



NEW BUSINESS



STAFF REPORT

To: SBWMA Board Members
From: Robert J. Lanzone, General Counsel
Date: July 28, 2011 Board of Director's Meeting
Subject: Board Election of Vice-Chair

Recommendation

The Board Chair should receive nominations from the Board of Directors for Vice-Chair and the Board should elect a Vice-Chair for the remainder of 2011, effective August 1, 2011.

Discussion

Kent Steffens of Menlo Park is the current Vice-Chair of the Board of Directors for 2011. He is leaving the Board effective the end of July 2011. He is leaving his position in Menlo Park to become the Public Works Director in Sunnyvale.

Pursuant to the JPA Agreement, Section 8.6, the Board needs to elect a replacement as Vice-Chair for the remainder of 2011. The process for doing so is described above in the Recommendation.



STAFF REPORT

To: SBWMA Board Members
From: Cliff Feldman, Recycling Programs Manager
Marshall Moran, Finance Manager
Date: July 28, 2011 Board of Directors Meeting
Subject: Review of Cart Migration Data for Member Agencies

Recommendation

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

Analysis

This staff report is a follow up to information provided at the July 22, 2010 Board meeting regarding a discussion on residential rates and rate setting. This report presents current data on customers changing service levels (i.e., cart migration) that has transpired through July 2011 (**Attachment A**). The data in Attachment A also reflects additional carts in service since last July 2010, an overall 3.3% increase or 2,665 new carts in service for the SBWMA. According to Recology San Mateo County (Recology), at least some of these additional carts are from accounts that had not been billed by the previous contractor for whatever reasons (e.g., "suspended" accounts), but were subsequently activated during Recology's new collection services roll-out.

The actual revenue impact from cart migration for any given Member Agency cannot be currently determined because we do not know the timing of when the change occurred during the past year (i.e., it is difficult if not impossible to ascertain exactly when all the changes were made since customers can change their service levels at any time). These changes could be for one month or twelve months. In addition, the data includes additional carts being serviced so the migration impact alone is diluted.

However, it is important to point out that cart migration generally results in less revenue being generated and needs to be considered when establishing rates for the next rate year (i.e., 2012). As a reminder, the 2012 Recology Compensation Application, the 2012 South Bay Recycling Compensation Application and the 2012 SBWMA Consolidated Rate Report will be presented to the Board in September. The 2012 SBWMA Consolidated Rate Report will provide the recommended rate adjustments based in part on factors including cart migration, revenue shortfall/overage projections, and all cost based adjustments to collection services such as disposal and agency fees. Further, the rate increases approved by the Board in the 2012 SBWMA Consolidated Rate Report will be binding on each Member Agency and interest will accrue on any revenue shortfall accrued by Recology for rates not increased prior to January 1, 2012.

Other factors in addition to cart migration that contribute to a deficit in revenue generation that need to be taken into account when establishing future rates include the extent to which an agency adopts "progressive" rates and the timing of past rate increases. Member Agencies that adopt more progressive rates (i.e., those that offer the smaller cart sizes such as the 20 and 32 gallon carts at the highest "discounts" in relation to the actual cost of service) may exacerbate the loss of revenue associated with cart migration. Staff will provide at the Board meeting an updated residential rate cost analysis similar to what was shared at the September 9, 2010 special Board workshop on rate issues.

Background

The new Franchise Agreements for Collection Services with Recology fundamentally improves the offering of services provided to customers including weekly single stream recycling and other services. There is also a new level of responsibility on Member Agencies to establish rates to pay for these services. The Franchise Agreements with Recology stipulate that the Member Agencies have a contractual obligation to set rates to cover Recology's approved compensation and pass-through costs such as Agency franchise fees and disposal. The past use of a Balancing Account with Allied/Republic Services is not part of the new Agreement with Recology and thus Member Agencies will need to adjust rates annually.

Fiscal Impact

There is no fiscal impact to SBWMA. The fiscal impact, if any, on the Member Agencies will be addressed during each respective Agency's rate setting process. Attachment B provides a preliminary look at how each Member Agency's 2011 projected revenue compares to last year's revenue requirement for planning purposes.

Attachment B provides an estimate of the projected 2011 revenue by Member Agency compared to the 2011 revenue projection put forth in last year's final November 19, 2010 Consolidated Rate Report. The footnotes explain how each Member Agency handled the Allied Balancing Account in their rates. The total revenue shortfall of 6.2% (column D) includes the combined affect of cart migration, delayed rate increases, lower rate increases than recommended, and other service changes to all customers including commercial. Of the 6.2% overall shortfall, an estimated 2% (column G) is specifically due to rate increases adopted late past the assumed January 1, 2011 date which was used in the SBWMA Consolidated Rate Report.

Attachments:

Attachment A – Cart Migration Tables

Attachment B – Current 2011 Revenue Projection vs. Last Year's 2011 Revenue Projection

**Residential Collection Service Levels
SOLID WASTE ONLY
Member Agency: SBWMA**

Service Levels	July 2010		July 2011		CHANGE	
	Number of Containers	Percent of Containers	Number of Containers	Percent of Containers	July 2011 vs July 2010	
					#	%
20 gal	11,734	14.6%	15,369	18.5%	3,635	31.0%
32 gal	48,192	59.8%	49,720	59.7%	1,528	3.2%
64 gal	15,601	19.3%	14,155	17.0%	-1,446	-9.3%
96 gal	5,103	6.3%	4,051	4.9%	-1,052	-20.6%
TOTAL	80,630	100.0%	83,295	100.0%	2,665	3.3%

3.3%

All data from Recology

July 2010 data is different than presented in 2010 due to data inconsistency

July 2010 data includes results of cart selection mailer responses received through August 27, 2010

Excludes NFO and County (data not available)

**Residential Collection Service Levels
SOLID WASTE ONLY
Member Agency: ATHERTON**

Service Levels	July 2010		July 2011		CHANGE	
	Number of Containers	Percent of Containers	Number of Containers	Percent of Containers	July 2011 vs July 2010	
					#	%
20 gal	165	6.5%	358	13.8%	193	117.0%
32 gal	915	36.0%	941	36.4%	26	2.8%
64 gal	741	29.2%	684	26.5%	-57	-7.7%
96 gal	721	28.4%	603	23.3%	-118	-16.4%
TOTAL	2,542	100.0%	2,586	100.0%	44	1.7%

1.7%

All data from Recology

July 2010 data is different than presented in 2010 due to data inconsistency

per Recology census - Att. N (J) Rate Application

2,359 - some customers have more than one container

**Residential Collection Service Levels
SOLID WASTE ONLY
Member Agency: BELMONT**

Service Levels	July 2010		July 2011		CHANGE	
	Number of Containers	Percent of Containers	Number of Containers	Percent of Containers	July 2011 vs July 2010 #	%
20 gal	1,170	17.8%	1,460	21.7%	290	24.8%
32 gal	4,324	65.8%	4,331	64.5%	7	0.2%
64 gal	885	13.5%	800	11.9%	-85	-9.6%
96 gal	188	2.9%	128	1.9%	-60	-31.9%
TOTAL	6,567	100.0%	6,719	100.0%	152	2.3%

2.3%

All data from Recology

July 2010 data is different than presented in 2010 due to data inconsistency

per Recology census - Att. N (J) Rate Application

6,677 - some customers have more than one container

**Residential Collection Service Levels
SOLID WASTE ONLY
Member Agency: BURLINGAME**

Service Levels	July 2010		July 2011		CHANGE	
	Number of Containers	Percent of Containers	Number of Containers	Percent of Containers	July 2011 vs July 2010	
					#	%
20 gal	742	11.6%	1,065	16.1%	323	43.5%
32 gal	4,041	63.1%	4,051	61.3%	10	0.2%
64 gal	1,218	19.0%	1,179	17.8%	-39	-3.2%
96 gal	407	6.4%	314	4.8%	-93	-22.9%
TOTAL	6,408	100.0%	6,609	100.0%	201	3.1%

3.1%

All data from Recology

July 2010 data is different than presented in 2010 due to data inconsistency

per Recology census - Att. N (J) Rate Application

6,511 - some customers have more than one container

**Residential Collection Service Levels
SOLID WASTE ONLY
Member Agency: FOSTER CITY**

Service Levels	July 2010		July 2011		CHANGE	
	Number of Containers	Percent of Containers	Number of Containers	Percent of Containers	#	%
20 gal	661	10.1%	1,056	15.7%	395	59.8%
32 gal	4,613	70.8%	4,652	69.0%	39	0.8%
64 gal	1,036	15.9%	879	13.0%	-157	-15.2%
96 gal	206	3.2%	153	2.3%	-53	-25.7%
TOTAL	6,516	100.0%	6,740	100.0%	224	3.4%

3.4%

All data from Recology

July 2010 data is different than presented in 2010 due to data inconsistency

per Recology census - Att. N (J) Rate Application

6,700 - some customers have more than one container

**Residential Collection Service Levels
SOLID WASTE ONLY
Member Agency: HILLSBOROUGH**

Service Levels	July 2010		July 2011		CHANGE	
	Number of Containers	Percent of Containers	Number of Containers	Percent of Containers	July 2011 vs July 2010	
					#	%
20 gal	268	7.2%	483	13.0%	215	80.2%
32 gal	1,858	50.1%	1,838	49.6%	-20	-1.1%
64 gal	960	25.9%	889	24.0%	-71	-7.4%
96 gal	619	16.7%	493	13.3%	-126	-20.4%
TOTAL	3,705	100.0%	3,703	100.0%	-2	-0.1%

-0.1%

All data from Recology

July 2010 data is different than presented in 2010 due to data inconsistency

per Recology census - Att. N (J) Rate Application

3,627 - some customers have more than one container

**Residential Collection Service Levels
SOLID WASTE ONLY
Member Agency: MENLO PARK**

Service Levels	July 2010		July 2011		CHANGE	
	Number of Containers	Percent of Containers	Number of Containers	Percent of Containers	July 2011 vs July 2010 #	%
20 gal	1,501	19.2%	1,845	22.7%	344	22.9%
32 gal	4,031	51.7%	4,356	53.7%	325	8.1%
64 gal	1,761	22.6%	1,518	18.7%	-243	-13.8%
96 gal	506	6.5%	399	4.9%	-107	-21.1%
TOTAL	7,799	100.0%	8,118	100.0%	319	4.1%

4.1%

All data from Recology

July 2010 data is different than presented in 2010 due to data inconsistency

per Recology census - Att. N (J) Rate Application

7,856 - some customers have more than one container

**Residential Collection Service Levels
SOLID WASTE ONLY
Member Agency: Redwood City**

Service Levels	July 2010		July 2011		CHANGE	
	Number of Containers	Percent of Containers	Number of Containers	Percent of Containers	July 2011 vs July 2010 #	%
20 gal	3,253	18.8%	3,966	22.2%	713	21.9%
32 gal	10,474	60.7%	10,849	60.8%	375	3.6%
64 gal	2,604	15.1%	2,328	13.0%	-276	-10.6%
96 gal	938	5.4%	705	4.0%	-233	-24.8%
TOTAL	17,269	100.0%	17,848	100.0%	579	3.4%

3.4%

All data from Recology

July 2010 data is different than presented in 2010 due to data inconsistency

per Recology census - Att. N (J) Rate Application

17,160 - some customers have more than one container

**Residential Collection Service Levels
SOLID WASTE ONLY
Member Agency: SAN CARLOS**

Service Levels	July 2010		July 2011		CHANGE	
	Number of Containers	Percent of Containers	Number of Containers	Percent of Containers	July 2011 vs July 2010 #	%
20 gal	1,472	17.6%	1,716	19.8%	244	16.6%
32 gal	5,308	63.3%	5,446	63.0%	138	2.6%
64 gal	1,287	15.4%	1,244	14.4%	-43	-3.3%
96 gal	316	3.8%	244	2.8%	-72	-22.8%
TOTAL	8,383	100.0%	8,650	100.0%	267	3.2%

3.2%

All data from Recology

July 2010 data is different than presented in 2010 due to data inconsistency

per Recology census - Att. N (J) Rate Application

8,531 - some customers have more than one container

**Residential Collection Service Levels
SOLID WASTE ONLY
Member Agency: CITY OF SAN MATEO**

Service Levels	July 2010		July 2011		CHANGE	
	Number of Containers	Percent of Containers	Number of Containers	Percent of Containers	July 2011 vs July 2010	
					#	%
20 gal	2,218	11.5%	3,010	14.9%	792	35.7%
32 gal	11,401	58.9%	12,034	59.7%	633	5.6%
64 gal	4,676	24.2%	4,235	21.0%	-441	-9.4%
96 gal	1,047	5.4%	894	4.4%	-153	-14.6%
TOTAL	19,342	100.0%	20,173	100.0%	831	4.3%

4.3%

All data from Recology

July 2010 data is different than presented in 2010 due to data inconsistency

per Recology census - Att. N (J) Rate Application

19,842 - some customers have more than one container

**Residential Collection Service Levels
SOLID WASTE ONLY
Member Agency: WEST BAY SANITARY DISTRICT**

Service Levels	July 2010		July 2011		CHANGE	
	Number of Containers	Percent of Containers	Number of Containers	Percent of Containers	July 2011 vs July 2010 #	July 2011 vs July 2010 %
20 gal	284	13.5%	410	19.1%	126	44.4%
32 gal	1,227	58.5%	1,222	56.9%	-5	-0.4%
64 gal	433	20.6%	399	18.6%	-34	-7.9%
96 gal	155	7.4%	118	5.5%	-37	-23.9%
TOTAL	2,099	100.0%	2,149	100.0%	50	2.4%

2.4%

All data from Recology

July 2010 data is different than presented in 2010 due to data inconsistency

per Recology census - Att. N (J) Rate Application

2,119 - some customers have more than one container

SBWMA

2011 Projected Revenue (July 2011) Versus 2011 Projected Revenue (Nov. 2010)

	<u>A</u>				<u>B</u>		<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>
	2011 Projected Revenue (July 2011)				2011 (Nov. 2010)		Revenue <Shortfall>/>Overage		2011 Revenue if	Lost Revenue due	%
	Annual								Rates set on	to delayed Rate	
	Jan-Jun	July-Dec	Attachment Q	Total	2011 Revenue	2011 Rate	\$	%	Jan. 1	Increases	
	Actual	Projected	Backyard & Add Cart Charges	(excl Att Q Rev.)		Increase Date					
Atherton	\$ 891,247	\$ 1,166,501	\$ 48,669	\$ 2,009,079	\$2,655,030	⁵ 07/17/11	(\$645,951)	-24.3%	\$ 2,443,475	\$ (434,397)	-16.4%
Belmont	\$ 2,668,486	\$ 2,668,486	\$ 2,682	\$ 5,334,291	\$5,789,861	⁶ 01/01/11	(\$455,570)	-7.9%	\$ 5,336,973	\$ (2,682)	0.0%
Burlingame	\$ 4,206,105	\$ 4,307,444	\$ 4,107	\$ 8,509,442	\$9,433,474	² 02/01/11	(\$924,032)	-9.8%	\$ 8,614,888	\$ (105,445)	-1.1%
East Palo Alto	\$ 2,308,814	\$ 2,304,718	\$ 301	\$ 4,613,231	\$4,421,110	¹ 01/01/11	\$192,121	4.3%	\$ 4,609,436	\$ 3,795	0.1%
Foster City	\$ 2,675,620	\$ 2,774,492	\$ 165	\$ 5,449,947	\$5,342,921	02/01/11	\$107,026	2.0%	\$ 5,548,984	\$ (99,037)	-1.9%
Hillsborough	\$ 1,212,856	\$ 1,360,620	\$ 32,159	\$ 2,541,317	\$3,177,705	⁵ 03/01/11	(\$636,388)	-20.0%	\$ 2,721,240	\$ (179,924)	-5.7%
Menlo Park	\$ 4,890,388	\$ 4,965,348	\$ 1,822	\$ 9,853,914	\$10,440,141	³ 04/01/11	(\$586,227)	-5.6%	\$ 9,930,695	\$ (76,782)	-0.7%
North Fair Oaks	\$ 1,236,572	\$ 1,242,304	\$ 360	\$ 2,478,517	\$2,480,074	¹ 03/01/11	(\$1,558)	-0.1%	\$ 2,484,609	\$ (6,092)	-0.2%
Redwood City	\$ 7,843,545	\$ 7,908,430	\$ -	\$ 15,751,975	\$16,635,962	⁴ 01/11/11	(\$883,987)	-5.3%	\$ 15,816,860	\$ (64,885)	-0.4%
San Carlos	\$ 3,389,604	\$ 3,389,604	\$ 3,198	\$ 6,776,009	\$7,605,142	² 01/01/11	(\$829,132)	-10.9%	\$ 6,779,208	\$ (3,198)	0.0%
San Mateo	\$ 8,996,917	\$ 9,740,515	\$ 9,158	\$ 18,728,274	\$19,794,485	⁵ 04/01/11	(\$1,066,212)	-5.4%	\$ 19,481,030	\$ (752,756)	-3.8%
San Mateo County	\$ 1,282,884	\$ 1,303,192	\$ 3,522	\$ 2,582,554	\$2,558,488	03/01/11	\$24,066	0.9%	\$ 2,606,383	\$ (23,829)	-0.9%
West Bay	\$ 512,118	\$ 557,641	\$ 3,998	\$ 1,065,761	\$1,014,517	03/01/11	\$51,245	5.1%	\$ 1,115,282	\$ (49,521)	-4.9%
Total	\$42,115,156	\$ 43,689,295	\$ 110,140	\$ 85,694,310	\$91,348,910		(\$5,654,600)	-6.2%		\$ (1,794,753)	-2.0%

Footnotes:

- ¹ - includes Allied Balancing Account at 25%
- ² - includes Allied Balancing Account at 100%
- ³ - includes Allied Balancing Account at 41%
- ⁴ - includes Allied Balancing Account at 100% and includes internal city funds to pay Allied not included in last year's report
- ⁵ - includes Allied Balancing Account at 25% but actual is unknown
- ⁶ - includes Allied Balancing Account at 25% but actual is zero



STAFF REPORT

To: SBWMA Board Members
From: Kevin McCarthy, Executive Director
Marshall Moran, Finance Manager
Date: July 28, 2011 Board of Director's Meeting
Subject: Review of Allied Waste 2010 Closeout Rate Applications for Collection and Shoreway Operations

Recommendation

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

Analysis

Transfer Station

Allied submitted its rate application on April 18, 2011 for an adjustment to its compensation and calculated a two year cumulative (see **Table 2 in the Executive Summary in the attached report- Attachment A**) actual revenue shortfall of \$2,044,000 at the end of 2010. The shortfall is comprised of a 2009 cash shortfall of \$1,347,000 and a 2010 cash shortfall of \$697,000. This compares favorably to the projected two-year revenue shortfall last year estimated at \$2,213,000.

A summary of HF&H and staff recommended adjustments that are disputed by Allied Waste can be found on pages 2-3 of the attached report. These items will be discussed at the Board meeting. As explained in other reports, these shortfalls are primarily due to lower tonnage than forecast resulting in lower payments to Allied which are based on a rate per ton.

Collection

Allied's application submitted to the SBWMA on April 18, 2011 presented a balancing account surplus and shortfall (as appropriate) for each Member Agency, based on its allocated cost of service. Allied calculated an average balancing account shortfall for all Member Agencies of \$926,000 (ranging from a surplus of \$181,000 for West Bay Sanitary District to a shortfall of \$3,700,000 for the city of San Mateo). After HF&H's recommended adjustments described in Section VI of the attached report (see **Attachment B**), HF&H calculated an average cumulative balancing account shortfall of \$884,000 (ranging from a surplus of \$186,000 for the West Bay Sanitary District to a shortfall of \$3,635,000 for the city of San Mateo).

Authority-wide, the actual balancing account balance owed to Allied was \$212,000 less than projected last year, with seven Member Agencies' balancing account balances decreasing and five increasing (as shown in Table 1 in the Executive Summary of the attached report – see Attachment B). The most significant unanticipated expense which impacted the balancing accounts was Allied's payment, at the request and urging of Recology San Mateo County and Teamsters, of the Teamsters' Benefit Trust health care premiums for January 2011 benefit coverage. This expense was included by Recology in their 2011 rate application and was therefore not anticipated to be paid by Allied.

Excluding this unanticipated payment, only three Member Agencies would have experienced higher than anticipated balancing accounts. With the exception of the West Bay Sanitary District and North Fair Oaks, all other Member Agencies have balancing account shortfalls which are required to be paid back to Allied within 12-months of the agreed-upon amount owed. Additional details by Member Agency can be found in Appendix A of the Collection rate report.

A summary of HF&H and staff recommended adjustments that are disputed by Allied Waste can be found on pages 4-5 of the attached report. These items will be discussed at the Board meeting. Additionally, there will be a discussion at the Board meeting of the reconciliation of still open post 2010 expenses, namely workers' compensation claims and bad debt expense.

Background

Transfer Station

Since the start of the operating agreement in March 2000, Allied has received bi-monthly payments from the SBWMA. The per-ton payment amount is calculated to provide Allied with its allowable projected compensation; however, the payments are not intended to provide compensation greater than allowable expenses and profit. On an annual basis, HF&H reviews and determines Allied's approved compensation (actual and allowable expenses and profit). HF&H calculates the difference between Allied's approved compensation and the sum of the bi-monthly payments Allied received from the SBWMA which becomes the Balancing Account. HF&H's findings are contained in a rate report that is reviewed by SBWMA staff and submitted to the Board for review and approval.

Allied's actual revenue and expenses were compared to the projected revenue and expenses to determine the final year's (2010) operating surplus/shortfall for Shoreway operations. In accordance with the Shoreway Operations Agreement Section VI.J of Exhibit H – SBWMA Compensation Adjustment Guidelines for the Operation of the Shoreway Recycling and Disposal Center "Any surplus owed to the SBWMA shall be paid by [Allied] to the SBWMA over a one-year period. Any shortfall owed to [Allied] will be paid to [Allied] over a one-year period." With Board approval, the SBWMA has made two quarterly payments of \$673,417 for half of the 2009 balance. Quarterly payments for 2010 will begin after Board approval of this report.

Collection

Procedurally, Allied submits a rate application to the SBWMA no later than August 1 of each year, which contracts with an independent consultant (HF&H) to review the application. The SBWMA bases its recommendations on the consultant's report and presents its recommendations to the Member Agencies for consideration. This application process covers the review of projected operating revenues and expenses for 2010 and the application was submitted earlier than usual as it only focused on the closeout of one rate year (i.e., 2010).

The rate application framework per the Allied Waste franchise agreements and Shoreway Operations Agreement are as follows:

- Expenses and revenues are projected based on actual results, trends, and management plans; and
- Profit is established on a 91% pre-tax operating ratio applied to reasonable and necessary operating expenses, net of certain "pass-through" expenses (i.e., disposal expenses and franchise fees).

Fiscal Impact

These Rate Reports form the basis, along with the compensation to be paid to South Bay Recycling and Recology San Mateo County, for setting Shoreway tip fees and Member Agency Collection rates. Since these final draft Rate Reports show a minor improvement to the Member Agency Balancing Accounts in total, there is no direct fiscal impact but the improvement is certainly good news compared to the alternative and will put less pressure on collection rates overall. Each Member Agency has established its own plan for settling with Allied what if anything is owed.

Attachments:

- A -- Allied Waste Draft 2010 Shoreway (Transfer Station) Rate Report
- B -- Allied Waste Draft 2010 Collection Rate Report



Agenda Item 6C

Attachments:

- Attachment A – Allied Waste Draft 2010 Shoreway (Transfer Station) Rate Report
- Attachment B – Allied Waste Draft 2010 Collection Rate Report

File too large to include with Packet

Posted on Website: www.rethinkwaste.org



STAFF REPORT

To: SBWMA Board Members
From: Kevin McCarthy, Executive Director
Marshall Moran, Finance Manager
Date: July 28, 2011 Board of Director's Meeting
Subject: Special Issues Affecting 2012 Compensation Applications

Recommendation

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

Analysis

This staff report provides an update to the Board on special issues potentially affecting the 2012 Compensation Applications from Recology San Mateo County (RSMC) and South Bay Recycling (SBR).

Special Issues Affecting the **RSMC Compensation Application** for 2012:

1. Collection Services to non-Franchised Public Schools

The collection data obtained from Allied in 2008 and used in the Collection RFP to develop cost proposals included services to public schools which in fact are non-franchised. It was unknown to the SBWMA at the time that schools were included in the data but it was up to the proposers to thoroughly review all data and ensure their RFP responses were compliant with the draft franchise agreement provided as part of the collection services RFP process. This draft franchise agreement clearly excluded public agencies such as schools from its scope. The RFP also was clear in stating that the draft franchise agreement would prevail if any conflicts arose between any of the documents included with the RFP. In addition, the draft franchise agreement and now all of the Member Agencies Franchise Agreements with Recology state that the company is solely responsible for all assumptions used to build its routes and hence the proforma used as the basis for the costs in its proposal and ultimately those approved via the RFP contractor selection process.

RSMC did not adjust their proposed routing assumptions during the RFP process or in their final routing assumptions memorialized in twelve separate franchise agreements to remove these non-franchise accounts.

When this fact came out in early 2011, it was discussed with RSMC who acknowledged that they would service all public schools if requested through the school year and then take them out of their franchise service. Some school accounts had already been lost to competition. To correct their cost and compensation for 2011, it is proposed that the cost to service these schools be removed from their 2011 and subsequent year's cost base and total compensation by Member Agency.

2. Reimbursement to Allied for their Payment for January 2011 Teamster Benefit Trust Coverage

As noted in the draft 2010 Allied Waste rate reports for collection services and Shoreway operations, Allied Waste paid, at the request and urging of Recology San Mateo County and Teamsters management representatives, the Teamsters' Benefit Trust health care premiums for January 2011 benefit coverage.

This expense was included by Recology in their 2011 rate application and was therefore not anticipated to be paid by Allied.

SBWMA staff requested the two new employers, RSMC and SBR to reimburse Allied for the benefit coverage for their employees in January. SBR agreed to reimburse Allied and we appreciate their cooperation. RSMC has not agreed to make this payment to Allied. The SBWMA plans to at a minimum deduct the appropriate amount from Recology's 2012 Compensation Application.

SBWMA staff believes that if the two contractors reimburse Allied now, then they will also be reimbursed by the next contractor for the January 2021 payment, assuming they are no longer the contractor. The RFP cost proposal assumed that each contractor would cover 120 months of benefit coverage and that is all we are trying to accomplish with this arrangement. RSMC wants to make 11 TBT payments in 2011, 12 payments per year for the next eight years, and 13 payments in 2021 which does not conform to the 12 annual payments assumed in the RFP and their cost proposal.

We believe that RSMC should make the payment directly to Allied since it is their employees who received the benefit of the payment by Allied for January medical coverage. The amount in question is \$357,000.

Special Issues Affecting the **SBR Compensation Application** for 2012:

1. Mechanics Wages being negotiated

The current mechanics union contract shows a July 1 2011, 2012, and 2013 wage rate but the rate is left blank and was to be negotiated later per a "reopener clause" in the collective bargaining agreement. The SBR 2012 Rate Application has an estimate for this wage rate. When this rate is finally negotiated, there will be a cost adjustment for the two mechanics affected by this agreement in next year's rate application.

This issue does not affect RSMC whose franchise agreement has different language than SBR's contract. The RSMC cost for mechanic's wages will revert to a CPI adjustment on January 1, 2012.

Fiscal Impact

Schools - The SBWMA staff is proposing that RSMC reduce their 2011 compensation by the annual cost to service schools of approx. \$120,000 which will be credited back to each Member Agency. The school revenue would also not be included in the franchise revenue. In addition, staff believes that RSMC should credit back to each Member Agency the difference in revenue from actual billed rates to the franchise rates net of franchise fees through June 30, 2011 (approx. \$126,000). Recology is not in agreement for reasons that are not clear to staff.

TBT – This issue is a timing problem as RSMC agrees that they will eventually make an additional monthly TBT payment. The amount at issue is \$357,000. Without this reimbursement by RSMC to Allied, it increases the Allied Collection Services Balancing Account. Unless a better agreement is reached, it will be deducted from RSMC's 2012 compensation since they will only be making 11 payments in 2011. This creates an awkward situation by shifting the payment to the old contract and recovering it in the new contract at a later time period.

Mechanics – unknown final CBA mechanics wage rate but since only two employees are affected, the impact is minimal.



STAFF REPORT

To: SBWMA Board Members
From: Kevin McCarthy, Executive Director
Cliff Feldman, Recycling Programs Manager
Date: July 28, 2011 Board of Directors Meeting
Subject: Discussion on Recology Request for a Waiver from First Quarter 2011 Incentive and Disincentive Payments

Recommendation

This is an informational report and no action is necessary.

Analysis

In a letter from Recology San Mateo County (Recology) dated May 23, 2011 (**Attachment A**), the company is requesting that the performance incentive and disincentive payments for the First Quarter of 2011 be waived.

The company's rationale for this request is substantially based on language found in Attachment I to each Member Agency's Franchise Agreement, as follows:

"The performance incentives and disincentives contained herein will commence after full implementation of the roll-out of new services to Agency, with the exception of Contamination disincentives for Single-Family Targeted Recyclable Materials, which will commence after the first six (6) months of Rate Year One (2011). Agency may defer imposing some standards until after the first six (6) months of the roll-out of new services."

This rationale provided to support the request for a waiver is further emphasized by Recology's perspective that "full implementation" of collection services was not achieved until some unspecified time which is at least after the First Quarter of 2011. In addition, the May 23, 2011 letter cites that "...factors beyond Recology's control contributed significantly to extending the roll-out period..." and thus delayed the company's ability to achieve a state of "full implementation." The "factors" cited in the May 23, 2011 letter include the following:

- the cart selection mailer sent to residents in June 2010 did not include 2011 rates
- not all Member Agencies adopted 2011 rates prior to January 1, 2011
- incomplete data on the number of backyard service customers was provided by Allied/Republic
- drivers adjusting to new collection routes
- drivers changing from two person crews to being alone on route
- service day changes
- collection location changes
- changes to placement of materials in containers
- implementation of "new accounts"

Staff believes that the company's reliance on the idea of not achieving full implementation as rationale to waive the performance incentive and disincentive payments and the supporting reasons stated are inadequate from both a contractual and practical perspective. In addition, staff has made several requests to Recology to document and quantify several aspects of the rationale used to support a waiver of disincentive payments for all of the First

Quarter; however, the information requested was either not made available or what was provided was insufficient to convince staff that the request in totality is reasonable.

The SBWMA requested an outside legal opinion from Hanson and Bridgett, LLP on Recology's request for a waiver. The legal opinion rendered states that Recology's reliance alone on the language from Attachment I is not sufficient rationale for a waiver. The opinion further states that contracts are to be read as complete and integrated documents, thus there are several other provisions of the Franchise Agreement(s) which indicate that the "roll-out" of new services was to be fully implemented on January 1, 2011, rather than over an extended, uncertain period of time potentially lasting six months, or more. For example, the Implementation Plan (i.e., Attachment L) which is in itself a detailed step-by-step schedule of actions to be taken by Recology over a 19-month period beginning in June 2009 and culminating in December 2010, refutes Recology's primary rationale. The language of the Implementation Plan could not be more clear; the roll-out was to be "fully implemented" by the date on which Recology was to begin providing collection service to customers -- January 1, 2011.

In addition, Recology's demand for a meeting to discuss these waivers pursuant to Section 8.E of Attachment I is not contractually appropriate. That section of the Franchise Agreement applies if and when the SBWMA, or a Member Agency, notifies Recology that it has revised Recology's initial calculation of an incentive or disincentive payment. Then, within 10 days after receiving that notice, Recology may, in turn, notify the SBWMA or Agency of its disagreement with the revised calculation and present evidence in support of its position. Thereafter, the SBWMA or Agency is obligated to meet with Recology to discuss the matter. However, neither the SBWMA nor a Member Agency has revised Recology's calculation of First Quarter 2011 disincentive payments.

It is important to point out that staff does generally concur with the company's perspective that the size and scope of the transition to new collection services commencing on January 1, 2011 did result in significantly higher call volume than anticipated and hence accrual of disincentive payments during the month of January 2011. Therefore, staff believes that providing relief from the first month (i.e., January only) of select performance incentives and disincentives may be a reasonable accommodation to the broader request made by Recology.

However, staff also believes that it is premature at this time to consider offering a waiver for performance incentives and disincentives for the following reasons. First, since only the 2011 First Quarter results have thus far been calculated, it is possible that the net balance of incentive payments owed to Recology and disincentive payments due to the Member Agencies at the end of 2011 (i.e., after four quarters of information is compiled and the results calculated) will result in a cost to the Member Agencies. Second, during FY 2012 staff will be conducting a detailed audit of the company's customer service, record keeping and reporting functions and any consideration of waiving performance incentives and disincentives should take the results of this audit into consideration.

Lastly, while the letter from Recology dated May 23, 2011 stated that the \$61,184 paid to the SBWMA for First Quarter contamination related disincentives was done so "under protest," staff is addressing this request separately with the company. Staff has already explained to the company that the only feasible way that a waiver for contamination related disincentive payments could be achieved, would be for every Member Agency's governing body to agree and subsequently amend each respective Franchise Agreement. It is important to also point out that the May 23, 2011 letter erroneously states that SBWMA staff are working through related issues with them "with the ultimate goal of achieving results that closely align with the actual residue achieved by the processing facility over a 12-month period." While staff will continue to work with the company on this issue and have in fact already offered an accommodation that would improve how the contamination related disincentive payments are calculated, which the company was receptive to, we did not agree nor imply our willingness to

modify the Contamination Measurement Methodology prescribed in the Member Agency's Franchise Agreement(s) Attachment E-2 as the May 23, 2011 letter states.

Background

The inclusion of performance incentives and disincentives with the new Franchise Agreement(s) was considered very early in the contractor selection process. This approach pursued by the Member Agencies dates back to the prior Franchise Agreement with Allied Waste/Republic Services and was also deemed important during the initial contractor selection process scoping work done by the PAF and PAC committees. In general, this approach was considered important to ensure the exemplary performance of the collection services provider. Thus, the Collection Services RFP and accompanying draft Franchise Agreement issued in 2007 included numerous performance incentive and disincentives that would be measured and associated monetary payments would be applied.

The primary rationale for this was to provide direct financial stimulus, both positive and negative, to ensure that the future collection services provider would meet and potentially exceed the performance standards prescribed in the contract. Table 1 found in Attachment I of the Member Agency Franchise Agreements lists the Performance Incentives and Disincentives, performance thresholds and associated payments.

Summary of Incentives/Disincentives

TABLE 1			
Performance Incentive and Disincentive	Disincentive Payment Threshold	Incentive Payment Threshold	Performance Incentive/Disincentive Payment Amount
Annual Diversion Level			
Overall Diversion Level ¹	Not applicable	calculated Overall Diversion Level > targeted Overall Diversion Level	Incentive payment = \$70.00 per Ton
Minimum Single-Family Diversion Level	Level < TBD% ¹	Not applicable	Disincentive payment = \$70.00 per Ton
Minimum Commercial Diversion Level	Level < TBD% ²	Not applicable	Disincentive payment = \$70.00 per Ton
Maximum Contamination Level – Residential Targeted Recyclable Materials	Rate Year One level > 20% ³ Rate Year Two (2012) through Ten (2020) level > TBD ⁴	Not applicable	Disincentive payment = \$175.00 per Ton
Maximum Contamination Level – Residential Organic Materials	Level > 5%	Not applicable	Disincentive payment = \$70.00 per Ton

TABLE 1			
Performance Incentive and Disincentive	Disincentive Payment Threshold	Incentive Payment Threshold	Performance Incentive/Disincentive Payment Amount
Maximum Contamination Level – Commercial Targeted Recyclable Materials	Level > 8%	Not applicable	Disincentive payment = \$70.00 per Ton
Maximum Contamination Level – Commercial Organic Materials	Level > 10%	Not applicable	Disincentive payment = \$70.00 per Ton
Maximum Contamination Level – MFD and Commercial Plant Materials	Level > 5%	Not applicable	Disincentive payment = \$70.00 per Ton
Single-Family Missed Pick-Up Initial Complaints	Actual % > 0.1% (1 Complaint per 1,000 Service Opportunities)	Actual % < 0.033% (1 Complaint per 3,000 Service Opportunities)	Incentive or Disincentive payment = \$50.00 per Complaint
Single-Family Missed Pick-Up Collection Event	Actual > 0	Not applicable	Disincentive payment = \$50.00 per Missed Pick-Up Collection Event
Average Speed of Answer	Actual > 30 seconds	Actual < 15 seconds	Incentive or disincentive payment = \$500 per second above or below the threshold
Ninety (90) Second Maximum Hold Time	Actual < 100% of all calls received are answered in ninety (90) seconds or less	Not applicable	Disincentive payment = \$5.00 per number of calls exceeding the threshold

¹ "TBD" is "to be determined. The minimum Single-Family Diversion Level for Rate Year One (2011) shall equal the calculated Single-Family Diversion Level achieved by the Previous Contractor in 2010 which shall include all Recyclable Materials Collected by Contractor during the Recycling Blitz in 2010. The minimum Single-Family Diversion Level for Rate Year Two (2012) through Ten (2020) shall equal the higher of the following: (i) the Single-Family Diversion Level achieved by Previous Contractor in 2010 including all Recyclable Materials Collected by Contractor during the Recycling Blitz in 2010 or (ii) the Single-Family Diversion Level achieved by Contractor in Rate Year One (2011).

² "TBD" is "to be determined. The minimum Commercial Diversion Level targeted for Rate Year One shall equal the calculated Commercial Diversion Level achieved by the Previous Contractor in 2010 which shall include all Recyclable Materials Collected by Contractor during the Recycling Blitz in 2010. The minimum Commercial Diversion Level for Rate Year Two shall equal the higher of the following (i) the Commercial Diversion Level achieved by Previous Contractor in 2010 including all Recyclable Materials Collected by

Contractor during the Recycling Blitz in 2010 or (ii) the Commercial Diversion Level achieved by Contractor in Rate Year One (2011).

³ The Single-Family Dwelling Targeted Recyclable Materials maximum Contamination Level is twenty percent (20%) for the last six (6) months of Rate Year One (2011).

⁴ "TBD" is: "to be determined." The Rate Year Two (2012) through Rate Year Ten (2020) maximum Contamination Level will be established by calculating the arithmetic average of the quarterly results obtained from the sampling for Rate Year One (2011) conducted pursuant to Section 6.02.B and Attachment E-2.

Fiscal Impact

While there is no fiscal impact associated with this item since there is no associated Board action, the following information is provided to facilitate discussion.

The fiscal impact for each Member Agency that considers the company's request to waive call center related performance incentive and disincentive payments for the First Quarter 2011 is delineated in Table 2.

Table 2

Q1-2011 Performance Incentives and Disincentives						
Member Agency	SFD Missed Pick Up Complaints		SFD Missed Pick Up Events	Average Speed of Answer	Ninety Second Hold Time	Q1-2011 Totals
	Incentive Payment	Disincentive Payment	Disincentive Payment	Disincentive Payment	Disincentive Payment	
Atherton	\$0.00	(\$350.00)	(\$900.00)	(\$132.50)	(\$1,296.42)	(\$2,678.92)
Belmont	\$1,250.00	\$0.00	(\$450.00)	(\$487.70)	(\$4,772.94)	(\$4,460.64)
Burlingame	\$850.00	\$0.00	(\$1,200.00)	(\$1,107.50)	(\$10,838.04)	(\$12,295.54)
East Palo Alto	\$1,500.00	\$0.00	(\$300.00)	(\$573.50)	(\$5,611.71)	(\$4,985.21)
Foster City	\$1,150.00	\$0.00	(\$600.00)	(\$594.00)	(\$5,812.31)	(\$5,856.31)
Hillsborough	\$0.00	(\$700.00)	(\$1,200.00)	(\$166.30)	(\$1,627.48)	(\$3,693.78)
Menlo Park	\$1,950.00	\$0.00	(\$600.00)	(\$842.00)	(\$8,240.06)	(\$7,732.06)
North Fair Oaks	\$350.00	\$0.00	(\$550.00)	(\$299.40)	(\$2,929.46)	(\$3,428.86)
Redwood City	\$2,250.00	\$0.00	(\$2,250.00)	(\$1,865.40)	(\$18,253.87)	(\$20,119.27)
San Carlos	\$550.00	\$0.00	(\$1,450.00)	(\$671.00)	(\$6,565.95)	(\$8,136.95)
San Mateo	\$2,250.00	\$0.00	(\$1,550.00)	(\$2,069.60)	(\$20,253.04)	(\$21,622.64)
San Mateo County	\$1,150.00	\$0.00	(\$700.00)	(\$230.70)	(\$2,257.51)	(\$2,038.21)
West Bay	\$400.00	\$0.00	(\$400.00)	(\$85.50)	(\$836.20)	(\$921.70)
Total	\$13,650.00	(\$1,050.00)	(\$12,150.00)	(\$9,125.10)	(\$89,294.99)	(\$97,970.09)

Positive amounts reflect payment to Recology and negative amounts reflect payment to Member Agencies.

The fiscal impact of considering staff's potential recommendation to a limited "January only" waiver of call center related performance incentive and disincentive payments is delineated in Table 3. This table reflects omitting January 2011 disincentive payments for Average Speed of Answer and 90 Second Hold Time performance standards.

Table 3

Q1-2011 (Call Center February and March Only) Performance Incentives and Disincentives						
Member Agency	SFD Missed Pick Up Complaints		SFD Missed Pick Up Events	Average Speed of Answer	Ninety Second Hold Time	Q1-2011 Totals
	Incentive Payment	Disincentive Payment	Disincentive Payment	Disincentive Payment	Disincentive Payment	
Atherton	\$0.00	(\$350.00)	(\$900.00)	\$0.00	(\$593.95)	(\$1,843.95)
Belmont	\$1,250.00	\$0.00	(\$450.00)	\$0.00	(\$2,186.70)	(\$1,386.70)
Burlingame	\$850.00	\$0.00	(\$1,200.00)	\$0.00	(\$4,965.39)	(\$5,315.39)
East Palo Alto	\$1,500.00	\$0.00	(\$300.00)	\$0.00	(\$2,570.97)	(\$1,370.97)
Foster City	\$1,150.00	\$0.00	(\$600.00)	\$0.00	(\$2,662.88)	(\$2,112.88)
Hillsborough	\$0.00	(\$700.00)	(\$1,200.00)	\$0.00	(\$745.62)	(\$2,645.62)
Menlo Park	\$1,950.00	\$0.00	(\$600.00)	\$0.00	(\$3,775.13)	(\$2,425.13)
North Fair Oaks	\$350.00	\$0.00	(\$550.00)	\$0.00	(\$1,342.12)	(\$1,542.12)
Redwood City	\$2,250.00	\$0.00	(\$2,250.00)	\$0.00	(\$8,362.91)	(\$8,362.91)
San Carlos	\$550.00	\$0.00	(\$1,450.00)	\$0.00	(\$3,008.15)	(\$3,908.15)
San Mateo	\$2,250.00	\$0.00	(\$1,550.00)	\$0.00	(\$9,278.82)	(\$8,578.82)
San Mateo County	\$1,150.00	\$0.00	(\$700.00)	\$0.00	(\$1,034.27)	(\$584.27)
West Bay	\$400.00	\$0.00	(\$400.00)	\$0.00	(\$383.10)	(\$383.10)
Total	\$13,650.00	(\$1,050.00)	(\$12,150.00)	\$0.00	(\$40,910.01)	(\$40,460.01)

Attachment:

Attachment A – Recology May 23, 2011 Letter



May 23, 2011

Kevin McCarthy
Executive Director
Rethink Waste
610 Elm Street, Suite 202
San Carlos, CA 94070

Subject: Request for a Waiver from Q-1 Incentive and Disincentive Payments

Dear Kevin,

The purpose of this letter is to follow up on our letters of May 3rd requesting a waiver from disincentive payments related to Recology San Mateo County's (RSMC's) first quarterly report. Although we received a response from you to our May 3rd letter addressing concerns with the disincentive payments assessed for contamination levels, and we had a meeting with you regarding those payments, we have to date had only preliminary discussions regarding the disincentive payments assessed for maximum call hold time and average speed of call answer.

We would request that a meeting be scheduled as required by Section 8E of Attachment I to the Franchise Agreement regarding our letter addressing concerns with the disincentive payments assessed for maximum call hold time and average speed of call answer. As we have not yet had the opportunity to discuss the call-related disincentive payment assessments with you, we thought it would be productive to provide additional information supporting our position on those matters, as well as to memorialize our thinking regarding the disincentive payment assessments for contamination levels.

Pursuant to the Franchise Agreement, both incentive and disincentive payments are to be waived during the roll-out of new services by RSMC. We are specifically referring to the language in Attachment I which states that "*The performance incentives and disincentives contained herein will commence **after full implementation of the roll-out of new services to Agency [emphasis added]**, with the exception of Contamination disincentives for Single-Family Targeted Recyclable Materials, which will commence after the first six (6) months of Rate Year One (2011). Agency may defer imposing some standards until after the first six (6) months of the roll-out of new services.*"

This quoted language in Attachment I indicates that the performance incentives and disincentives were not intended to apply until after the "full implementation" of the roll-out

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period, which could extend as long as six months from the commencement of services. As more particularly described below, for a variety of reasons beyond RSMC's control, the roll-out of RSMC's new collection services was not fully implemented during the first quarter of 2011. RSMC and other Recology-owned affiliates have successfully implemented service transitions in a number of communities in northern California, and we go to great lengths to ensure that roll-outs occur as smoothly as possible. Nevertheless, in any major service transition, particularly one such as this which involves so many different communities and such a marked change in collection services, there will be a "start up period" during which the new services are rolled out, customers finalize their decisions about what level of service they wish to have, and the new hauler adjusts its services to meet customers' preferences — and our contract with you recognizes that by acknowledging that performance incentives and disincentives will not apply during the roll-out or "start up" period.

In this case, factors beyond RSMC's control contributed significantly to extending the roll-out period and thus increasing call volume to RSMC. As you are aware, in July 2010 residential customers received materials notifying them of the forthcoming program changes and asking them to select the cart sizes they wished to receive. However, at that time, the rates for the different cart sizes that would go into effect on January 2011 had not yet been determined. Customers were thus asked to choose a service without knowing its cost. When Member Agencies eventually adopted the new rates and customers became aware of them, many customers decided to change their service level, thereby generating above-average call volumes and cart replacement requests. RSMC was and continues to be happy to accommodate these requests -- but these are clearly part of the roll-out process. The situation was complicated by the fact that not all Member Agencies adopted the new rates before January 2011 as required by the Franchise Agreement. Some adopted the new rates in January, some delayed as late as March and April, and some (such as San Carlos) still have not adopted them. These delays triggered waves of cart replacement requests — over 24,000 carts during the first quarter alone. And that number will continue to grow until all of the Member Agencies have adopted the new rates. Full implementation of the roll-out of new services cannot be complete until all customers have been informed of the cost of those services and been allowed to choose what they want, and RSMC has had a reasonable opportunity to respond to those requests.

A second factor beyond RSMC's control concerns backyard service. There were periodic transfers of data from Allied, the previous contractor, to RSMC during the months leading up to the January 1 transition date, through which RSMC obtained from Allied database information containing lists of all customers in the Service Area and the services they received. RSMC relied on those lists in planning and implementing its routes. Unfortunately, much of the information RSMC received was incomplete, as details about which customers received backyard service and which customers received curbside service were not always included in the database. The old system placed considerable reliance on the drivers and collectors servicing a route to know which

residences received backyard service and which did not. The new routing required under the Franchise Agreement meant that a majority of streets or areas were not serviced by the same employees who had previously handled collection in those streets or areas, and accordingly the new drivers had only limited knowledge of which residences received backyard, instead of curbside, service. Not surprisingly, RSMC had to work through all of the customer requests in order to provide the service they expected. All the while call volumes remained at historically high levels with questions regarding single-sided street service, time of collection, cart size changes, etc. The resulting requests to restore backyard service increased call volume during the first quarter and required operational adjustments of the type usually associated with the roll-out or "start-up" period rather than the post-roll-out normalization of services.

Other factors also contributed to extending the roll-out period and thus increasing call volume. Not only did all drivers have to adjust to learning new collection routes, many drivers transitioned from being only helpers on two-man routes to now driving their own collection route. Routing for the new collection services resulted in day changes to 40% of the customers. Container collection locations changed for many customers, and placement of materials in containers changed. Despite the best efforts of both the SBWMA and RSMC to make people aware of these changes, many questions from customers remained.

The phone call activity during the first three months of service is one indication of the considerable changes taking place during our roll-out. In January RSMC received 56,057 phone calls and 23,064 phone calls in March, a 59% reduction in calls. The RFP indicated that Allied experienced approximately 850 calls per day which would represent 18,700 calls per month. The average hold time was 58.03 seconds in January and 32.86 seconds in March, a 43% reduction in average hold time.

The roll-out also required implementation of new accounts after the start of new services on January 3, 2011. RSMC has added 8,569 monthly commercial and residential stops since start-up. These new stops had to be incorporated into our collection routes and required additional routes to be added. This process further affected call volume. This volume of additional stops reflects a transition process that is inherent whenever there is a change in service providers — not a fully implemented roll-out.

Turning to the disincentive payment assessment for contamination levels, during the first three months of service, SBWMA's consultant took the first quarterly residue sampling for the commercial and residential recyclables and organics. Recent discussions regarding the quarterly sampling methodology have raised issues that SBWMA staff and RSMC are now working through, with the ultimate goal of achieving results that closely align with the actual residue experienced by the processing facility over a 12-month period. RSMC is requesting that the disincentive payment resulting from the Q-1 samples be waived. Not only was the processing facility not operating, but the third-party processors, Smurfit Stone, Newby Island, and Grover reported no concerns relating to excess residues. We feel that further refinement of the sampling methodology

is needed to establish a more balanced methodology for determining quarterly disincentive payments for residue.

As incentive and disincentive payments from excess residue identified in the quarterly sampling process are due with the quarterly report, we have made this payment under protest. We would request that the payment be applied to any future disincentive payments that may occur once a more balanced quarterly residue measurement process is agreed upon. As incentive and disincentive payments for all other items are to be included in the annual rate application process, the outcome from our request for a waiver from Q-1 incentive/disincentive payments would be incorporated in the rate setting process.

For the reasons stated above, we believe that, under the terms of the contract, the first quarter incentive/disincentive payments should be waived during the roll-out of the new collection services. We look forward to the opportunity to discuss and resolve these issues with you.

Sincerely,



Mark Arsenault, Group Manager

Cc: Mario Puccinelli, General Manager