



**MINUTES**

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY  
 MEETING OF THE BOARD OF DIRECTORS  
 March 27, 2014 – 1:30 p.m.  
 RethinkWaste Board Room at the Shoreway Environmental Center

**Call To Order: 1:30 PM**

**1. Roll Call**

Agency	Present	Absent	Agency	Present	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 District	X	

- 2. Adjourn to Closed Session** –Conference with Legal Counsel – Existing litigation per government code section 54956.9(a) Zanker Road Resource Management, LTD versus South Bayside Waste Management Authority Santa Clara Superior Court Case No. 1-13-CV-248796

Regular Session CTO: 2:00 PM

**3. Report from Closed Session**

Nothing to report

**4. Roll Call**

Agency	Present	Absent	Agency	Present	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 District	X	

**5. 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.

Dwight Herring of SBR spoke about the proposed California budget elimination of curbside supplemental fees that are paid to the Member Agencies, and administrative fees that are paid to certified recycling centers. He noted that the proposed plan suggests certified recycling centers and processors should continue to provide the critical recycling services without any compensation. He added that administrative fees, or reimbursements, are used to defray the cost of managing the CRV recordkeeping and reporting requirements. Administrative fees also cover the cost of capital expended by recycling centers that typically wait 30 days or more to be reimbursed by the state for payments made to the public. In 2013, the Administration Fees that were billed to CalRecycle and paid to the SBWMA amounted to over \$24,000. He concluded by asking Board members to contact their State Assembly members asking them to leave the administrative fees alone.

Chair Widmer asked Dwight Herring to send a form letter to all of the Member Agencies that could be used to contact Assembly Members regarding the issue.

Michael Brownrigg commented that he was expecting a bigger number than \$24,000 and would like to understand the bottom line scale better.

Chair Widmer suggested this item be referred to the TAC for further understanding.

**6. 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 February 27, 2014 BOD Meeting Minutes
- B. Resolution Approving Calendar Year 2013 Financial Statements
- C. Resolution Approving Agreement to Conduct a Financial Systems Audit of the Collection Services and Facility Operations Contractors

Motion/Second: Gauthier/Aguirre  
 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			

Chair Widmer noted that Item 8 Old Business would be taken before Item 7.

**8. Old Business:**

**A. Resolution Clarifying Interest Calculations for Rate Revenue Surplus/Shortfall Calculated as part of Annual Contractor Compensation Adjustment Process**

Staff Feldman noted that this was a follow up item from the January 2014 Board Meeting, and that staff was asking for approval of the Memorandum of Understanding (MOU) attached to the staff report, which establishes expectations regarding future interest calculations on surplus revenue accrued by Recology. He noted that the MOU would be between the SBWMA and Recology because the SBWMA staff is charged with the review of the compensation application calculations that show the surplus or shortfall for each agency each year.

Member Bronitsky noted that last time he asked if it was all or nothing, and clarified that with this approval it will be all.

Counsel Lanzone answered yes, per the contract this Board approves the revenue reconciliation, and sets the compensation for the next year, as part of that the MOU says that if an Agency has a surplus they can apply by the end of July each year to have the surplus amount returned.

Executive Director McCarthy clarified that this Board doesn't set each individual Agency's rates; it approves the revenue requirement that needs to be generated through the rates.

Staff Feldman added that section 10 of the contract allows Agencies to provide an "other fee" with their garbage rates, if an "other fee" is part of your rates Recology will remit that money throughout the year, and avoid accruing any surplus.

Vice Chair Dehn asked for clarification on the time in between when an Agency is notified of a surplus and the July deadline to ask for the money back.

Staff Feldman answered that the revenue reconciliation report is due March 31<sup>st</sup> each year, so it's between April and July that an Agency would need to ask for the surplus funds.

Chair Widmer recalled that at the last meeting the time line was 30 days for a payment to be made.

Staff Feldman clarified that Agencies have 60 days to make the request, and it will be paid within 30 days.

Member Olbert made a motion to approve Resolution 2014-06.

Member Bronitsky seconded the motion

Member Brownrigg noted that he would be voting in favor of the resolution, adding that the City of Burlingame does maintain a significant surplus and they would be asking for it back.

Roll Call Vote: 11-0-0-1

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
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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			

B. Discussion on Cost Allocation Methodology in Member Agency Franchise Agreements with Recology San Mateo County (Discussion only)

Executive Director McCarthy noted that this was a follow up item and the last time this was discussed Recology was going to come back to the Board with additional data points to see if more data would change allocations, and also come back with information on what it would cost to automate their systems.

Mario Puccinelli explained the data that was provided in the staff report. He noted that they used their route hours operating statistics in June, September and December and then annualized them to emulate the process used in the compensation application. He concluded there were slight fluctuations in the allocations but nothing alarming, and that they believe no matter what methodology is used, there will still be variances. He also noted the Recology has yet to receive a quote on the cost of automating their systems.

Member Olbert wondered if it was possible to put the information gathered into dollar terms.

Mario Puccinelli answered that without doing the full blown rate application Recology would be making some large assumptions to do that.

Chair Widmer commented that he would still like to see all the data for the whole year, and that he thought that information was vital to making a final decision on fixing allocation. He added that increased data would give the Board good information from a benchmarking standpoint as well. He concluded that he supports the Executive Director's request to continue to press forward, and requested that the item be brought back next month to put pressure on the non-responsive vendor.

Mario Puccinelli agreed that Recology would press their vendor for a quicker response.

Member Brownrigg stated that there are two different elements involved. One is what data is collected, and second is how often it is collected. He noted that Burlingame would support a process that changed rates less than annually, but that he didn't support fixing allocation forever.

Chair Widmer commented that he is in favor of less variability.

Member Olbert commented that he is less concerned about year over year variability, because each agency can manage that to whatever level they wish themselves, and noted that there is inherent variability that is outside of this Board's control.

Vice Chair Dehn asked for clarification on whether this data is already collected, or if the Board was requesting another type of audit or methodology.. She commented that she did not support additional audits.

Mario Puccinelli explained that Recology looked at data from a different time and compared it to the four week period.

Member Brownrigg clarified that he was commenting on the term in the staff report – “arduous process”. He added that if it is an arduous process it is an expensive process and therefore he didn’t think it should be done annually.

Executive Director McCarthy added that he thought the take away from the last meeting was to try and get a different data set to see if it led to different results. He added that there isn’t enough information at this time to change what is being done now, and the proposal from RouteWare could be a game changer. He acknowledged that this year’s annual route assessment is coming up, and requested that there be an acknowledgement that Recology keep using the process prescribed in the contract, since there is no alternative to change to at this time. He noted that this would be a fundamental change to the compensation methodology that is in the Franchise Agreements to the JPA can’t make this change, each agency would have to vote on it.

## **7. New Business:**

### **A. Consideration of Introduction of Ordinance Implementing a Recycling Reporting System for Commercial Recycling Haulers**

Staff Feldman noted that this item has been before the Board in May and October of 2013, and in February of 2014, and that a lot of progress had been made at the TAC meetings in the last 2 months. He commented that changes in the last two months are: it is no longer a permit system it’s a registration system, enforcement would be in the way of administrative fines, and a detailed implementation schedule and a protocol manual will be set up. He added that one of the protocols is to have stakeholders meetings this fall to let them know they need to register by January 1, 2015, and the first quarter of 2015 would be the first reporting period.

Executive Director McCarthy added that there would be fees charged, and the intent would be to set fees get full cost recovery, he noted that there isn’t a firm number on how many haulers there are, which is why the registration fee hasn’t been determined yet.

Member Olbert was uncomfortable with the line in the staff report explaining why this would be a JPA ordinance, that stated some agencies may chose not to adopt the ordinance, noting that it felt like this Board would be stepping on Member Agencies prerogative to make sure they do the right thing.

Executive Director McCarthy commented that it’s possible if a model ordinance template is used then all the Member Agencies might not pass it, and then we would have an incomplete picture of diversion across the service area. He referred to the example of the model C&D ordinance that was passed by this agency that was felt to be a high priority to get additional diversion, noting that it took 2 years to get 8 or 9 agencies to pass a C&D ordinance.

Member Olbert followed up by clarifying that this ordinance would be enforced by SBWMA, and if it was new to the JPA.

Counsel Lanzone answered that it would be enforced by the SBWMA, and that the SBWMA has done one other ordinance, the cost accounting ordinance.

Member Bronitsky asked why it was important to collect the information.

Executive Director McCarthy answered that as stated in the staff report, this JPA plans solid waste and recycling programs for the 12 agencies in the JPA, and as far as doing our program planning the commercial recycling diversion rates are a big area of concern. All of our member agencies are doing great on the residential side, some as high at 80% diversion, but looking at the commercial side which is just what Recology collects the number is more like 30%, so that looks like a big opportunity for diversion. He noted that the truth may lie somewhere in between, but we don't know until we can get some information and reporting on what other recyclers are doing in the service area.

Member Bronitsky commented that he read the staff report as saying it's not for compliance with AB939, and if not for compliance with the law, that he didn't understand the necessity for an ordinance to collect data. He wondered why data couldn't be collected without an ordinance. He also commented that he had issues with passing authority to this board. He suggested starting with a letter from each municipality to all of their businesses to ask how they deal with their recycling to see if data would be given, and to ensure all of the commercial haulers were known. He commented that a business is more likely to know their City, than a letter that says RethinkWaste.

Executive Director McCarthy answered that part of what this JPA does is to look out over the horizon so that staff can advise on solid waste and recycling needs. He added that as part of that there is a 75% diversion state wide goal, and the only way to reach that 75% goal is through increased commercial recycling. He noted that it isn't a local mandate yet, so that is not the goal, but the goal behind getting the data is to be in a better position to answer the question as to whether or not there should be additional commercial recycling efforts throughout the service area. He also noted that in his opinion it would be hard to get the data voluntarily, there is a long history in the state of California of people trying to get the data voluntarily, but it got very expensive and the process was stopped.

Member Bronitsky wanted to know what the burden on the business community would be to provide this data and what the cost of enforcement would be.

Executive Director McCarthy stated that it is not the intent to chase businesses down; the intent is to get the data.

Member Olbert commented that if you start getting some of the larger haulers, they will know who the competition is.

Executive Director McCarthy added that Recology knows who the haulers are and that he thought it was a small universe and not too many companies would be missed.

Member Brownrigg suggested bringing on the consultant to shape the data inquiry before the ordinance, so that more definite parameters could be defined which could help make this board more comfortable passing an ordinance.

Staff Feldman noted that it is prescribed in the ordinance as far as who the applicants are, the definitions of a commercial hauler, and the material information collected. He added that it is not the intent to make it arduous on the businesses.

Member Bronitsky asked about a company like Safeway that puts the empty boxes back in the truck and if that was dealt with in the ordinance.

Staff Feldman answered that it is in the ordinance, and explained the term back haul.

Executive Director McCarthy added that these large businesses that are back hauling may be the largest source of diversion, but we don't know without getting the data.

Member Bronitsky noted that he would like more information from Cascadia, and that the ordinance was still a problem for him. He would like to use the next nine months to see if information can be gathered voluntarily.

Staff Feldman responded that it was staff's perspective that in order to spend the money prudently it needed to be more than voluntary.

Chair Widmer reiterated that Member Bronitsky didn't suggested large sums of money be spent in developing the software before a decision is made on the ordinance. The idea is to better define what is wanted and see if the information could be gathered voluntarily and be readily available before a data base is built.

Executive Director McCarthy noted that staff has surveyed agencies across the state that are dealing with the same issue and they've either put exclusive non franchises in place, which staff thinks is excessive, or they've done these types of ordinances, because they've found it difficult to get the data voluntarily.

Vice Chair Dehn asked if staff has reached out to haulers to see if they could provide information easily in a way that would be of value.

Staff Feldman answered that they provide this information to other agencies like the SBWMA that have ordinances in place, so they can also provide the information to our agency, but staff hasn't reached out to those business yet, it is part of the stakeholder engagement plan.

Member Ross wondered if any of the other agencies that have enacted an ordinance have run into any litigation with regards to the information being requested.

Counsel Lanzone answered that that he hadn't heard of any nor was there any mentioned in the consultant's report.

Chair Widmer asked for Executive Director McCarthy's thoughts on moving forward with the motion.

Executive Director McCarthy thought that a vote should be taken, and that this was the simplest way to go about getting the data. He noted that budget conversation would begin next month, including a long range plan and that this information would be needed as part of the long range plan and that he thought this was the cheapest way to go about getting the data. He noted that if the Board doesn't want an ordinance the backup plan would be to pursue voluntary data, but that it was important to get this information because without it there is an incomplete picture of our diversion.

Member Carlton suggested just going to what is thought to be the top 20% of generators that we know are providing this information to other jurisdictions to see if they would provide without an ordinance.

Executive Director McCarthy answered that would be the backup plan.

Counsel Lanzone suggested that an alternative would be to table the matter and bring back more information to the board.

Member Bronitsky made a motion that we table the decision until more information and informal outreach to some of the haulers can be done.

Member Gauthier seconded the motion

Discussion:

Member Olbert suggested taking this back to individual councils to see if their Agencies would be in favor of this.

Member Brownrigg noted that he would find it very difficult to adopt an ordinance in which the fee is not clear.

Chair Widmer suggested the chair or the vice chair of the TAC comment on their thoughts as a public comment.

TAC Vice Chair Afshin Oskoui noted that there has been a lot of healthy discussion on this topic for about a year and half at the TAC, and that Executive Director McCarthy has a legitimate concern over the big hole in the data, and how to capture that. He thought this was a means to get these companies to come to the table. He noted that information especially from the smaller haulers would be challenging without the ordinance but seeing if information could be given from the larger haulers over the next two to three months might not be a bad idea. He added that it might put staff in an awkward position in terms of planning purposes if the information can't be gathered voluntarily.

Member Ross added that when asking for the information voluntarily, that the message be that the Board is considering an ordinance but would like to take the least intrusive means to collect the data, noting that the delivery message would be important.

Member Bronitsky noted that he had no issue with collecting the data, so put the money in the budget to collect the data and then see if we can get it voluntarily or not.

Voice Vote: All in Favor.

#### B. Review of Cash Reserve Policy (Discussion only)

Staff Moran gave an overview of the staff report noting that the cash reserve policy was last reviewed in May by the previous board and the current policy was adopted at that time.

Executive Director McCarthy added that different from many cities, the JPA doesn't have high fixed costs, there is a small staff, and 1/3 of the total costs are staff costs, so there isn't as much risk exposure on a percentage basis. He noted that the policy is in line with what other JPAs are doing with the exception of the rate stabilization fund. Noting that reserving money for a rate stabilization fund is unique to this JPA, so it's not something individual member Agencies need to do. He also added that the only thing that can affect our revenue swing is commodity revenue which can go up and down, so he reiterated that the risk exposure is much smaller when compared to other municipalities.

Member Olbert questioned why operating expenses are tied to reserve policies and not revenue, since operating expenses are what is variable.

Executive Director McCarthy answered that the formula could be changed, but 10% of the operating cost gives a \$3M reserve which is in line with largest impact this agency has experienced, so we get there, and the rate stabilization fund is there to mitigate any sudden shocks that would make the tipping fees go way up or down.

Chair Widmer commented that some of the Member Agencies are setting up funds to deal with rate increases, and he suggested a supplemental rate stabilization fund to soften the blow when the additional labor costs come to the Agencies. He noted that the contracts are back end loaded with increases so - those costs are going up, and when those costs can get passed on to the Member Agencies they will, and he thought a supplemental fund would help the agencies.

Member Olbert commented that he was opposed to setting aside those types of funds at the JPA level because it could create a reverse incentive at negotiation time.

Executive Director McCarthy added that there is cost containment now, as increases are tied to indices, noting that under the old contract there was no cost containment. He added that it will be in 2017 and 2018 when these points will come up because if the contract is renewed they will want to have those costs covered, but right now there is a mechanism in place to protect the Member Agencies.

Member Brownrigg commented that he was comfortable with the reserve policy the way that it is, but asked if the Executive Director had visibility into the contracts that were recently renegotiated, because he would like to see some analysis of the cost curves that have been built in and some sense of what the delta might be.

Executive Director McCarthy that staff could do that both contractors have provided table on their rates, but the benefit side would have to be forecasted.

Member Ross is now absent.

#### D. Staff Overview of Contractor Annual Reports

Staff Feldman and Staff Gans gave overviews of Recology and SBR's annual reports.

Executive Director McCarthy gave a Snapshot Report on Recycling, Organics and Solid Waste for 2013 service area wide.

Member Brownrigg questioned why multi-family developments (MFD) and commercial were lumped together.

Executive Director McCarthy answered that there is separated information through Recology, but the two are serviced similarly which is why they are reported together.

Staff Feldman added that MFD diversion is very low.

Vice Chair Dehn asked why the HHW numbers were down in 2012.

Executive Director McCarthy answered that there was no significant outreach for HHW programs in 2012, in 2013 outreach was done, money was spent, and the numbers went up.

Chair Widmer wondered if 3<sup>rd</sup> party tons from outside the facility were included in the diversion analysis.

Executive Director McCarthy answered that they are included in overall facility numbers but not included if talking about self-haul.

E. Contractor Presentations on 2013 Annual Reports (Presentation only)

Mario Puccinelli gave a presentation on Recology's 2013 annual report and introduced his management team who each gave a presentation on each of their departments.

Tim Hester Assistant General Manager gave a presentation on Recology operations.

Dennis Franco Maintenance Manager gave a presentation on Recology maintenance.

Jeannette Haskell Customer Service Manager gave a presentation on Recology customer service.

Chair Widmer asked if the average time to resolve issues is going down.

Jeannette Haskell answered that all calls are resolved within 24 hours and that the time is going down.

Tammy DelBene Waste Zero manager gave a presentation on the Waste Zero specialists.

Gino Gasparini Public Affairs Manager gave a presentation on Recology's community involvement and volunteer programs.

Member Stone now absent.

Dwight Herring General Manager of SBR gave a presentation on SBR's annual report.

Member Aguirre now absent.

## 9. **Staff Updates**

- a) Update on Labor Issues
- b) Potential Future Board Agenda Items
- c) Check Register for February 2014
- d) Technical Consulting Contracts – 1<sup>st</sup> Quarter 2014

Executive Director McCarthy noted that this staff update was included at the request of the Board and would be provided quarterly.

- e) Update on 2014/15 Franchise Rate Setting Process
- f) Recycling and Outreach Programs Update

Staff Mututa announced the Trash to Art Contest judging and asked the Board members to vote places 1<sup>st</sup> through 4<sup>th</sup> for their favorites.

- g) Shoreway Facility Operations and Maintenance Update
- h) Receipt of Recology and SBR Monthly Reports

**10. Board Member Comments**

**11. Adjourn 4:39 PM**