world wide web and every time you put in composting funding, it directs you to your local CAPCOG.

J. White: To me the fundamental question comes down to this: whether it is appropriate to expend public dollars to allow somebody to buy equipment that puts them into a private enterprise. If that enterprise is very minimal and will not have any impact on the marketplace, then I think it's probably ok, especially if you can demonstrate that they are in fact providing some kind of a net benefit. If however that enterprise would be the beginning of something that would have an impact in the local market, then clearly the guidance from the legislature is – thou shalt not do this. That's really where it comes down.

J. Ranney: We can't make a determination of what that measure is, what is the plausibility of it.

Comm. Muras: But by what he said, when she sat there last month she in fact said that they're going to get bigger if they can do this, and once she said that, that pretty much drew the line for me. I hadn't decided, but that tells me right there that she's getting bigger and she's going to be doing more, and she can't get rid of her compost now, she's going to have to sell it. It would be nice if you two could get together and she can continue like she's going, and TDS says – you've got some extra, just bring it to us and we'll take care of it. That would be the best for everybody.

D. Gernes: I would still need the equipment. They are trying to say I can't get the grant unless I cooperate with other entities, then I've got to branch out. I'm not just branching out because I want to become a huge composting business. We're trying to establish a neighborhood composting for all the local MUDs within about 5 miles of each other to compost their sludge locally, so they'll only have to truck it a couple miles. We'll compost it for them, and they can use it, or we can somehow get the taxpayers' money back by selling it. I think it would be bad public policy to simply give it away, where I couldn't get the taxpayer and ratepayer money back. This is not to get into the business.

K. Freeman: If I could make one point of clarification, the cooperation with other entities is not a black and white requirement of the grant. That is one component that the scoring committee reviews when looking at projects, but if you do not cooperate with other entities that does not mean that you don't get a grant. It is a part of the scoring criteria, but there were projects funded in this round that did not demonstrate cooperation with other entities, that were funded.

J. Ranney: What you're trying to do is important, because believe me I understand the principle behind what you're trying to do. It can lower your cost, which can keep cost down to your ratepayers. I understand and I fully support that. However, going back to the tests that are applied to this particular thing, it seems like it is plausible that you could be substituting a product from something that's already being offered out there. Or that, if you're not selling to one enterprise or the other, we may be by this funding we may be making that other enterprise have a competitive advantage over another enterprise in the area. I think this is an important project, and I would want to encourage that you look at another business model that may help this project go forward, and that you might consider looking at other business models to make this project go forward.

P. Correa: And I think Ralph said, you might would pay her or help her out like that, and that TDS paid \$250,000, and that if (the District) gets a grant that would put them at a competitive advantage.

Dr. Evans: It seems to me that you (TDS) have, maybe not a legal obligation, but at least a moral obligation to help supply an alternative.

R. Wueller: Yes, absolutely.

Dr. Evans: \$70,000 is not very much money for a business the size of (TDS).

R. Wueller: Well if you're asking me if we're going to buy them a screen, no. But I would love to (help them) with this, I would love to do that.

Betty Voights, Executive Director of CAPCOG, made brief comments, indicating that during her time at CAPCOG this issue had come up before. TCEQ has not differentiated or provided guidance regarding the size or scope of protested projects, but that if the SWAC wishes to make distinctions regarding the size of projects in determining their eligibility, then it would have to be done on the basis of a formula.

SWAC members expressed that the Committee wished to provide as much assistance as possible to applicants and to the region.

Commissioner Pitts called for a motion.

L. Sheffield made a motion that the proposed project was not eligible because it did not meet the restrictions regarding competition with private industry; the motion was seconded by K. Hahn. The motion passed, with two votes against (J. White, R. McHale), and two abstentions (R. Wueller, G. Acuna).

4. Adjourn

10:30 am

A motion to adjourn was made by L. Sheffield, seconded by P. Correa, and was passed by acclamation.