

September 21, 2011

Q & A on Sanitary Landfill Operation Agreement

Questions were presented during the Public Hearing regarding the Sanitary Landfill Operation Agreement. I introduced a list of questions / comments by Bobby Cogdill, a former county employee in charge of running the White Oak Landfill after he had an opportunity to review the contract.

The contract is posted on www.haywoodtp.net, under [Sanitary Landfill Operation Agreement - SANTEK, 9/6/2011, 9/2/2011...](#). These questions by Bobby Cogdill follow at the end of this brief history leading up to this Public Hearing.

Monroe A. Miller Jr.

The Sanitary Landfill Operation Agreement is on the fast track (being rammed thru) for approval by Haywood County Commissioners.

[**Editors Note:** Reprints, e-mail correspondence, etc., are highlighted in blue and indented. Correspondence from David Elliot from the Department of Justice is double indented and highlighted in red and in bold].

From Toeprints, January 27, 2011, Vol 2, Issue 6:

Solid Waste Committee Meeting, January 24, 2011.

The following people attended:

- David Teague
- **Mark Swanger**
- **Dale Burris** [D]
- Chris Boyd
- Julie Davis
- **Steven King** [?]
- **Chip Killian**
- David Francis
- 5 people I did not recognize, municipalities?
- Marty Stamey (late)
- **Bill Upton** [D] (late)
- myself.

Swanger stated the two (2) purposes of the meeting [re: recording]

- Recommend Santek to the commissioners, and
- Recommend Transfer Function be Discontinued.

[**Editors Note:** I met with two representatives of Republic near the conclusion of the Solid Waste Workshop on January 20th. They expressed several concerns to me, which I related to David Francis prior to this meeting. Only the issues relating to the 325 ton / day were discussed during this meeting].

A general starting comment: This is a “no brainer”.

Julie Davis explained the rationale for the bid response comparisons. A Set Budget of \$6M was created, as if the county were to run solid waste for the coming year. The responses from the bidders were compared against that.

Swanger wanted to begin negotiations with Santek. **Swanger** outlined an ambitious schedule of how long it would take before Santek could be brought on-line. It was rather typical of what I had seen of **Swanger** in the past, wanting to shove things through as fast as possible.

There was an issue of Santek’s number of 325 tons per day. There were all kinds of triggers, thresholds and other criteria with that particular number. It was questioned by some of the folks that might have been representing some of the local municipalities. For example, if Santek did not reach 325 tons per day, and reached only 320 tons per day, the county, not Santek would be responsible for opening new “cells” in the landfill, about a \$4M to \$5M expense. Stuff like that.

Both of **Swanger’s** two (2) stated purposes of the meeting passed.

One of the folks, again presumably representing a municipality, asked: “What about the lady that was sitting right over there at the last meeting (pointing to the other side of the table), that Santek had a problem at a Kentucky landfill? [Her name was Sylvia Blakeslee]. Everyone looked blank. **Swanger** immediately blew her off by attempting to discredit her - “She doesn’t want the White Oak Landfill changed anyway”. Not phased, the original fellow persisted, and wanted someone to check into it. Still blank looks. It’s not clear who was going to do that.

Swanger was going to seek permission from the Board to take it to the next level, i.e. begin to negotiate. “They will have to give us every contract they have”, someone commented.

Here comes the part where everything goes under the table. **Swanger** said they will probably make us sign a CONFIDENTIALITY AGREEMENT, because we haven’t seen any marketing information from them yet. **Chip Killian** concurred. This will be part of the negotiation process.

The only point in time that the word Public Hearing was mentioned, was in the context of having to have one relating to a permit change with DENR regarding increasing the quantity of garbage per day into the landfill.

This sets the stage for this going completely silent, and then one day, it will be presented to the commissioners to pass, and they will do it. So far, I see the public getting pretty much locked out of this whole decision process.

You know, this represents a lot of money, now, and in the future for the taxpayers of Haywood County. I am interested to insure that the playing field is level for all the bidders, not for only a single bidder that wasn’t knocked out in pre-bidding analysis.

Since January 24, 2011, the last open public meeting of the Solid Waste Committee, there have been **no more** open public meetings of the Solid Waste Committee.

Then, after months and months, as predicted above, there was a rumor of a contract floating about. I made a request for public information to see the contract on:

Sent: Tuesday, August 02, 2011 8:00 AM
To: David Teague
Subject: Santek Contract

Mr. Teague,

At the close of the last county commission meeting, there was much self-congratulations regarding the completion or near completion of a contract with Santek. Can you please scan that contract and send it to me so that I can put it on my web site when it becomes available?

To which I received -

Monroe,
Negotiations are still underway on this contract. It will be available for public review when it is presented to the Board of Commissioners. You may obtain a copy then.
Thanks, David V. Teague

[?] To which I replied back to David Teague -

Mr. Teague,
Didn't we go through this before? From your 5/12/2011 e-mail to me:

"Monroe,

Public Records law does require us to provide public documents within a reasonable amount of time at a minimal cost. The law does not state a specific time frame for providing the documents. The Public Records Policy adopted by the Board of Commissioners states that the Public Information Office will provide a written response to public records requests within 3 business days, which I have done. In my response to public records requests, I include an estimate of when the documents will be available. I've done that as well.

It is our position that it is reasonable for the officials elected by county voters to receive information on the proposed FY2011-12 budget, including the revenue neutral tax rate and other documents used in calculating that rate, before we respond to your public records request.

I believe we are in compliance with Public Record law in response to your request, but I'll be glad for you to contact Mr. Cooper's office. I'll be interested to see his response.

Thanks, David V. Teague"

To which David Elliot from the Department of Justice responded with

"Mr. Miller,

In response to your question, "Can you tell me if there is any provision that you are aware in the Public Records General Statutes that provides safe haven for the county to withhold public information until it has been presented to County Commissioners?"

I am not aware of any statute other than the ones regarding economic development and the frustration of purpose (i.e. service awards) that provide the above-mentioned "safe haven."

Respectfully, David"

So, I'll ask again, at what point will I be able to inspect this contract?

To which I finally received:

Monroe,

Just like any other citizen, you may review the contract when it is posted to the county website as an agenda attachment to an upcoming commissioners meeting.

David V. Teague

The contract was finally posted as ATTACHMENT 11 on the September 6, 2011 agenda, under Old Business on the Haywood County website on the Friday before the September 6, 2011 meeting.

A presentation was given at the September 6, 2011 county commission meeting, to which the commissioners called for a public hearing at the next scheduled meeting on September 19, 2011.

A public hearing was called on September 19, 2011, and Swanger called for it to be placed on the agenda for the next scheduled meeting on October 3, 2011.

This is as fast as you can possibly shove something through the system, hence, I called it **"being rammed thru"**. Kevin Ensley commented at the September 19th meeting something like "someone said at the last meeting that this was being rammed through". [**Editors Note:** Let me refresh Kevin Ensley's memory - I said that, since I was the only citizen making a public comment at the last meeting]. I stand by what I said, this thing is **being rammed thru**. It cannot go any faster (unless they skipped the Public Hearing). Kevin Ensley forgot to mention that the Solid Waste Committee closed off all public access to these meetings since the last public meeting this committee had, which was on January 24, 2011.

In an e-mail to Marty Stamey on September 14th, I wrote:

Marty,

I passed a copy of the Sanitary Landfill Operation Agreement to a friend, and he passed it onto someone who I believe is credible in being able to review this contract and come up with questions and comments that should and must be answered by the county commissioners.

There are eighteen (18) questions / comments.

My question to you is: What do you think the best way would be for the commissioners to address answering these questions during the public hearing next Monday?

Can this be placed on the agenda, or can they respond during the public hearing?

Now anyone could respond to these questions / comments. Either you, David Francis, Chip or Leon Killian, the commissioners, or maybe a combination of all (excluding Steven King).

Please let me know.

Monroe

To which he replied:

Monroe,

The questions will be answered during the public hearing to the best of our ability. You can email me the questions for us to answer ahead of time. The format of this meeting will probably be more of a Q&A instead of a normal public hearing where we only receive input. It is the intent of the Chairman to answer questions during the meeting.

Thanks, Marty

I submitted (e-mailed) eighteen (18) questions /comments posed by Bobby Cogdill, the previous manager of the White Oak Landfill to Marty, so that he could prepare for the meeting.

When the time came for public comment at the Public Hearing on the Santek Contract on September 19, Swanger indicated that citizens would only be allowed 3 minutes. [?]

There was no way on God's Green Earth that I would be able ask 18 questions in a 3 minute time period. The format had changed to taking Bobby Cogdill's questions, and now have them asked and answered by David Francis, the Tax Collector.

[Editors Note: There were three (3) people from Santek attending the meeting, along with Stephen King, whose title is Director, Recycling, Solid Waste, all sitting in comfortable conference room chairs at the meeting, yet the Tax Collector was chosen to respond to Bobby Cogdill's questions. Question: Why is David Francis, the elected Tax Collector, carrying the water for Stephen King, the Director of the Solid Waste Department, who should have responded to the questions?]

The following are the questions / comments posed by Bobby Cogdill. You can read along while David Francis, the Tax Collector asks and answers these questions on the Government Cable channel and on the video posted on www.haywoodnc.net.

September 14, 2011

Questions on Sanitary Landfill Operation Agreement, by Bobby Cogdill
[Compiled by Monroe Miller]

[Page references are with respect to the page number in the .pdf file. Questions and comments are identified with a bullet, **in bold and underlined**, and need to be addressed.]

Page 7. Definition, Environmental Impairment. A determination that is made by the Contractor within the first twelve (12) months following the Commencement Date that pre-existing environmental conditions exist on, under or about the Landfill, which Contractor did and could not have determined during its due diligence, such that in the Contractor's reasonable discretion, the continue operation of the Landfill will subject the contractor to environmental liability, which is supported by facts submitted to the County in writing.

Page 9. Monthly Fuel Surcharge.

Page 9. Performance Security.

Page 10. Post-Closure Care. ... Furthermore, any response actions in excess of normal post-closure care requirements under the Solid Waste Laws are not included in Post-Closure Care, including without limitation, remedial actions of a nature similar to superfund response actions of RCRA corrective actions.

- **Leaves them an "out" for any existing conditions.**

Page 11. Work.

(a) ... and the Drop-off Center at the Landfill;

- **Does this mean a Drop-off Center is in the plans for White Oak? This presents a whole new set of issues.**

Page 12. Following the Expanded Management Commencement Date, Work shall include:

(a) ... and the Drop-off Center at the Landfill;

Page 13. (e) The county owns the Equipment and has the right, power and authority to lease the Equipment to the Contractor pursuant to the terms of this Agreement; and

- **Who Pays for the maintenance of this equipment?**

Page 14/15.

III. Scope of Work.

... and timely pay any and all fees required by said permits and/or licenses, and utilize its reasonable efforts to obtain in the County's name any and all new permits ...

- **The County will always have ownership and therefore assume the responsibility for the Landfill.**

Page 17. Disposal of Haywood County Generated Solid Waste.

... third party's engineering calculation of available airspace remaining in the Landfill using the average daily volume of 396 tons.

- **Will 396 daily tons allow for 30 years? This would yield 80 years at the present rate. This is contrary to any numbers that I have seen.**

Page 18. County Landfill Inspector.

- **Another part-time job! What will this employee do at other times?**

Page 21. Methane and Leachate Collection.

- **Leachate costs will increase. With the additional increase in trash the leachate properties may be unacceptable to Maggie Valley or the Town of Waynesville.**

Page 23. Placement and Compaction of Solid Waste.

- **Alternate covers are expensive.**

Page 23. Unacceptable Waste Procedures.

- **This may affect the leachate.**

Page 24. Load Checking.

- **This looks like locking the barn door after the horse runs away.**

Page 25. 5.15 1 & 4.

- **Again, leachate issues.**

Page 28. (b)

- **Final closure costs may exceed any projected costs.**

Page 28. Financial Assurances.

- **Financial Assurance remains with the County.**

Page 32. X. Revenue Collection: Billing.

- **The State of NC may charge for each tone of trash put into the Landfill.**

Page 34.

... Any other Haywood County Generated Solid Waste generated by private business, commercial, industrial, manufacturing, construction and demolition activities shall be the responsibility of the originating generator or its designee.

- **These customers may see an increase in tipping fees.**

Page 35. Verification of Weights.

... which shall be initially be set at \$1000 per mobile home, ...

- **\$1000 is pretty high. This may cause a lot of waste to go over the road banks.**

Page 39. Hold Harmless Clause.

- **Section 12.3 - This whole section has lawsuit written all over it.**

Page 42. Performance Security.

- **This may not be enough to cover potential fines for non-compliance.**