



MINUTES

**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
MEETING OF THE BOARD OF DIRECTORS
February 27, 2014 – 2:00 p.m.
RethinkWaste Board Room at the Shoreway Environmental Center**

Call to Order: 2:01 PM

1. Roll Call

| Agency | Present | Absent | Agency | Present | Absent |
|----------------|---------|--------|----------------------------|---------|--------|
| Atherton | X | | Menlo Park | X(late) | |
| Belmont | X | | Redwood City | X | |
| Burlingame | X | | San Carlos | X(late) | |
| East Palo Alto | X(late) | | San Mateo | X | |
| Foster City | X | | County of San Mateo | X | |
| Hillsborough | | X | West Bay Sanitary District | X | |

2. Public Comment

Persons wishing to address the Board on matters NOT on the posted agenda may do so.

Each speaker is limited to two minutes. If there are more than five individuals wishing to speak during public comment, the Chairman will draw five speaker cards from those submitted to speak during this time. The balance of the Public Comment speakers will be called upon at the end of the Board Meeting.

If the item you are speaking on is not listed on the agenda, please be advised that the Board may briefly respond to statements made or questions posed as allowed under The Brown Act (Government Code Section 54954.2). The Board's general policy is to refer items to staff for attention, or have a matter placed on a future Board agenda for a more comprehensive action or report and formal public discussion and input at that time.

None

3. Approval of Consent Calendar:

Consent Calendar item(s) are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless members of the Board, staff or public request specific items be removed for separate action. *Items removed from the Consent Calendar will be moved to the end of the agenda for separate discussion.*

- A. Adopt the January 23, 2014 BOD Meeting Minutes
- B. Approval of Quarterly Investment Report as of 12/31/13
- C. Resolution Approving Office Lease Agreement at San Carlos Library

Motion/Second: Dehn/Ross

Voice Vote: All in favor

| Agency | Yes | No | Abstain | Absent | Agency | Yes | No | Abstain | Absent |
|------------|-----|----|---------|--------|--------------|-----|----|---------|--------|
| Atherton | X | | | | Menlo Park | | | | X |
| Belmont | X | | | | Redwood City | X | | | |
| Burlingame | X | | | | San Carlos | | | | X |

| | | | | | | | | | |
|----------------|---|--|--|---|------------------------|---|--|--|--|
| East Palo Alto | | | | X | San Mateo | X | | | |
| Foster City | X | | | | County of San Mateo | X | | | |
| Hillsborough | | | | X | West Bay Sanitary Dist | X | | | |

4. New Business:

A. Executive Director FY1314 Goals

Executive Director McCarthy gave an overview of the set of goals presented to the Board. He noted that these goals had been originally drafted under the previous board, and then revised with feedback from this Board.

Vice Chair Dehn thanked the Board members that participated for their input.

Member Olbert now present.

Chair Widmer asked for an earlier March date for goal number 5, so that strategic plan information could be considered in the budget process.

Executive Director McCarthy noted that staff would be coming to the Board with the draft program budget in April of 2015. The goal would be to complete the work in time for the plan to be incorporated into the budget, but having the lengthy document fully complete by then would be challenging.

Vice Chair Dehn noted that the goals stated preparing an initial plan and asked if the Executive Director would be more comfortable with the suggested March date, emphasizing initial.

Executive Director McCarthy clarified that by April the Board would have an outline of how staff plans to develop the long range plan and a year from April would be the final plan.

Member Slocum asked if that meant that the Chair's suggested date change was acceptable.

Executive Director McCarthy replied yes, that the March date was fine.

Member Foust asked if there are benchmarking metrics to determine how each goal is met.

Vice Chair Dehn answered that in the original 10 goals that the Executive Director presented to the Board, there were metrics to back them up. She noted that these are the 8 overall goals that were determined by the subcommittee, and that metrics need to be assigned to them, but the committee agreed that they wanted to present the overall goals to the board.

Member Foust clarified that the subcommittee will determine the metrics.

Member Carlton now present.

Vice Chair Dehn answered yes, with the Executive Director's input, and added that if any Board members had ideas in terms of measurement to discuss those with her.

Chair Widmer reminded the Board that the Executive Director had started this process with the old Board, and the new Board wanted some refinement to the goals without making the Executive Director start over with only half the year left to complete the goals, so the subcommittee was taxed with trying to dovetail everything together.

Member Olbert suggested for the next round of goal setting that once the goals are agreed upon by the subcommittee that they are given to the Executive Director to assign measurements.

Member Dehn noted that the Executive Director has been part of the process from the beginning and will continue to be.

Member Deal made a motion to accept the Executive Director's goals.

Member Slocum seconded the motion.

Voice Vote: All in Favor.

B. Discussion on Interest Calculations for Rate Revenue Surplus/Shortfall

Staff Moran gave an overview of the staff report and background on the issue. He noted that at the end of each year Recology submits a revenue reconciliation that compares what they were owed to what they were actually paid. The reconciliation process creates a surplus or a shortfall by Agency. In 2011 and 2012 Recology paid interest to those agencies with a surplus, and charged interest where there was a shortfall. He added that in 2011 there were only 3 agencies with a surplus, in 2012 there were 9, and it became evident that Agencies were building up large surpluses. In looking at the contract, interest is only owed on a shortfall. So, staff and Recology discussed this matter and Recology developed a fair and equitable solution.

Member Gauthier now present.

Mario Puccinelli noted that this discussion address a situation that was neither intended nor contemplated and proposed 3 scenarios to address the issue:

- Scenario 1 – if an Agency adopts rates lower than the SBWMA recommends or late, then interest would be owed to Recology as described in section 11.07 of the Franchise Agreement.
- Scenario 2 - if an Agency adopts rates at or above the SBWMA recommendation no interest would be owed to Recology even if there is a shortfall.
- Scenario 3 – if an Agency adopts rates above the SBWMA recommendation, then Recology would not pay interest on any surplus.

He also added that Recology will require a 60-day notification to return any surplus funds to an Agency.

Member Deal asked when Agencies would be notified when a surplus has been created.

Staff Moran answered that the rate report issued in September has a projection, so that would be an Agency's first clue that there would be a surplus or shortfall, but when the final reconciliation report is issued in March the final numbers would be available.

Member Ross clarified if a City wants their surplus they can get it they just need to give notice.

Mario Puccinelli answered yes with 60-days notice.

Member Olbert asked if this issue is not addressed in the contract, and questioned if this is clarifying interpretation of the contract.

Mario Puccinelli answered yes.

Member Widmer commented that looking over table 1, it looked like 8 of the 12 agencies had paid more interest than received, and requested it be a zero sum game, noting that no Agency should receive more interest than they paid in. He also asked what the logic was for cutting the interest off in 2012, and not sometime in 2013 when the first discussions happened.

Mario Puccinelli noted that Recology is waiving the interest payments that were made for 2011 and 2012 on surplus amounts.

Executive Director McCarthy added that he thought what Recology was proposing was fair. He noted that Recology did inadvertently pay interest that they were not obligated to and is not asking for it back. He also added that the books on 2011 and 2012 have already been closed, and the thought process is to not go back and change something in the past, but since the 2013 revenue reconciliation hasn't happened yet to try and agree on an understanding going forward.

Chair Widmer reiterated that his assumption was that it was going to be a zero sum game.

Member Olbert asked if any Agency that might have expected to receive interest income had contacted staff.

Executive Director McCarthy stated that his staff had not been contacted, but noted that the 2013 numbers are still estimates.

Mario Puccinelli said that no Agencies have contacted Recology either regarding expected interest income.

Member Olbert asked if Recology had basis to send an invoice to a City and ask for money back.

Counsel Lanzone stated that it's up to each individual agency on how they would like to reconcile interest. He noted that this Board would act in advisory capacity to the Agencies.

Member Bronitsky asked if all Agencies needed to agree on how to settle.

Executive Director McCarthy noted that the 2013 revenue reconciliation hasn't occurred yet, so the conversation has been started to come to a common understanding on how the interest should be handled before that reconciliation happens. He noted that this item would come back to the Board for a vote on a common understanding but that it wouldn't be binding, because each Agency separately holds an agreement; Member Agencies need to separately approved any amendments to their franchise agreements

Member Olbert added that he would like to see the SBWMA Board's decision be advisory. Adding that he supported Recology's approach on leaving 2011 and 2012 alone, and starting with 2013.

Counsel Lanzone suggested an informal contract interpretation be adopted by each agency rather than a formal amendment to the Franchise Agreements.

Member Foust requested that what Counsel Lanzone suggested be presented as part of what the Board votes on.

Counsel Lanzone stated yes, that it would be part of what was brought back to the Board for a vote.

Chair Widmer reiterated that he would like to see it balance to zero and that was his understanding from the conversation in October.

Mario Puccinelli noted that he didn't recall the zero sum game conversation.

Staff Moran noted that it's not possible to have every agency come to a zero sum, and that specific conversations about an Agency should be had with Recology.

Executive Director McCarthy restated that if interest went both ways, it's never going to add up to zero, he thought that if Recology wanted to make it zero that would be between Recology and the Member Agency. He added that he thought what Recology was proposing for the 2013 rate year was a fair and equitable way to handle the issue going forward.

D. Formation of an Audit Adhoc Subcommittee

Chair Widmer gave an overview of the Executive Committee discussions, in which forming an Adhoc Subcommittee was recommended, and that it would be a joint TAC/Board Subcommittee.

Member Ross made a motion to form an audit committee with 3 Board Members preferably with financial backgrounds, and a TAC member that is a finance professional.

Member Gauthier seconded the Motion

Voice Vote: All in favor.

5. **Old Business:**

A. Consideration of Approval of Additional Third Party Tons into the Shoreway Environmental Center MRF

Staff Gans gave an overview of the staff report, and clarified that 3rd party tons come from outside the service area. He noted that the facility has been processing 3rd party tons since 2011, and that it has been a positive relationship thus far. He addressed why staff was requesting such a short term approval for an evaluation period, noting that this additional material means additional workers are required, and staff wants to monitor this on an evaluation basis before final approval. He also noted that staff is analyzing facility needs, and the host fee in this evaluation period as well. He added that with approval of this resolution the host fee would go from \$10/ton to \$10.30/ton to reflect CPI.

Member Olbert asked if the extended hours that the facility would be open had been discussed with the City of San Carlos in the context of the conditional use permit, noting that he brought it up with San Carlos, and that they are looking into it.

Staff Gans answered that Cal Recycle is the oversight agency for the Shoreway facility, and that they would be the agency that would manage that permit, and that it hadn't been discussed with the City of San Carlos.

Member Olbert asked if market price for host fee had been researched.

Executive Director McCarthy answered yes, and pointed members to Table 1 in the staff report. He explained that when the \$10/ton host fee was established the RFP process was just completed and there was a pretty good idea of market pricing. That price was established to keep the Shoreway facility competitive. He also added that the goal would be to get a higher host fee if possible.

Member Gauthier commented that the staff report does not mention specific daily amounts, and asked for clarification from staff Gans noting he had mentioned a specific amount.

Staff Gans answered that prior Board approval was capped at 100 tons/day or 15,000 tons/year, and the new tonnage would be a little bit more than 100 tons per day.

Chair Widmer wondered how SBR could plan not knowing the specific daily tonnage coming in to the facility. He also commented that the host fee is significantly lower than the tipping fee and wondered if the host fee was covering costs.

Staff Gans answered that the host fee sits on top of the processing fee; it's an additional charge on top of what SBR charges to process the materials.

Executive Director McCarthy added that the host fee is altogether different from the processing fee, and this agreement is between SBR and Recology.

Chair Widmer asked if they would be paying the same overhead rates in this transaction, as the Agencies are paying.

Staff Gans answered that SBR is essentially renting our facility at \$10/ton to process this material and at that price the wear and tear costs on the building and equipment are being covered. He also noted that per ton price in this arrangement is higher than what tipping fees are for the SBWMA Agencies.

Member Olbert asked if the Board had any influence over the fee SBR is charging Recology to process these tons.

Executive Director McCarthy stated there is indirect influence by ensuring SBR prices are competitive, and by brokering the arrangement.

Member Olbert took issue with the arrangement, noting that the arrangement couldn't be made if the Shoreway facility didn't exist, and thought that more of the revenue should be coming to the SBWMA.

Executive Director McCarthy noted that the risk is all on SBR. The goal is to charge a host fee that covers overhead cost. He noted that there is an interest in knowing what SBR might be charging Recology, to know if the market can withstand a higher host fee.

Member Olbert disagreed and thought that if SBR was making a large profit in the arrangement then some of that should come to the Agencies.

Executive Director McCarthy noted that the alternative method is that the SBWMA go out and broker the deals for 3rd party tons, and then the SBWMA would take all the risk.

Chair Widmer asked if at the end of the trial period SBR's costs would be available.

Executive Director McCarthy answered that staff could construct those costs, but there is not an obligation for SBR to share financial statements.

Member Slocum commented that wound up in all of this discussion is a contract that is currently being negotiated with VRS that very important to the County and providing 24 jobs to workers from the North Fair Oaks area. He asked to hear from SBR for their perspective, concern and judgment on the issue.

Dwight Herring noted that SBR is currently in negotiations with VRS, and that the current contract expired December 31st, and they are currently working under a letter of intent. He explained that the new volume has maxed out first shift capacity and requires a second shift. To attract enough workers the new contract will have an increased wage rate. He noted that the six month review period puts everything on hold to sign a contract with VRS. If ultimately the Board decides to not allow the additional tons or if the host fee makes it prohibitive for Recology to commit the tons, SBR would not be able to execute the contract, and first shift workers would have to go back to the lower wage rate in the previous contract.

Chair Widmer clarified if SBR was asking the Board not to do a 6 month trial.

Dwight Herring answered yes, that SBR doesn't agree with the 6 month trial, but would prefer a 30 day review to understand what the host fee should be. He would like to avoid language in the VRS contract that is contingent on the SBWMA review period.

Member Ross asked if Shoreway wasn't available where the tons would go, and how far would they have to truck their items.

Staff Gans answered San Jose, which is actually closer than our facility.

Member Ross asked why the 3rd party tons aren't being brought to the closer facility now.

Dwight Herring answered that SBR provides a back haul to reduce costs.

Vice Chair Dehn commented that she wasn't comfortable with a 30 day review, and asked if there are other reasons why staff has recommended a six month review.

Staff Gans answered that the past board approved 3rd party tons, but didn't approve a second shift. He noted that the only other thing that needs to be researched is the need for possible capital improvements to accommodate the additional tonnage. Staff will be monitoring the need for additional space during the interim period. He also noted that within 60 days we would know the capital costs associated with this item, and if the Board wanted to take a fast track approach the agreement could be contingent on the host fee covering the costs of the capital improvement.

Executive Director McCarthy added that the infrastructure issue is an important consideration because if the materials come out of the building we are in violation of our permit. He added that he doesn't think a 30 day review is practical but a three to four month review is a possibility.

Member Ross asked if the SBWMA gets compensated for the back haul.

Dwight Herring answered that SBR does, but the SBWMA doesn't, SBR charges for fuel, labor and wear and tear for the difference in the route to pick up the material.

Member Ross asked if depreciation of the trucks was figured into the cost SBWMA pays SBR, and if depreciation of the trucks was being caused by the backhaul of material shouldn't the SBWMA receive some credit on depreciation.

Dwight Herring said he would look into that point.

Executive Director McCarthy added that at a host fee of \$10.30/ton, \$100,000 goes back to facility depreciation. He noted that from his perspective it's a lot of moving parts for only \$100,000 profit. He suggested more time to see if a higher host fee was possible, but not the single reason for requesting the review period.

Member Olbert asked what the consequences are of keeping tons at the current limits.

Executive Director McCarthy answered that if Shoreway can only take some of the tons, then all the tons might go somewhere else.

Vice Chair Dehn asked for further explanation of the first and second shifts.

Dwight Herring answered that in order to accommodate these tons a second shift needed to be added. VRS had to expand their available pool of workers, and an increased wage rate was offered to attract those workers, this raised the wage rate for all of the VRS workers. The difference in cost is being passed on to the 3rd party ton provider, so if those tons go away the higher wage rate goes away.

Member Olbert asked for clarification on what flexibility this Board has if the resolution is not approved, or don't approve it after the review period.

Executive Director McCarthy noted that we have a mutual interest to get this settled as soon as possible for all of the parties involved.

Counsel Lanzone noted that he didn't see any downside to the Agencies, to enter into the interim agreement. The discretion is going to be the Board to terminate it sooner since the agreement says up to six months.

Executive Director McCarthy added that the exposure lies with SBR and the agreement with VRS. Staff needs six months to figure the math out on the host fee and the capital improvement.

Vice Chair Dehn commented that she isn't comfortable with anything less than six months.

Member Carlton asked if six months would be enough time to do the research, and what happens at the end of the review period.

Executive Director McCarthy answered that sometime before the six month trial period is over, staff would come back to the Board with a recommendation for a long term contract, or not, but that he didn't see any barriers to a long term contract.

Member Carlton asked if there were any hidden costs which could cause the Board to cancel the contract.

Executive Director McCarthy said the only unknown cost is the cost of the capital improvement if it is needed.

Chair Widmer asked if Recology was fine with the six month terms.

Staff Gans answered that currently the tons are being accepted and Recology's pressure has been relieved with the interim arrangement. He noted that the SBWMA can cancel the 3rd party tonnage allowance at any time, based on terms in Exhibit A.

Mario Puccinelli stated that he is not a party to these agreements, but that at the moment there is no formal agreement between SBR and Recology. He added that the new material from Santa Clara that is requiring the second shift at some point in time without a written contract the tons could be at risk.

Executive Director McCarthy added that he has spoken with Mark Arsenault and he is comfortable with the interim terms, but if Recology gets a better deal the tons could go away. The goal is to continue to bring in additional tons, and to get the Board the additional information as soon as possible, and hopefully the Board will be comfortable with the new pricing arrangement.

Member Deal made a motion to approve staff recommendation.

Member Gauthier seconded the motion

Roll Call Vote:

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

6. Staff Updates

a) Update on Labor Issues

Executive Director McCarthy stated that both contractors have come to terms with their drivers, and that two contracts were still being negotiated.

b) Potential Future Board Agenda Items

c) Check Register for January 2014

Chair Widmer discussed why this was being added to the staff updates, and noted that it added a level of transparency.

Member Bronitsky asked what the policy is for out of the ordinary consultant work.

Executive Director McCarthy answered that any contract above his spending authority would come to the Board for approval.

Member Bronitsky stated that he would like disclosure to the Board on all contracts, and asked for a monthly report.

Chair Widmer suggested a report similar to a City Manager's update.

Executive Director McCarthy noted that the budget is approved by the Board, and that if it's not budgeted then the contract won't be issued, and he didn't see any contract as out of the ordinary.

Vice Chair Dehn commented that she would like to see a tally of what is paid to each contractor.

Member Foust agreed that a monthly Executive Director's report would be helpful.

d) Update on Commercial Recycling Registration System for Non-Franchised Haulers

Member Bronitsky asked if the SBWMA could pass an ordinance that would be binding in a jurisdiction.

Counsel Lanzone answered yes, and that this was just to collect information and data.

Vice Chair Dehn asked if it would be like the plastic bag ban in which each City has to go and pass their own.

Counsel Lanzone stated no, that this would be held by the SBWMA.

Saff Feldman added that this would have the purpose of gathering information on what is being diverted by haulers other than Recology.

e) Update on 2014/15 Franchise Rate Setting Process

f) Recycling and Outreach Programs Update

g) Shoreway Operations and Master Plan Update

h) Receipt of Recology and SBR Monthly Reports

Executive Director McCarthy noted that the contractor's monthly reports are now being emailed directly to the Board, and that this would only be a cover staff report going forward.

7. Board Member Comments

8. Adjourn 4:05PM