
MINUTES

**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
MEETING OF THE BOARD OF DIRECTORS
September 22, 2011 – 2:00 p.m.
San Carlos Library Conference Room A/B**

1. Roll Call: CTO 2:08 p.m.

In attendance: East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, County of San Mateo and West Bay Sanitary District.

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 July 28, 2011 BOD Meeting Minutes
- B. Resolution Approving the 2nd Amendment to the Executive Director's Employment Agreement
- C. Approval of Quarterly Investment Report as of 6/30/11
- D. Resolution Approving Contract with SMART, Inc. for Installation of MRF Residue Conveyor
- E. Receipt of Recology and SBR Monthly Reports

M/S: Porter/Gibbons

Voice Vote: All in Favor (Atherton, Belmont, Burlingame, San Mateo Absent)

4. New Business:

- A. Resolution Approving SBWMA Reimbursement of Allied Waste for Teamster Benefit Trust Payment and Repayment Terms for Recology San Mateo County

Executive Director McCarthy stated that this issue was highlighted at the July meeting, noting that this is a timing issue of how the money gets reimbursed to Allied. Staff has presented the option of using SBWMA cash reserves to make the payment to Allied. Stating that if the motion is approved it has the benefit of keeping the total amount of the reimbursement out of the Allied Balancing Account.

Executive Director McCarthy also noted that repayment terms from Recology would need to be captured in an Agreement.

M/S: Porter/Gibbons

Roll Call Vote:

Motion Passes: 8-0-0-4

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 District	X			

San Mateo Now Present

B. Resolution Approving Allied Waste 2010 Closeout Rate Applications for Collection and Shoreway Operations

Executive Director McCarthy thanked Allied Waste for working productively with HF&H and the SBWMA to come to Resolution on the close out of their 2010 expenses.

Member Fotu asked about the bad debt services. Noting that it appeared that some of the bad debt was due to down sizing, asking why Allied would be able to claim this as bad debt and not a loss.

Rick Simonson explained, that it is two separate issues, and noted that it might not be stated in the report as such, adding that there is an expense line item for less than anticipated revenue due to down sizing. And another for non payment which is the bad debt specifically, noting that downsizing has not caused bad debt.

M/S: Hardy/Porter

Roll Call Vote:

Motion Passes: 7-0-2-3

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 District			X	

C. Resolution Approving 2012 South Bay Recycling Compensation Application

Executive Director McCarthy noted that there is prescribed rate setting process for setting the fees we used to compensate South Bay Recycling. The overall adjustment is 1.3% increase over 2011. That includes both indexed adjustments and CBA adjustments. He noted that staff had gotten a question ahead of the meeting regarding the CBA adjustments, and clarified that there are 4 of them in place: mechanics, truck drivers, transfer station workers, and clerical workers. 3 of them expire in October 2013. One of them, the mechanics CBA has a reopener, so going forward wages and benefits will be indexed.

Executive Director McCarthy added that there is one item of note in the rate application. Last year the VRS contract had not been finalized, so there is a true up of that in this year's application that had the effect of adjusting the MRF fee by \$1.10.

Member Fotu clarified that the Allied Balancing Account for Shoreway is not included in this rate application

Executive Director McCarthy answered no, it's not included in the compensation for SBR. Adding, that there is a table in the back of the SBR application, which does show the Allied balancing account, it's there to show our financial projections, but doesn't have any impact on what we pay SBR.

M/S: Hardy/Porter
Roll Call Vote:
Motion Passes: 9-0-0-3

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 District	X			

D. Resolution Approving 2012 Recology San Mateo County Compensation Application

Item moved until after discussion of agenda item 4E

E. Presentation on Consolidated 2012 Rate Report

Staff Moran gave a presentation on the total rate adjustment process to put Recology's piece of rate adjustment into the context of how it fits into the total picture. He noted that there are four required pieces to the rate setting process: The Allied Balancing Account, the SBR compensation application, the Recology compensation application and additional pass throughs. Adding that there are also two discretionary items including the 2011 revenue reconciliation estimate, noting that currently we are estimating that we will make in 2011 less than what we owe Recology. The other discretionary item is 2012 cart migration. Noting that it would be up to each individual agency to decide how much to include in their rates for 2012 cart migration.

Staff Moran referred to hand outs 1 to 5 that gave updates to the rate variance analysis.

Member Murray asked if the cart migration service adjustments would be included in the shortfall, or were the reason for the shortfall.

Staff Moran answered that cart migration was included in the number, but also included late rate increases, lower than recommended increases, lost commercial business, and anything else that could be happening to each agencies revenue base that could be causing it to be lower than what was projected last year.

Member Masbad asked about the estimated shortfall, if there was analysis on the breakdown of what is causing the shortfall.

Staff Moran answered that there is another analysis to show the agencies, but that there was no way to know how much of the short fall is caused by what piece.

Member Fotu asked for clarification on what agencies are obligated to pay. Asking if it was everything is section A and clarifying that the Allied piece was separate.

Staff Moran answered that the two have been combined, but each agency will owe a certain amount to Allied and a certain amount to Recology.

Staff Feldman added that the answer is yes, the Franchise Agreement obligation is contained in A. The Allied piece is separate.

Executive Director McCarthy explained that the SBWMA's role is to ask what the numbers are and try to confirm those numbers. It's not the SBWMA's role to tell each Agency how to collect money form Recology to pay Allied.

Each agency is responsible for setting up that process with Recology as part of the process of remitting Franchise fees.

Staff Feldman clarified that in section 10 of each agency's Franchise Agreement the framework is set up to collect the money on a regular basis.

Member Masbad questioned when the Allied Balancing Account monies would be due, and how much interest is incorporated. She also asked when the Recology account reconciliation monies would be due as well as that interest.

Staff Moran answered that Allied's obligation would be due within 12 months from the date of approval which would be today as it was just approved.

Rich Lanser, Allied, answered that interest has been calculated through 2010 only, no interest has been calculated for 2011 or 2012, and there is nothing set up for it going forward. Allied is proposing a payment plan that replicates the Franchise fees on a quarterly basis. If that is acceptable to everyone then Allied would be willing to forgo the interest, but if there are Agencies wanting to wait until the 12th month to pay, then interest would need to be implemented.

Bob Lanzone clarified that there is no interest that accrues under the contract

Member Scott requested that the SBWMA provide some facilitation between Allied and the agencies for repayment terms.

Member Murray questioned if there is a formal remit process or how does each agencies start the process.

Executive Director McCarthy answered that there is no formal process, but added that if it was the will of the Board to facilitate staff work on that.

Chair Moura if it is the will of the board we can provide direction to staff to help facilitate the remittance process.

Bob Lanzone clarified that it is up to each legislative body to decide how they are going to work out the repayment terms. This board doesn't have the authority to make a motion or pass any thing that would obligate each agency.

Executive Director McCarthy added that he wasn't appreciative of Rich Lanser's comments regarding interest being accrued if the Agencies didn't make quarterly payments. He thanked Kevin Finn for helping to resolve the issues fairly, realizing that the SBWMA can't tell 12 agencies what to do. He suggested that Staff poll each agency on what their given situation is and see if there is a commonality.

Member Scott suggested that maybe there are 2 or 3 options we could come up with that would make it simpler for Allied.

Staff Moran continued with the presentation, noting that the final reports would be out October 1st, and the numbers being presented were all based on a January 1 rate adjustment.

Member Hardy asked if numbers would change between today and when the final reports come out on October 1st.

Executive Director McCarthy noted that there was an item that could change numbers, but it wouldn't change numbers much, and it would be highlighted later in the presentation.

Staff Feldman explained how costs are allocated, and how the statistics are used allocate costs. Making note that the first year of data was based on assumptions, and the second year based on specific operational data. Two items of statistical data were collected in a way that varied from the contract. One staff agrees with and one staff disagrees with.

He continued that the one that staff agrees with is venues and events. The way the contract is written it doesn't say to collect data in a way that makes sense. So what Recology did was allocate costs based on the number of accounts in lieu of the cost of providing service to the venues of events. Because the rate application was due in July in the middle of event season, Recology didn't have all of the data, so Staff agrees with the way Recology did this allocation.

The second item is the facility cost allocation. The way the company allocated this was based on the number of lifts in lieu of the actual operating statistics. Because no revenue is generated from these types of facilities they are coded differently in their system. Looking at the data provided there are a couple of agencies that take 70% of the total cost to provide service to agency facilities. Adding that staff can't say for sure if this is an equitable way to do it, but it wasn't prescribed in the contract to be allocated this way. He noted that this is a very small piece (less than 2%) of the over all rate impact. He concluded that Staff recommends reconciliation be put in place, that would have to be voted on with the Recology Rate application.

Member Scott questioned why Recology didn't use the rate setting dollars to tell each agency how much agency facilities are costing them.

Staff Feldman answered that each member agency sets the rates. The costs are allocated through Attachment N of each agency's Franchise Agreement. The issue here is how the company has calculated costs to provide service to your Agency facilities across all agencies. It was done in a way that was not prescribed in the contract. We don't know if the numbers would come out differently if it was done the way it is written in the contract, but we need to put a process in place to find out, and that would be done through your recommendation to approve Recology's rate application.

Executive Director McCarthy added that we would like to get this answered very quickly, so it's possible some of these costs could be reallocated.

Member Masbad asked what the JPA's recommendation on the issue.

Staff Feldman answered that we have a couple of choices. The first is to ask the company to look at these numbers the way it is written in the contract and see if in 3 to 5 days we can get a clearer answer. The second is to wait until next year, give Recology time to fix their systems, and make an adjustment is next year's revenue reconciliation process.

Member Fotu asked staff how Menlo Park went from 1200 lifts in 2010 to 67,000 lifts in 2011, and how the numbers were calculated. She wondered how Menlo Park got such a huge increase.

Executive Director McCarthy answered that in the case of Menlo Park it's a huge part of the rate increase, and the numbers don't seem to make sense to staff. He added that what Staff Feldman is proposing is that we have Recology do this allocation based the way the Franchise Agreement is written. In your case it seems if they do it the way the Franchise Agreement says Menlo Park is likely to get a reduction. We are in the position that we didn't know this when the staff report went out on the 15th, so we are trying to get to an equitable solution.

Member Hardy asked if it was possible in the next 3 to 5 days to have these numbers calculated according to the Franchise Agreement. And, if not would they give a waiver or interest, if we study further and come up with a resolution for next year.

Mike Kelly Recology San Mateo County answered that an updated allocation methodology could probably not be done in the next 3 to 5 days, but it could be done within a month. Adding that Recology's preference is to work toward a resolution in the 2013 revenue reconciliation

Member Scott noted that it sounded like two ways of getting to the same information.

Mike Kelly gave an explanation of how the numbers could turn out differently.

Executive Director McCarthy added that the same number of lifts might not equate to the same number of hours.

Member Fotu asked how they know they had 67,000 lifts in Menlo Park, adding that that is more than 1,000 lifts per week.

Executive Director answered that he agreed Menlo Park's numbers didn't make sense. But acknowledged we have a timing issue because the Recology rate application numbers may change. He added that if there is a motion to approve the rate application today, this issue should be addressed in the motion.

Staff Feldman noted that it sounded like getting new numbers allocated the way it states in the Franchise Agreement isn't feasible because the Agencies need the numbers by October 1st. So adding this item the revenue reconciliation for 2013 might be the better way to go at this point.

Staff Feldman continued with his presentation on the revenue reconciliation process, noting that the unscheduled services are not included in the rate application. So Recology doesn't get paid for two years for unscheduled services.

Member Masbad asked when interest would accrue.

Staff Feldman answered that interest would accrue on the 2011 money on January 1, 2013, because that would be the first time an Agency would have to collect it through their rates.

Staff Moran clarified that the interest would actually start accruing in Jan 2012, but payments would start after the revenue reconciliation in January of 2013.

Member Hardy asked if the reverse was true if we have set are rates to high do we get an interest credit.

Staff Moran answered no.

County Staff Clark asked for data on unscheduled services.

Staff Moran answered that is in the monthly and quarterly reports.

Member Galli noted that agencies are charging for unscheduled services regularly.

Mike Kelly said that unscheduled services are costs outside of the revenue reconciliation because they were not included in the RFP.

Member Hardy asked if it is a one to one relationship between costs and charges for items in attachment Q is there a different cost for the items in attachment Q for 2012.

Mike Kelly answered that attachment Q has been updated by CPI and that the SBWMA has those updates.

Executive Director McCarthy asked Mike Kelly to send it to the Board.

Mike Kelly said he would get that out to the Board tomorrow.

Chair Moura asked about the schools adjustment, noting that some agencies have a schools adjustment, but San Carlos doesn't have a schools adjustment.

Staff Moran answered that your agency had no change so it's not reflected in this handout, but San Carlos does have a schools adjustment.

Chair Moura wondered if there was an agency who's rates began February 1st instead of January 1st, would they be charged interest for January if those were the old rate?

Staff Moran answered that interest isn't paid until the end of the year, but yes, interest would still be charged for January.

Member Hardy asked how bad debt is handled under this new contract with Recology.

Staff Moran answered that there is no reconciliation for bad debt; it's built into our operating budget.

D. Resolution Approving 2012 Recology San Mateo County Compensation Application

Staff Feldman noted that the numbers are basically the same from the report on the 15th with a few exceptions, related to the costs for the schools adjustments, and how those allocated across the Member Agencies. Adding that they are much more reflective of how the cost reduction should be applied. Hand out #3 highlights the changes.

Member Fotu asked about the labor routes, she gave the example of there being an increase of 2% more accounts in Menlo Park but that there is an increase of 7% route hours and a 15% increase in labor route hours, she asked for clarification of reconciling increase in costs.

Mike Kelly answered that last years numbers were based on our model from 2008, now we have Routeware and we have much truer numbers. Routeware identifies how much time we're spending in each jurisdiction. Adding that is how Recology figures out what the route labor hours are.

Staff Feldman added that there will be an annual route audit, and other audits of Recology's systems.

Member Hardy questioned what time period the route hours assessment was over.

Staff Feldman answered that it was a snap shot of May 1 – 28, and then annualized for 12 months.

Member Hardy added that we have a phenomenal amount of real time data because of this technology that we paid for. So we can have confidence we are getting accurate data and the route hours associated with that for 2011.

Member Fotu questioned how the annual route assessment will change things going forward.

Staff Feldman answered that we're looking at doing the application differently than the way it's spelled out in the contract. If we get direction from the Board and Recology is agreeable. Instead of using snap shot of May use June 2011 to May 2012 data in the Rate Application setting process. What the route assessment data will be a confirmation of the data.

Member Fotu asked if Recology was looking into making routes more efficient.

Mario Puccinelli answered yes; Recology is always looking at ways to make routes more efficient. He requested help from the member agencies on getting customers to properly set out their carts, adding that proper set out helps Recology become more efficient.

Executive Director McCarthy acknowledged that this is a complicated process, and would like to start a dialogue about how to improve the process.

Executive Director McCarthy reiterated that the Board needed to give direction on how to deal with Agency facilities cost allocation.

Motion:

Member Hardy made a motion to approve the Recology Rate Application with amendments from hand out 3 page 3, and handout 5. Included in the motion that we acknowledge that there is a reconciliation that needs to happen on Agency facilities allocation and that we go forward with getting the information in the next month, but not put in rates until 2013. Resolve the issue now, but pay it in 2013.

Second:

Member Gibbons seconded the motion.

Discussion:

Member Porter announced that the County was going to vote no because they'd done some review and have questions. We have a meeting with Recology to get those questions answered but we don't feel comfortable voting for this on the County's behalf until those questions get answered.

Member Fotu added that Menlo Park would be voting no as well due to the unanswered questions regarding the Agency Fees

Member Chan asked the Board to consider postponing the vote so that there would be more time to answer some unanswered questions

Motion Fails: 4-4-1-3

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 District		X		

Executive Director McCarthy asked the Board for direction on next steps. Noting that is an obligation of this Board to have due consideration for this application, adding that Recology has no obligation to waive the interest.

Member Porter suggested a special meeting in two weeks to re-vote and in order to keep everyone's time line intact. Noting that this would allow for time to have meeting with Recology and get questions answered.

Member Masbad added that Recology and Staff have been very responsive to questions, noting that not all of them have been answered to date, but we feel that we don't want to hold up the process.

Member Fotu offered the option of removing the Agency Facility Fee and reconciling in correctly in the 2013 rate application.

Member Porter added that San Mateo County's concern is very specific to our Agency, but if our numbers change it could affect all the agencies. He suggested voting again, knowing that the numbers could still change based on individual agencies discussions.

Member Hardy noted that the problem with that is that Agencies have to go to our councils and approve Prop 218 notices.

Member Scott noted that he has made some requests and hasn't gotten a response and asked to speak off line about that. He also noted he opposes some of the pass through costs that he opposed in the past.

Member Chan added that San Mateo just had a meeting with Recology earlier in the day and they just need a little bit more time to digest the information and share the information with other staff.

County Staff Clark asked that when Attachment N is submitted to the SBWMA that the agencies get it to, so that they can start reviewing the numbers.

Staff Feldman noted that if 12 member agencies review it, it will be impossible for the review will be completed in 60 days. Something like this needs to be thought out because there will be a lot more give and take and it will change what we are working with.

Executive Director McCarthy added that what ever work is going to be done in the next few weeks is not going change these numbers that much. So if you're an agency getting ready to go to your council, he suggested to keep moving forward.

Member Hardy suggested using the commercial recycling workshop to reschedule the vote for this item.

Chair Moura noted that they would direct staff to send out some dates in the next two weeks to set a meeting to re-vote on this issue.

San Mateo County Now Absent
East Palo Alto Now Absent

F. Resolution Approving Pricing Agreement between the SBWMA and SBR for Processing Third Party MRF Tonnage

Staff Gans explained that Newby Island Recycling Facility is undergoing a major construction project and on August 23rd they issued an RFP for processing services similar to the way we issued an RFP for processing services. The RFP had a deadline of September 16th. He noted that there are two major areas for discussion, one is the reason for processing 3rd party tons, and the second is the terms the SBWMA has with SBR for processing 3rd party tons. Explaining that the quantity of recyclable material being processed at the MRF is less than anticipated, and by bringing in 3rd party tons SBR's capacity and the MRF capacity can be filled through recruitment of outside tons. SBR has proposed a price for Daly City and Half Moon Bay tonnage to come to the facility. Newby will be making a decision if SBR is a candidate.

Member Masbad asked if staff had looked into the process that would allow SBR to separate the costs associated with processing 3rd party tons from the Franchise tons.

Staff Gans answered that this issue is one of the core terms on the agreement with SBR. Noting that the agreement states that SBR would be responsible for the any repair costs associated with 3rd party tonnage and it has protection from collateral damage as well.

M/S: Gibbons/Hardy
Roll Call Vote:
Motion Passes: 7-0-0-5

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 District	X			

7. Old Business:

- A. RSMC Franchise Agreement Operational and Contract Administration Update
No Report
- B. SBR Shoreway Operations Agreement Update
No Report

8. Staff Updates

- a) Update on Recology Commercial Recycling Outreach Efforts
- b) Recycling and Outreach Programs Update
- c) Shoreway Construction Update
- d) Preview of Upcoming Board meetings

9. Board Member Comments

10. Adjourn 4:30 PM

Next Regular meeting scheduled for October 27, 2011, San Carlos Library at 2:00 pm