

APPROVED

**MINUTES OF THE REGULAR MEETING OF THE
ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY (WMA) BOARD
AND
THE ENERGY COUNCIL (EC)**

Wednesday, March 26, 2014

**Closed Session
2:30 p.m.**

**Regular Meeting
3:00 p.m.**

**StopWaste Offices
1537 Webster Street
Oakland, CA 94612
510-891-6500**

CLOSED SESSION (WMA only):

CONFERENCE WITH LABOR NEGOTIATORS (pursuant to Government Code Section 54957.6) Agency Designated Representative: Gary Wolff. Unrepresented Employee: Authority Counsel
(confidential materials mailed separately)

CLOSED SESSION (WMA only)

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code Sections 54956.9(d)(2): (1 potential case)
(confidential materials mailed separately)

There was nothing to report from Closed Session.

I. CALL TO ORDER

President Biddle, WMA, called to meeting to order at 3:08 p.m.

II. ROLL CALL

WMA & EC

County of Alameda	Keith Carson
City of Alameda	Lena Tam
City of Albany	Peter Maass
City of Berkeley	Gordon Wozniak
Castro Valley Sanitary District	Danny Akagi
City of Dublin	Don Biddle
City of Emeryville	Jennifer West
City of Fremont	Anu Natarajan
City of Hayward	Barbara Halliday
City of Livermore	Laureen Turner
City of Oakland	Dan Kalb
City of Piedmont	Tim Rood
City of Pleasanton	Jerry Pentin
City of San Leandro	Pauline Cutter
City of Union City	Lorin Ellis

Absent:

City of Newark	Luis Freitas
Oro Loma Sanitary District	Laython Landis

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Staff Participating:

Gary Wolff, Executive Director
Jeff Becerra, Communications Manager
Karen Kho, Senior Program Manager
Richard Taylor, Counsel, Authority Board
Arliss Dunn, Clerk of the Board

Others Participating:

Bill Pollack, HHW Program Manager

III. ANNOUNCEMENTS BY THE PRESIDENTS

President Biddle welcomed Councilmember Tim Rood as the new representative for the city of Piedmont.

IV. CONSENT CALENDAR (WMA & EC)

- 1. Approval of the Draft Minutes of February 26, 2014 (WMA & EC-Separate Votes) Action**
(Gary Wolff)
- 2. Adoption of a Resolution to Adopt the San Francisco Bay Area Integrated Regional Water Management Plan Update (Gary Wolff & Teresa Eade) (WMA only) Action**
Staff recommends that the Waste Management Authority Board adopt the attached Resolution 2014- [__], adopting the San Francisco Bay Area Integrated Regional Water Management Plan Update.

Ms. Tam made the motion to approve the Consent Calendar for the WMA Board. Mr. Wozniak seconded and the motion carried 17-0-1 (Landis and Freitas absent) (Rood abstained).

Ms. Cutter made the motion to approve the Consent Calendar for the Energy Council. Ms. Natarajan seconded and the motion carried 16-0-1 (Freitas absent) (Rood abstained).

V. OPEN PUBLIC DISCUSSION (WMA & EC)

Gwen Smith, Oakland resident provided public comment regarding the issue of illegal dumping. Ms. Smith suggested that Waste Management consider increasing the number of bulky pick-ups to 2 or 3 times per year.

VI. REGULAR CALENDAR (WMA only)

- 1. BayREN Contract Amendment - Resolution (Gary Wolff & Wendy Sommer) Action**
(EC only)
Adopt the Resolution attached.

Mr. Wolff provided an overview of the staff report. The report is available here:
<http://www.stopwaste.org/docs/03-26-14-bayren.pdf>

Ms. Natarajan stated that the Governor's budget has \$80 million in its cap and trade allocation for water and energy efficiency projects and inquired if the Energy Council is seeking this funding. Ms. Kho indicated that the Energy Council is definitely tracking the cap and trade allocations and will provide a future update on this effort. Mr. Kalb inquired if staff is considering exploring the newly revitalized PACE program with respect to multi-family and energy efficiency projects. Ms. Kho stated that BayREN has a commercial PACE program and we are implementing local outreach. Ms. West inquired if the \$4 million grant includes the \$2 million in rebates. Ms. Kho affirmed that it is included.

Ms. Natarajan made the motion to approve the staff recommendation. Mr. Wozniak seconded and the motion carried 17-0 (Freitas absent).

- 2. Household Hazardous Waste Services and Fee Ordinance (Gary Wolff) (WMA only) Action/
Public
Hearing**
After a public hearing and a report on the number of protests, consider adopting the ordinance (this would include waiving reading of the entire ordinance, and reading the ordinance by title only). Staff may want to make a more specific recommendation after the public hearing and report on the number of protests.

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Mr. Wolff provided an overview of the staff report and presented a powerpoint presentation. The staff report is available here: www.stopwaste.org/docs/march26-hhw-powerpoint.pdf
Mr. Biddle inquired if the fee collection report was available to the public. Mr. Wolff affirmed and stated that the report was positioned at the front desk and was provided on disc pursuant to a public records request.

President Biddle opened the public hearing. There were 27 public speakers. Most were against the fee, and many of those making comments related to multi-family buildings spoke in support of assessing multi-family units about units one-half of the proposed fee (\$5 per year rather than \$9.55 per year). An audio of the public hearing is available here: www.stopwaste.org/docs/03-26-14-hhh-hearing.mp3

John Arens	Claudia Hoverton	Joyce Nichelini	Dan Sullivan
John Bassetti	Minh Le	Truc Nguyen	John Sullivan
Marcus Crawley	Rutha Lemons	Jim Olson	Leslie Strauss
Marlene Daniels	Timothy May	Ed Payne	R. Wallace
Caroll Deaton	David Mix	Vuong Phi	M. Willey
Richard Dekay	Duane Mongerson	Jeff Rehholts	Ligia Zelaya
John Doe	Sandy McMurray	Tom Silva	

Tom Silva, California Apartment Association, provided public comment and distributed two items. One item was from the StopWaste website that listed all of the household hazardous waste items. Item two also from the StopWaste website included items from Oro Loma Sanitary District and Dublin regarding the collections that are offered. Mr. Silva indicated that some household hazardous waste items when empty are already collected by the waste haulers through the co-mingled recycling program. Mr. Silva also spoke in support of having multi-family units assessed one-half of the proposed fee. John Sullivan, California Rental Housing Association, spoke in support of paying one-half of the proposed fee.

Dan Sullivan, Emerald Properties, referenced an email sent to Board members and stated that residents pay a fee that is included in the rent to cover recycling of HHW items.

Sandy McMurray, Acacia Properties, spoke in support of assessing multi-family units one-half of the proposed fee.

Leslie Strauss, Emeryville resident, spoke to the spirit of the law regarding Prop 218 with respect to the protest process. Ms. Strauss distributed a memo expressing her concerns in more detail.

Caroll Deaton, Fremont resident, distributed a memo expressing his concerns, which mostly focused on government spending which he feels is unnecessary.

David Mix inquired how public housing properties are treated with respect to the proposed fee and opportunity to protest. Mr. Wolff stated that publicly owned and tax exempt properties are subject to the same fee and have the same opportunity to protest. Mr. Mix stated his opinion that as a joint powers authority the agency does not possess the legal authority to levy this fee.

Timothy May, California Rental Housing Association, spoke to the definition of multi-family and single-family homes including duplexes, triplexes and fourplexes and how waste is composed, and its effect on how to levy the fee. Mr. May also commented on the complications of the second mailing. Mr. May restated his support of levying one-half of the proposed fee for multi-family units. Mr. May added that he has spoken with Mr. Wolff regarding how to lower the fee in the future through more effective extended producer responsibility or advanced disposal fee approaches, and that his organization or its affiliates will support those approaches regardless of the outcome of this decision.

After hearing from all the public speakers Mr. Wolff notified the public that this was the final opportunity to submit any remaining protest letters. The public hearing was closed. Mr. Biddle explained the make-up of the Board. There are 17 Board members (elected officials) representing the 14 cities in Alameda County, the Alameda County Board of Supervisors, and two special districts (Oro Loma Sanitary District, and Castro Valley Sanitary District). The board recessed for 5 minutes.

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After the 5 minute recess the Board resumed discussion of the HHW Fee Ordinance.

Ms. Turner inquired about a possible error in the Spanish language statement on the back of the first notification letter. That statement, made in six languages, told readers whose first language was not English that the notice was about a potential fee and they might want someone more familiar with English to translate the full letter for them. Mr. Wolff explained that the first letter contained an error in the one sentence Spanish statement to that effect; it said the fee was \$9.95 rather than \$9.55. The error was corrected and included in the letter later posted to the website. But the fee was correctly stated in the rest of the letter, and to the extent the error in the one sentence Spanish language statement on the back might affect the number of protests, it would likely increase rather than decrease them. Ms. Turner asked why the second mailing -- a postcard -- was not provided in multi-language. Mr. Wolff stated there was an urgency to provide notification appropriately and to send a letter in the same format as the first would cause confusion, such as leading people to believe they had to resubmit protests already submitted. Ms. Turner inquired if there was precedent that the public prevailed in this type of balloting process. Mr. Wolff stated that he was unaware of such precedent. Ms. Turner inquired if we could have asked for a yes or no vote. Mr. Taylor stated there is no law that prohibits the ability from asking for a yes and no vote, however there is no requirement to do so. Mr. Taylor responded to a public comment regarding Prop 218 and stated the agency does have the Authority as a JPA to place items on the ballot.

Mr. Wozniak inquired about the possible cost of placing an item on the ballot. Mr. Becerra stated that based on a discussion a few years ago on another topic it could be a multi-year process costing millions of dollars. Mr. Wolff noted that there would be the cost of the election itself, but also the additional cost of printing booklets and engaging in extensive outreach. Mr. Rood asked if the agency has the authority to spend public money on such an effort. Mr. Taylor stated the agency's expenditures would be limited to contracting with the Registrar of Voters for the election, providing basic information, and responding to inquiries. Mr. Pentin added Pleasanton held a special election in May that cost approximately \$250,000 however if they would have waited until the fall the cost would have decreased significantly to approximately \$60,000.

Mr. Pentin asked with respect to transparency how many presentations were made to City Councils. Mr. Wolff stated that he appeared upon request before the cities of San Leandro, Alameda, and Albany. Mr. Pentin stated that more outreach to the cities could have generated more support for the effort. Mr. Wolff stated that he did reach out early to the rental property associations and continued communicating with them, conducted media and community outreach beginning in September, and community meetings in October.

Ms. Cutter asked if customers visiting the HHW facilities are surveyed to ascertain if they are from a home or apartment. Mr. Pollack stated the facility has recently implemented this procedure in January. Ms. Cutter stated that she was not satisfied with the response to her inquiries regarding modifying the program to cover the \$700,000 shortfall by reducing the fee for multi-family units. Ms. Cutter stated possible program modifications could include reducing the drop-off events from 12 to 9 or reduce 1 hour from hours of operation for all facilities or other modifications. Mr. Wolff stated with respect to the protest process and what people have already provided protest for we cannot change the services already publicized in the ordinance and notice. Additionally, the independent report conducted by HF&H Consultants in 2012 include cost saving measures and there are no other areas for reduction. We can either find new revenue sources or develop another service proposal which will require another protest process. Ms. Cutter inquired if the service proposal includes salary or benefit increases, etc. and Mr. Wolff stated that the proposal included an allowance for 2.5% inflation each year.

Mr. Wolff announced the results of the protest tabulation:

Number of parcels in the County that were subject to the fee:	388,943
Number of total residential units on parcels subject to the fee:	565,566

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Number of valid protests (incl. 33 received @ meeting):	51,203
Protest rate by parcel:	about 13%
Number of total residential units on parcels that protested:	102,756
Number of residential units on parcels that protested divided by total residential units subject to the fee	about 18%

Mr. Wolff stated that by law and the Board's procedures resolution, if there are 50% protests by either the record owners of parcels potentially subject to the fee, or the number of total residential units on parcels that protested, the fee cannot be adopted. Since there was not a 50% protest by either criteria, the Board has the discretion to adopt or not adopt the fee.

Ms. Natarajan inquired about the turnout for the 4 community events held. Mr. Wolff stated approximately 40 people attended the four community meetings. The dedicated email address we setup in advance of the meetings received approximately 30-40 emails, including some for and some against the fee. Ms. Natarajan inquired about the cost for the mailings. Mr. Becerra stated the first mailing cost between \$110-115,000. Mr. Wolff stated the second mailing cost was approximately \$80,000 for postage only. The mailing house absorbed other costs due to their error in the first mailing. Ms. Natarajan inquired about an analysis of the tabulation with respect to clustering or geographical information. Mr. Wolff stated that he can request this information from the Registrar's office. There may be some difficulty in separating out information especially in the unincorporated areas but staff will prepare that information if the Board asks that it be prepared.

Ms. Natarajan made the motion to carryover discussion of the HHW Fee proposal to the April 23 WMA meeting. Mr. Wozniak seconded. Mr. Carson asked for clarification with respect to public participation since the public hearing was closed. Mr. Taylor stated under the Brown Act the public has the right to comment at any public meeting.

Mr. Kalb inquired if there is any method for lowering the fee for multi-family and increasing the fee for single family that would not create a re-notification process. Mr. Taylor stated that the agency would have to explore such scenarios.

Ms. Halliday stated that the item warrants further discussion and supports the motion to carry the item over to the April 23 meeting. Ms. Turner stated that she would like to vote on the item due to the number of likely voters that would have participated if this were an actual election.

Mr. Pentin stated that because we don't have the data to support lowering the fee for multi-family, we should not arbitrarily consider such an action.

Mr. Ellis inquired if residents placing HHW items in the recycling bin are sorted by the haulers. Mr. Wolff stated HHW materials that are placed in the recycling bins and that are not completely empty are dangerous and recycling workers are put at risk by this method. Ms. West stated there is still a need for robust outreach. Ms. West inquired about the source for paying for satellite drop-off locations such as libraries, etc. Mr. Pollack stated the HHW budget covers these services. Ms. West stated the public should be informed that this fee includes those locations.

Ms. Halliday stated that she is not comfortable with the information regarding single-family and multi-family waste production, and feels the item merits further discussion. Ms. Halliday added StopWaste is an agency that requires cooperation and this process seemed to alienate some people. Ms. Halliday stated support for carrying the item over to the April 23 meeting. Mr. Kalb stated that we have an obligation of ensuring that HHW materials are out of the waste stream with the ultimate goal of having point of purchase fees.

President Biddle tallied the vote for the motion to carryover discussion of the HHW Fee Ordinance to the April 23 WMA meeting: The vote was 12-3 (Voted yes: Biddle, Carson, Cutter, Halliday, Kalb, Maass,

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Rood, West, Wozniak) (Voted no: Ellis, Pentin, Turner) (Absent: Akagi, Freitas, Landis, Natarajan, Tam) (Abstain: None).

Mr. Wolff asked the Board for feedback and direction for the April 23 meeting. Ms. Turner requested information on changing the service level proposed without having to re-notice the ordinance as well as provide information on other agencies that have successfully or unsuccessfully utilized the protest process and their response rates. Mr. Pentin requested information on the effects of changing the rate structure with respect to restarting the process and what the public initially protested, as well as documentation to support splitting the fee. Ms. Cutter requested information on the budget effects of modifying the work schedule at HHW facilities. Ms. West requested clear information on the definition of multi-family and single-family to assist the Board in defining its own criteria.

Mr. Rood inquired if the Board could vote on bringing the ordinance back as proposed or consider modifications to it prior to giving direction to staff to bring back options that the Board has not yet considered. Mr. Taylor stated increasing the fee for single-family to lower the fee for multi-family would require re-noticing the ordinance. Staff will need to look closely at the ability to modify service levels without having to re-notice the ordinance. Mr. Taylor added that we are constrained by the data we have and the public outreach that we have done.

2. Interim appointment(s) to the Recycling Board for WMA appointee unable to attend future Board Meeting(s) Action

(P&O and Recycling Board meeting - April 10, 2014 at 4:00 p.m. - StopWaste Offices)

There were none. Mr. Wolff informed the Board that the meeting may be cancelled as there will be a joint meeting of the WMA and RB Boards on April 23.

VII. COMMUNICATIONS/MEMBER COMMENTS (WMA & EC) Information

There were none.

VIII. ADJOURNMENT (WMA & EC)

The meeting adjourned at 5:55 p.m.