

# Anatomy of a Boondoggle: The Richmond Burn Plant

## CITYSIDE

By Sam Quinones

The West Contra Costa Sanitary District is a small, relatively obscure agency which is responsible for maintaining sewers in Richmond and several other West County cities. It is not a glamorous job, but someone has to do it.

Several years ago, the district's five elected directors began to discuss a problem: how to get rid of the sludge that filters from its sewers. It was not a big problem, exactly; the district produces about 55 tons of the stuff a day and has simply trucked it to a nearby landfill. Still, the directors talked. And eventually they arrived at a solution: they decided to build a small "waste-to-energy" plant to burn the sludge and generate electricity.

Unfortunately, this solution was not as elegant as it first appeared; 55 tons of sludge is not enough fuel to run an efficient electrical generating plant, so the plans had to be enlarged. In addition to the district's sludge, the plant would burn garbage. A lot of garbage: some 450 tons of garbage a day—an amount equivalent to all the garbage produced by the West Contra Costa area each day. And then as the estimates of potential electrical revenues dropped in the face of a worldwide oil glut, the proposed plant's size continued to increase. It would require 600 tons of garbage a day, then 900 tons. Suddenly the small, relatively obscure West Contra Costa Sanitary District was planning to build—at a cost now estimated to exceed \$180 million—a burn plant so large that

for their campaign."

La Pointe began to pore over the district's board meeting minutes and billing statements particularly as they applied to the burn plant. He soon began "to discover stuff that was far askew of common sense," he says. "The numbers were just quantum leaps away from what any reasonable person would have expected."

La Pointe showed what he was finding to several city council people from cities within the sanitary district's jurisdiction. One of them was John Koepke, a city council member and businessman from San Pablo. Koepke took a long look at what La Pointe had discovered. Over several months, meetings were set up with city officials and sanitary district board members. Koepke began asking for answers and when he finally didn't get any, the San Pablo city council requested an investigation by the Contra Costa County Grand Jury. The request was promptly seconded by the city of Pinole.

The burn plant's most influential supporter is an El Sobrante liquor store owner named Leonard Battaglia. A long-time member of the sanitary district board, Battaglia is



Richmond activist Alan LaPointe

paid out a whopping \$10 million to one company, Cooper Engineers in Palo Alto, to study the feasibility of the project. When the district's contract with Cooper ended last January, the engineering firm had been receiving \$284,500 a month.

Despite the large amounts of money paid, however, the grand jury noted that it was "unable to ascertain the stage of completion of the preliminary/pre-design plans for the four hundred fifty, six hundred, or nine hundred [tons per day] plant." Furthermore, according to the grand jury report, Robert Cooper, head of Cooper Engineers, now claims the plans he had been paid to draw up belong to him, since the contract "did not call for the WCCSD to have possession." (Cooper declined to comment on the grand jury's report until his formal response is issued in a few weeks.)

The entire \$12.3 million paid out so far is, of course, public money. About half of it came from money acquired in the 1978 sale of sewer bonds. The grand jury was unsure of the legality of spending money from bonds which the voters thought were for sewer construction on studies for a solid waste burn plant; they recommended that the district attorney investigate further. Officials at the sanitary district say they received advice guaranteeing them it was legal from the San Francisco law firm of Orrick Herrington & Sutcliffe, the same firm which had organized the sale of the bonds. The grand jury and the auditors also pointed out that no compe-

OAK Trib 1/17/87

# Suit charges funds misspent on burn plant

By Catherine Schutz  
The Tribune

RICHMOND — The West Contra Costa Sanitary District's as-yet-unbuilt waste-to-energy plant, already under siege on several fronts, now faces a lawsuit charging district directors with misspending some \$6 million of taxpayers' money.

In a suit filed yesterday in Contra Costa County Superior Court, Alan LaPointe, a Richmond resident who lives within the district boundaries, accuses directors Len Battaglia, William Oliver, Warren Trundle, Ted Wooten and Fred Granzella of a "breach of fiduciary duty" by spending bond money that was supposed to be used for sewer projects on engineering, consulting and public relations work in connection with the garbage-burning plant.

The suit was expected: LaPointe in October filed a claim

against the district covering the same points. The district rejected the claim.

Last May, Richard Martland of the state attorney general's office, said in a letter that the district's expenditure of sewer bond money on a waste-to-energy plant was not authorized by West County voters who approved the bond measure in 1978.

Martland stopped short of calling for prosecution of the district by his office but set the stage for future lawsuits by noting it was a local matter that should be handled at the local level.

LaPointe's suit asks for a decision ordering the district to return to the taxpayers all sewer bond money spent on the waste-to-energy plant.

It also seeks a temporary restraining order and a permanent injunction barring the district

from spending sewer bond money "on public relations activities or any other activities that are in any way related to a waste-to-energy project."

Michael Freund, the attorney handling the suit, said yesterday he would seek the temporary restraining order "in the near future."

The district has said it only spent about \$3 million in bond funds on the burn plant. An audit performed by Arthur Young and Co. for the Contra Costa County grand jury put the figure at about \$5.9 million.

Altogether, from various funding sources, the district has spent \$13 million so far in planning the \$60 million North Richmond facility. The project has yet to receive approval, or even much support, from West County cities and faces several permit hurdles as well.

The district's reluctance to

stop spending money on the burn plant, particularly for public relations, has been a focal point for many critics of the project, including the county grand jury.

Last month the district's directors decided to initiate a newsletter and advertising campaign to acquaint area residents with the burn plant and other waste-related issues.

District directors are attending a conference in Palm Springs and were unavailable for comment yesterday.

LaPointe's lawsuit comes a day after the Richmond City Council held a study session on garbage-related topics. At the conclusion of the session, the council agreed to take a formal vote at its Jan. 26 meeting to support the concept of waste-to-energy as one potential element in solving the county's impending garbage disposal crisis.

# West County Times

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One of the nation's 10 best small dailies — ASNE 1990

## Trial starts on West San burn project

By Michael Hytha  
Staff writer

MARTINEZ — The long-running battle about up to \$5.9 million spent by the West Contra Costa Sanitary District on its defunct waste-to-energy project resumed Tuesday with the beginning of a Superior Court trial.

Alan La Pointe, an environmental gadfly and district resident, accuses the district of illegally spending funds from a 1977 bond measure on the abandoned waste-to-energy project that was planned to burn garbage and sewage sludge. La Pointe wants the district and four longtime board members to refund



**Alan La Pointe**

Environmental gadfly contests district's expenditures on defunct waste-to-energy project

the millions they spent on the project to taxpayers.

At the heart of the case is whether using garbage to burn sludge was

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## Trial

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authorized under the \$9.96 million bond measure, or if the sanitary district officials spent the money improperly.

The first witnesses called by La Pointe were two former members of the district's board of directors. Both said they believe spending money on the burn plant was not allowed under Measure D, whose stated purpose was to raise money for sewage treatment and disposal facilities.

"I don't believe a waste-to-energy project was indicated to the voters," said Maury Woulf, a board member from 1977 to 1985.

Dan Yee, who served on the board from 1958 to 1977, testified that incinerating sewage sludge was not discussed as a way of disposing of sewage sludge until after voters approved Measure D.

Yee said that when he first learned of the district's plans for a waste-to-energy plant after his own election defeat in 1977, he was curi-

ous how the district could spend bond monies on the project.

Yee said under cross-examination that district consultants had suggested innovative solutions to sludge disposal might be available.

Saying the district's attorney, Alfred Cabral, had triggered his memory, Yee said the board members decided to include in the bond measure only projects needed to meet state and federal pollution standards. That did not include sludge incineration, he said.

Woulf said he initially supported studies of sludge incineration, but opposed district plans after his fellow board members decided to burn garbage along with sludge.

La Pointe took the stand briefly.

"I felt there had been a real ruse on the public," La Pointe said, describing his reaction to the district's expenditures.

The trial is expected to last about a week. The sanitary district is expected to present its defense later this week. It admits spending \$3.1 million in bond funds, but argues the expenditures were allowed because the burn plant would have disposed of sewage sludge.

The expenditures battle began in 1985, when the county grand jury concluded the district spent \$5 million improperly.

In 1986, the state Attorney General's Office agreed with the jury and suggested a taxpayer suit might be filed to recover the money.

The district says it relied on bond attorneys' advice that the money could be spent on the project. The law firm that served as bond counsel, Orrick, Herrin & Sutcliffe, wrote in a 1985 letter that the expenditures were allowed.

The district filed a legal malpractice suit against the firm in 1985 but has not pursued it.

The district abandoned the project after its contract to sell electricity from it to PG&E expired in 1985 and the Public Utilities Commission rejected a new plant contract.

In a related matter, La Pointe also is suing the district, its board members and attorneys in court, claiming they violated his civil rights by suing him for his role in the taxpayers action. That case is held until the taxpayers suit is resolved.

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## Aborted burn plan accounting thwarted

By Michael Hytha  
Staff writer

MARTINEZ — During the second day of a civil trial over the West Contra Costa Sanitary District's defunct waste-to-energy project, an auditor testified Wednesday that substandard accounting makes it impossible to say how much bond money the district spent on the project.

Certified public accountant David Bott concluded after his 1985 review of the district's books that the district spent \$11 million planning the garbage-burning electricity plant, possibly \$5.9 million of it from a 1977 bond measure.

The exact amount was impossible to calculate because the district combined funds from different sources and did not keep track of the sources of funds being transferred among separate accounts, Bott said in court.

"We were unable to determine where those dollars came from," said Bott, who described the district's accounting system as substandard compared to those used by similar public agencies.

Bott, then with the international accounting

firm of Arthur Young & Co., was hired to review district expenditures by the Contra Costa County grand jury.

Bott's report, completed after 400 hours of investigation by himself and other Arthur Young employees, was the cornerstone of the 1985 grand jury report that led to raucous public debate about the expenditures.

Alan La Pointe of Park Avenue in East Richmond Heights is suing the district and four long-time members of its board of directors for using the \$9.96 million bond measure to fund the waste-to-energy project.

He wants the district and its directors to repay taxpayers for bond money spent on the project, planned to burn 510 tons of garbage and 75 tons of sewage sludge a day.

La Pointe contends the district spent the money improperly because the bond funds were intended for sewage treatment and disposal facilities.

The district, which admits to spending \$3.1

million in bond funds on the project, contends the expenditures were allowed because the burn plant would have disposed of sewage sludge. Outside attorneys advised that the expenditures were proper, district officials say.

The district is expected to present its side beginning Friday.

Based on the accountant's report and private testimony, the grand jury blasted the sanitary district in 1985 for awarding consulting contracts without competitive bidding and failing to adequately review consultants' work or keep accurate records.

At the grand jury's request, the state attorney general's office investigated and suggested in 1986 that a taxpayers' lawsuit might be filed to recover the money.

The district abandoned the project in 1988 when the California Public Utilities Commission rejected extension of the district's contract to sell electricity from the plant to Pacific Gas & Electric Co.

## Waste-energy accounting 'substandard'

By Michael Hytha  
Staff writer

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## Audit

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# West County Times

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One of the nation's 10 best small dailies — ASNE 1990

## Waste-to-energy project defended at trial

By Michael Hytha  
Staff writer

MARTINEZ — The West Contra Costa Sanitary District never veered from the proper goal of disposing of sewage sludge while it formulated plans for a garbage-burning incinerator, a key district board member testified in court Thursday.

Len Battaglia, a member of the board since 1975, said the waste-to-energy project's main purpose was to dispose of 50 to 60 tons of sewage sludge a day, although at one point a daily capacity of up to 900 tons a day was considered.

"Our whole program was to get rid of sludge and to use garbage as a fuel to do that," said Battaglia, who sat on key board committees that planned the project.

Battaglia, the first board member to testify in defense of the district in

the civil trial in Contra Costa Superior Court, defended spending proceeds from a bond measure approved by voters in 1977 on the burn plant.

Alan La Pointe, a longtime burn plant opponent, accuses the district of illegally spending up to \$5.9 million in bond monies on the project because the bond funds were intended for sewage treatment and disposal facilities, which he claims didn't include a garbage incinerator.

Battaglia said the district's attorneys and outside attorneys who oversaw the bond measure advised that the funds could be spent on the burn plant.

He added that the language of the 1977 bond measure was deliberately vague because the district officials had not decided on the type of facilities needed to prevent sewage from spilling into San Pablo Bay.

"We had no idea where we were going at that time," Battaglia said. The board did not seriously investigate burning sludge until 1978, he said.

The trial resumes today with La Pointe's attorney cross-examining Battaglia. Two other board members, also named as defendants, and the district's manager are scheduled to testify before the trial ends Monday or Tuesday.

Earlier Thursday, the former chairman of the state's Solid Waste Commission testified that the commission had given the district \$619,000 because innovative ways of disposing of sewage sludge were needed.

"The disposal of sludge was an important and critical element from our point of view," said Terry Trumball, now an environmental attorney in San Francisco.

# Sanitary district states bond funds spent improperly

By Michael Hytha  
Staff writer

A taxpayers' lawsuit accusing a West County sanitary district of illegally spending \$5.9 million to study a waste-to-energy plant has turned up a previously unreported suit in which the district states the bond money was spent improperly.

An attorney for the West Contra Costa Sanitary District said Wednesday that the earlier suit does not mean the district admits any wrongdoing.

In 1986, the district came under fire from the state Attorney General's Office and the Contra Costa County grand jury. District officials then sued the lawyers who drafted the bond measure that was passed by voters in 1977 and who had advised that the funds could be spent studying the sewage sludge- and garbage-burning plant.

The legal malpractice suit, filed in San Francisco County Superior Court, sharply contradicts the district's position against a taxpayers' lawsuit filed in 1987. That suit was filed in Contra Costa County Superior Court by Alan La Pointe of East Richmond Heights.

## Court hearing today

In fighting La Pointe's suit, the sanitary district has asserted the expenditures were proper. The district also claims that only \$3.1 million in bond money was spent on the project.

The malpractice suit was submitted as evidence for a court hearing set for today on the district's request to have the taxpayers' suit dismissed.

The district filed the suit because a 1985 grand jury investigation concluded \$5.9 million in bond funds had been improperly spent on the burn plant, said Alfred Cabral, the sanitary district's attorney. In a May 16, 1986 letter, Chief Assistant At-

torney General Richard Martland also concluded the funds were improperly spent.

The district filed the suit only to "protect our rights in the event we did find malpractice," Cabral said. The district had to file in June 1986 because the statute of limitations was about to expire, he said.

"We always thought the money was properly spent. But on the other hand, you had the attorney general saying somebody should sue because the money was illegally spent and we wanted to file before the statute of limitations ran out."

## Denies allegations

The malpractice suit is on hold until the taxpayers' lawsuit is resolved, Cabral said.

The law firm that acted as bond counsel, now Orrick, Herrington & Sutcliffe, has denied all of the malpractice suit's allegations and supports Cabral's assertions.

"The 1986 lawsuit is without merit," the firm's lead attorney for the case, W. Reece Bader, wrote in a statement.

"We also believe that the district's counsel is well aware that the lawsuit was without merit. When the suit was filed, the district's counsel indicated that it was being filed in an attempt to stop the running of the statute of limitations," the statement reads.

"I find the discovery of the suit real interesting," said La Pointe, who would not comment further.

La Pointe's attorney, Michael Freund, said he will raise the issue of the malpractice suit during today's hearing in Contra Costa Superior Court.

The district officially gave up on building the burn plant after the district's contract to sell electricity that is generated from the plant expired in 1988.