

The first is the need to rebuild the deteriorating transfer system. Those long term facilities are typically financed with twenty year debt. However, with the transfer station improvement projects now underway there is only 16 years left before the ILAs end. Council will not issue debt for a period longer than the term of the ILA. As a result, shorter term bonds need to be sold unless the ILAs are extended. With shorter term bonds, payments are higher, but the overall cost will be lower.

The second challenge is related to how waste will be disposed when Cedar Hills reaches capacity. That is currently projected to occur in 2025, three years before the end of the current agreement. Cities want to have full input into that choice and not be bound indefinitely if they don't like the disposal choice made.

MSWMAC members identified other changes to the ILA that would be useful. A work plan listing those items was developed last year and approved by MSWMAC. They created the ten-member ILA Review Committee, which then recommended that MSWMAC create the five-member ILA Drafting Committee in August of last year. Reed began working with the ILA Drafting Committee at that time. The ILA Drafting Committee consists of Nina Rivkin of Redmond, Scott MacColl of Shoreline, Carolyn Robertson of Auburn, Joyce Nichols of Bellevue, and Bob Lee of Lake Forest Park together with King County staff. Members of the ILA Drafting Committee should be commended for their efforts.

The ILA Drafting Committee was asked to draft a proposed amended and extended agreement to share it with the ILA Review Committee. They accomplished that task and the recommendations of the ILA Review Committee are being shared today. It is important to note that those recommendations are not binding on any party.

The recommendations include a consensus on all the items identified on the work plan. The recommendations are documented in the term sheet. However, additional items have been identified that are not resolved. Those items are not the type of issues that are normally addressed by policy makers but instead are part of the underlying legal framework of the agreement. Attorneys have been working with the ILA Drafting Committee since December about these issues which will be discussed later in the presentation.

This same type of process has been used in many regional contract negotiations – a small team of representatives working through the issues and then engaging with a small group of attorneys. Though the participants have previously characterized this as a “discussion” it is fair to say that at this point the group is “negotiating” language that could be used in an agreement.

Reed discussed the [timeline](#) that identifies milestones in the process.

- August 2011 - ILA Drafting Committee Work Plan adoption
- July 1, 2012 - division submits a rate proposal (for a minimum of two years to match the new biennial budget process).
- Sept 20, 2012 - Council must take action and publish notice of the new rate not later than September 30 because of the required 90-day notice of new rates.
- Jan 1, 2013 - The new rate goes into effect.
- March 2013 - the current short term financing for the Bow Lake project will be rolled over into longer term financing that will be paid off within the term of the current ILA.

If the ILA has not been extended by March 2013, Bow Lake will be financed with 15-year debt which will result in a higher per ton rate when compared to longer term debt. The [Rates, Long Term Debt and ILA Negotiations](#) document provides more detail.

There will be a rate increase regardless of whether long-term ILAs are in place. The rate increase will be slightly higher if the assumption included in the rate is 15-year bonds and not longer term financing. It is quite likely that the rate proposal will include the assumption of 15-year bonds because it is not reasonable to assume that a new ILA will be in place this year.

In response to a question Kiernan noted that if a new ILA were in place before March 2013 longer term bonds could be sold which would result in a lower rate increase. Absent an extended ILA, the County will have to sell 15 year bonds for Bow Lake which will result in a higher per ton rate.

The [term sheet](#) has been redlined to show changes since parts 1-4 were distributed to MSWMAC. The unresolved issues are listed in part 5. The discussion will start with the unresolved issue to ensure there is sufficient opportunity for discussion today. If there is time the presentation will also review the agreed upon language about mitigation and Cedar Hills rent.

The primary unresolved issue is environmental liability. Liability related to Solid Waste is a very complicated issue. It can be oversimplified into three parts. The first is operational liability. The second is related to unacceptable waste being accepted into the system. Though work remains to be done on these types of liability, they are not the major challenges related to the ILA.

The third liability issue is the potential release of hazardous substances from the landfill. Questions about this issue include:

- Whether and to what extent the ILA should impose an obligation on the system to cover both city and County liabilities
- Who should be liable for the costs of responding to releases and under what circumstances? (The Solid Waste Division, the County general fund, the cities general funds?)
- What kind of insurance should be purchased and should a requirement for that purchase be included in the ILA?
- Who should be covered under the insurance?

In response to a question Kiernan said that the County is currently self insured. However, the division has procured additional insurance covering the County for up to \$50M for offsite issues related to solid waste. That coverage has some exclusions. The cost of the insurance is borne by the solid waste system and is included in the current rate.

A member asked if releases as referenced above are “possible or probable.” Kiernan replied that preventing releases and ongoing monitoring is a significant effort that has been occurring for many years. Cedar Hills has been in operation since the mid-60s. The region has invested a significant amount of money in monitoring since that time to address this concern. Since the mid-80s solid waste has been disposed in areas lined with a three foot thick composite liner

that exceeds federal regulations. Chair McGilton noted that ILA Drafting Committee discussion is concerned with a major event that we can't at this time imagine happening.

Kiernan responded to a question by saying that though the parts of the landfill filled before the mid-80s are unlined they have also been in place for a longer period. The division does not differentiate between the risks associated with those areas and the risks associated with the newer areas.

Reed said that discussions regarding the legal framework for the ILA began in December. The ILA Drafting Committee will continue to meet as long as the effort is productive. Reed believes that the work of the group will be completed one way or the other before next month. Cihak noted that the next step is to identify areas of disagreement, come to agreement if possible and if not to determine next steps.

In response to a question about how cities that are not part of the ILA Drafting Committee have been kept informed, an ILA Drafting Committee member noted that the attorneys from Bellevue, Redmond, Shoreline, Lake Forest Park and Auburn have been involved in ILA Drafting Committee discussions. Because some of those attorneys work for multiple cities, the attorneys for sixteen cities in the system have been involved in the negotiations.

Rivkin noted that an important point is which entities - the County, cities or both - are covered by the insurance.

A member noted that Cedar Hills is an asset of the County, not the division. That's demonstrated by the payment of rent from the utility to the general fund. The member asked if the county's general fund could be liable for solid waste issues. Kiernan responded that typically, under federal law, allocation of the liability occurs at the end of the process based on the specific circumstances.

In response to a request that a "complete picture" of the liability issue be sent to MSWMAC members, it was noted that the ILA Drafting Committee has spent many hours discussing the liability issue.

A member asked what would happen if waste disposed previously caused problems when the new ILA was in place. Cihak said that all parties have an interest in protecting the system and themselves from liability. The question facing the group is what can or should be included in the ILA about that topic.

In response to a comment it was noted that the current ILA does not protect cities from liability associated with environmental risk from solid waste. Both County and cities general funds are at risk. Current ILA language in section 8.6 follows. The discussion is about whether or to what extent that language should be changed.

8.6 City is not held harmless or indemnified with regard to any liability arising under 42 USC § 9601-9675 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) or as hereafter amended or pursuant to any state legislation imposing liability for cleanup of contaminated property, pollutants or hazardous or dangerous substances.

To what extent should system rates be set to address the risk? The current insurance may not cover everything. The County has offered to purchase insurance that is commercially available at a cost that is not prohibitive and write it so that it would also cover cities. City members of the ILA Draft Committee question whether the insurance would cover everything or just the landfill. There is also disagreement about whether or not the cities would be able to sue the County if they disagree over whether the insurance is commercially available and/or whether it is cost prohibitive.

The city members of the ILA Drafting Committee proposed that the system rates cover all liability for the entire system. The County is concerned about how to draft an ILA that addresses liability when each of the thirty-seven cities in the system may have a different level of comfort with risk and may want the County to purchase a different amount of insurance. The County believes the ILA language needs to be written in such a way to prevent some cities from suing the County for purchasing too much insurance while other cities sue the county for purchasing too little.

Regardless of what is done, there will be some risk involved with solid waste management. In addition to buying insurance, another option for covering potential liability costs is to create a reserve fund. If either or both of those methods are chosen, it is important that the ILA say it's acceptable to use rates to pay for the expense.

Worst case scenarios are fact specific. Details are hard to hammer through because the answer is invariably, "it depends." And, if a worst case scenario happens the parties may still litigate.

A member suggested it is important not to forget the benefits of a joint cooperative agreement and asked if being unable to reach agreement about liability should mean that each city has to dispose of their own solid waste at the end of the current ILA.

Rivkin said the current issue is whether or to what degree to establish a contractual obligation to buy insurance, establish a reserve and include language that allows rates to pay for those expenses.

Robertson said the cities had initially wanted indemnification from all risk and had moved to a place where the cities and the County have equal protection. Kiernan responded that there is zero indemnification for cities in current ILA language and moving from that position needs to be of benefit to the County as well as the cities in order to be a mutually beneficial agreement. All parties to the ILA share an interest in minimizing liability.

Kiernan responded to a question by noting that solid waste is highly regulated. The division's obligation is to comply with the regulations but the division's practice has been to exceed those requirements.

In summary, the ILA Drafting Committee is looking for ways to move beyond the liability language in the current ILA. There is risk associated with solid waste management. The discussion is about how far it is reasonable to go to address that risk. Of the three types of liability, coming to agreement about the risk associated with a hazardous release is the most

challenging. Possible ways to address that risk are to use system revenues to purchase insurance and to create a reserve fund. ILA language also will need to address whether the insurance should cover the whole system, including transfer stations and closed landfills or just the Cedar Hills landfill and under what circumstances parties to the ILA could sue.

The conversation moved away from liability. In response to a comment Rivkin noted that the cities members of the ILA Drafting Committee have no intention to change the commitment of the cities to flow control. The question is whether there would be something about flow control beyond the contractual requirement in the ILA. MacGillivray noted that language resulting from previous discussions about direct billing is in part 2 of the [term sheet](#).

The group discussed changes to other issues listed in part four of the term sheet; mitigation and rent. The current ILA does not include language about mitigation. The suggested language addresses mitigation for existing as well as new or reconstructed facilities. It also discusses that mitigation is for impacts directly attributable to those facilities. For detailed language, see part 4 of the term sheet.

Rent for the Cedar Hills Landfill is also discussed in part 4 of the term sheet. It says that the County will continue to charge rent for the use of the landfill which is a General Fund asset. Further language makes it clear that the system will not be asked to pay twice for capacity included and paid for in the 2003 appraisal. Refer to the term sheet for further information.

In response to a concern that negotiations without an identified end point may continue for some time Reed noted that the ILA Drafting Committee is approaching a point where they will come to agreement if possible and if not, will consider other options for moving forward.. To that end, Reed's role with the committee has changed from facilitator to mediator.

Public Comment

There was no public comment.