

PLANNING AND FINANCING OF REGIONAL SOLID WASTE SYSTEMS

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This paper reviews the various means for municipalities to provide solid waste management on a regional, system-wide basis. Recently, we assisted three of our clients in structuring regional solid waste management systems. Their approaches illustrate the different means for achieving an integrated, regional solid waste system.

Regionalization

The development of a regional solid waste system is becoming a popular and familiar approach to municipal solid waste management. To date, most successful regional facilities have arisen as the result of one municipality "piggy-backing" after another municipality has financed and is constructing a solid waste management facility. It has been difficult for multiple municipalities to develop projects because of the level of dedication and cooperation necessary. Accordingly, many facilities designed originally as regional projects have been deferred or otherwise have been redefined because of the lack long-term regional dedication and cooperation.

Nonetheless, a regional approach presents distinct benefits if the obstacles to long-term cooperation are overcome. One method for overcoming this obstacle is for each municipality to agree to "host" a specific element of the regional solid waste system. Alternatively, municipalities may form a regional solid waste agency and grant it sufficient powers to design, build and operate a regional solid waste management system. Such a structure has been successful in diverting the political pressure away from politically vulnerable municipal officials. A regional agency, if adequately funded and if granted sufficient powers, is less likely to succumb to the political pressures than an elected governing body.

The System Approach

System planning and financing is a natural extension of a regional waste management approach. By planning and financing an integrated waste management system on a regional basis, rather than municipality by municipality, communities are able to exploit the economies of scale. In addition:

- * Most regulatory officials now prefer integrated waste management systems that rely on a combination of recycling, composting, incineration and landfilling.
- * Under a system financing approach, the bondholder need be concerned only that total system revenues cover total system costs. Individual facility performance, technical or economic, is not of primary concern. The revenues of mature technologies can offset the implementation of new, experimental programs. Accordingly, the credit markets believe system financing is desirable.
- * A system provides greater managerial flexibility. Unlike facility-specific contract obligations that may restrict use of alternative facilities, contract obligations under a system-wide financing may permit the municipality to use facilities interchangeably and more efficiently in accordance with seasonal waste flows and facility downtime. Likewise, various programs become easier to plan and administer. For example, recycling programs require a rigorous analysis of marginal costs and marginal revenues (or avoided costs). A system-wide approach facilitates control, access and preparation of relevant data.
- * A system financing approach usually provides an opportunity to finance additional facilities as the system matures.

However, for a system financing to be successful, a municipality must provide four necessary elements: (1) redundant, reliable and economic waste disposal facilities, (2) "all-contingency" contract obligations by system users to use and pay for the system (3) a rate covenant by the municipality that it will set and revise tipping fees and/or user fees as necessary to guarantee payment of operation and maintenance expenses, debt service and a coverage margin and (4) waste flow control.

Flow Control

Waste flow control exists in three forms: geographic, economic and legal. Geographic flow control arises where an alternative waste disposal facility is physically unavailable. A municipality exercises economic flow control when it offers for the long-term a tipping fee significantly lower than its competition. Legal flow control exists where a municipality is authorized by law to compel delivery of solid waste to a particular facility or waste management system.

However, recent federal court decisions have raised doubts about the ability of municipalities to exercise legal flow control. In their decisions, each court determined that the flow control law discriminated against interstate commerce and violated the commerce clause of the United States Constitution. Prior to these decisions, a municipality's power to control the flow of waste within its own borders had been relatively undisputed.

THREE EXAMPLES OF THE REGIONAL, SYSTEM-WIDE APPROACH

Union County, New Jersey

Union County initiated a waste management system by first creating a self-sufficient, independent authority, the Union County Utilities Authority ("UCUA") to oversee the construction and operation of multiple solid waste facilities and programs. The Authority then financed the construction of a mass-burn resource recovery facility, the acquisition of landfill capacity and the development of recycling programs (the "Project"). Construction of the resource recovery facility should be completed by year end.

The UCUA issued bonds to finance the Project in December 1991. At that time, the Bergen County Utilities Authority ("BCUA"), another independent authority, entered into a Memorandum of Understanding with the UCUA that redefined the Project as a two-county, regional Project. Pursuant to the terms of the Memorandum of Understanding, the UCUA and the BCUA entered into a twenty-year interdistrict agreement which provides for a regional effort in the area of solid waste management. The parties agreed to share the usage of the UCUA's mass-burn resource recovery facility and to cooperate in recycling and reuse programs. The UCUA and the BCUA shall each pay the same fee, on a per ton basis, for waste disposal services at the resource recovery facility. In addition, the parties agreed to equally share the costs related to uncontrollable circumstances. Recently, additional counties in New Jersey have expressed an interest in regionalizing with the UCUA.

San Diego County, California

San Diego County established a solid waste management system based on landfills, transfer stations, and a recently financed recycling facility. The recycling facility is presently under construction and was financed on the strength of the County's solid waste system.

The County presently manages approximately 1.5 - 2 million tons of solid waste per year. Although municipalities within the County have the ability to manage their own waste, most have historically relied on the County. Various participation agreements are currently being negotiated between the County and its municipalities which would provide more definitive flow control.

North Carolina

Three counties in North Carolina determined that it was in their best interest to join together in order to develop a comprehensive solid waste management plan. The Counties of Carteret, Craven and Pamlico formed a solid waste authority entitled the "Coastal Regional Solid Waste Management Authority." Each County committed the necessary resources in order for the Authority to commence the development of a regional system. The Authority has successfully issued bonds to finance its start-up costs and the construction of a landfill. Additional activities are underway in order to achieve recycling goals and to integrate other facilities into the system.