



A Public Agency

OLD BUSINESS



STAFF REPORT

To: SBWMA Board Members
From: Hilary Gans, Operations Contracts Manager
Kevin McCarthy, Executive Director
Date: July 24, 2014 Board Meeting
Subject: Discussion of Continued Use of County VRS Workers by SBR

Recommendation

This staff report is for discussion purposes only and no formal action is requested of the Board of Directors.

This update is being provided to the Board since SBR's use of subcontractors, in this case the County Vocational Rehabilitation Services (VRS) clients, is subject to Board approval. This is a timely issue given that SBR and the County are negotiating a new long-term staffing contract potentially through the end of 2020.

Analysis

With the approval of the SBWMA (and referenced in the Operations Agreement Section 5.11.N - Personnel), SBR and San Mateo County entered into a three-year agreement (January 1, 2011 to December 31, 2013) for the VRS program to provide sort labor staffing at the Shoreway MRF. During the past three years VRS has had 20-25 sorters on a daily basis at the MRF. Since the expiration of the agreement on December 30, 2013, both parties have been negotiating a new agreement. At the end of the agreement, a Letter of Intent was signed by both parties and is still in effect.

A major goal of the negotiations between the County and SBR has been to guarantee a more reliable labor force for the first-shift of MRF operations and for a second-shift of sorters to process third-party recyclables. Over the past few years, the County VRS program did not consistently supply all of the sort labor that SBR required to run their first shift of operations. As discussed further below, since negotiating and implementing a new wage structure in January 2014, VRS has been able to supply the appropriate number of sorters on a consistent basis.

According to information provided to the SBWMA by SBR, the key elements of the current negotiated draft agreement between SBR and the County's VRS program include:

- VRS has agreed to supply sort workers for SBR's first and second-shift operations (SBR needs 25 sorters on the first-shift and is now using approximately 25 sorters on the second-shift to process third-party tons). The new agreement would double the number of sorters provided by the VRS program.
- There have been problems over the term of the last agreement with VRS being able to reliably supply the numbers of sorters needed by SBR to staff the MRF operations. In the new agreement, the County guarantees to provide the number of workers required by SBR.
- SBR has agreed to pay a wage increase of \$3.00 per hour to each sorter on the first-shift and on the second-shift as an incentive to help the County recruit and retain the VRS workers. Effective since January 2014, SBR increased the wage paid to VRS sorters from \$8.00 per hour to \$11.00 per hour for sorters on both shifts. This is a cost borne entirely by SBR and is not passed through to the SBWMA. It should be noted the State minimum wage effective 7/1/14 is \$9.00 per hour and the rate will increase to \$10.00 per hour on 1/1/16.

- The term of the Agreement would be for roughly 6 plus years starting in the next 30-60 days depending upon final negotiations and running through December 31, 2020.
- Per a meeting held on July 17th between representatives from the County, SBR and the SBWMA; the parties are finalizing contract terms to maximize the cost effectiveness of the program while also providing incentives to increase worker productivity. The meeting attendees included SBWMA Board members Warren Slocum and Bill Widmer and the SBWMA Executive Director.

Staff expects to agendize Board action in September 2014 on consideration for approval of a revised long-term agreement between the County and SBR.

Discussion of the Cost of VRS Program

Per the Operations Agreement, the SBWMA compensates SBR a fixed amount per ton (\$76.74 per ton MRF processing fee for rate year 2014) and SBR is responsible for paying all of the costs of MRF operations (including sort labor) out of the per/ton processing fee paid by the SBWMA. It is important to note that SBR is not able to pass through labor cost increases to the SBWMA that are not covered by the compensation methodology in the Operations Agreement (e.g., in the case of the VRS sort labor cost increase discussed in this staff report, SBR is solely responsible for paying the sort labor cost increase and will not be reimbursed by the SBWMA). SBR has evaluated the new sort labor cost under the proposed new VRS contract and has estimated that there is a \$129,003 per year cost differential between the compensation paid to SBR by the SBWMA and the wage and administrative cost of the VRS program (see sort cost analysis, **Table 1**). This differential is the basis for recent negotiations to identify strategies for cost reductions.

Table 1.			
MRF Sort Labor Cost Comparison			
2014 Costs Based on Day Shift Operation Using 25 Sorters			
	<u>/Hour</u>	<u>/Ton</u>	<u>Cost</u>
SBWMA Compensation to SBR (1)	\$ 17.95	\$ 15.11	\$ 1,118,472
VRS Cost for Sort Labor (2)	\$ 20.02	\$ 16.85	\$ 1,247,475
<i>(1) SBWMA compensation to SBR for sort labor</i>			
<i>(2) VRS cost per sorter with administration cost included</i>			

Background

The MRF has sophisticated mechanical sorting equipment that performs the bulk of the materials separation function, however, the equipment is not 100% accurate and manual sorting of the finished product is necessary for quality control. Prior to SBR's operation of the new Shoreway MRF, BFI/Allied Waste operated an older MRF at Shoreway and had an agreement with the County of San Mateo Vocational Rehabilitation Services program to provide sort labor to the operation. Throughout the program's history at the Shoreway MRF, the SBWMA has been supportive of the VRS program. The VRS program's function is to provide steady work for people who experience barriers to employment and are transitioning back to the workplace. The VRS clients spend a maximum of 18 months in the program before they transition out of the program (it should be noted that there are several program graduates that have been hired by SBR for full-time employment).

Fiscal Impact

The SBWMA pays SBR a fixed price per ton for each ton of franchise single stream material processed at the Shoreway MRF. This processing fee adjusts annually according to a methodology (Operations Agreement section 8.01) that uses established indexes. VRS sort labor cost increases incurred by SBR are not reimbursable and so do not affect the current payment made by the SBWMA to SBR for MRF operations. However, there is a concern by the SBWMA staff that any labor cost increase that is agreed to by SBR will become the status quo and that the Agency will potentially bear any labor cost increase when a new Facility Operations Agreement is negotiated.



STAFF REPORT

To: SBWMA Board Members
From: Hilary Gans, Facility Operations Contracts Manager
Kevin McCarthy, Executive Director
Date: July 24, 2014 Board of Directors Meeting
Subject: Consideration of Long-Term Approval of Additional Third-Party Tons into the Shoreway MRF

Recommendation

Staff recommends the Board approve Resolution 2014-18 attached hereto authorizing the following action:

- Long-term approval of additional third-party tons into the Shoreway MRF from Recology through December 31, 2020.

Exhibit A to the Resolution is the actual Memorandum of Understanding (MOU) between the SBWMA and SBR that captures the terms and conditions associated with SBR processing the third-party tons.

Analysis

At the February 27, 2014 Board meeting, the Board approved a six-month evaluation period for SBR to receive and process recyclables from Recology with no specific daily or annual tonnage limits during that period. The six-month time frame was intended to provide sufficient time to address the following key items related to the third-party tons processing.

1. **Provide time for SBWMA staff to monitor the functioning of the MRF with the additional third-party tonnage and to prepare a preliminary design and an engineer's estimate for an extension to the MRF tipping floor area.**

Since February, SBR has been processing approximately one hundred tons of recyclables per day from Recology. SBR has accommodated the additional tonnage by expanding operating hours at the MRF to include a second-shift (from 3:00 pm to 11:30 pm) of operation. Staff has monitored SBR's processing of the additional tonnage and has found no adverse impact on the processing of franchise tonnage at the MRF.

Staff has confirmed the need for additional material tipping space to ensure that there is sufficient area for recyclables being dumped by incoming trucks and that these materials can be stored under roof as required by regulations. Staff has prepared a preliminary design and engineers estimate on the cost to construct an extension to the MRF building tipping floor (see **Table 1 on p.3 of staff report**) and the 2014/15 budget includes \$450,000 for the construction project in anticipation of the additional third-party tonnage being approved by the Board. The next step towards the long-term processing of third-party tonnage will be for Staff to conduct an RFP and develop a construction contract that will be brought back to the Board for consideration.

2. **Review of the host fee amount which staff is recommending be raised from the current amount of \$10.30 to a new amount of \$13.00**

The total third-party tonnage from Recology is expected to be 27,000 tons per year (with a guaranteed minimum of 25,000 tons per year for the first three years). Based on a host fee of \$13.00 per ton, the amount

paid to the SBWMA is expected to be \$351,000 per year; over the six plus year term of the third-party tonnage agreement between Recology and SBR, the total SBWMA host fee income is expected to be roughly \$2.25 million. As presented in detail in prior staff reports, the host fee is intended to pay for: 1) added equipment wear, 2) added equipment depreciation and interest cost, 3) the construction cost of the tipping floor extension, and 4) provide additional revenues to the Agency.

3. A long-term Supply and Processing Agreement between SBR and Recology for the processing of the recyclables.

SBR and Recology have completed the negotiation of a Supply and Processing Agreement. The key elements of importance to the Agency regarding this agreement include the following:

- The agreement for Recology to supply third-party tons to the Shoreway MRF is for a period of six plus years (from August 1, 2014 through December 31, 2020). During the first three years of the agreement, there is a provision that requires Recology to deliver the minimum tonnage of 25,000 tons per year.
- Minimum and maximum tonnage delivered to the Shoreway MRF. The minimum tonnage is 25,000 tons per year for a period of three-years, the maximum tonnage is 37,552 tons per year. The minimum tonnage commitment over the first three-years is important for the SBWMA because it guaranties sufficient host fee income to cover the SBWMA's construction cost for the MRF tipping floor extension. A maximum tonnage limit is important to ensure that the facility is not overloaded with more recyclable materials than the facility is designed to process.
- The establishment and inclusion of terms and conditions set forth in MOU developed by the SBWMA and agreed to by SBR that allow the Agency to restrict or eliminate the third-party tonnage should regulatory or operational problems arise (See MOU in **Exhibit A** at the end of this staff report).

4. Finalize an agreement between SBR and the San Mateo County VRS for first and second shift sorters.

The sorting labor for the first- shift and second-shift is currently provided by the County of San Mateo under the Vocational Rehabilitation Services (VRS) program. A final agreement is being negotiated and will need to be approved by the SBWMA Board. Addition information on the status of this negotiation is provided in the July 24th staff report titled "Discussion on Continued Use of County VRS Workers by SBR", agenda item 4A.

Background

On February 27, 2014, the Board of Directors approved a six-month interim processing arrangement to allow Recology to deliver approximately 50 additional tons per day from communities in Santa Clara County. In total, Recology is planning to deliver approximately 27,000 tons per year from sources outside the SBWMA service area. The six-month interim arrangement was established to provide time for several key items relating the third-party tonnage to be analyzed and completed. An update on each of these items is presented in the analysis section of this staff report.

Fiscal Impact

The SBWMA currently collects a host fee of \$10.30 per ton for every third-party MRF ton delivered to Shoreway (the host fee is paid by SBR to the SBWMA). The host fee is meant to cover the direct expense to the facility associated with processing the additional tons plus a margin to cover some of the other MRF expenses that the JPA incurs (e.g., MRF building and equipment depreciation and interest expense). In 2013, approximately \$110,380 in host fee payments were paid by SBR on the Recology tons processed at the Shoreway MRF.

With the planned construction of a \$411,151 tipping floor roof extension to enclose the additional third-party tons, the host fee has been increased from \$10.30 to \$13.00 to cover the added cost of this project. **Table 2 on page 4**

of this report shows the detail of the SBWMA Direct Expense at \$7.62 per ton (\$6.57 per ton in equipment depreciation expense related to the wear from processing the third-party tons plus \$1.05 per ton depreciation cost for the tipping floor roof extension). After direct expenses, the Agency will benefit from a \$5.38 per ton or \$140,310 per year margin. Note that the adopted FY1415 budget assumed a host fee of \$14.00 per ton on a slightly lower tonnage than is expected to be delivered in the budget year -- the net effect is that the actual host fee revenues are expected to be roughly \$13,000 less than budgeted.

Table 1
SOUTH BAY WASTE MANAGEMENT AUTHORITY
MRF CANOPY EXTENSION
Engineers Estimation of Probable Cost of Construction

Revised March 31, 2014

MASTER PLAN IMPROVEMENTS						
BUILDING/ SITE AREA		DESCRIPTION OF WORK	QUANTITY	SF / LF	UNIT COST	EXTENDED VALUE
STRUCTURAL IMPROVEMENTS						
	Demolition and Slab	Remove Existing Concrete Slab	2,720	SF	\$3.60	\$9,792
		Remove existing canopy	374	SF	\$30.00	\$11,220
		Remove existing bollard	3	EA	\$240.00	\$720
		Remove portion of concrete abuse wall	48	SF	\$4.80	\$230
		Remove metal wall panel and framing	64	SF	\$9.60	\$614
		New 14" thick concrete slab	2,720	SF	\$3.60	\$9,792
		New 12" thick concrete pushwall	18	CY	\$300.00	\$5,400
		New 6" high concrete curb	18	SF	\$20.40	\$367
		8"d x 3'-6" tall concrete filled steel bollard	5	EA	\$1,440.00	\$7,200
TOTAL STRUCTURAL IMPROVEMENTS						\$45,336
PEMB						
	Canopy framing	PEMB Canopy	2,720	SF	\$80.40	\$218,688
					\$0.00	\$0
					\$0.00	\$0
					\$0.00	\$0
					\$0.00	\$0
					\$0.00	\$0
					\$0.00	\$0
TOTAL PEMB						\$218,688
Architecture						
	Canopy Finishes	Light fixtures	4	EA	\$420.00	\$1,680
		Relocated downspout	1	EA	\$240.00	\$240
		Painted, 20 gauge galvanized flashing	200	LF	\$12.00	\$2,400
		Additional girt/backing	105	LF	\$12.00	\$1,260
		Fire Suppression	2,720	SF	\$5.40	\$14,688
		Replace trim and flashing at opening	28	LF	\$30.00	\$840
		General Painting and touch-up	1	EA	\$2,400.00	\$2,400
		Skylights	4	EA	\$1,800.00	\$7,200
TOTAL Architecture						\$30,708
SUBTOTAL PROBABLE COST OF CONSTRUCTION						\$294,732
	General Conditions				8%	\$23,579
	Design and Engineering Fees				10%	\$29,473
	General Contractors Overhead and Fees				10%	\$29,473
	Bonds and Insurance				2%	\$4,421
	Contingency				10%	\$29,473
TOTAL ESTIMATED PROBABLE COST OF CONSTRUCTION						\$411,151

Table 2

SBWMA

Cost per Ton for Incremental Tons at Shoreway MRF

January 2014 for Calendar Year 2014

based on 15 Year life of Canopy

SUMMARY		Current - 2014		Increase	New - 2014		TOTAL
	\$ /ton	Total \$	\$ /ton		Total \$	Total \$	
3rd Party Tons		11,000				15,080	26,080
3rd Party Fee to SBWMA	\$ 10.30	\$ 10.30		\$ 1.05	\$ 11.35	\$ 13.00	\$ 13.00
Other fee	\$ -	\$ -			\$ 1.65	\$ -	
3rd Party Revenue to SBWMA	\$ 10.30	\$ 113,300			\$ 13.00	\$ 196,055	\$ 339,066
Variable Equipment Depreciation (see "A")	\$ 6.57	\$ 72,243			\$ 6.57	\$ 99,039	\$ 171,282
New Canopy Depreciation	\$ -	\$ -			\$ 1.05	\$ 27,410	\$ 27,410
Total Variable Depreciation	\$ -	\$ -			\$ 7.62	\$ 126,449	\$ 198,692
Margin	\$ 3.73	\$ 41,057			\$ 5.38	\$ 69,606	\$ 140,374

DETAIL		Current			New - 2014		
MRF COST, TONS	BASE	3rd Party Tons	Total	BASE	Incremental	Total	
Existing MRF Tons	67,451		67,451	67,451		67,451	
Current 3rd Party Tons		11,000	11,000	11,000		11,000	
New 3rd Party Tons			-		15,080	15,080	
Total Annual MRF Tons	67,451	11,000	78,451	78,451	15,080	93,531	
A. SBWMA DIRECT EXPENSE							
1. EQUIPMENT DEPRECIATION							
Equipment Capital Cost & Installation Total	\$ 17,804,000			\$ 17,804,000			
Replaceable Equipment Capital Cost (per BHS)	\$ 5,315,834			\$ 5,315,834			
Equipment Life (years)	12			12			
Depreciation Expense / Year	\$ 442,986			\$ 515,229			
adjusted for additional tons		\$ 72,243	\$ 515,229		\$ 99,039	\$ 614,268	
Depreciation Cost per Ton	\$ 6.57	\$ 6.57	\$ 6.57	\$ 6.57	\$ 6.57	\$ 6.57	
2. NEW CANOPY (IN 2014)							
Canopy Cost				\$ 411,151			
Life (years)				15			
Depreciation Expense / Year				\$ 27,410			
Depreciation Cost per Ton		N/A	\$ -	\$ 1.05	\$ 1.05	\$ 1.05	
B. OTHER OPERATING EXPENSE							
1. INTEREST EXPENSE							
Interest Expense - (5 Year Average)	\$ 2,808,180						
Allocated to MRF Equip - %	37.9%						
Allocated to MRF Equip - \$	\$ 1,064,396		\$ 1,064,396	\$ 1,064,396		\$ 1,064,396	
Interest Expense per Ton	\$ 15.78	N/A	\$ 13.57	\$ 13.57	N/A	\$ 11.38	
2. MRF BUILDING CAPITAL							
MRF Building Capital Improvements	\$ 12,189,000						
Life (years)	30						
Depreciation Expense / Year	\$ 406,300		\$ 406,300	\$ 406,300		\$ 406,300	
Depreciation Cost per Ton	\$ 6.02	N/A	\$ 5.18	\$ 5.18	N/A	\$ 4.34	
3. FIXED EQUIPMENT CAPITAL							
Fixed Equipment Capital	\$ 12,488,166						
Life (years)	18						
Depreciation Expense / Year	\$ 693,787		\$ 693,787	\$ 693,787		\$ 693,787	
Depreciation Cost per Ton	\$ 10.29	N/A	\$ 8.84	\$ 8.84	N/A	\$ 7.42	
Other Operating Expense- Total Cost per Ton	\$ 32.09		\$ 27.59	\$ 27.59		\$ 23.14	

Attachments:

Resolution 2014-18

Exhibit A -Memorandum of Understanding between SBWMA and SBR



RESOLUTION NO. 2014-18

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS LONG-TERM APPROVAL OF ADDITIONAL THIRD PARTY TONS INTO THE SHOREWAY MRF

WHEREAS, the SBWMA owns a Materials Recovery Facility (MRF) that has surplus processing capacity; and

WHEREAS, the SBWMA is interested in having SBR market this surplus capacity for the processing of third-party MRF tonnage in exchange for the payment of a host fee that would be paid by SBR to the SBWMA; and

WHEREAS, the terms and conditions a third-party MRF processing arrangement with SBR is detailed in **Exhibit A** and has been reviewed by the SBWMA Board.

NOW, THEREFORE BE IT RESOLVED that the South Bayside Waste Management Authority hereby authorizes the Executive Director to enter into an agreement with SBR for the processing of additional third-party tons from Recology through December 31, 2020.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 24th day of July, 2014, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton					Menlo Park				
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				

I HEREBY CERTIFY that the foregoing Resolution No. 2014-18 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on July 24, 2014.

ATTEST:

Bill Widmer, Chairperson of SBWMA

Cyndi Urman, Board Secretary

Exhibit A

**MEMORANDUM OF UNDERSTANDING
for the Long-Term Processing of Third-Party Tonnage from Recology
at the Shoreway Materials Facility**

This is an agreement (MOU) by and between the South Bayside Waste Management Authority, a California JPA (SBWMA) and South Bay Recycling (SBR), regarding the processing of Third-Party Tonnage at the Shoreway Environmental Center to be received from Recology, Inc. and/or its affiliates (“Recology”).

WHEREAS, the SBWMA owns a Materials Recovery Facility (MRF) that has surplus processing capacity and the SBWMA is interested in having SBR market this surplus capacity for the processing of third-party MRF tonnage in exchange for the payment of a host fee that would be paid by SBR to the SBWMA;

WHEREAS, on July 23, 2009, the Board approved the Shoreway Operations Agreement (the Agreement) with SBR effective January 1, 2011, Section 5.03 of the Agreement requires SBWMA written approval prior to receiving new materials in the MRF by SBR from Recology or other large third-party customers if not charged at the published gate rates (Third-Party Tonnage);

WHEREAS, on October 28, 2010, the Board approved conditions to the Agreement for the Operations of the Shoreway Recycling and Disposal Center with SBR, specifically to Section 5.03 that clarified the acceptance of Third-Party Tonnage into the MRF;

WHEREAS, on February 27, 2014, the Board approved Resolution 2014-03, approving on a temporary basis for SBR to process additional Third-Party Tonnage at the MRF that contained core terms for Agreement with SBR for processing Third-Party Tonnage at the Shoreway MRF from Recology;

WHEREAS, the parties wish to formalize the terms and conditions for the ongoing processing arrangement for processing the recyclable materials from Recology and to clarify that any agreement between SBR and Recology for processing of third-party tons is subordinate to the conditions set forth in this MOU and to the Agreement for Operations of the Shoreway Recycling and Disposal Center.

Therefore the following terms and conditions shall apply to SBR accepting and processing Third-Party Tonnage from Recology:

1. This agreement shall run concurrent with the SBR-SBWMA Operating Agreement.
2. Any change or extension of this agreement shall be in writing and approved by the SBWMA Board of Directors.

3. SBR shall pay SBWMA a "Host Fee" of \$13.00 for every Third-Party Tonnage received by SBR from Recology. The host fees shall be paid monthly by the 15th day of the following month and be adjusted by the CPI-U (Series ID CUURA422SA0) each January.

4. SBR shall retain all revenues from the sale of Recology recyclable materials and pay all operational costs, equipment and repair costs and residual disposal costs associated with the processing of the Recology tonnage.

5. SBR shall be responsible for and fully reimburse the SBWMA for any lost revenues that result from the Recology tonnage adversely impacting the Shoreway Environmental Center or the quality and marketability of the SBWMA Member Agencies' recycled commodities.

6. All of the terms and conditions of the Agreement for Operations of the Shoreway Recycling and Disposal Center shall apply to this MOU, to SBR's processing of the Recology tonnage.

7. SBWMA shall have the discretion to cancel this agreement in the event any of the following occur. Any notice of cancellation of this agreement shall be in writing and is effective thirty (30) days from delivery of written notice by SBWMA to SBR.

A. If the processing of the Recology tonnage cannot reasonably be performed without interfering with the daily operation or effectiveness of the MRF.

B. If SBR or SBWMA receives any notice of regulatory violations related in any way to the processing of the Recology tonnage and the regulatory violation is not corrected within thirty (30) days of notification from the Regulatory Agency.

C. If SBR is found to have violated or breached any of the terms of the Operations Agreement as a result of the processing of the Recology tonnage, and the event constitutes a Default under Section 11.01 of the Operating Agreement.

Dated: _____

SBR

Dated: _____

SBWMA



To: SBWMA Board Members
From: Cliff Feldman, Recycling Programs Manager
Date: July 24, 2014 Board of Director's Meeting
Subject: Consideration of Introduction of Ordinance Implementing a Recycling Reporting System for Commercial Recycling Haulers

Recommendation

It is recommended that the SBWMA Board of Directors introduce the attached Ordinance No. 002 - Recycling Reporting Requirements for Commercial Recycling Haulers (**Attachment A**) by the following motion:

"Move to introduce an ordinance entitled Ordinance No. 002 – Recycling Reporting Requirements for Commercial Recycling Haulers and waive further reading of the Ordinance."

Analysis

Overview

The primary rationale for adopting this Ordinance is to enable RethinkWaste to develop a more complete picture of existing diversion efforts for the commercial sector, since the only diversion information currently available is provided by the Member Agencies franchised service provider, Recology San Mateo County (Recology). Based solely on the Recology data, the current commercial diversion rate for 2013 was 28%. The actual overall commercial diversion rate is likely much higher once we factor in diversion data from non-franchised haulers. As noted in the May 22, 2014 BOD staff report on benchmarking SBWMA's Recycling, Public Outreach and Shoreway Tour Programs, this commercial diversion rate is low relative to other surveyed communities.

This SBWMA-wide Ordinance would implement reporting requirements for non-franchised commercial recycling haulers (e.g., paper recycling companies, scrap metal haulers, construction and demolition debris haulers, businesses that backhaul recyclables and/or compost materials to distribution centers, etc.) in an effort to begin collecting diversion data that is currently unavailable. The Ordinance will become effective on January 1, 2015 and the haulers will be required to commence providing reports for the first quarter of 2015 by April 30, 2015. Implementation of reporting requirements assumes RethinkWaste will adopt an Ordinance requiring recycling hauling companies to submit quarterly reports on the volumes and types of recyclable materials that are collected in our service area. The haulers will be requested to provide data by Member Agency if available. Obtaining such data is critical for future waste diversion planning purposes, including completion and implementation of the SBWMA Long Range Plan. However, collecting the data is not required for complying with State mandated recycling laws (e.g., AB 939, AB 341, etc.).

As the JPA is responsible for service area wide diversion (i.e., waste reduction, recycling and composting programs) planning, it makes sense for the JPA to implement one Ordinance as opposed to individual Member Agencies implementing separate Ordinances. It would also make it easier for companies that have to comply with the Ordinance to have one point of contact to direct questions and get registered in lieu of having to deal with multiple jurisdictions. It would also guarantee that data is collected for all Member Agencies instead of relying on the Member Agencies individually to adopt and implement Ordinances as some Member Agencies may choose

not to. Thus, the effort to collect data would be compromised from the JPA perspective if data was not collected for all Member Agencies.

The JPA will work closely with the Member Agencies to supplement the list of potential registrants which has already been compiled. Staff will also confer with key Member Agency staff on any implementation challenges, issues that may arise and potential future enforcement efforts. The Ordinance was crafted to encourage commercial recycling haulers to provide the needed data while the SBWMA's enforcement activities will be limited. In addition, the Ordinance is not intended to place an undue burden on recycling haulers nor require significant JPA resources to implement. The Implementation Schedule to commence this project is provided as **Attachment B**.

At the March 27, 2014 Board meeting, the Board discussion centered on a few issues including:

- The need for an Ordinance when haulers would provide this data voluntarily
- Importance of the JPA coordinating its efforts with the Member Agencies in terms of program outreach, potential enforcement issues, etc.
- Determining a specific fee amount to be charged businesses

Most critically, the Board directed Staff to reach out to a cross section of potentially affected haulers to determine if they would provide data voluntarily. Staff's effort to obtain data from businesses voluntarily is presented on the following page. The results do not support pursuing a voluntary effort only to collect diversion data. The results did reinforce, though, staff's previous comments to the TAC and Board that such non-franchise commercial diversion could be significant and the JPA's ability to quantify this diversion would be of great benefit for program planning purposes.

Efforts to Obtain Data from Haulers Voluntarily

Per the Board's direction at the March Board of Director's meeting, Staff developed and implemented a stakeholder engagement project in an effort to obtain the data sought voluntarily from the commercial recycling haulers. The stakeholder engagement entailed targeting 37 haulers representative of the 7 hauler types comprising the full list of potential (i.e., identified through initial research) haulers totaling 165. These haulers were sent emails and contacted on the phone. **Table 1** below shows the results of this effort. All 37 haulers were contacted multiples times, which included a minimum of two to three phone calls and three emails to each, not including going to great lengths to identify the person most appropriate to contact at each hauler. However, only three haulers provided a report on the data they hauled. It is important to note that extrapolating the tons reported from only these three haulers for four quarters (i.e., 6,884 tons) and comparing this 3rd party hauler diversion to Recology's efforts to collect similar materials through its franchised services in 2013, results in documenting an approximately 30% increase in our existing commercial diversion rate.

Table 1
Details of Hauler Type and Data Reported Voluntarily for the First Quarter of 2014

Hauler Type	# of Haulers in SBWMA Service Area	# of Targeted Haulers for Initial Stakeholder Engagement	# of Targeted Haulers Reporting Data	% of Targeted Haulers Reporting Data	First Quarter 2014 Tons Reported
Backhaul	63	9	1	11%	45.0
C&D ¹	33	9	1	11%	1,610.5
Small	38	5	0	0%	0.0
Large	18	8	1	13%	65.6
Metal	4	2	0	0%	0.0
Paper	7	2	0	0%	0.0
Plastics	2	2	0	0%	0.0
TOTAL	165	37	3	8%	1,721.1

¹ While the "C&D" hauler type explains the characterization of these haulers, the data reported by this hauler is similar to the commercial Compost material that Recology collects from the commercial sector.

Background

At the May 23, 2013 Board meeting, staff shared the preliminary results of the research project on Non-Exclusive Franchise Options for Commercial Recycling. Staff explained the efforts of other public agencies in California that implemented systems to capture data from many of the independent recycling companies that haul recyclables. In addition, Staff explained how this could be accomplished in the SBWMA service area and why this data is critical for RethinkWaste to ascertain how best to focus its efforts in the pursuit of increasing diversion from the commercial sector which still contributes approximately two-thirds of all the garbage generated. The challenges faced and best practices employed were highlighted in order to guide RethinkWaste in developing a policy and program that would be successful and to provide detailed information to interested stakeholders during the stakeholder engagement process. Another staff report on this project was provided to the Board for its October 24, 2013, February 27, 2014 and March 27, 2014 meetings and this item was discussed in detail with the TAC at its November 7, 2013, February 13, 2014 and March 13, 2014 meetings.

Section 4.01(B)(1) of the Member Agencies Franchise Agreements with Recology provide the company the non-exclusive right to collect source separated recyclables and compost from commercial accounts. Therefore, the open market competition for the collection of recycling and compost which has always characterized our service area has been preserved. While Recology's commercial recycling collection services and commercial recycling outreach staff of nine full time employees are paid for through the Member Agency's solid waste rates, the businesses in the service area are not bound to subscribing to Recology's collection service. Many businesses offer commodities for sale in the marketplace, such as high-grade paper and corrugated cardboard, and many others backhaul recyclables and/or compostables to their distribution facilities (e.g., large grocery and chain stores).

In addition, per AB341 (California's Mandatory Commercial Recycling Law), commencing July 1, 2012, all businesses that generate four cubic yards or more of garbage per week or multifamily dwelling complexes of five units or more are required to recycle.

At the March 27, 2014 Board meeting a revised ordinance was provided reflective of changes per discussions with the TAC and SBWMA legal counsel. These revisions included: changing the system from requiring permits to simply

requiring applicants to register and then provide reports quarterly; significantly simplifying enforcement to only administer an administrative fine for non-compliance; establishing the Ordinance will become effective on January 1, 2015; and, including sections 2, 3 and 4 concerning severability and applicable Government Code sections.

Fiscal Impact

The approved FY1415 budget includes \$25,000 to hire a consultant to assist Staff with the stakeholder engagement and implementation of an SBWMA-wide Ordinance implementing a reporting system for commercial recycling haulers. Ongoing maintenance of the program is anticipated to be less in future years. The Ordinance establishes an administrative fee in an amount not to exceed \$150.00 to cover the SBWMA costs to administer the Ordinance. This administrative fee will be charged to commercial recycling haulers required to register and submit reports and is anticipated to generate approximately \$25,000 in revenue commencing in calendar year 2015.

In addition, the FY1415 budget includes a one-time expense of \$10,000-\$15,000 to develop the software update needed for the online registration and reporting system. (The FY1314 budget included similar funding which was not spent due to delays in adopting the Ordinance.)

For future implementation and maintenance, staff will not be proposing any additional staff to administer this program but will rely on the support of outside contractors if needed.

Attachments:

Attachment A – SBWMA Ordinance No. 002: Recycling Reporting Requirements for Commercial Recycling Haulers

Attachment B – Implementation Schedule



ORDINANCE NO. 002

ORDINANCE OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY ADOPTING RECYCLING REPORTING REQUIREMENTS FOR COMMERCIAL RECYCLING HAULERS

IT IS ORDAINED by the Board of Directors of SBWMA as follows:

SECTION I: The following ordinance regarding Commercial Recycling Reporting is adopted:

I. Findings

A. The Board of Directors finds that there is a need to implement a Reporting System for Commercial Recycling Haulers to begin collecting recycling diversion data that is currently unavailable.

B. Currently the Agency receives recycling diversion data only from the Member Agencies franchised recycling service provider, Recology San Mateo County. Based solely on the Recology data, the most recently reported annual commercial recycling diversion rate for Agency Service Area in 2013 was 28%.

C. Implementation of a Reporting System requiring Commercial Recycling Haulers to submit quarterly reports on the volumes and types of recyclable materials that are collected within the Agency Service Area would allow the Agency to develop a more complete picture of existing recycling diversion efforts for the commercial sector.

D. Implementing a Reporting System for Commercial Recycling Haulers will enable the Agency to capture data that is needed for future planning purposes related to increasing recycling diversion to better meet State mandates.

II. Purpose

A. This Ordinance establishes a system for registering Commercial Recycling Haulers who are performing services in the Agency Service Area and receiving from them information on the volume and types of Recyclable Materials that they collect in the Agency Service Area. To achieve this reporting requirement, each Commercial Recycling Hauler will be required to submit to Agency a Recycling Report quarterly.

B. This Ordinance is not intended to preclude a Commercial Entity or a building or demolition contractor from contracting with more than one Commercial Recycling Hauler or from donating, selling or otherwise disposing or hauling Recyclable Materials.

III. Definitions

“Agency” means the South Bayside Waste Management Authority (SBWMA) or Rethink Waste, which is a joint powers authority comprised of the Member Agencies.

“Agency Clerk” means the SBWMA Board Secretary.

“Agency Service Area” means the service area comprised of the Member Agencies, which include the following: Town of Atherton, City of Belmont, City of Burlingame, City of East Palo Alto, City of Foster City, Town of Hillsborough, City of Menlo Park, City of Redwood City, City of San Carlos, City of San Mateo, sections of unincorporated San Mateo County, and West Bay Sanitary District.

"Applicant" means any person, business, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, public or private corporation, or any other entity whatsoever who is required to register and report to the Agency.

“Board of Directors” means the governing body of the Agency.

“Collection Container” means any container used to store and collect Solid Waste, Targeted Recyclable Materials, Organic Materials, or any other material targeted for collection by a Recycling Hauler.

“C&D Debris” (“Construction and Demolition Debris” or “C&D”) means materials resulting from construction, renovation, remodeling, repair, or demolition operations on any Residential, Commercial or other structure or pavement.

"Commercial" means a business activity including, but not limited to, retail sales, wholesale sales, services, research and development, government, private schools, colleges and universities, non-profit, hospital, manufacturing, institutional and industrial operations, but excluding businesses conducted upon residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

“Commercial Entity” means a Commercial business that generates Recyclable Materials and/or Organic Materials in the Agency’s Service Area.

“Commercial Recyclables” means Recyclable Materials generated by a Commercial business.

“Commercial Recycling Hauler” means a Person or Entity engaged in commercial hauling of Recyclable Materials in the Agency Service Area.

“Director” means the Executive Director of the Agency or designee.

“Discarded Material” means Solid Waste, Targeted Recyclable Materials, and Organic Materials placed by a Generator in a Collection Container and/or at a location that is designated for Collection pursuant to a Member Agency’s Code.

"Food Scraps" means a subset of Organic Materials including: (i) all kitchen and table food waste, and animal or vegetable fruit, grain, dairy or fish waste that attends or results from the storage, preparation, cooking or handling of foodstuffs, with the exception of animal excrement, (ii) paper waste contaminated with putrescible material, and (iii) biodegradable plastic food service ware.

"Generator" means any Person whose act or process produces Solid Waste, Targeted Recyclable Materials, or Organic Materials.

"Member Agencies" means the following jurisdictions: the cities of Belmont, Burlingame, East Palo Alto, Foster City, Menlo Park, Redwood City, San Carlos, and San Mateo; the towns of Atherton and Hillsborough; the County of San Mateo; and the West Bay Sanitary District.

"Organic Materials" means those materials that will decompose and/or putrefy and that the Agency permits, directs, or requires Generators to separate from Solid Waste and Targeted Recyclable Materials for collection in specially designated containers for Organic Materials collection. Organic Materials include Plant Materials, Food Scraps, paper contaminated with Food Scraps, biodegradable plastic food service ware, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No Discarded Material shall be considered Organic Materials, unless such material is separated from Solid Waste and Targeted Recyclable Material.

"Person" means any individual of Commercial Entity.

"Recycling Hauler" means an entity that engages in the activity of hauling or transporting Targeted Recyclable Materials and/or Organic Materials generated by Commercial businesses, but does not include haulers and transporters of electronic scrap (as defined by California Public Resources Code §66273), universal waste, hazardous waste or radioactive waste.

"Recyclable Materials" means discarded commingled or source separated materials including C&D Debris that can be re-used, remanufactured, reconstituted, or recycled.

"Recycling Registration " means the registration of Commercial Recycling Haulers required by this Ordinance to provide information on Recyclable Materials and/or Organic Materials hauled in the Agency's Service Area.

"Recycling Report" means the report providing information on the volume and types of Recyclable Materials and/or Organic Materials transported by the Recycling Hauler in the Agency's Service Area.

"Solid Waste" means all putrescible and non-putrescible solid, semisolid, and liquid wastes, as defined in California Public Resources Code §40191.

“Targeted Recyclable Materials” means a subset of Recyclable Materials that includes: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, paperboard, paper egg cartons, telephone books, books, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes); chipboard; corrugated cardboard; paper milk cartons; glass containers of any color (including brown, blue, clear, and green); aluminum (including food and beverage containers, foil, small pieces of scrap metal); scrap metal (ferrous and non-ferrous) steel, tin or bi-metal; plastics (i.e., both thermoform and thermoset plastics); and C & D Debris.

IV. Commercial Recycling Hauler Registration

A. Commercial Recycling Haulers shall register with the Agency and provide Recycling Reports as set forth in this Ordinance in the Agency Service Area.

B. Registration shall be in writing and submitted in a format specified by the Director, and pay an administrative fee to the Agency in an amount not to exceed \$150.00 established by the Director.

C. Registration of a Commercial Recycling Hauler shall be renewed every two years.

V. Appeals

Persons or Commercial Entities that are dissatisfied with any decision or determination of the Director pursuant to this Ordinance shall have the right to appeal that decision to the Board of Directors if the appeal is filed with the Agency Clerk fifteen (15) days of the decision of Director.

VI. Reporting Requirements

A. Commercial Recycling Haulers shall be required to submit a report each calendar quarter to the Agency providing data on the volume and type of Recyclable Materials hauled during that calendar quarter from Commercial Entities in the Agency Service Area. To the extent feasible, the data provided in the Recycling Report should be attributable to the jurisdiction of the Member Agency where it was generated. The Recycling Report shall be due to the Agency thirty (30) calendar days after the end of each calendar quarter as follows: First Quarter (January-February-March) report due April 30; Second Quarter (April-May-June) report due July 30; Third Quarter (July-August-September) report due October 30; Fourth Quarter (October-November-December) report due January 30.

The format of the Recycling Report and submittal guidelines shall be determined by the Director. The data to be included by the Commercial Recycling Hauler in the Recycling Report

must provide to the furthest extent possible the specific volumes and types of Recyclable Materials by weight (e.g., tons) and by the source of generation.

VII. Civil Administrative Penalties

Recycling Haulers that fail to comply with any or all of the provisions of this Ordinance shall be subject to the issuance of civil administrative penalty in the amount of \$100 for the first failure to comply, \$250 for the second failure to comply, and \$500 for each subsequent failure to comply.

A. The Director shall establish the procedures and notification protocol to administer civil administrative penalties.

VIII. Enforcement

Except as otherwise expressly provided, the provisions of this Ordinance shall be administered and enforced within the Agency Service Area by the Director or other staff and enforcement officials designated by the Director. The remedies set forth herein are cumulative to any other remedy available to the Agency or Member Agencies.

IX. Effective Date:

This Ordinance shall not be effective until January 1, 2015. It is the intent of the Agency to provide Commercial Recycling Haulers with advance information and assistance with the terms of this Ordinance.

SECTION 2: Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The SBWMA Board hereby declares that it would have adopted this Ordinance and such section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

SECTION 3: Pursuant to Section 36937 of the Government Code of the State of California, this Ordinance shall not take effect and be in full force and effect until thirty (30) days from its final passage and pursuant to Section IX above shall not be in effect until January 1, 2015.

SECTION 4: The Clerk of the Board shall cause this Ordinance to be published and posted in accordance with the requirements of Section 36933 of the Government Code of the State of California.

Introduced this _____ day of _____, 2014.

PASSED AND ADOPTED as an Ordinance of the Board of Directors of the SBWMA at a regular meeting thereof held on the _____ day of _____, 2014.

AYES, BOARD MEMBERS: _____

NOES, BOARD MEMBERS: _____

ABSENT, BOARD MEMBERS: _____

ABSTAIN BOARD MEMBERS: _____

Chair of the SBWMA

ATTEST:

Clerk of the SBWMA Board of Directors



A Public Agency

Attachment B
Implementation Schedule

<u>Date</u>	<u>Activity</u>
July 24, 2014	<ul style="list-style-type: none"> • Board introduces of Ordinance (first reading).
September 25, 2014	<ul style="list-style-type: none"> • Board adopts of Ordinance (approval finalized).
October - December 2014	<ul style="list-style-type: none"> • Develop the protocol and procedures to implement the Ordinance, including: application and reporting formats, registration and reporting review process, enforcement process, outreach strategy and needs. • Establish registration fee. • Develop software to facilitate online application and reporting compliance. • Commence stakeholder engagement and outreach
January 1, 2015	<ul style="list-style-type: none"> • Effective date of Ordinance. • Compliance commences with submittal of 1st quarter 2015 report (due April 30, 2015).
January - March 2015	<ul style="list-style-type: none"> • Continue outreach effort • Conduct stakeholder meetings with haulers and chambers of commerce • Update website with information on the reporting system and commence accepting registrations. • Include hauler best practices information on website. • Test online application and reporting system with several stakeholders. • Refine application and reporting system. • Develop and produce outreach tools and design changes to website. • Provide assistance to haulers in completing registrations and submitting sample reports.
March 30, 2015	<ul style="list-style-type: none"> • Registration deadline for applicants.
April - May 2015	<ul style="list-style-type: none"> • Conduct additional outreach to facilitate haulers to register and submit reports.
April 30, 2015	<ul style="list-style-type: none"> • 1st Quarter 2015 Report(s) due (Jan-Feb-Mar)
May 2015 - ongoing	<ul style="list-style-type: none"> • Assess compliance. • Pursue enforcement as needed. • Compile data. • Make adjustments to system as needed.
July 30, 2015	<ul style="list-style-type: none"> • 2nd Quarter 2015 Report(s) due (Apr-May-June)
October 30, 2015	<ul style="list-style-type: none"> • 3rd Quarter 2015 Report(s) due (July-Aug-Sept)
January 30, 2016	<ul style="list-style-type: none"> • 4th Quarter 2015 Report(s) due (Oct-Nov-Dec)