

**GOVERNMENT OF THE VIRGIN ISLANDS
OF THE UNITED STATES**

Public Services Commission

In re:)
)
Application by the Virgin Islands Waste)
Management Authority for Approval of) **PSC DOCKET NO. 650**
Imposition of Tipping Fees for Disposal of)
Solid Waste)
_____)

REPORT AND RECOMMENDATION

Procedure

By Application dated October 9, 2015, the Virgin Islands Waste Management Authority (the “WMA”) filed with the Virgin Islands Public Services Commission (the “PSC”) an Application for approval of imposition of tipping fees for disposal of solid waste (the “Application”). By Order dated October 27, 2015 in Docket 650, the PSC appointed the undersigned as the Hearing Examiner. On January 25, 2016, the Hearing Examiner issued a Notice of Hearing setting the hearing for February 16, 2016 on St. John, February 17, 2016 on St. Thomas and February 18, 2016 on St. Croix. The Notice of Hearing invited the public to comment on the Application in writing and in person. The Notice of Hearing was delivered to the WMA and was published in the newspaper and otherwise disseminated through the media.

The hearing began and was conducted as and where scheduled in the Notice of Hearing on February 16, 17 and 18, 2016. WMA was represented by its Chief Operations Officer, Steven Aubin, and by Mario Leonard, its Solid Waste Director. The following members of the public appeared at the hearing and delivered opinions on the record: Mr. José Penn, Mr. Rick Barksdale, Lauren Hunter, Ph.D.; Mr. John Lynch; Mr. Franklin Johnson; Mr. Eldred Brooks; and Mr. James Bates.

On March 31, 2016, the PSC's Technical Consultant, Mr. Avery Williams, filed his technical report with the Hearing Examiner.

FINDINGS OF FACT

The WMA is responsible for the collection, treatment and disposal of solid waste and wastewater in the United States Virgin Islands. *See generally* 29 V.I.C. §§ 494-500q. The WMA is authorized to determine, fix, alter, charge and collect reasonable fees for certain public services of solid waste in the Territory. *Id.* The Application requests approval of solid waste fees, referred to as "tipping fees". The tipping fees are designed to cover the cost of managing the waste processing and disposal facilities.

Solid waste disposal facilities are located on St. Croix at the Anguilla Municipal Solid Waste Landfill (the "Anguilla Landfill"), on St. Thomas at the Bovoni Municipal Solid Waste Landfill (the "Bovoni Landfill"), and on St. John at the Susannaberg Transfer Station. The WMA proposes to charge a fee to customers who dispose of solid waste at these facilities. The proposed fees are based upon both weight, measured in tons, and type of waste.

As of fiscal year 2014, the preliminary cost of solid waste disposal to the WMA is approximately \$10.6 million per year. The amount is what the WMA pays annually to accept solid waste, sort it, and have it placed in the landfills, but does not represent the total cost of disposal of solid waste in the Territory, as it does not include the costs associated with maintaining or closing the landfills.

In 2010, the United States of America filed a Complaint in the United States District Court on St. Thomas against the Government of the Virgin Islands (the "GVI"), the Virgin Islands Port Authority, and the WMA for violations of the Clean Air Act and the Resource Conservation and Recovery Act. The lawsuit was settled in part by a Partial Consent Decree

covering the Bovoni Landfill in 2012 and the Anguilla Landfill in 2013. See Partial Consent Decree with Government of the U.S. Virgin Islands and Virgin Islands Waste Management Authority regarding Bovoni Landfill filed 03/19/2012 as Document #61-1, and Partial Consent Decree with Government of the U.S. Virgin Islands and Virgin Islands Waste Management Authority regarding Anguilla Landfill filed 01/14/2013 as Document #89-1 in *United States of America v. Government of the U.S. Virgin Islands, Virgin Islands Waste Management Authority, Virgin Islands Port Authority, and Joseph and Zulma Hodge*, Civ. No. 3:10-CV-00048 (U.S. Dist. Ct. for the District of the Virgin Islands, Div. of St. Thomas & St. John).

Pursuant to the foregoing settlement agreements and federal court orders memorializing those agreements, the WMA must seek to impose fees for disposal of solid waste and seek the issuance of bonds to finance the obligations imposed by the Consent Decrees. Paragraph 50c of the Partial Consent Decree regarding the Bovoni Landfill and paragraph 53c of the Partial Consent Decree regarding the Anguilla Landfill each provide as follows:

Solid Waste Fee. By the end of 2014, GVI and WMA, as applicable, shall seek, and shall use reasonable efforts to secure, approval by the Legislature of the Virgin Islands, or the Virgin Islands Public Services Commission, as applicable, for the prospective imposition of a solid waste fee, if and to the extent that such approval is necessary for the imposition of such fee. Upon such approval by the Legislature of the Virgin Islands or the Virgin Islands Public Services Commission as applicable, the GVI and WMA shall use reasonable efforts to assess and collect such solid waste fee.

Partial Consent Decree regarding Bovoni Landfill, *supra*, at p. 26, ¶ 50c; Partial Consent Decree regarding Anguilla Landfill, *supra*, at p. 27, ¶ 53c.

The Partial Consent Decrees also require the GVI and WMA to pay the cost of closing the Anguilla and Bovoni landfills, estimated at \$60 to \$80 million dollars. Under the Consent Decrees, the GVI and WMA are subject to an enforcement action, including civil penalties for failure to secure the necessary funding to manage its solid waste disposal facility in accordance

with the timeline set fourth in the Decrees. *See* Partial Consent Decree regarding Bovoni Landfill, *supra*, at pp. 28-31, ¶¶ 51-63; Partial Consent Decree regarding Anguilla Landfill, *supra*, at pp. 28-32, ¶¶ 54-67.

In preparation for its Application, WMA analyzed the types and amounts of solid waste deposited in the solid waste disposal facilities and the annual cost of operating the solid waste system. The projected revenue from the proposed tipping fees will not cover the cost of closing the landfills or post-closure costs, nor will it assist with debt service on bonds. It will cover only the actual daily costs of operating the solid waste facilities, and will pay for the cost of capital equipment and infrastructure.

In its Application, WMA proposes to assess and collect tipping fees directly at the disposal facilities. WMA proposes uniform unit rates across the Territory for six types of waste by weight (and not volume). The fees are imposed only at the landfills or disposal facilities, and not at the residential bin sites. Specifically, WMA proposes the following tipping fees:

Type of Waste	Tipping Fee
Municipal Solid Waste (MSW): waste from households and businesses	\$52.13/ton
Construction & Demolition (C&D): asphalt, concrete, building materials	\$65.26/ton
Green Waste (GW): trees, shrubs, leaves, grass	\$52.13/ton
Fill Waste (Fill): soil, sand, spoils, domestic sewage, sludge	\$31.28/ton
Scrap Metal (SM): vehicles, steel, aluminum, metal appliances	\$39.15/ton
Mixed Waste (Mixed): co-mingled loads of all waste types	\$65.26/ton

The WMA uses scales at the St. Thomas and St. Croix locations to weigh waste material as it is delivered. The scales at each site are identical and use the same software. The St. John

transfer station does not have a scale. WMA proposes to weigh the St. John material on St. Thomas until it deploys a portable scale on St. John. WMA generated the proposed fees by determining the actual cost of disposal by waste type. It then divided the actual cost per category by the number of tons of waste in each category, resulting in the cost per ton used as the proposed tipping fee.

A direct tipping fee would be assessed against waste hauling companies that deliver the waste. This would include all WMA-permitted commercial waste hauling companies as well as self-haulers. According to WMA, all commercial entities, including residential properties with four or more units, are required to hire a permitted waste hauler to transport waste. WMA will bill commercial haulers on a monthly basis. No cash or checks will be accepted at the site. It is anticipated, and common practice in the States, that haulers will adjust their customer prices to reflect the tipping fee, even though they may not necessarily itemize it separately in the amount charged to the customer.

WMA contends that no new regulations would need to be promulgated, and states that it has adequate funding for enforcement. It has the scales and financial software already, but may need to procure a portable scale for St. John.

If the PSC approves the Application, WMA would be ready to begin collection of the tipping fee from its direct customers in August of 2016. WMA acknowledges that there ought to be a public education campaign about the new tipping fees. It will also need time to activate its financial and operational software, to train its staff, and to ensure that enforcement measures are in place.

WMA anticipates that it could collect \$6.9 million (65%) of its operational costs through the proposed tipping fees. Initially, WMA will use its GVI allotment to offset the other 35%,

which amounts to \$3.7 million. Thereafter, WMA intends to recoup the remaining 35% (\$3.7 million annually) through a proposed residential collection fee application it plans to submit for PSC approval. In this future application, WMA will propose to indirectly collect fees as the disposal component of a residential collection service fee assessed to solid waste customers who do not enter the disposal facilities because they receive direct solid waste collection from WMA.

The PSC's Technical Consultant concluded that the proposed tipping fees by the WMA are just, reasonable and non-discriminatory. The Technical Consultant analyzed the operating costs of WMA for fiscal year 2014 in the amount of \$10,615,000. Of that amount, 91% was spent on contract services, 4% went to personnel costs, 2% was spent on materials, and 3% was spent on utilities.

The Technical Consultant also examined the proposed tipping fees, which were calculated to generate sufficient revenues to cover WMA's costs as of fiscal year 2014. He noted that tipping fees are common across the United States and the Caribbean. They are normally instituted as either an annual fee charged to all residential and commercial customers using a disposal facility, or are assessed on a per visit basis. When fees are assessed on the per visit basis, there are typically different rates for residential and commercial customers, and the fees may be based upon weight or volume. According to the Technical Consultant, tipping fees range from as low as \$28 per ton to as high as \$98 per ton, with the average being \$68 per ton. Tipping fees vary based upon the population of the area served and the success of recycling programs.

Based on the tipping fees proposed by WMA in its Application, the average cost per trip for direct customers at the landfills using commercial trucks would vary between \$100 to \$600, while an individual with a smaller half-ton pick up truck might pay \$26 for a load. The

Technical Consultant concluded that the impact on the average direct customer should be manageable, but for high volume commercial direct customers (such as the haulers for hotels or large supermarkets) there could be a “considerable” impact. He therefore recommended phasing in the tipping fees for high volume customers and monitoring the impact.

ARGUMENTS PRESENTED

Arguments Made by the Applicant

The WMA made the following arguments: the health and well-being of the people of the Territory require environmentally sound and cost effective management of the collection, processing and disposal of solid waste; proper waste management is necessary to protect and preserve the natural environment, and is a necessary component for a healthy economy; the Legislature has reduced its general fund allotments to the WMA over the past several years, inhibiting its ability to fund its mandated activities; the tipping fees will encourage waste sorting, waste diversion and recycling; if the request for tipping fees is denied, WMA will operate at a deficit.

OPINIONS EXPRESSED BY MEMBERS OF THE PUBLIC

Members of the public expressed various opinions on the record at the hearings in this case which may be summarized as follows: WMA needs a comprehensive waste management plan which includes recycling as well as enforcement. If WMA simply imposes new and large fees that do not presently exist, WMA must anticipate that there will be attempts to avoid the fee through illegal dumping. Therefore WMA should implement both a public education campaign as well as proper enforcement procedures. If one of the goals is to reduce or eliminate solid waste at the disposal sites or landfills, then WMA needs to have an articulated recycling program so that waste that can be recycled does not go into the disposal sites.

Members of the public, particularly on St. John, expressed the view that waste is a very important issue and that the matter should be funded appropriately right from the start, including sufficient fees for enforcement. The members pointed out that improper disposal of waste creates health hazards of mosquitos and rodents. Citizen advisory committee spokespersons on St. John vigorously supported the application by WMA. They contend that this is not a WMA or PSC problem or issue, but an undertaking for the entire community. They urged PSC to fully support the tipping fees in order to appropriately fund the WMA, and asked the PSC to consider whether the proposed fees are high enough. Another St. John resident pointed out that the tipping fees as proposed will not even cover the cost of handling all of the solid waste and will not cover the cost of closing the landfills.

On St. Thomas, the commercial haulers felt that \$60 per ton was too high, and there was a discussion about how this cost will actually be passed on to their customers.

On St. Croix, a commercial hauler stated that although the fees would be passed on to the customer, there would still be a large impact. For example, if the hauler charges \$600 to clear a lot, the fee for the 20 tons entailed could be \$1,000. The point made by haulers was that even if the fee is fair and reasonable, its implementation represents a significant change for haulers and customers, and there should be a public education and transition period. The public also expressed concern that unless enforcement is up to par, there will be illegal dumping.

OPINION

I. Jurisdiction

The PSC has jurisdiction of this matter pursuant to section 1 of Title 30 of the Virgin Islands Code and the provisions of Act 6918.

II. The Application for Imposition of Fees for Disposal of Solid Waste

Based on the foregoing, the evidence in the record shows that PSC should impose a fee for the disposal of solid waste, and that the proposed rate schedule is fair, just, reasonable and nondiscriminatory.

Pursuant to the Partial Consent Decrees for the Bovoni and Anguilla Landfills, WMA agreed with the federal government that WMA should seek imposition of tipping fees through the PSC, and this agreement was memorialized in a final judgment of a federal district court. As such, there can be no doubt that the GVI, the WMA and the federal government all believe that tipping fees should be imposed. The Virgin Islands Government currently provides an annual appropriation to the WMA to fund the cost of the solid waste disposal. The effect of imposing a tipping fee is to move the burden of paying for solid waste disposal from the Government generally to the users of the landfill.

The commercial haulers will be the first to be affected by the imposition of the tipping fee, as they will have to pay the tipping fee in order to dispose of solid waste. The Technical Consultant made it very clear, however, that the haulers need not bear the cost of the tipping fee. In the States, the fees haulers charge to their customers reflect the cost of tipping fees, although they are not usually itemized. If PSC were to grant the Application, it might consider delaying the effective date in order to give the haulers time to adjust their pricing and notify their customers, and for the WMA to conduct public education.

Based on the testimony, the pricing proposed by WMA is fair and reasonable. It is based upon actual costs, and is also less than the national average. The pricing does not, however, reflect the full cost of solid waste management in the Territory -- WMA seeks only to cover 65% of its actual cost, planning to make up the rest through the GVI allotment pending a future

application for imposition of a residential solid waste fee. It should also be noted that while WMA contends that it has sufficient funding for public education and enforcement efforts, the public testifiers were skeptical.

RECOMMENDATION

For the foregoing reasons, it is hereby recommended that:

1. The Commission grant the request in the Application and approve WMA's request to impose fees on solid waste collection haulers and other customers disposing of certain types and quantities of waste at the Territory's waste processing and disposal facilities at the rates requested by the WMA in the Application; and

2. The Commission consider delaying the effective date of its Order to provide WMA with sufficient time to conduct a public information campaign and to arrange for effective deployment of enforcement procedures.

Respectfully submitted,



Lorin M. Kleeger,
Hearing Examiner

DATED: April 13, 2016