



# Board Agenda Item 50

---

DATE: July 13, 2021

TO: Board of Supervisors

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

SUBJECT: Amendment II to Exclusive Service Area Program Agreement with Western Solid Waste

RECOMMENDED ACTION(S):

**Approve and authorize Chairman to execute Amendment II to Amended and Successor Exclusive Service Area Program Agreement No. 17-572 with Western Solid Waste to establish a successor recycling surcharge methodology based on a recyclable commodity market index, establish maximum rates for organic materials collection, and revise the Schedule of Maximum Special Service Rates to include charges for overfilled containers, as well as charges for recycling and organic materials contamination, with no change to the Agreement term of February 28, 2018 through February 28, 2028.**

Approval of the recommended action will amend Exclusive Service Area Program (ESAP) Agreement No 17-572 with Western Solid Waste (Western), effective September 1, 2021. Amendment II establishes a recycling surcharge methodology that will mitigate future cost increases incurred by Western Solid Waste due to recyclable commodity market volatility. Amendment II further establishes organic material collection rates within the Schedule of Maximum Rates for carts and bins and revises the Schedule of Maximum Special Service Rates to include charges for overfilling containers, as well as contaminating recycling and/or organic materials. This item pertains to a hauler that operates within District 5.

ALTERNATIVE ACTION(S):

Your Board may choose not to approve the recommended action. However, doing so will prevent Western from being able to relieve the financial burden placed on their operations because of negative market conditions and improper customer behaviors such as container overfilling or placing non-recyclable and/or non-organic materials in the respective carts/bins. Furthermore, if your Board chooses not to approve the recommended action, organic collection rates cannot be established in hauler's exclusive territory, which could jeopardize the County's ability to comply with organics diversion regulations set forth by the State's Department of Resources Recycling and Recovery (CalRecycle).

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action. AB 939 (Integrated Waste Management Act; Chapter 1095, Statutes of 1989) service fees remitted by the County's ESAP haulers fund staff's ongoing administration of the ESAP. Sufficient appropriations and estimated revenues for associated salaries and benefits costs are included within the Department of Public Works and Planning - Resources Org 9015 FY 2021-22 Recommended Budget. Department staff will ensure that adequate appropriations and estimated revenues are included in future budget cycles.

DISCUSSION:

On September 25, 2018, Department staff presented the results of analysis of the fiscal effects of declining recyclable commodity markets due to foreign policy decisions, primarily China's National Sword policy, which had the effect of severely restricting the markets available for export of recyclable products. At that time, the Board directed staff to return with amendments authorizing ESAP haulers to implement a recycling surcharge to relieve some of the financial burden placed on their operations as a result of the negative market conditions.

On November 6, 2018, the Board approved these amendments, which allowed a 1.45% surcharge, effective January 1, 2019 through June 30, 2020. The amendments stipulated that Department staff and haulers would continue to negotiate on a successor process to replace the 1.45% surcharge with a new adjustable surcharge, which would be tied to a recyclable commodity market index and thus more accurately reflect upward and downward trends. At the initial implementation of the 1.45% recycling surcharge, markets suffered further significant decline. Many Material Recovery Facility (MRF) operators who process curbside recyclables for the County's ESAP haulers indicated to Department staff at the time that although they refrained from imposing drastic price increases per ton on inbound recyclables during 2017 and 2018, they could no longer sustain processing operations without imposing higher pricing to mitigate negative market impacts.

Seven of the eight ESAP haulers executed Amendment I on November 6, 2018. Western elected to forego Amendment I at the time and was not able to implement the 1.45% surcharge in its exclusive service territory. Western incurred additional significant cost increases when delivering recyclables to MRF operators throughout the first portion of 2019. In approximately July of 2019, Western advised Department staff that it could no longer sustain the burdensome cost increases and requested to participate in Amendment I so it could mitigate those costs. Western executed Amendment I on August 6, 2019, which allowed it to implement the surcharge effective October 1, 2019 through June 30, 2020.

Successor Recycling Surcharge

Department staff and ESAP haulers began negotiating this Amendment II on January 4, 2019. Of particular concern during negotiations was the creation of the successor recycling surcharge that would be more responsive to fluctuations in recyclable commodity market values. The end result agreed upon by the County and ESAP haulers was a surcharge that would still be expressed as a percentage of the maximum rates in place for both carts and bins to customers' periodic billings. However, the successor surcharge differed in that the percentage would be variable and derived from a calculation of the market value of selected materials multiplied by quarterly adjusted tonnage as a dividend of quarterly ESAP revenues. Quarterly recyclable tonnage is adjusted by deducting 3.75% to account for revenue received by haulers for California Redemption Value (CRV) material tonnage. The market commodities utilized in the calculation are Mixed Paper (MP) and Old Corrugated Containers (OCC), derived from the RISI Fastmarkets® Pulp and Paper Index (PPI), a recovered fiber export market value index. Market regions selected for the successor surcharge were the Los Angeles and San Francisco/Oakland port regions, which are the historical points of export utilized by recycling processors who provide service to ESAP Haulers.

During negotiations, data provided by haulers indicated that MP and OCC account for approximately 41% of the composition of recyclable materials collected and have the most volatile market values per ton. This volatility is the primary contributor for negative impacts to haulers' operations, which has resulted in steepened operational costs for materials collection and/or processing. Other data collected for the surcharge calculation is derived from the quarterly reporting submitted by the haulers, as required per Section 8.3.C of the ESAP Agreements. The proposed amendment called for the successor surcharge to be adjusted each quarter based on data from the second most recent prior quarter and restricts the surcharge to a maximum of 5%. The recommended amendment outlined the process for adjusting and calculating the surcharge and provided a schedule for adjustments (Exhibit L). Haulers were to implement the surcharge beginning January 1, 2020 for a period of five years, through and including June 30, 2025.

The Schedules of Maximum Rates for carts and bins reflect the maximum surcharge of 5% but may be lower on any given quarter depending on market values, recyclable tonnage collected, and revenues (Exhibits D and D-1).

The successor surcharge, part of a collection of modifications to the ESAP Agreement, was included in Amendment II, and was approved by the Board on October 22, 2019, to become effective January 1, 2020. As with Amendment I, seven of the eight ESAP haulers executed Amendment II, and were able to implement the successor surcharge on January 1, 2020. Western again elected to forego the execution of Amendment II and was not able to implement the surcharge in its exclusive territory. Market volatility and additional cost increases negatively impacted Western's operations during all of 2020. Western formally requested to participate in Amendment II on April 27, 2021 during the Board meeting. Today's recommended amendment will afford Western the opportunity to: 1) implement the successor recycling surcharge to offset future cost increases experienced due to the market's volatility, 2) implement rates for organics collection should its service area be required to provide this service in compliance with State regulations, and 3) allow Western to apply special service rates for overfilling and contamination. Western's proposed Amendment II contains terms identical to those found in the amendments executed by the seven other ESAP haulers on October 1, 2019.

Based on currently applicable monthly rates, the maximum surcharge (5%) will range from \$1.40 to \$2.79 for cart customers depending on container size and service rate area. For bin customers, the maximum surcharge (5%), based on currently applicable monthly rates will range from \$3.74 to \$74.2, again depending on container size, frequency of collection and service rate area.

#### Organic Materials Collection Rates

Assembly Bill 1826 (AB 1826) (Mandatory Commercial Organics Recycling, Chapter 727, Statutes of 2014) mandated that generators of a designated threshold, currently 2 cubic yards or more of solid waste per week, arrange for organic waste recycling services or other approved organics management program. Jurisdictions were held accountable by CalRecycle for implementing an organics diversion program to facilitate compliance with these requirements. Accordingly, the Amended and Successor ESAP Agreements, approved on October 31, 2017, set forth stipulations requiring that haulers assist the County with achieving compliance with various State waste diversion statutes, including AB 1826. The agreements required haulers to provide organics collection service. To provide the service, it was necessary for the County to generate rates for organics collection service, calculated at 60% of the solid waste rate (stipulated in Section 4.2.E of the agreements), plus a cost for processing and transfer of collected organic materials. The processing cost component was derived based on cost proposals per ton submitted by Haulers and were designated on a service rate area basis. The County then selected the lowest proposed cost per service rate area to be incorporated into the organics rates.

#### Revision of Special Service Rates

During negotiations, haulers expressed the need to revise the Schedule of Maximum Special Service Rates of the ESAP Agreement to provide means for the haulers to charge customers for improper use of solid waste containers. There are two primary behaviors haulers identified that have become pervasive in recent years and which negatively impact hauling operations:

- Overfilling is when a customer places materials in either the solid waste, recycling, or organics containers that is in excess of the container's capacity so that the lid of the container cannot close flush and overflow of such materials is imminent. The primary consequence of this behavior is spillage, which forces the driver to stop the collection vehicle, exit the vehicle, and clean the spillage from the road or right-of-way before proceeding on the route. This slows down the collection operation, lowers productivity, and increases costs. Additionally, some haulers have noted that overfilling poses the risk of excess material spilling on the collection vehicle's exhaust system, possibly causing a fire and jeopardizing the driver's safety and potentially damaging or destroying the vehicle. ESAP haulers submitted proposed rates on a per service rate area basis, and the County selected the lowest cost proposed to incorporate into Special Service Rates. Rates range from \$15

to \$30 per occurrence depending on service rate area.

- Contamination is when a customer places materials in either the recycling or organics container that are not consistent with the acceptable materials stipulated in the agreement related to Recyclables and Organic Materials or Compostable Materials. Typical examples of contamination include placing old garden hoses, soiled diapers, dirty food containers, or wet paper and cardboard in the recycling container, or treated wood waste or animal droppings into the organics container. Depending on the severity, contamination can render an entire load of recyclables or organics useless, resulting in the load becoming trash to be landfilled. Rates range from \$20 to \$55 per occurrence depending on when the container is serviced and if the customer can remove contamination in a timely fashion.

Amendment II provides that in the case of overfill, haulers are to document the occurrence, attempt to collect if safe to do so, and place a warning notice on the container educating the customer on appropriate use of the container, and/or appropriate materials to be deposited into the container. In the case of contamination, the hauler may not service the container as scheduled. Subsequent occurrences warrant a charge for the behavior. Further failure to correct the improper behavior may result in the removal of recycling and/or organics containers in the case of contamination, and the requirement of an additional solid waste container(s), in the case of both overfilling and contamination, at additional charges.

REFERENCE MATERIAL:

BAI #44, October 22, 2019  
BAI #52, August 6, 2019  
BAI #54, November 6, 2018  
BAI #12, September 25, 2018

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Amendment II to Agreement No. 17-572 with Western Solid Waste  
On file with Clerk - Amendment I to Agreement No. 17-572 with Western Solid Waste  
On file with Clerk - Agreement 17-572 with Western Solid Waste

CAO ANALYST:

Ron Alexander