

# Waste Management in the Province of Tyrol

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***"Courtesy translation provided by the organisation"***

- Waste Management has been the subject of audits by:
  - the Provincial Audit Office of Tyrol
    - Waste management in Tyrol Report of 5/2/2003
  - the Federal Court
    - Selected issues of waste management in Austria, Federal Series 2007/6 May 2007
    - Provincial waste management plans - Tyrol Federal Series 2006/5, Tyrol series 2006/2 Tyrol
  - the Provincial Audit Office of Tyrol
    - Special Riederberg Landfill Audit Report, 2/4/2008.
  
- The reports are available online at
  - [www.rechnungshof.gv.at](http://www.rechnungshof.gv.at) or
  - [www.tirol.gv.at/landtag/landesrechnungshof/berichte](http://www.tirol.gv.at/landtag/landesrechnungshof/berichte)
  
- Part 1
  - The general situation in Austria
  - Focussing on Tyrol, based on the above reports
- Part 2 Concerning the special case of a private landfill operator (Riederberg Landfill).

- On the whole, waste management in Austria is of high quality.
- The three key principles of waste management in Austria are:
  - Waste prevention
    - Keeping waste volumes as low as possible,
  - Waste utilisation/recycling
    - If ecologically appropriate, technically feasible
    - Not disproportionately expensive
    - If a market for the derived products exists or can be created
  - Waste disposal
    - Only those wastes should remain whose deposition represents no danger for future generations.
- I shall confine myself to waste disposal

- significant changes in the last 20 years
- EU law
  - European Community legal guidelines
  - Directives and Regulations
- Austria
  - Federal Waste Management Act
  - Waste Management Law and Provincial Waste Management Plans
  - Landfill Ordinance of 1997 with a ban on the landfilling of most waste as of 2004

# Situation in the Tyrol

- The Governor of Tyrol by his power shall, under certain conditions, extend the deadline for banning the landfilling of untreated waste to 31/12/2008 at the latest.
- According to an amendment to the law, only those untreated wastes may be deposited for landfill, which were accrued in the same state – with the exception of statutory cross-regional waste disposal sites.
- The current restrictions in force as of May 2004, however, caused significant problems (transport hire, odour pollution) for the Riederberg Landfill.

# Situation in the Tyrol

- Almost no other issue in the Tyrol has been discussed in recent years with so much controversy as what should happen to the approximately 160,000 tonnes of residual waste in the Tyrol.
- For some, the state of the technology for waste management was wanting and there is a continued lack of the necessary political will for it.
- After the landfilling of waste was banned, there was a scientific and political dispute over the direction of the method of waste disposal
- Although the majority opinion considered waste incineration as the best solution, the Province of Tyrol was unable to decide for:
  - Pretreating the waste
    - either through incineration or
    - mechanical-biological treatment (sorting and composting)

The causes can be found:

- In the complexity of the Waste Law (in which other legal areas such as water rights and conservation come into play)
- Mixing of private sector structures with public law regulatory mechanisms
  - Statutory waste disposal areas (waste quantity)
  - Officially prescribed rates
- In the lack of political will to make decisions
- In the resistance of the population due to
  - Inadequate information
  - Insufficient and poor communication
- By politicians and the authorities.

# Special Case: Riederberg Landfill

- In March 1992, the Province of Tyrol entered into a contract with a contractor committing the company to:
  - operate the Riederberg Landfill as a public landfill
  - including undertaking the public waste removal for the municipalities of the waste disposal area and that of the waste to be landfilled.
- The Province in return, must ensure that
  - All of the public rubbish removal of both collected and to-be-landfilled waste within the designated waste disposal area is sent to the landfill.
- There were many disputes between the authorities and the landfill operator, which were based on differing interpretations and conflicting interpretations of legal provisions.
- In many cases the issues were taken all the way up to the supreme courts.



# Riederberg Landfill

- According to statistics on waste, between 1998 and June 2002, some 400,000 tonnes were deposited at the landfill.
- Due to the annual waste volumes (e.g. in 2001, about 101,000 tons) it was anticipated that by the end of 2003 at the latest, the set volume limit would be exceeded by 500,000 tonnes.
- This assumption was subsequently borne out by later facts.
- The annual amount deposited in 2001 was significantly greater than the average volume for the years 1994 to 1996.

# Riederberg Landfill

- The landfill operator had the required permits for the construction and operation of the landfill.
- There were numerous regulatory authorisations required under federal and state law provisions.
- Obtaining these was sometimes very protracted in particular by the lodging of legal appeals.
- The responsibility for monitoring landfill sites fundamentally falls to the governor as an authority.
- A construction/landfill supervisory body was appointed for this purpose, the cost of which was to be borne by the landfill operator.
- The supervisory body consistently fulfilled its obligations.

# Riederberg Landfill

- During the entire life of the Riederberg Landfill, the authority was faced with numerous complaints from local residents about unacceptable odour pollution.
- It was clearly the problem of the current landfill operator to put the appropriate measures in place to reduce this odour pollution, such as using microorganisms.
- Even for its part, the authority adopted several measures that contributed to short-term improvements in the situation. A long-term solution to the odour problem, however, was not found until the last moment.
- The causes for the odour pollution lay chiefly in the (initially) high proportion of biogenic waste, technical defects in the system and the relatively large volumes of waste, in particular those from 2005 (among other things, due to a flood in 2005).

- Connected with establishment of the catchment area, there was additionally an authorisation from the provincial government for the fees set by the respective landfill owners.
- At the request of the landfill operator, the provincial government reviewed the rate authorisation process in the years 1991, 1993, 1998 and 2003 to determine:
  - whether the municipalities in the catchment area were being charged commercially reasonable rates by the landfill operator, and
  - publicly stipulated binding fees for the catchment area.
- Many municipalities notified the authority that in other waste disposal areas, the cost for waste disposal was significantly lower and the fee approved by the authority was therefore incomprehensible.

# Riederberg Landfill

- For years, the catchment area municipalities were charged fees by the landfill operator that were approximately 70% below the approved fee and therefore were not cost-effective.
- The landfill operator justified this approach based on the competition that had arisen as a result of the approved treatment plant in the Riederberg Landfill catchment area.
- The fees charged the municipalities by the landfill operator in past years only covered a portion of the fixed costs and no variable costs, accounting costs or stranded costs.

- According to the first fee authorisation decision in 1991, a fixed amount of €14.53 per tonne weight was to be disclosed separately in the calculation of aftercare costs and that this should be paid semi-annually into a gilt-edged bank account to be created.
- The amount of aftercare costs, however, was never separately disclosed in the accounts.
- Furthermore, no gilt-edged bank account for aftercare costs had been set up.
- Compliance with these decisions concerning aftercare costs had not been monitored by the competent authority.
- In the fee decisions of 1993, 1999 and 2003, no stipulations on payment of aftercare costs had been established.
- Nevertheless, both aftercare costs and reclamation costs were included in the submitted calculation under the relevant fee authorisation process.

- By decision of the provincial governor on 11.4.2006, to ensure aftercare costs, an amount of €20.4 million was to be served to the landfill operator in the form of a bank guarantee along with capital preservation and run-time up to 2046.
- No legally binding decisions have been made to date concerning the appeals submitted in opposition to this.
- On the one hand, the landfill operator had not charged a cost-efficient fee (instead of the €196 per metric tonne fee in line with known economic principles and which was subsequently authorised, the landfill operator had only charged €56 per metric tonne) and on the other, the landfill operator had to deposit a bank guarantee in the amount of €20.4 million.

# Riederberg Landfill

- From a business perspective a landfill is only operational,
  - if respective landfill volumes are consistently incurred and
  - if the catchment area allocated to the respective municipalities pays the fees set (by the collective authority of the Province of Tyrol).
- With regard to
  - the limited catchment area and
  - the costs charged (those under the authorised fixed rates)
- The landfill could not long survive without outside waste volume.
- In 2006 (the last year of landfill operation), out of the total waste disposed of at the landfill to the amount of nearly 130,000 tonnes, only 25% was from the specified Kufstein and Kitzbühel catchment. The remaining 75% was spread out from waste from other districts of Tyrol (13%).



- The state is responsible for the planning, construction and operation of the required public waste treatment facilities and public landfills.
- Using the example of the Riederberg Landfill, it is evident that the transfer of the public responsibility for “waste management” to private operators not only creates “dependencies”, which are only partially regulated by civil arrangements or able to be regulated, but it also
  - contains significant potential for conflict (see the regulatory requirements and the subsequent proceedings in the supreme courts or the civil procedure, conflicts between state and landfill operator) and also
  - brings with it an economic risk for the state (see the subsidiary statutory liability of the state) by nesting or non-transparent links between companies that are directly and indirectly connected to the landfill operation (leachate disposal, waste deliveries).

- The primary potential for conflicts were due to:
  - Landfilling of waste from other states and other Tyrolean catchment areas. (The landfill operator attempted – using the newly identified site for a treatment plant in Kufstein in 2000 – to compensate as far as possible for lost transactions with rubbish taken from the provinces of Upper Austria and Salzburg.)
  - The landfill operator's obligation to deposit a bank guarantee as security upfront.

- In July 2007, the operator completed the closing of the landfill.
- The closure was made without the appropriate precautions.
- Furthermore, no follow-up measures had been taken.
- The landfill operator provided no security for the aftercare obligations incumbent upon it.
- The company was obliged to file for bankruptcy due to illiquidity and excessive indebtedness and lack of continuation of positive forecast.
- As of 19/12/2007, the landfill operator's bank account balance amounted to about €888,000, whereas each month for leachate treatment alone about €150.000 (€1.8 million per year!) should have been spent.
- This does not even cover reclamation and closure for the landfill.
- For this reason, in April 2008, there was no more cash for other future or ongoing leachate disposal or aftercare measures.

# Riederberg Landfill

- For years it has been evident from the budgets presented (reported in millions of dollars as a reserve position in the budget), that in essence, only the part of the landfill that can still be filled (at end of 2006: about 160,000 m<sup>3</sup> at an annual volume in the Tyrol catchment area of approximately 65,000 m<sup>3</sup>) can be offset as an asset.
- As a result of the landfill operator's insolvency and the bankruptcy of its property, the state will thus have to bear the costs associated with the abandonment, closure and aftercare of the Riederberg Landfill.
- The appropriate civil law claims for compensation remain with the state.

- On 12/2/2008, the provincial government decided that the province should acquire both the Riederberg property for a token amount and the necessary equipment to carry out the decommissioning and closure measures from the bankrupt estate.
- For all measures, around €1.5 million were budgeted for the 2008 fiscal year.
- There is currently no long-term operator available for the state (the approved rehabilitation period is 30 years!).
- The resources of the provincial administration alone are not equal to the task. Furthermore, it is the opinion of the provincial supreme court that the establishment of a Tyrolean provincial company exclusively for aftercare would be economically inefficient.
- The provincial supreme court took the view that there are currently several options open.

- The transfer of the responsibility for “waste management” to the private sector has not worked.
- Causes:
  - Corporate structures that are insufficiently transparent
  - Lack of oversight
- Since the waste may no longer be disposed of and construction of an incinerator plant has been abandoned, residual waste currently needs to be transported abroad for incineration.
- This situation in a Tyrol state known for its transit problems.
- No foreseeable solution exists.
- The public audit has shown this on several occasions, but unfortunately to no avail.

**Thank you!**