METHODS OF COMPENSATION AND MITIGATION TO AID IN IMPLEMENTATION OF SOLID WASTE FACILITIES

ABSTRACT

Solid waste disposal facilities and processing facilities, like other land uses such as power plants, airports or highways, produce substantial external or off-site effects. Because solid waste disposal or processing facilities are perceived to bring more burdens to a community than benefits, it is important for owners, designers and engineers of these facilities to be sensitive to the concerns of the community where the facility is located and to consider methods to reduce and/or compensate the community for these impacts.

BACKGROUND

The Twin Cities Region refers to the seven-county Metropolitan Area of Minneapolis and St. Paul where approximately two million people live. The total land area of the Region covers about 3000 square miles of which 150 are lakes and rivers.

A unique decision-making process governs change in the Twin Cities Region. In 1967, the Minnesota legislature established the Metropolitan Council, a regional form of government. The Council was charged with the responsibility of undertaking the planning and coordinative actions to ensure the orderly economic development of the Region. To this end the Council has prepared a Metropolitan Development Guide which serves as a long-range regional plan upon which to base development decisions. The Council serves as an “umbrella” agency to five operating Metropolitan Commissions: Airports, Parks and Open Space, Sports Facilities, Transit, and Waste Control, and coordinates planning activities with counties, municipalities and townships in the Region. The Council develops and sets public policy for the Region, and the regional commissions and local governmental units implement those policies. In addition, the Council plays a significant planning role in other areas, including arts, health, housing, research and transportation.

The Council initially became involved in solid waste management in 1969 when the legislature passed the Metropolitan Solid Waste Act. This law required the Council to adopt a regional solid waste policy plan. The plan was quite limited in its scope and identified the locations and capacities of solid waste disposal facilities in the Region. The law made the Council an integral part of the landfill permitting process, requiring that no permit be issued for a solid waste facility by the Minnesota Pollution Control Agency (MPCA), the state’s environmental regulatory agency, unless the Council found the proposed facility consistent with the objectives and policies in its solid waste policy plan. In addition, the Council had the authority to subject the permit to conditions to satisfy the requirements of the regional plan.

Within a few years, however, it became clear that the landfilling approach was too simplistic, limited, and in the long run, costly. Landfill space was dwindling and there was an increasing interest in recycling and resource recovery, and the existing authorities seemed unable to address proposals for large resource recovery facilities. Consequently, the legislature overhauled the 1969 law in its 1976 session.

The 1976 legislation clarified the distinction between the collection and the processing or disposal of solid waste.
waste. In general, the law let the counties remain the implement­ing agencies for solid waste management and broadened the Council's authority by permitting it to review and approve long-term waste supply contracts. Also, the Council was directed to prepare a long-range policy plan for the collection and processing of solid waste and establish a solid waste advisory committee composed of representatives from local governments, the private waste management industry and the general citizenry.

Shortly after the 1976 legislation, several proposals for large scale resource recovery facilities were abandoned. In addition, vociferous local opposition blocked the siting of new landfills although the Region was facing a severe shortage of disposal capacity. Consequently, in 1980 the legislature was more aggressive in its action to get solid waste management moving toward abating land disposal of municipal solid waste. The 1980 Waste Management Act directed the counties to select potential landfill sites. These sites would form a pool or inventory of sites from which the counties could select for development, as needed, according to the level of land disposal abatement achieved. In addition, the Council was to revise its policy plan to include a landfill development schedule and a land disposal abatement program. An important addition was the requirement that the Council issue a Certificate of Need for any new land disposal facility, based on the finding that no other feasible, prudent alternative exists.

Because the legislature also realized that some landfills would be needed regardless of the degree of abatement, it directed the Council to prepare a report to the Legislative Commission on Waste Management that identified methods of mitigating and compensating the local communities for the adverse impacts from solid waste facilities. The report would serve as a guide in preparing legislation to implement compensation and mitigation measures. The report was lobbied for by the Association of Metropolitan Councils to address the burdens placed on those communities with landfills within their juris­diction.

State law required that at least one representative from each community where a new landfill site facility could potentially be located would be appointed to the Metropolitan Council's Waste Management Advisory Committee. These representatives would assist the Council in preparing the compensation and mitigation report. In late 1982, over 20 representatives were added to the 30-member advisory committee. The committee met over a period of 10 months to prepare the report and submit recommendations for legislative action. In addition to possible legislative action, many of the report's recommendations will be incorporated into the Council's policy plan and will be used to review new permits for solid waste facilities.

INTRODUCTION

Solid waste disposal facilities, like power plants, airports, highways and factories, often cause undesirable effects on local communities. Impacts may include the risk of air or water pollution, litter, noise, decrease in property values, increased traffic on local roads or taking land out of other, productive uses.

Many negative impacts of solid waste disposal facilities can be reduced through proper siting — for example, locating a new landfill where there is less risk of causing groundwater pollution. However, proper siting of disposal facilities usually cannot eliminate all adverse impacts. Some environmental and public health risks remain regardless of where a facility may be located.

Resource recovery facilities and transfer stations may also cause undesirable effects upon local communities even though these facilities generally pose less of a risk to public health or the environment than landfills. Potential impacts from these facilities are under greater control than landfills.

While benefits may accompany the development of power plants and similar land uses, such as spin-off development, large property tax payments or employment opportunities, landfills do not usually attract other development. If publicly owned, they produce no property tax revenue. If privately owned, they don't produce much property tax revenue because they don't involve use of much capital equipment. Moreover, landfills are usually of more benefit to a large geographic area that uses them than to the community that hosts them.

Resource recovery facilities and transfer stations are different from landfills in that they may attract additional development. They may encourage the location of waste-related recycling or processing industries or other energy intensive industry. If publicly owned, they may produce considerable property tax revenue because they can be very capital intensive, particularly waste-to-energy facilities. However, like landfills, large resource recovery facilities are usually of more benefit to a large geographic area that uses them than to the community that hosts them. In comparison, transfer stations and small resource recovery facilities tend to benefit the host community.

This report examines the beneficial and detrimental effects of waste facilities on host communities. A local community fights proposals for new solid waste facilities for a variety of reasons. One reason is that people who live in the neighborhood or adjacent to the proposed facility feel that they are going to be the losers. They feel that they will be less well off after the project is completed.

There is a perception on the part of the neighborhood or city that any economic development that disturbs it should be resisted regardless of the needs of the outside
world. This is the NIMBY, or “not in my backyard” attitude. Along with this attitude is the realization by public officials and the public that, “Yes, we realize solid waste is a problem, but why should we assume all the risks inherent in managing that problem?” Recently, there have been efforts by government officials and policymakers to reduce the costs of landfills, power plants and other undesirable public facilities to the local community.

METHODS OF COMPENSATION AND MITIGATION

Below is a list of recommendations adopted by the Metropolitan Council for dealing with the adverse impacts from solid waste disposal and processing facilities. These recommendations will be considered by Minnesota’s Legislative Commission on Waste Management for new legislation.

(1) The legislature should establish a State or Metropolitan Area Solid Waste Environmental Compensation Fund to provide immediate relief to persons or local units of government within the Metropolitan Area injured or damaged by adverse environmental incidents caused by solid waste facilities, including landfills, resource recovery facilities and transfer stations.

The fund should be structured to contain permanently approximately $5 million for use within the Metropolitan Area. The fund should be exclusively used to provide compensation for injuries and damages of the following types attributable to these environmental incidents: Personal property damage; providing alternative water supply systems; restoring or replacing natural resources; personal injuries, including medical expenses and loss of income; and the cost to design, construct, install, operate and maintain any device or activity determined to be necessary by the MPCA to investigate, clean up, remedy, monitor or analyze any threat to the public’s health, safety or welfare.

An administrative mechanism should be provided to enable the immediate payment of the cost of replacing a polluted water supply following the receipt of an individual claim and a determination by the MPCA that the drinking water supply is contaminated and that the contamination is probably attributable to a waste facility.

The fund should be financed by a tax on all solid waste destined for land disposal. Fund proceeds should not be used to pay for costs, damages and injuries associated with the release of hazardous substances covered by the Environmental Response, Compensation and Compliance Fund established pursuant to Minn. Stat. 115B.20. Fund proceeds should be used for the above purposes only if money from other sources is determined by the MPCA to be unavailable at the necessary time or insufficient to satisfy identified needs. The MPCA should seek reimbursement of all money spent from the fund. The state should ensure there is adequate legal authority to seek recovery of money spent from the parties responsible for the environmental incident.

(2) The MPCA or metropolitan counties should require solid waste facility owners/operators to provide appropriate financial guarantees during their operation and for a reasonable period following closure. Such guarantees would ensure payment of costs, injuries or damages incident to the ownership, operation, closure and post-closure of solid waste facilities. The financial guarantees should be in the form of insurance, self-insurance, trust funds, surety bonds, and/or escrow accounts, etc.

The MPCA should also be empowered to reduce the payment of the fee to the Solid Waste Environmental Compensation Fund for the operator of any solid waste facility that provides appropriate financial guarantees regarding the above.

(3) The legislature should require publicly owned solid waste facilities to make a payment in lieu of taxes (PILOT) to the local governmental unit annually during their operation. The PILOT would cover the usual and customary expenses incurred by the local unit of government for serving the waste facility. The payment should be based on an industrial property tax classification rate. The payment could be arranged so the county or other public body would compensate the municipality or township, school district and other taxing districts by a contract for PILOT or the usual taxing mechanism.

(4) The solid waste facility owner should compensate the local unit of government for all indirect costs attributable to the facility. They may include, but are not limited to, disruption of planned sewer or water services, road maintenance costs incident to waste facility use, litter control, monitoring costs, end-use planning and special assessments for utilities. The legislature should grant municipalities and townships the authority to recover their indirect costs from solid waste facility owners. If a contract or agreement cannot be achieved, the legislature should grant the Metropolitan Council the authority to mediate an agreement.

The indirect costs referred to are those costs over and above the normal costs incurred by the local unit of government. The contract here should give the appropriate credit for the PILOT or property tax payments made to the local unit of government.

(5) The legislature should require that all landfills compensate the municipality or township for hosting the facility. The Legislature should establish a uniform measure of compensation to the local unit of government based upon a percentage of the total weight, volume or gross receipts of the landfill. This compensation would be in addition to
Property owners are eligible for compensation if they sold property at the expected market value. The proposer or owner should state the loss incurred by the property owner attributable to the landfill. The claim should be submitted to the Department of Revenue to be the administering body for purposes of compensation. The department should establish its own procedures for evaluating claims by property owners. To the extent possible, the department should be exempted from the requirements of the Administrative Procedures Act.

The legislature should provide for the state Department of Revenue to be the administering body for purposes of compensation. The department should establish its own procedures for evaluating claims by property owners. To the extent possible, the department should be exempted from the requirements of the Administrative Procedures Act.

The commissioner should appoint a three-person panel to hear claims and make recommendations to the commissioner for a final decision on compensation. The panel should include at least one person knowledgeable about real estate in the facility's general area, one person from outside the county who is considered neutral and an attorney as chairperson to conduct the proceedings.

Direct costs such as fire protection, water and sewer services and buffer zone design and amenities for servicing a solid waste facility should be paid for by the facility owner/operator. The facility owner/operator should contract with the local unit of government for fire protection services to cover routine and unusual circumstances. Also, the facility owner/operator should bear the costs of relocating planned water or sewer services, as shown in a local comprehensive plan, that may be disrupted as a result of siting the waste facility. The appropriate credit should be given for the PILOT or property taxes paid to the local unit of government.

The legislature should require that the MPCA develop rules and standards for end uses for landfills to protect public health and safety, and the environment.

By statutory amendment, the legislature should provide compensation to property owners within one mile of the buffer areas of sites ultimately selected for landfill development if they can prove a loss of market value upon the sale of their property attributable to the landfill. The property owner should show that a reasonable process was used to sell the property at the expected market value. The proposer or owner of the landfill should have an adequate opportunity to provide evidence negating the impact or need for compensation.

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The county or the solid waste facility owner should assume full responsibility for the immediate access roads to the site and the costs of upgrading these roads to the necessary weight limits. These are costs over and above the typical construction and maintenance costs that may be incurred by the local unit of government.

Buffer zone design and amenities needed by the township or municipality should be paid for and maintained by the solid waste facility owner or operator. For new facilities, sufficient berming and buffer amenities (screening) should be provided by the waste facility owner or county to shield adjacent properties from nuisance impacts. Appropriate portions of buffer zones should be developed prior to the operation of the solid waste facility.

The landfill owner should prepare an end-use plan for the landfill during preparation of the environmental impact statement. The plan should meet the approval of the local unit of government.

The municipality or township should become involved in the state and regional permitting process for solid waste facilities. The municipality or township should establish an ongoing local oversight committee that would act as a communication link between the community and the state and regional agencies during the facility’s site selection procedure, design, operation and postclosure period.

The Metropolitan Council should provide ordinances for local regulation of solid waste facilities.

SUMMARY

The Council hopes these recommendations will result in new legislation making solid waste facilities more palatable to the local community. The intention of the recommendations is to make the users of each waste facility pay for the external or adverse off-site impacts. Although these recommendations are not a panacea for the community hosting a landfill or resource recovery facility, they are a step in the right direction to ensure that one community or a group of people will not bear more than its share of the burden of these facilities.

BIBLIOGRAPHY


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