



Board Agenda Item 53

DATE: March 28, 2023

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Amendment No. 3 to Amended and Successor Exclusive Service Area Agreements for Solid Waste, Recyclable Materials, Green Waste, and Organic Materials Services

RECOMMENDED ACTION(S):

Approve and authorize the Chairman to execute the following amendments to the Exclusive Service Area Provider Program Agreements:

- A. Amendment 3 to Agreement No. 17-564 with Allied Waste Services of North America, LLC;**
- B. Amendment 3 to Agreement No. 17-565 with Granite Solid Waste, Inc.;**
- C. Amendment 3 to Agreement No. 17-566 with Mid Valley Disposal, LLC;**
- D. Amendment 3 to Agreement No. 17-567 with Miramonte Sanitation, Inc.;**
- E. Amendment 3 to Agreement No. 17-568 with Orange Avenue Disposal, Inc.;**
- F. Amendment 3 to Agreement No. 17-569 with Peña's Disposal, Inc.;**
- G. Amendment 3 to Agreement No. 17-571 with USA Waste of California, Inc.; and**
- H. Amendment 3 to Agreement No. 17-572 with Western Solid Waste**

Approval of the recommended action will authorize a third amendment to the Exclusive Service Area Provider (ESAP) Program to establish a revised Scope of Services for countywide organic waste collection and related ancillary tasks, which are regulatory obligations of all jurisdictions pursuant to Senate Bill 1383 and 14 CCR Section 18981.2(c). The establishment and implementation of countywide organic waste collection service is a major milestone as specified in the County's Notification of Intent to Comply originally presented to the Board for approval on February 22, 2022, and subsequently revised and resubmitted to the Department of Resources Recycling and Recovery on June 20, 2022. This item is countywide.

ALTERNATIVE ACTION(S):

Your Board may choose not to approve the recommended action. However, doing so will prevent the County from implementing countywide organic waste collection and achieving compliance with SB 1383 regulations, which would expose the County to regulatory enforcement action from Department of Resources Recycling and Recovery which may include administrative penalties of \$10,000 per day for continued noncompliance with Senate Bill 1383 regulations.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action. Organics collection is a service to be included in the package of services offered to residents through the County's Exclusive Service Area Provider (ESAP) Program, and any monthly service charges are paid by customers who subscribe to service. Sufficient appropriations have been included in the FY 2022-23 Adopted Budget for the Department

of Public Works and Planning Resources Division Org 9015 for implementation and administration of County solid waste programs, including staff preparation and drafting of associated documentation.

DISCUSSION:

On September 19, 2016, the State of California enacted Senate Bill 1383 (Chapter 395, Statutes of 2016). Senate Bill 1383 (SB 1383) has quickly become known as one of the most sweeping pieces of solid waste management legislation since the enactment of the Integrated Waste Management Act in 1989. SB 1383 focuses on organic waste management and establishes strict standards for achieving significant reductions in Short-Lived Climate Pollutants (SLCP), as part of its strategy for addressing air quality throughout the State. SB 1383 calls for a 75 percent reduction in organic waste disposed of in landfills, as well as a 20 percent reduction in the amount “edible food,” which is surplus food inventory that is destined for landfill disposal but is still fit for human consumption, by 2025.

On November 3, 2020, the Department of Resources Recycling and Recovery (CalRecycle), in consultation with the California Air Resources Board, adopted regulatory requirements (Regulations), consistent with the mandate of SB 1383 designed to achieve the organic waste reduction goals established in Section 39730.6 of the Health and Safety Code through a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2025.

On June 7, 2022, the County made significant progress in its compliance with the Regulations through the adoption of its Organics Disposal Reduction Ordinance (Ordinance), codified in Fresno County Ordinance Code Chapter 8.27. Consistent with the Regulations, the Ordinance requires that single-family, multifamily, and commercial generators of organic waste divert and recycle said waste to facilitate SLCP reductions within the County. One of the critical regulatory obligations of each jurisdiction subject to the Regulations is the establishment and implementation of jurisdiction-wide source-separated organic waste collection service to facilitate generators’ diversion of organic waste from landfill disposal. Pursuant to 14 CCR, Section 18981.2(b)(1), jurisdictions are permitted to designate haulers to fulfill their responsibilities through contractual agreement.

Staff met with the County’s current contracted Exclusive Service Area Provider (ESAP) Program haulers throughout the month of August 2022 to negotiate amendment to the ESAP Agreements that addresses the various organic waste collection requirements of the Regulations. Terms of the Amendment include:

Organic Waste Collection Base Service Levels

Amendment 3 establishes base service levels for both organic waste Cart and Bin services. One unique characteristic of organic waste is its higher weight per cubic yard due to high moisture content. Because organic waste is heavier, base service levels have to be adjusted to account for this weight so materials can be collected safely and to minimize the risk of damage to collection vehicle equipment. The base service level for Cart service is 60-gallon once per week, and between 1 and 2 cubic yard once per week for Bin service.

Materials Accepted for Collection

Amendment 3 establishes the Acceptable Materials List, which is included as Exhibit A-2 to the Amendment. A standardized list of acceptable materials creates clear expectations for what can be placed in the Green Container, to mitigate the deposit of unacceptable materials into the container. This greatly assists staff in the identification of organic waste contamination, and subsequent enforcement action as required by the Regulations.

Container Color and Labeling Requirements

Amendment 3 establishes standardized container color and labeling requirements that align with the Regulations. Amendment 3 allows haulers to maximize operational cost efficiency by utilizing existing inventory until the end of its useful life before they secure new inventory that meets the container color and

labeling requirements.

Organic Waste Capacity Planning

Another major element of the Regulations is the requirement that jurisdictions engage in sufficient planning of organic waste processing capacity to ensure long term compliance with the Regulations. Amendment 3 requires that haulers transport organic waste collected to a processing facility approved by the County, and that documentation be furnished to the County that demonstrates that haulers have secured consistent processing capacity for the collection program.

Outreach and Education

The provision of public outreach and education is crucial to the success of any newly established program. Amendment 3 stipulates that haulers provide a robust outreach and education program with a strong focus on SB 1383-related programs such as appropriate organic waste recycling practices and acceptable use of the container, alternative organic waste management such as home/onsite composting, waste prevention, and edible food recovery. Amendment 3 also stipulates that haulers report to the County on the extent of their outreach, including quantities, types, topics and dates, so County staff can provide periodic reporting to CalRecycle on these activities.

Compliance Monitoring and Waivers

The Regulations mandate that jurisdictions engage in significant complaint investigation and compliance monitoring to ensure compliance. Amendment 3 calls for haulers to report possible violations of the Regulations and Ordinance promptly so County staff can conduct investigation and resolve any violations and pursue enforcement when appropriate. Amendment 3 also outlines the process for how Commercial Generators may qualify for specific waivers from the collection mandates of the Regulations. Commercial Generators are eligible for requesting waivers for De Minimis organic waste production, as well as Physical Space constraints on their premises. Haulers are directed to provide assistance in the initial research of a Commercial Generator's request and forward all information gathered to County staff for review and approval. The County has final determination in issuing any waiver(s).

Jurisdictional Procurement Assistance

Jurisdictions are charged with procuring a specified threshold of recycled organic waste products on an annual basis. Amendment 3 stipulates that haulers procure paper products and printing/writing paper with a minimum recycled content when available at no greater cost than nonrecycled products and when fitness and quality are equal to nonrecycled products. This requirement is consistent with mandates placed on jurisdictions currently pursuant to Public Contract Code Section 12209. Additionally, Amendment 3 requires that if and when haulers procure organic waste-derived Renewable Natural Gas (RNG) for fueling fleets, that this procurement be reported to the County for purposes of procurement reporting to CalRecycle.

Contamination Monitoring

The Regulations emphasize the prevention of organic waste contamination through routine monitoring for contamination. Amendment 3 requires haulers to engage in contamination monitoring either through route monitoring by "flipping lids" to inspect for contamination in containers, or to perform a periodic waste evaluation in which haulers would conduct load sampling to inspect for contaminants. This Amendment term provides for hauler flexibility to account for the novelty of these protocols so haulers can create best practices relevant and functional to their operations.

Reporting

Amendment 3 compels haulers to provide reporting data to the County on the various aspects of organic waste collection service as specified by the Regulations. It additionally requires that haulers continue with established quarterly reporting protocols on tonnage collected, disposed of, and diverted, customer counts, container counts, edible food generators, as well as ESAP Service Fee, Solid Waste Management Program Administration (\$3.41 per ton) and Southeast Regional (\$3.50 per ton) surcharge remittances. Amendment 3 also obliges haulers to cooperate with the implementation of the County's new compliance tracking software application, which will improve the County's ability to track, monitor, and comply with the

Regulations.

Rates and Supplemental Inflation Mitigation

As previously specified in the ESAP Agreement and reemphasized in this Amendment 3, organic waste collection rates shall be calculated at 60% of the maximum rates for solid waste collection (“fixed” cost component), plus a processing cost per ton (“variable” cost component) proportional to the container size based on weight, volume, and time assumptions determined for mixed organic waste, which are 500 pounds per cubic yard, 201.974 gallons per cubic yard, approximately 2.48 pounds per gallon, and 4.33 weeks per month (52 weeks divided by 12 months). Rate proposals were secured from the haulers and vary based on the Service Rate Area from \$45 to \$46 per ton. For example, the processing cost for the Zone 1 60 gallon organic waste service is \$14.47, and is based on a 60 gallon Cart producing 643 pounds of organic waste per month.

In response to the continued volatility of the recyclable material commodity markets, as well as unprecedented inflation in the diesel fuel commodity markets, Amendment 3 calls for a “Supplemental Inflation Mitigation Surcharge (SIMS).” The SIMS is calculated on a quarterly basis and consists of two (2) components: a recycling component, and a fuel component. The recycling component is identical in structure to the “Recycling Surcharge” established in Amendment 2 approved by the Board on October 22, 2019. It is computed by factoring in total recyclable material tonnages collected quarterly, less California Redemption Value tonnage; the combined average net market value of the Mixed Paper and Old Corrugated Container recyclable commodity material streams, and ESAP Program hauler quarterly revenue. The fuel component is computed using the factors of fuel expense as a percentage of rate revenues, portion of the base rate that accounts for fuel, and the quarterly change in the Producer Price Index (PPI) Commodity Data index for “No. 2 Diesel Fuel.”

The SIMS calls for maximum increases to control the impact to customers. The recycling component shall never exceed 5% of the base service rate, and the fuel component shall never exceed 10% for the Zone 1, 2A, and 2B Service Rate Areas, and 15% for the Zone 3A and 3B Service Rate Areas. It should be noted that Zones 3A and 3B call for a higher maximum due to the territories consisting primarily of moderate to high altitude areas with larger distances traveled, lower route density, and generally steeper terrain, which equates to lower fuel mileage and significantly higher fuel expenses to provide service. The SIMS also calls for a “sunset” of June 30, 2025, which allows the County to revisit the applicability of the SIMS at that time.

Corrective Action Plan (CAP)

The SB 1383 enforcement structure allows CalRecycle to focus on compliance assistance first and dedicate enforcement efforts to serious offenders. Regulations allow for flexibility and deadline extensions in some instances when there are extenuating circumstances causing compliance issues despite a jurisdiction’s substantial efforts, such as the COVID-19 pandemic and natural disasters.

While the regulations became effective January 1, 2022, the enforcement process is an escalating process, and the timelines are not triggered until a Notice of Violation (NOV) is issued. If CalRecycle takes enforcement action, it can consider extenuating circumstances as well as substantial efforts made by a jurisdiction and place the entity on a corrective action plan (CAP). CalRecycle has enforcement discretion to allow for a longer timeline for compliance.

Due to the County’s substantial effort towards implementing SB 1383 requirements, but inability to fully implement all the regulations by January 1, 2022, CalRecycle has issued a CAP for the County. If the County does not meet the CAP deadlines, CalRecycle has another opportunity to exercise enforcement discretion by determining when to commence an action to impose penalties up to \$10,000 per day.

Approval of the recommended action will allow the haulers to proceed with implementation of organic waste collection service countywide. Approval will also bring the County closer to completing the objectives stipulated in its State-approved Notice of Intent to Comply and Corrective Action Plan, and will expedite the removal of the County from heightened scrutiny by CalRecycle.

REFERENCE MATERIAL:

BAI#8, March 14, 2023
BAI #66, June 7, 2022
BAI #13, May 17, 2022
BAI #56, February 22, 2022
BAI #44, October 22, 2019
BBR - Senate Bill 1383 Implementation, March 17, 2021
Attachment A to BBR - Senate Bill 1383 Implementation, March 17, 2021

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Amendment 3 to Agreement No. 17-564
On file with Clerk - Amendment 3 to Agreement No. 17-565
On file with Clerk - Amendment 3 to Agreement No. 17-566
On file with Clerk - Amendment 3 to Agreement No. 17-567
On file with Clerk - Amendment 3 to Agreement No. 17-568
On file with Clerk - Amendment 3 to Agreement No. 17-569
On file with Clerk - Amendment 3 to Agreement No. 17-571
On file with Clerk - Amendment 3 to Agreement No. 17-572

CAO ANALYST:

Salvador Espino