



A Public Agency

ADMINISTRATION AND FINANCE

STAFF REPORT

To: SBWMA Board Members
From: Joe LaMariana, Executive Director
John Mangini, Senior Finance Manager
Date: November 15, 2018 Board of Director's Meeting
Subject: Resolution Approving the Revised Reserve Policy

Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2018-38 attached hereto authorizing the following action:

Resolution approving the revised Reserve Policy as found in Attachment A.

Summary

The Cash Reserve Policy has been revised to establish a Capital Reserve to address the need to fund large-scale planned capital projects that carryover in the next several years and made other updates. This policy was last updated in 2013. This proposed policy change has been reviewed by the Finance Committee on November 5th, 2018, which recommends it for approval.

Analysis

Proposed New Policy Changes

The proposed changes to the reserve policy include these major items as well as clean up language:

- Added a new **Capital Reserve**. It will be based on the Agency's five-year capital plan, and approved during the budget approval process.
- Defines operating expense for reserve funding purposes.
- Set the priority of funding for each reserve.
- Established how funds in each reserve could be spent.
- Establish a methodology to replenish a utilized reserve to an appropriate level.

While the FY18/19 budget presentation of the SBWMA reserves showed a Capital Reserve, it was not actually recognized in the reserve policy. Rather, the Undesignated Reserve had been renamed Capital Reserve but since it was the last or "plug" reserve to be funded, it showed a \$2.5 million decrease in the FY18/19 budget just as the future planned capital project expenditures are expected to greatly increase. Thus a new Capital Reserve is proposed to address this problem and set up a distinct reserve as a mechanism to hold funds for future capital projects.

In reviewing other city and JPA reserve policies, there is no clear consensus around establishing minimum reserve levels. There does appear to be commonality around having flexibility in establishing reserve levels which we have continued. It is not feasible to accurately establish, for instance, how much could be needed after an earthquake. There are too many variables to consider and a practical limit on how much we can fund from customer tip fees. We believe the approx. \$4 to \$5 million would provide the Agency with an appropriate funding base to work with. In the event of a

disaster. This proposed policy also allows the Board with the prerogative to designate all or a portion of the reserve balance towards immediate Agency emergency needs. Currently, the cumulative amount that would be available in such a situation is \$10,790, 851.

Impact of New Policy on SBWMA Reserve

Table 1 (below) shows the final approved FY18/19 budget reserves. **Table 1A** (below) shows the expense components used when calculating percent of expense.

Table 1

ADOPTED FY18/19 BUDGET: RESERVE BALANCES					
	ACTUAL FY16/17	ADOPTED BUDGET FY17/18	MID-YEAR BUDGET FY17/18	ADOPTED BUDGET FY18/19	FY19 vs. FY18 Mid-Year Budget
UNCOMMITTED RESERVE:					
RATE STABILIZATON (10% of expense)	\$ 4,033,671	\$ 4,237,586	\$ 4,756,987	\$ 4,938,136	\$ 181,150
EMERGENCY RESERVE (10% of expense)	4,033,671	4,237,586	4,756,987	4,895,300	138,314
CAPITAL RESERVE (Undesignated)	6,828,704	4,438,135	3,437,843	957,415	(2,480,428)
TOTAL UNCOMMITTED RESERVES	\$ 14,896,047	\$ 12,913,307	\$ 12,951,816	\$ 10,790,851	\$ (2,160,965)
COMMITTED RESERVE					
EQUIPMENT REPLACEMENT (ANNUAL)	\$ 1,192,148	\$ 1,723,744	\$ 1,723,744	\$ 1,397,514	\$ (326,231)
TOTAL RESERVES	\$ 16,088,195	\$ 14,637,052	\$ 14,675,560	\$ 12,188,365	\$ (2,487,195)

Table 1A

FY18/19 Budget Expense Detail				
EXPENDITURE SUMMARY	ACTUAL FY16/17	ADDOPTED BUDGET FY17/18	MID-YEAR BUDGET FY17/18	PROPOSED BUDGET FY18/19
TOTAL SBWMA PROGRAM BUDGET	\$ 2,483,403	\$ 3,653,015	\$ 3,688,963	\$ 3,375,780
SUB SHOREWAY OPERATIONS COST	\$ 35,651,898	\$ 35,927,570	\$ 38,887,988	\$ 41,110,633
DEBT SERVICE BOND INTEREST	\$ 2,759,746	\$ 2,710,170	\$ 2,710,170	\$ 2,641,333
FRANCHISE FEE TO CITY OF SAN CARLOS	1,853,604	1,846,710	2,024,236	2,253,616
TOTAL EXPENSES (SBWMA Program + All Shoreway Operations)	47,474,554	44,137,465	47,569,865	\$ 49,381,362
10% of Expense				4,938,136

Hypothetical Scenario Using Proposed New Policy Language:

Table 2 below shows a revised hypothetical FY18/19 reserve based on the proposed new Reserve Policy. Some assumptions have been made on the Capital Reserve since we did not present a 5 year capital schedule as it was not fleshed out enough. Also, the Rate Stabilization Reserve shows usage based on the decline in budgeted net commodity revenue caused by falling commodity prices since this is what the reserve was intended for. Notice that the total reserve balance does not change, just the balance in each separate reserve.

Table 2

EXAMPLE OF PROPOSED POLICY CHANGE					
FY18/19 BUDGET: RESERVE BALANCES PROPOSED					
	ACTUAL FY16/17	ADOPTED BUDGET FY17/18	MID-YEAR BUDGET FY17/18	ADOPTED BUDGET FY18/19	FY19 vs. FY18 Mid-Year Budget
UNCOMMITTED RESERVE:					
RATE STABILIZATON RESERVE	\$ 4,033,671	\$ 4,237,586	\$ 2,655,153	\$ 1,007,000	\$ (1,648,153)
EMERGENCY RESERVE	4,033,671	4,237,586	4,756,987	4,800,000	\$ 43,014
CAPITAL RESERVE	4,438,135	4,438,135	4,438,135	4,900,000	\$ 461,865
UNDESIGNATED	2,390,569	-	1,101,542	83,851	\$ (1,017,691)
TOTAL UNCOMMITTED RESERVES	\$ 14,896,047	\$ 12,913,307	\$ 12,951,816	\$ 10,790,851	\$ (2,160,965)
COMMITTED RESERVE					
EQUIPMENT REPLACEMENT (ANNUAL)	\$ 1,192,148	\$ 1,723,744	\$ 1,723,744	\$ 1,397,514	\$ (326,231)
TOTAL RESERVES	\$ 16,088,195	\$ 14,637,052	\$ 14,675,560	\$ 12,188,365	\$ (2,487,195)

Current Policy Description

The current cash reserve policy encompasses three designated reserve accounts as follows – the purpose of each reserve does not change in the new policy:

The Rate Stabilization Reserve is to set aside funds to minimize Transfer Station rate increases resulting from significant one-time revenue shortfalls (e.g., commodity price decreases, loss of tipping fee revenues due to short or long-term closure of the Shoreway facility, etc.).

The Emergency Reserve is to address limited capital needs or significant one-time increases in Shoreway operating expenses as a result of damage caused by natural disasters, acts of war or terrorism, or other community emergency scenarios that are not covered by existing insurance policies. Notably, we currently do not have insurance coverage for damage from a seismic event, flood damage, and damage caused by an act of terrorism. Seismic insurance coverage is reviewed annually but has been declined by the Board due to the high cost (i.e., last quote was \$450,000 per year with a 10 percent deductible). We do maintain coverage for fire; natural gas explosion; a plane crashing into our property; and weather related damage from wind, lightning, or a severe storm.

The Equipment Replacement Reserve is a sinking fund that is funded annually and then drawn down as monies are needed for major MRF equipment capital repairs, and eventually for partial replacement of the single stream processing equipment within the Material Recovery Facility (MRF). The Equipment Replacement Reserve covers the expected equipment replacement costs after the assumed 12-year depreciable life of the single stream processing equipment installed in 2011 plus any significant one-time equipment repair (wear parts) costs not covered in our Shoreway capital budget. Per the Operations Agreement with SBR, the SBWMA is responsible for any repair expenses to stationary equipment when the repair for a single item exceeds \$10,000.

There is also a **Capital Reserve** that was formerly called the **Undesignated Reserve** which is essentially the “plug” reserve into which excess funds above the needs of the three designated reserves are put. This causes the Capital Reserve balance to fluctuate greatly and is not addressing the needs of funding capital projects. Therefore a distinct Capital Reserve is being added to the policy so that the reserve balance can hold funds for capital projects.

Background

The current cash reserve policy was reviewed by the Board of Directors in March 2014 and July 2015. No changes were made to the policy.

The policy was last revised at the May 23, 2013 Board Meeting to reflect more clarity in defining the purpose and use of each reserve account. Key changes were made to the reserve policy as follows:

- Maintained two previous reserve accounts (Rate Stabilization Reserve and Equipment Replacement Reserve) and replaced the Operating Reserve with an Emergency Reserve Account.
- Changed the priority order of the accounts so the Rate Stabilization Reserve is first in priority followed by the Emergency Reserve.
- Excluded certain operation expenses (i.e., Shoreway buyback payments to customers and door to door HHW collection expenses) in the calculation of the fund levels for each account (i.e., up to maximum of 10% of Operating Expenses) for the Rate Stabilization Reserve and the new Emergency Reserve.

Fiscal Impact

There is no direct fiscal impact from maintaining the reserve policy other than its intended when needed and approved by the Board. A change in the reserve policy could have a one-time impact to tip fees at Shoreway if the reserves are increased or decreased.

Attachments:

Resolution 2018-38

Exhibit A - Proposed Reserve Policy (2019)

Attachment A - Current Reserve Policy (2013)



RESOLUTION NO. 2018-37

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS AUTHORIZING THE RESOLUTION APPROVING THE REVISED RESERVE POLICY

WHEREAS, the South Bayside Waste Management Authority (SBWMA) last revised the Reserve Policy at the May 23, 2013 Board of Directors Meeting.

WHEREAS, the current reserve policy does not fully meet the needs of the SBWMA, and

WHEREAS, the revised policy establishes a new Capital Reserve Fund, and

WHEREAS, the revised policy defines operating expense for funding purposes, sets the priority of funding for each reserve, establishes how funds in each reserve could be spent, and

WHEREAS, the revised policy establishes a methodology to replenish a utilized reserve to an appropriate level.

NOW, THEREFORE BE IT RESOLVED that the South Bayside Waste Management Authority hereby approves the Revised Reserve Policy as found in Exhibit A.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 15th day of November, 2018, 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. 2018-37 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on November 15, 2018.

ATTEST:

Charlie Bronitsky, Chairperson of SBWMA

Cyndi Urman, Board Secretary

Exhibit A

Proposed SBWMA Reserve Policy – 2019

This policy replaces the previous policy approved by the Board in 2013.

The purpose of the Reserve Policy is to establish reserve funds to meet known and estimated future obligations or unknown events causing economic or physical disruption. This policy establishes the level of fund balances and the process whereby funds may be spent. The source of all SBWMA funds are tip fee revenue and commodity revenue.

After meeting all normal operating and debt service obligations of the SBWMA, the following reserve accounts shall be funded in the order of priority as shown below:

1. Rate Stabilization Reserve of up to a maximum of ten percent (10%) of budgeted operating expenses. This fund is available to help minimize Transfer Station tip fee increases resulting from significant one-time revenue shortfalls (e.g., commodity price decreases, loss of revenue due to short closure of the Shoreway facility, etc.). Staff shall propose use of this fund when warranted which will be approved by the Board during the budget approval process.

2. Emergency Reserve of up to a maximum of ten percent (10%) of budgeted operating expenses. This fund is established to make limited emergency capital repairs and reconstruct the Shoreway facility buildings and infrastructure that may be damaged by natural disasters, acts of war or terrorism, or other community emergency scenarios that are not covered by existing insurance policies. Such capital expenses would be those that could not be funded through an existing capital budget. This fund is also available to cover significant one-time increases in operating expenditures associated with the above scenarios.

Use of this fund is approved by the Finance Committee on an emergency basis and subsequently approved by the Board at the next Board meeting.

3. Equipment Replacement Reserve is established to replace single stream MRF processing equipment based on a 12 year replacement schedule as recommended by the manufacturer. This reserve would also be available to fund any significant one-time unanticipated equipment repair (wear parts) costs not covered in our Shoreway capital budget. Use of this fund is for the actual replacement of existing MRF processing equipment above the \$10,000 maximum responsibility of SBR for any single item of equipment repair.

4. Capital Project Reserve is intended to fund future capital projects that need to be funded over a term longer than one year and cannot be absorbed by one budget period. The proposed balance and use of this fund shall be approved by the Board as a part of the annual budget process based on a five-year capital project plan.

5. Undesignated Reserve shall hold any excess funds after the above reserves are fully funded.

All reserve fund levels will be approved each year as part of the adoption of the fiscal year budget. During the budget process, projected net cash flow, reserve balances, and debt covenant requirements are considered when budgeting Shoreway tip fees which are the main source of reserve funds.

Operating expense for the purpose of funding the first two reserves are defined as all cash expenses including Shoreway operations, SBWMA program, bond interest and franchise fees. Excluded are non-cash expenses such

as depreciation. Also excluded are any expenses that are 100% offset by revenue from the same source such as the now defunct HHW program.

It is important to note that the first two funds are basically static funds with minimal annual changes. Going forward, these balances will be established each year as part of the adoption of the fiscal year budget. Ten percent is not added each year – this is the fixed limit.

The third and fourth funds are cumulative funds as cash is added each year to reach the total amount needed and depleted by the approved and designated expenditures.

If a reserve fund is utilized to the extent the Board concludes that the fund requires replenishment, a plan to replenish the reserve over a three year budget cycle to an appropriate level is to be established.

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Attachment A

April 2013 Reserve Policy

After meeting all debt service obligations of the SBWMA the following reserve accounts shall be funded in the following order of priority:

1. Rate Stabilization Reserve Fund of up to a maximum of ten (10%) percent of budgeted operating expenses, exclusive of pass through expenses that are 100% offset by revenue from the same sources (e.g., Shoreway buyback payments to customers and door to door HHW collection expenses). These funds are available to help minimize Transfer Station rate increases resulting from significant one-time revenue shortfalls (e.g., commodity price decreases, loss of tipping fee revenues due to short or long-term closure of the Shoreway facility, etc.).

2. Emergency Reserve Fund of up to a maximum of ten (10%) percent of budgeted operating expenses, exclusive of pass through expenses that are 100% offset by revenue from the same sources (e.g., Shoreway buyback payments to customers and door to door HHW collection expenses). This fund is available to make limited capital repairs and reconstruct the Shoreway facility buildings and infrastructure that may be damaged by natural disasters, acts of war or terrorism, or other community emergency scenarios that are not covered by existing insurance policies. Such capital expenses would be those that could not be funded through an existing capital budget or those not reimbursable through insurance coverage. This fund is also available to cover significant one-time increases in operating expenditures associated with above said scenarios.

3. Equipment Replacement Reserve Fund for a 12 year cost replacement schedule, inclusive of an annual CPI adjustment, for the Shoreway MRF single stream processing equipment. This reserve would also be available to fund any significant one-time unanticipated equipment repair (wear parts) costs not covered in our Shoreway capital budget.

Fund levels will be approved each year as part of the adoption of the fiscal year budget. During the budget process, projected net cash flow, reserve balances, and debt covenants are considered when budgeting Shoreway tip fees. Excess cash flow is minimized by adjusting tip fees to cover operating expenses and fund reserve balances.

It is important to note that the first two funds are basically static funds with minimal annual changes which are based on fluctuations in the annual operating budget. Ten per cent is not added each year – this is the fixed limit. The third fund is a cumulative fund as cash is added each year to reach the total amount needed at the end of the twelve year replacement period.

If after all reserve levels are funded up to their maximum levels and tip fees are budgeted, minimal surplus cash may be available. The adopted budget will include specific guidance on the use of such surplus cash with a goal of utilizing the monies for one-time expenditures, non-recurring costs, or funding an undesignated reserve fund.

STAFF REPORT

To: SBWMA Board Members
From: Joe La Mariana, Executive Director
Date: November 15, 2018 Board of Directors Meeting
Subject: Discussion on Discontinuing Ordinance No. 002 (2014), Regarding Reporting Requirements for Non-Franchised Recycling Haulers

Recommendation

Staff is seeking direction from the Board on the continuation of the Commercial Recycling Ordinance initiated in 2014. In consideration of Agency resources and the relative utility provided to the SBWMA of the Ordinance reports, Staff is recommending discontinuance of this Ordinance.

Summary

In 2014, the Board adopted a “Commercial Recycling Ordinance” that requires non-franchised commercial haulers of recyclable materials to submit quarterly reports to the SBWMA regarding types and amounts of materials hauled. The Ordinance been onerous to implement, and Staff feels that there is not sufficient value in the data to warrant the effort. Moreover, changes in state law regarding waste disposal accounting have obviated the need for diversion-oriented framework that underlies the ordinance.

Analysis

The Commercial Recycling Ordinance (No. 002) approved by the Board in 2014 has the goal of collecting data from non-franchised commercial recycling haulers on the quantity of recyclables not brought to Shoreway and therefore not captured in the Agency’s diversion calculation. (i.e., a January 2016 staff report (written by Cliff Feldman, Recycling Programs Manager), indicates that there is an estimated 3% additional diversion (53% vs 49%) that is not captured in the SBWMA’s diversion statistics due to recyclables handled by non-franchise haulers). To assess the accuracy and value of the data collected by the Ordinance Staff hired Steven Sherman Consulting. The consultant’s findings contradict the assertions of the 2015 staff report and claim that the data collected from the Ordinance is incomplete and, therefore, has little bearing on the SBWMA’s Diversion rate.

The Ordinance has proven challenging to implement due to: 1) the need to collect Fees from commercial haulers entities (an administrative fee of \$125/yr recycling haulers), 2) the incomplete data provided by haulers, and 3) the non-compliance of some commercial entities. Based on the high administrative staff-time/cost to collect the data required by the Ordinance and the limited value of the data (e.g., data does not affect SBWMA rates, operations, outreach, or planning), staff is recommending that the Commercial Recycling Ordinance be eliminated.

Fiscal Impact

The FY14/15 Budget included \$50,000 to the ordinance and to implement a mandated reporting system targeting non-franchised commercial recycling haulers. In FY15/16, \$15,000 was approved for compliance-related activities. No funds were approved for these compliance-related activities in FY17/18.

Attachments:

Attachment A – SBWMA Ordinance No. 002 (2014)

Attachment B – State of California SB1016 (2008)

Attachment C – January 28, 2016 Staff Report to SBWMA Board of Directors, “Update on Implementation of Commercial Recycling Hauler Reporting System Ordinance”



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 RethinkWaste, 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. The C&D materials can be in mixed or source separated form.

"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, and Multi-Family Residential Complexes, but excluding business activity conducted upon single-family 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 activity.

"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.

"Multi-Family Residential Complex" means the building(s) containing five (5) or more individual Residential Premises.

"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. Plant materials and wood may be in loose form or chipped or ground but excludes finished product such as mulch or compost for sale. 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 business activity of hauling or transporting Targeted Recyclable Materials and/or Organic Materials generated by Commercial business activity, 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.

"Residential Premises" means individual dwelling units such as single-family dwelling units, the dwelling units comprising Multi-Family Residential Complexes (such as townhouses, apartments, and condominiums), mobile home park dwelling units, cooperative apartments, and dwelling units at yacht harbors and marinas where residents live aboard boats.

"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 The Targeted Recyclable Materials can be in mixed (commingled) or source separated form.

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 by the SBWMA Board of Directors 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 25th day of September, 2014.

PASSED AND ADOPTED as an Ordinance of the Board of Directors of the SBWMA at a regular meeting thereof held on the 23rd day of October, 2014.

AYES, BOARD MEMBERS: Widmer (Atherton); Stone (Belmont); Brownrigg (Burlingame); Benton (Hillsborough); Aguirre (Redwood City); Slocum (County of San Mateo); Dehn (West Bay Sanitary District)

NOES, BOARD MEMBERS: Bronitsky (Foster City); Olbert (San Carlos)

ABSENT, BOARD MEMBERS: Abrica (East Palo Alto); Carlton (Menlo Park); Ross (San Mateo)

ABSTAIN, BOARD MEMBERS: _____



Bill Widmer, Chair of the SBWMA

ATTEST:



Cyndi Urman, Clerk of the SBWMA Board of Directors

**SB-1016 Diversion: compliance: per capita disposal rate.** (2007-2008)

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**Senate Bill No. 1016****CHAPTER 343**

An act to amend Sections 40183, 40184, 41783, 41820.6, 41821, 41850, 42921, and 42926 of, to amend the headings of Article 4 (commencing with Section 41825) and Article 5 (commencing with Section 41850) of Chapter 7 of Part 2 of Division 30 of, to add Sections 40127, 40145, 40150.1, 41780.05, 42921.5, and 42927 to, and to repeal and add Section 41825 of, the Public Resources Code, relating to solid waste.

[Approved by Governor September 26, 2008. Filed with Secretary of State September 26, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1016, Wiggins. Diversion: compliance: per capita disposal rate.

(1) The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components. Those entities are required to divert, from disposal or transformation, 50% of the solid waste through source reduction, recycling, and composting subject to the element, except as specified. A city, county, or regional agency is required to submit an annual report to the board summarizing its progress in reducing solid waste. Existing law requires the board to review, at least once every 2 years, a jurisdiction's source reduction and recycling element and household hazardous waste element. The board is required to issue an order of compliance if the board finds that a jurisdiction has failed to implement its source reduction and recycling element or its household hazardous waste element, pursuant to a specified procedure. If, after issuing an order of compliance, the board finds the city, county, or regional agency has failed to make a good faith effort to implement those elements, the board is authorized to impose administrative civil penalties upon the city, county, or regional agency.

This bill would define the terms "diversion program," "jurisdiction," and "multicounty regional agency," for purposes of the act and would revise the definitions of the terms "rural city" and "rural county." The bill would delete the condition that the solid waste subject to source reduction, recycling, and composting under these provisions be diverted from landfill disposal or transformation.

The bill would repeal the board's existing 2-year process. The bill would instead require the board to make a finding whether each jurisdiction was in compliance with the act's diversion requirements for calendar year 2006 and to determine compliance for the 2007 calendar year, and after, based on the jurisdiction's change in its per capita disposal rate. The board would be required to review a jurisdiction's compliance with those diversion requirements in accordance with a specified schedule, which would be conditioned upon the board finding that the jurisdiction is in compliance with those requirements or has implemented its source reduction and recycling element and household hazardous waste element.

The bill would require the board to issue an order of compliance if the board finds that the jurisdiction has failed

to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, pursuant to a specified procedure. The board would be required to comply with certain requirements in making this determination, including considering the extent to which the jurisdiction has maintained its per capita disposal rate.

The bill would repeal this review schedule on January 1, 2018, and, after that date, would require the board to review each jurisdiction's source reduction and recycling element and household hazardous waste element at least once every 2 years.

The bill would revise the information required to be included in the jurisdiction's annual report to the board and would require the report to be submitted to the board electronically. The bill would make conforming changes regarding the compliance order and related enforcement provisions. The bill would impose a state-mandated local program by imposing new duties upon local agencies.

(2) Existing law requires each state agency, as defined, to develop and adopt, in consultation with the board, an integrated waste management plan. Each state agency and large state facility is required to divert at least 50% of the solid waste generated by the state agency or large state facility from landfill disposal or transformation facilities. "State agency" is defined, for purposes of these requirements to include the California Community Colleges.

This bill would require the board to determine if a state agency or large state facility is in compliance with the 50% diversion requirement by comparing the annual per capita disposal rate of the state agency or large state facility with the per capita disposal rate that would be necessary to comply with the 50% diversion requirement. The board would be authorized to consider an agency's or facility's per capita disposal rate as a factor in determining whether the agency or facility is adequately implementing its integrated waste management plan.

The bill would require a community college district to give first priority in the expenditure of the revenues derived from the sale of recyclable materials resulting from implementation of the district's integrated waste management plan for the purposes of offsetting recycling program costs and to expend all cost savings that result from implementation of the district's integrated waste management plan to fund the continued implementation of the plan. A community college district would be required to provide information to the board annually, on the quantities of recyclable materials collected for recycling, according to a schedule determined by the board and the district. The bill would impose a state-mandated local program by imposing new duties upon community colleges.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature that the California Integrated Waste Management Board shall not consider a jurisdiction's per capita disposal rate to be determinative as to whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.

SEC. 2. Section 40127 is added to the Public Resources Code, to read:

40127. "Diversion program" means a program in the source reduction and recycling element of a jurisdiction's integrated waste management plan, specified in Chapter 2 (commencing with Section 41000) of, or Chapter 3 (commencing with Section 41300) of, Part 2 and that has the purpose of diverting solid waste from landfill disposal or transformation through source reduction, recycling, and composting activities. "Diversion program" additionally includes any amendments, revisions, or updates to the element, and any programs set forth in a time extension, alternative requirement, or compliance order approved by the board pursuant to Part 2 (commencing with Section 40900).

SEC. 3. Section 40145 is added to the Public Resources Code, to read:

40145. "Jurisdiction" means a city, county, or regional agency that is approved by the board pursuant to Section 40975.

SEC. 4. Section 40150.1 is added to the Public Resources Code, to read:

40150.1. "Multicounty regional agency" means a regional agency, as defined in Section 40181, that includes all of the jurisdictions that are located in at least two or more rural counties.

SEC. 5. Section 40183 of the Public Resources Code is amended to read:

40183. (a) "Rural city" or "rural regional agency" means a city or regional agency that is located within a rural county as defined in Section 40184.

(b) (1) Unless the board takes action pursuant to paragraph (2), this section does not affect any reduction granted to a rural city by the board pursuant to Section 41787 prior to January 1, 2008.

(2) The board may review and take action regarding any reduction granted to a rural city by the board in accordance with subdivision (b) of Section 41787.

SEC. 6. Section 40184 of the Public Resources Code is amended to read:

40184. (a) "Rural county" means a county or multicounty regional agency that annually disposes of no more than 200,000 tons of solid waste.

(b) (1) Unless the board takes action pursuant to paragraph (2), this section does not affect any reduction granted to a rural county by the board pursuant to Section 41787 prior to January 1, 2008.

(2) The board may review and take action regarding any reduction granted to a rural county in accordance with subdivision (b) of Section 41787.

SEC. 7. Section 41780.05 is added to the Public Resources Code, to read:

41780.05. (a) After January 1, 2009, pursuant to the review authorized by Section 41825, the board shall determine each jurisdiction's compliance with Section 41780 for the years commencing with January 1, 2007, by comparing each jurisdiction's change in its per capita disposal rate in subsequent years with the equivalent per capita disposal rate that would have been necessary for the jurisdiction to meet the requirements of Section 41780 on January 1, 2007, as calculated pursuant to subdivisions (c) and (d).

(b) (1) For purposes of paragraph (5) of subdivision (e) of Section 41825, in making a determination whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board shall consider, but is not limited to the consideration of, the jurisdiction's per capita disposal rate and whether the jurisdiction adequately implemented its diversion programs.

(2) When determining whether a jurisdiction has made a good faith effort pursuant to Section 41825 to implement its source reduction and recycling element or its household hazardous waste element, the board shall consider that an increase in the per capita disposal rate is the result of the amount of the jurisdiction's disposal increasing faster than the jurisdiction's growth. The board shall use this increase in the per capita disposal rate that is in excess of the equivalent per capita disposal rate as a factor in determining whether the board is required, pursuant to Section 41825, to more closely examine a jurisdiction's program implementation efforts. This examination may indicate that a jurisdiction is required to expand existing programs or implement new programs, in accordance with the procedures specified in Article 4 (commencing with Section 41825) and in Article 5 (commencing with Section 41850).

(3) When reviewing the level of program implementation pursuant to Sections 41825 and 41850, the board shall use, as a factor in determining compliance with Section 41780, the amount determined pursuant to subdivision (d) when comparing a jurisdiction's per capita disposal rate in subsequent years.

(c) (1) Except as otherwise provided in this subdivision, for purposes of this section, "per capita disposal" or "per capita disposal rate" means the total annual disposal, in pounds, from a jurisdiction divided by the total population in a jurisdiction, as reported by the Department of Finance, divided by 365 days.

(2) (A) If a jurisdiction is predominated by commercial or industrial activities and by solid waste generation from those sources, the board may alternatively calculate per capita disposal to reflect those differing conditions.

(B) When making a calculation for a jurisdiction subject to this paragraph, "per capita disposal" or "per capita disposal rate" means the total annual disposal, in pounds, from a jurisdiction divided by total industry

employment in a jurisdiction, as reported by the Employment Development Department, divided by 365 days.

(C) The board shall calculate the per capita disposal rate for a jurisdiction subject to this paragraph using the level of industry employment in a jurisdiction instead of the level of population in a jurisdiction.

(3) If the board determines that the method for calculating the per capita disposal rate for a jurisdiction provided by paragraph (1) or (2) does not accurately reflect that jurisdiction's disposal reduction, the board may use an alternative per capita factor, other than population or industry employment, to calculate the per capita disposal rate that more accurately reflects the jurisdiction's efforts to divert solid waste.

(d) The board shall calculate the equivalent per capita disposal rate for each jurisdiction as follows:

(1) Except as otherwise provided in this subdivision, the equivalent per capita disposal rate for a jurisdiction shall be determined using the method specified in this paragraph.

(A) The calculated generation tonnage for each year from 2003 to 2006, inclusive, shall be multiplied by 0.5 to yield the 50 percent equivalent disposal total for each year.

(B) The 50 percent equivalent disposal total for each year shall be multiplied by 2,000, divided by the population of the jurisdiction in that year, and then divided by 365 to yield the 50 percent equivalent per capita disposal for each year.

(C) The four 50 percent equivalent per capita disposal amounts from the years 2003 to 2006, inclusive, shall be averaged to yield the equivalent per capita disposal rate.

(2) If a jurisdiction is predominated by commercial or industrial activities and by solid waste generation from those sources, the board may alternatively calculate the equivalent per capita disposal rate to reflect those conditions by using the level of industry employment in a jurisdiction instead of the level of population in that jurisdiction.

(3) If the board determines that the method for calculating the equivalent per capita disposal rate for a jurisdiction pursuant to this subdivision does not accurately reflect a jurisdiction's per capita disposal rate that would be equivalent to the amount required to meet the 50 percent diversion requirements of Section 41780, the board may use an alternative per capita factor, other than population or industry employment, to calculate the equivalent per capita disposal rate that more accurately reflects the jurisdiction's diversion efforts.

(4) The board shall modify the percentage used in paragraph (1) to maintain the diversion requirements approved by the board for a rural jurisdiction pursuant to Section 41787 or for a reduction granted pursuant to Section 41786.

(5) The board may modify the years included in making a calculation pursuant to this subdivision for an individual jurisdiction to eliminate years in which the calculated generation amount is shown not to be representative or accurate, based upon a generation study completed in one of the five years 2003 to 2007, inclusive. In these cases, the board shall not allow the use of an additional year other than 2003, 2004, 2005, 2006, or 2007.

(6) The board may modify the method of calculating the equivalent per capita disposal rate for an individual jurisdiction to accommodate the incorporation of a new city, the formation of a new regional agency, or changes in membership of an existing regional agency. These modifications shall ensure that a new entity has a new equivalent per capita disposal rate and that the existing per capita disposal rate of an existing entity is adjusted to take into account the disposal amounts lost by the creation of the new entity.

(7) The board shall not incorporate generation studies or new base year calculations for a year commencing after 2006 into the equivalent per capita disposal rate, unless a generation study that included the year 2007 was commenced on or before June 30, 2008.

(8) If the board determines that the equivalent per capita disposal rate cannot accurately be determined for a jurisdiction, or that the rate is no longer representative of a jurisdiction's waste stream, the board shall evaluate trends in the jurisdiction's per capita disposal to establish a revised equivalent per capita disposal rate for that jurisdiction.

SEC. 8. Section 41783 of the Public Resources Code is amended to read:

41783. (a) For a jurisdiction's source reduction and recycling element submitted to the board after January 1, 1995, and on or before January 1, 2009, the 50 percent diversion requirement specified in paragraph (2) of

subdivision (a) of Section 41780 may include not more than 10 percent through transformation, as defined in Section 40201, if all of the following conditions are met:

(1) The transformation project is in compliance with Sections 21151.1 and 44150 of this code and Section 42315 of the Health and Safety Code.

(2) The transformation project uses front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(3) The ash or other residue generated from the transformation project is routinely tested at least once quarterly, or on a more frequent basis as determined by the agency responsible for regulating the testing and disposal of the ash or residue, and, notwithstanding Section 25143.5 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a class 1 hazardous waste disposal facility.

(4) The board holds a public hearing in the city, county, or regional agency jurisdiction within which the transformation project is proposed, and, after the public hearing, the board makes both of the following findings, based upon substantial evidence on the record:

(A) The city, county, or regional agency is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(B) The transformation project will not adversely affect public health and safety or the environment.

(5) The transformation facility is permitted and operational on or before January 1, 1995.

(6) The city, county, or regional agency does not include biomass conversion, as authorized pursuant to Section 41783, in its source reduction and recycling element.

(b) On and after January 1, 2009, for purposes of the review authorized by Section 41825, with regard to a jurisdiction's compliance with Section 41780 for each year commencing January 1, 2007, the board may reduce the per capita disposal rate for a jurisdiction, as calculated pursuant to subdivision (d) of Section 41780.05, by no more than 10 percent of the average of the calculated per capita generation tonnage amount, if the jurisdiction otherwise meets the substantive requirements specified in paragraphs (1) to (6), inclusive, of subdivision (a), for solid waste to be included as diversion for purposes of that subdivision.

SEC. 9. Section 41820.6 of the Public Resources Code is amended to read:

41820.6. (a) In addition to its authority under Section 41820, the board may, after a public hearing, grant a time extension from the requirements of Section 41780 to a city if both of the following conditions exist:

(1) The city was incorporated pursuant to Division 3 (commencing with Section 56000) of Title 5 of the Government Code on or after January 1, 2001.

(2) The county within which the city is located did not include provisions in its franchises that ensured that the now incorporated area would comply with the requirements of Section 41780.

(b) The board may authorize a city that meets the requirements of subdivision (a) to submit a source reduction and recycling element that includes an implementation schedule that shows that the city shall comply with the requirements of Section 41780, within three years from the date on which the source reduction and recycling element is due pursuant to subdivision (b) of Section 41791.5, through source reduction, recycling, and composting activities.

SEC. 10. Section 41821 of the Public Resources Code is amended to read:

41821. (a) (1) Each year following the board's approval of a jurisdiction's source reduction and recycling element, household hazardous waste element, and nondisposal facility element, the jurisdiction shall submit a report to the board summarizing its progress in reducing solid waste as required by Section 41780, in accordance with the schedule set forth in this subdivision.

(2) The annual report shall be due on or before August 1 of the year following board approval of the source reduction and recycling element, the household hazardous waste element, and the nondisposal facility element, and on or before August 1 in each subsequent year. The information in this report shall encompass the previous calendar year, January 1 to December 31, inclusive.

(b) Each jurisdiction's annual report to the board shall, at a minimum, include the following:

- (1) Calculations of annual disposal reduction.
 - (2) A summary of progress made in implementing the source reduction and recycling element and the household hazardous waste element.
 - (3) An update of the jurisdiction's source reduction and recycling element and household hazardous waste element to include any new or expanded programs the jurisdiction has implemented or plans to implement.
 - (4) An update of the jurisdiction's nondisposal facility element to reflect any new or expanded nondisposal facilities the jurisdiction is using or planning to use.
 - (5) A summary of progress made in diversion of construction and demolition of waste material, including information on programs and ordinances implemented by the local government and quantitative data, where available.
 - (6) Other information relevant to compliance with Section 41780.
- (c) A jurisdiction may also include, in the report required by this section, all of the following:
- (1) Information on disposal reported pursuant to Section 41821.5 that the jurisdiction believes may be relevant to the board's determination of the jurisdiction's per capita disposal rate.
 - (2) Disposal characterization studies or other completed studies that show the effectiveness of the programs being implemented.
 - (3) Factors that the jurisdiction believes would affect the accuracy of, or mitigate the amount of, solid waste disposed by the jurisdiction, including, but not limited to, either of the following:
 - (A) Whether the jurisdiction hosts a solid waste facility or regional diversion facility.
 - (B) The effects of self-hauled waste and construction and demolition waste.
 - (4) The extent to which the jurisdiction previously relied on biomass diversion credit and the extent to which it may be impacted by the lack of the credit.
 - (5) Information regarding the programs the jurisdiction is undertaking to address specific disposal challenges, and why it is not feasible to implement programs to respond to other factors that affect the amount of waste that is disposed.
 - (6) Other information that describes the good faith efforts of the jurisdiction to comply with Section 41780.
- (d) The board shall use, but is not limited to the use of, the annual report in the determination of whether the jurisdiction's source reduction and recycling element needs to be revised or updated.
- (e) (1) The board shall adopt procedures for requiring additional information in a jurisdiction's annual report. The procedures shall require the board to notify a jurisdiction of any additional required information no later than 120 days after the board receives the report from the jurisdiction.
- (2) Paragraph (1) does not prohibit the board from making additional requests for information in a timely manner. A jurisdiction receiving a request for information shall respond in a timely manner.
- (3) If the schedule for the submission of an annual report by a jurisdiction does not correspond with the scheduled review by the board specified in subdivision (a) of Section 41825, the board shall utilize the information contained in the annual report to assist the board in providing technical assistance and reviewing the jurisdiction's diversion program implementation.
- (f) The board shall adopt procedures for conferring with a jurisdiction regarding the implementation of its diversion programs.
- (g) Notwithstanding the Uniform Electronic Transactions Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code), a jurisdiction shall submit the progress report required by this section to the board electronically, using the board's electronic reporting format system.
- (h) Notwithstanding the reporting schedule required by this section, and in addition to the review required by Section 41825, the board shall visit each jurisdiction not less than once each year to monitor the jurisdiction's implementation and maintenance of its diversion programs.

SEC. 11. The heading of Article 4 (commencing with Section 41825) of Chapter 7 of Part 2 of Division 30 of the Public Resources Code is amended to read:

Article 4. Review and Compliance Orders

SEC. 12. Section 41825 of the Public Resources Code is repealed.

SEC. 13. Section 41825 is added to the Public Resources Code, to read:

41825. (a) Using the information in the report submitted to the board by the jurisdiction pursuant to Section 41821 and any other relevant information, the board shall make a finding whether each jurisdiction was in compliance with Section 41780 for calendar year 2006 and shall review a jurisdiction's compliance with Section 41780 in accordance with the following schedule:

(1) If the board makes a finding that the jurisdiction was in compliance with Section 41780 for calendar year 2006, the board shall review, commencing January 1, 2012, and at least once every four years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(2) If the board makes a finding that the jurisdiction made a good faith effort to implement its source reduction and recycling element and household hazardous waste element, the board shall review, commencing January 1, 2010, and at least once every two years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(3) If the board makes a finding that the jurisdiction was not in compliance with Section 41780 for calendar year 2006 or for any subsequent calendar year, the board shall review, commencing January 1, 2010, and at least once every two years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(4) If, after determining that a jurisdiction is subject to paragraph (2), or, if, after determining that a jurisdiction is not in compliance with Section 41780 and is subject to paragraph (3), the board subsequently determines that the jurisdiction has come into compliance with Section 41780, the board shall review, at least once every four years, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste in the same manner as a jurisdiction that is subject to paragraph (1).

(5) If, after determining that a jurisdiction is in compliance with Section 41780 and is subject to paragraph (1), the board subsequently determines that the jurisdiction is not in compliance with Section 41780, the board shall review, at least once every two years, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element in the same manner as a jurisdiction that is subject to paragraph (2) or (3).

(b) In addition to the requirements of subdivision (a), the board may review whether a jurisdiction is in compliance with Section 41780 in accordance with the requirements of this section at any time that the board receives information that indicates the jurisdiction may not be making a good faith effort to implement its source reduction and recycling element and household hazardous waste element.

(c) (1) Before issuing a compliance order pursuant to subdivision (d), the board shall confer with the jurisdiction regarding conditions relating to the proposed order of compliance, with a first meeting occurring not less than 60 days before issuing a notice of intent to issue an order of compliance.

(2) The board shall issue a notice of intent to issue an order of compliance not less than 30 days before the board holds a hearing to issue the notice of compliance. The notice of intent shall specify all of the following:

(A) The proposed basis for issuing an order of compliance.

(B) The proposed actions the board recommends are necessary for the jurisdiction to complete to implement its source reduction and recycling element or household hazardous waste element.

(C) The proposed recommendations to the board.

(3) The board shall consider any information provided pursuant to subdivision (c) of Section 41821 if the proposed issuance of an order of compliance involves changes to a jurisdiction's calculation of annual disposal.

(d) (1) If, after holding a public hearing, which, to the extent possible, shall be held in the local or regional agency's jurisdiction, the board finds that a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board shall issue an order

of compliance with a specific schedule for achieving compliance.

(2) The compliance order shall include those conditions that the board determines to be necessary for the jurisdiction to implement its diversion programs.

(3) In addition to considering the good faith efforts of a jurisdiction, as specified in subdivision (e), to implement a diversion program, the board shall consider both of the following factors in determining whether or not to issue a compliance order:

(A) Whether an exceptional growth rate may have affected compliance.

(B) Other information that the jurisdiction may provide that indicates the effectiveness of the jurisdiction's programs, such as disposal characterization studies or other jurisdiction specific information.

(e) For purposes of making a determination pursuant to this section whether a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board shall consider all of the following criteria:

(1) For the purposes of this section, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(2) For purposes of this section, "good faith effort" may also include the evaluation by a jurisdiction of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the jurisdiction to adequately address all sources of significant disposal, the submission by the jurisdiction of a compliance schedule, and the undertaking of all other reasonable and feasible efforts to implement the programs identified in the jurisdiction's source reduction and recycling element or household hazardous waste element.

(3) In determining whether a jurisdiction has made a good faith effort, the board shall consider the enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.

(4) The board shall consider all of the following when considering whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element:

(A) Natural disasters.

(B) Budgetary conditions within a jurisdiction that could not be remedied by the imposition or adjustment of solid waste fees.

(C) Work stoppages that directly prevent a jurisdiction from implementing its source reduction and recycling element or household hazardous waste element.

(D) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction.

(E) The extent to which the jurisdiction has implemented additional source reduction, recycling, and composting activities.

(F) The extent to which the jurisdiction has made program implementation choices driven by considerations related to other environmental issues, including climate change.

(G) Whether the jurisdiction has provided information to the board concerning whether construction and demolition waste material is at least a moderately significant portion of the waste stream, and, if so, whether the local jurisdiction has adopted an ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, has adopted a model ordinance pursuant to subdivision (a) of Section 42912 for diversion of construction and demolition waste materials from solid waste disposal facilities, or has implemented another program to encourage or require diversion of construction and demolition waste materials from solid waste disposal facilities.

(H) The extent to which the jurisdiction has implemented programs to comply with Section 41780 and to maintain its per capita disposal rate.

(5) In making a determination whether a jurisdiction has made a good faith effort, pursuant to this section, the board may consider a jurisdiction's per capita disposal rate as a factor in determining whether the jurisdiction adequately implemented its diversion programs. The board shall not consider a jurisdiction's per capita disposal

rate to be determinative as to whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.

(f) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 14. Section 41825 is added to the Public Resources Code, to read:

41825. (a) At least once every two years, the board shall review each jurisdiction's source reduction and recycling element and household hazardous waste element for compliance with Section 41780.

(b) In addition to the requirements of subdivision (a), the board may review whether a jurisdiction is in compliance with Section 41780 in accordance with the requirements of this section at any time that the board receives information that indicates the jurisdiction may not be making a good faith effort to implement its source reduction and recycling element and household hazardous waste element.

(c) (1) Before issuing a compliance order pursuant to subdivision (d), the board shall confer with the jurisdiction regarding conditions relating to the proposed order of compliance, with a first meeting occurring not less than 60 days before issuing a notice of intent to issue an order of compliance.

(2) The board shall issue a notice of intent to issue an order of compliance not less than 30 days before the board holds a hearing to issue the notice of compliance. The notice of intent shall specify all of the following:

(A) The proposed basis for issuing an order of compliance.

(B) The proposed actions the board recommends are necessary for the jurisdiction to complete the implementation of its source reduction and recycling element or household hazardous waste element.

(C) The proposed recommendations to the board.

(3) The board shall consider any information provided pursuant to subdivision (c) of Section 41821, if the proposed issuance of an order of compliance involves changes to a jurisdiction's calculation of annual disposal.

(d) (1) If, after holding a public hearing, which, to the extent possible, shall be held in the local or regional agency's jurisdiction, the board finds that a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board shall issue an order of compliance with a specific schedule for achieving compliance.

(2) The compliance order shall include those conditions that the board determines to be necessary for the jurisdiction to implement its diversion programs.

(3) In addition to considering the good faith efforts of a jurisdiction, as specified in subdivision (e), to implement a diversion program, the board shall consider all of the following factors in determining whether or not to issue a compliance order:

(A) Whether an exceptional growth rate may have affected compliance.

(B) Other information that the jurisdiction may provide that indicates the effectiveness of the jurisdiction's programs, such as disposal characterization studies or other jurisdiction specific information.

(e) For purposes of making a determination pursuant to this section as to whether a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board shall consider all of the following criteria:

(1) For the purposes of this section, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(2) For purposes of this section, "good faith effort" may also include the evaluation by a jurisdiction of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the jurisdiction to adequately address all sources of significant disposal, the submission by the jurisdiction of a compliance schedule, and the undertaking of all other reasonable and feasible efforts to implement the programs identified in the jurisdiction's source reduction and recycling element or household hazardous waste element.

(3) In determining whether a jurisdiction has made a good faith effort, the board shall also consider the

enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.

(4) The board shall consider all of the following when considering whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element:

(A) Natural disasters.

(B) Budgetary conditions within a jurisdiction that could not be remedied by the imposition or adjustment of solid waste fees.

(C) Work stoppages that directly prevent a jurisdiction from implementing its source reduction and recycling element or household hazardous waste element.

(D) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction.

(E) The extent to which the jurisdiction has implemented additional source reduction, recycling, and composting activities.

(F) The extent to which the jurisdiction has made program implementation choices driven by considerations related to other environmental issues, including climate change.

(G) Whether the jurisdiction has provided information to the board concerning whether construction and demolition waste material is at least a moderately significant portion of the waste stream, and, if so, whether the local jurisdiction has adopted an ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, has adopted a model ordinance pursuant to subdivision (a) of Section 42912 for diversion of construction and demolition waste materials from solid waste disposal facilities, or has implemented another program to encourage or require diversion of construction and demolition waste materials from solid waste disposal facilities.

(H) The extent to which the jurisdiction has implemented programs to comply with Section 41780 and to maintain its per capita disposal rate.

(5) In making a determination whether a jurisdiction has made a good faith effort, pursuant to this section, the board may consider a jurisdiction's per capita disposal rate as a factor in determining whether the jurisdiction adequately implemented its diversion programs. The board shall not consider a jurisdiction's per capita disposal rate to be determinative as to whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.

(f) This section shall become operative on January 1, 2018.

SEC. 15. The heading of Article 5 (commencing with Section 41850) of Chapter 7 of Part 2 of Division 30 of the Public Resources Code is amended to read:

Article 5. Enforcement and Penalties

SEC. 16. Section 41850 of the Public Resources Code is amended to read:

41850. (a) Except as specifically provided in Section 41813, if, after holding the public hearing and issuing an order of compliance pursuant to Section 41825, the board finds that the jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board may impose administrative civil penalties upon the city or county or, pursuant to Section 40974, upon the city or county as a member of a regional agency, of up to ten thousand dollars (\$10,000) per day until the jurisdiction implements the element.

(b) In determining whether or not to impose any penalties, or in determining the amount of any penalties imposed under this section, including any penalties imposed due to the exclusion of solid waste pursuant to Section 41781.2 that results in a reduction in the quantity of solid waste diverted by a jurisdiction, the board shall consider whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element. In addition, the board shall consider only those relevant circumstances that have prevented a jurisdiction from meeting the requirements of this division, including, but not limited to, the factors described in subdivisions (d) and (e) of Section 41825.

SEC. 17. Section 42921 of the Public Resources Code is amended to read:

42921. (a) Each state agency and each large state facility shall divert at least 25 percent of all solid waste generated by the state agency by January 1, 2002, through source reduction, recycling, and composting activities.

(b) On and after January 1, 2004, each state agency and each large state facility shall divert at least 50 percent of all solid waste through source reduction, recycling, and composting activities.

SEC. 18. Section 42921.5 is added to the Public Resources Code, to read:

42921.5. (a) After January 1, 2009, the board shall determine each state agency's or a large state facility's compliance with Section 42921, for each year, commencing with January 1, 2007, by comparing the per capita disposal rate in subsequent years with the equivalent per capita disposal rate that would have been necessary for the state agency or large state facility to comply with Section 42921 on January 1, 2007, as calculated pursuant to subdivision (d).

(b) In making a determination whether a state agency or large state facility is in compliance with the requirements of Section 42921, the board may consider an agency's or facility's per capita disposal rate as a factor in determining whether the state agency or large state facility is adequately implementing its integrated waste management plan. The board shall not consider a state, agency, or large state facility's per capita disposal rate to be determinative when considering whether the agency or facility is implementing its integrated waste management plan.

(c) When determining whether an agency or facility is in compliance with Section 42921, the board shall consider that an increase in the per capita disposal rate is a result of disposal amounts increasing faster than the growth of the state agency or large state facility. The board shall use an increase in the per capita disposal rate that is in excess of the equivalent per capita disposal rate as a factor in determining whether the board is required to more closely examine the agency's or facility's plan implementation efforts. If indicated by this examination, the board may require a state agency or large state facility to expand existing programs or implement new programs.

(d) (1) Except as provided in paragraph (2), "per capita disposal" or "per capita disposal rate" means the total annual disposal by a state agency or large state facility, in pounds, divided by total number of employees in that state agency or large state facility, and divided by 365 days.

(2) The board may alternatively define per capita disposal or per capita disposal rate for a state agency or large state facility that has a significant amount of disposal from nonemployees or for other reasons that would make calculation of per capita disposal by the number of employees inaccurate.

SEC. 19. Section 42926 of the Public Resources Code is amended to read:

42926. (a) In addition to the information provided to the board pursuant to Section 12167.1 of the Public Contract Code, each state agency shall submit an annual report to the board summarizing its progress in reducing solid waste as required by Section 42921. The annual report shall be due on or before September 1, 2009, and on or before September 1 in each subsequent year. The information in this report shall encompass the previous calendar year.

(b) Each state agency's annual report to the board shall, at a minimum, include all of the following:

(1) Calculations of annual disposal reduction.

(2) Information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors.

(3) A summary of progress made in implementing the integrated waste management plan.

(4) The extent to which the state agency intends to utilize programs or facilities established by the local agency for the handling, diversion, and disposal of solid waste. If the state agency does not intend to utilize those established programs or facilities, the state agency shall identify sufficient disposal capacity for solid waste that is not source reduced, recycled, or composted.

(5) Other information relevant to compliance with Section 42921.

(c) The board shall use, but is not limited to the use of, the annual report in the determination of whether the agency's integrated waste management plan needs to be revised.

SEC. 20. Section 42927 is added to the Public Resources Code, to read:

42927. (a) A community college district shall give first priority for the expenditure of the revenues derived from the sale of recyclable materials resulting from the implementation of the district's integrated waste management plan for the purposes of offsetting the recycling program costs imposed pursuant to this chapter.

(b) A community college district shall expend all cost savings that result from implementation of the district's integrated waste management plan pursuant to this chapter to fund the continued implementation of the plan consistent with the requirement that revenues from the sale of recyclable materials be used to offset recycling program costs, as specified in Sections 12167 and 12167.1 of the Public Contract Code.

(c) A community college district shall provide information on the quantities of recyclable materials collected for recycling annually to the board, according to a schedule determined by the board and the district.

SEC. 21. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because the act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.



STAFF REPORT

To: SBWMA Board Members
From: Cliff Feldman, Recycling Programs Manager
Date: January 28, 2016 Board of Directors Meeting
Subject: Update on Implementation of Commercial Recycling Hauler Reporting System Ordinance

Recommendation

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

Analysis

On October 23, 2014, the SBWMA Board of Directors adopted Ordinance No. 002, the JPA's Commercial Recycling Reporting Ordinance, which became effective on January 1, 2015 requires commercial recycling haulers to report tons collected quarterly. The Q1-2015 report was due on May 1, 2015, Q2 on August 1, Q3 on October 1, and Q4 on February 1, 2016. Staff last provided an update to the Board at the September 24, 2015 Board meeting and will continue to do so quarterly.

Staff continues contacting businesses to register online and begin reporting. Since the last quarterly update to the Board, registrations have increased 45% from 33 businesses registered to the current 48. The active list of businesses that are being contacted to register totals 125. The amount of reports submitted by quarter total 33 for Q1-2015, 25 for Q2 and 27 for Q3. However, it is important to note that in many cases businesses tend to submit reports well after the deadline and only after receiving several notices from staff, thus it is anticipated that more Q3 reports will be forthcoming. (The deadline for Q4-2015 reports is February 1, 2016.) In addition, as businesses are registered, they are requested to provide past quarterly reports to the extent feasible.

We are frequently faced with barriers in obtaining more registrations and will continue to work towards overcoming these barriers. For example, businesses recently contacted to register have simply refused to comply, the parent corporation is unresponsive to requests to provide a clear point of contact responsible for recycling at the local store/business locations, and most commonly the store/business manager or other individual presented as the appropriate contact, is either unavailable or non-responsive. Staff will continue to encourage these businesses to comply and will be requesting the assistance from our Member Agencies to send letters to these potentially non-compliant businesses as we have done in the past.

From the reports provided, the amounts and types of material collected vary and approximately 18,000 tons were reported for Q1-2015, 11,000 tons for Q2, and 11,000 for Q3 (i.e., 40,000 additional tons for Q1-Q3 with several reports still pending and Q4 not included). The largest quantities (in order) of individual material types are mixed construction and demolition debris, dirt/inerts, green/yard waste and cardboard. As predicted, even a small sampling of non-franchised commercial recycling activities provides some insights as to the magnitude of independent recycling occurring in the RethinkWaste service area. As a matter of comparison, the preliminary results for Recology's 2015 commercial recycling totaled of 58,784 tons, and was comprised of 33,542 tons of recyclables and 25,241 tons of organics.

Staff's original diversion projections based on the Q1 reports estimated an additional 26,500 tons of commercial recycling (Table 1) to the diversion figures used in the Long Range Plan. Table 2 provides an update of this diversion estimate based on the information provided to date through Q3-2015 (i.e., an increase of the potential diversion estimate by including 60,000 additional tons).

Table 3 shows an update on projected future diversion through 2020 reflective of the revised baseline forecast in Table 2 plus new diversion expected from recommended Long Range Plan projects. The SBWMA's new forecasted overall diversion rate for 2020 has increased from 70.02% to 72.49%.

Table 1 (based on Q1-2015 projected for entire year)¹

Projected Future Measured Diversion Rate % by Sector with Current Programs 2015-2020								
Sector	Year							
	Actual Results		Projected Results					
	2013	2014	2015	2016	2017	2018	2019	2020
Residential	66.90%	66.48%	66.59%	66.59%	66.59%	66.59%	66.59%	66.59%
Commercial/MFD	29.77%	31.04%	41.06%	43.46%	45.49%	46.87%	48.54%	49.71%
Overall	48.83%	48.90%	52.971%	54.26%	55.34%	56.08%	56.97%	57.59%

Note: Preliminary Commercial Recycling Reporting Ordinance data is included (i.e., 26,500 tons).

¹Table 1 as shown is included in the Board adopted 2015 Long Range Plan document as Table 2.1: Baseline Measured Diversion Rate by Sector with Current Programs 2015-2020.

Table 2 (based on tonnage thru Q3-2015 projected for entire year)

Projected Future Measured Diversion Rate % for 2015-2020								
Sector	Year							
	Actual Results		Projected Results					
	2013	2014	2015	2016	2017	2018	2019	2020
Residential	66.90%	66.48%	66.59%	66.59%	66.59%	67.02%	67.88%	68.22%
Commercial/MFD	29.77%	31.04%	49.55%	51.60%	53.34%	54.52%	55.95%	56.95%
Overall	48.83%	48.90%	56.845%	58.03%	59.02%	59.88%	61.06%	61.78%

Note: Preliminary Commercial Recycling Reporting Ordinance data is included.

Table 3 (projected future diversion through 2020 including new diversion and LRP projects)

Projected Future Measured Diversion Rate % by Sector for 2015-2020								
Sector	Year							
	Actual Results		Projected Results					
	2013	2014	2015	2016	2017	2018	2019	2020
Residential	66.90%	66.48%	66.59%	66.59%	66.59%	71.32%	76.35%	76.60%
Commercial/MFD	29.77%	31.04%	49.55%	51.60%	53.34%	61.96%	69.40%	69.40%
Overall	48.83%	48.90%	56.845%	58.02%	59.02%	65.97%	72.38%	72.49%

Note: Preliminary Commercial Recycling Reporting Ordinance data is included.

In May 2015, per the Board and TAC's direction, staff followed through with our commitment to keep the Member Agencies engaged in our efforts to encourage affected businesses to register and report and we plan to enlist their assistance again in February 2016. Staff will provide a list to the Member Agencies of the businesses in their jurisdiction which need additional encouragement to register. Staff will also provide a sample letter to use with

each Member Agency's letterhead. By working with our Member Agencies, we anticipate similar results as in the past such as additional businesses registering, determining those businesses that do not need to comply and those which the JPA should continue to follow up with.

Staff's efforts to continue reaching out and educating businesses about the Ordinance will be ongoing via additional direct mail letters, phone calls and emails. Staff will also continue to work with our Member Agencies regarding the businesses located in their jurisdictions. However, it is important to note that less than 50% of all identified businesses are located in our Member Agencies. In addition, the list of potentially affected businesses continues to be refined. For example, after contacting some businesses that were initially identified it turns out they are not required to submit reports, and our efforts continue to result in identifying other independent recycling haulers which are then added to the list.

Background

At the October 23, 2014 Board meeting, the Board adopted Ordinance No. 002 – Recycling Reporting Requirements for Commercial Recycling Haulers. The Ordinance will 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 Recology, the Member Agencies franchised service provider. Based solely on preliminary tonnage data provided by Recology, the commercial diversion rate for 2015 was 33.0%. The actual overall commercial diversion rate is likely much higher once we factor in diversion data from non-franchised haulers.

This SBWMA-wide Ordinance implements 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 became effective on January 1, 2015 and the haulers are required to provide reports quarterly.

Fiscal Impact

There is no fiscal impact associated with this staff update. The approved FY1516 budget includes \$15,000 for stakeholder engagement and encouraging compliance efforts. The Ordinance allows the Executive Director to establish an administrative fee in an amount not to exceed \$150 to cover the SBWMA costs to administer the Ordinance. This administrative fee for 2015 was set at \$125 and is charged to commercial recycling haulers required to register and submit reports. Staff is not recommending increasing this fee for 2016.