



# Board Agenda Item 44

DATE: October 22, 2019

TO: Board of Supervisors

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

SUBJECT: Amendments to Exclusive Service Area Program Agreements

RECOMMENDED ACTION(S):

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

- **Amendment II to Agreement No. 17-564 with Allied Waste Services of North America, LLC**
- **Amendment II to Agreement No. 17-565 with Granite Solid Waste, Inc.**
- **Amendment II to Agreement No. 17-566 with Mid Valley Disposal, LLC**
- **Amendment II to Agreement No. 17-567 with Miramonte Sanitation, Inc.**
- **Amendment II to Agreement No. 17-568 with Orange Avenue Disposal, Inc.**
- **Amendment II to Agreement No. 17-569 with Peña's Disposal, Inc.**
- **Amendment II to Agreement No. 17-571 with USA Waste of California, Inc.**

**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 authorize an amendment of the Exclusive Service Area Program (ESAP) agreements to establish a recycling surcharge methodology that supersedes the existing fixed surcharge established under Amendment I of the agreements. Approval of the proposed amendment would establish organic material collection rates within the Schedule of Maximum Rates for carts and bins, and revise the Schedule of Maximum Special Service Rates to include charges for overfilling containers, as well as contaminating recycling and/or organic materials. Seven of eight ESAP haulers have executed the recommended amendment. One hauler, Western Solid Waste, declined to execute the amendment, which jeopardizes the County's compliance with recent State legislation regulating the diversion of organic waste. This item is countywide.

ALTERNATIVE ACTION(S):

Your Board may choose not to approve the recommended action. However, doing so will prevent ESAP haulers 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, which will delay the County's

implementation of a countywide organics collection program and jeopardize County compliance with CalRecycle's organics diversion regulations.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action. Assembly Bill 939 (Integrated Waste Management Act; Chapter 1095, Statutes of 1989) service fees remitted by the County's ESAP haulers fund the ongoing administration of the ESAP. Sufficient appropriations and estimated revenues are included in the Department of Public Works and Planning - Resources Org 9015 FY 2019-20 Adopted Budget.

DISCUSSION:

On September 25, 2018, Department staff presented the results of analysis of the fiscal effects of declining recyclable commodities 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 amendments, which allowed the 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 and thus more accurately reflect upward and downward trends. Since the implementation of the 1.45% recycling surcharge, markets have suffered further significant decline. Many Material Recovery Facility (MRF) operators who process curbside recyclables for the County's ESAP haulers have indicated to Department staff 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.

Successor Recycling Surcharge

The recycling surcharge included in the recommended amendment will allow ESAP haulers to continue applying a recycling surcharge, expressed as a percentage of the maximum rates in place for both carts and bins to customers' periodic billings. However, the successor surcharge percentage in the proposed amendment is different in that instead of a flat percentage, the successor surcharge percentage is 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 Cardboard (OCC), derived from the Pulp and Paper Index (PPI), a recovered fiber export market value index, for the Los Angeles and/or 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 calls 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 outlines the process for adjusting and calculating the surcharge, and provides a schedule for adjustments. Haulers may 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. Based on currently applicable monthly rates, the maximum surcharge (5%) will range from \$1.35 to \$2.68 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 \$3.60 to \$71.17 depending on container size, frequency of collection and service rate area.

### Organic Materials Collection Rates

Assembly Bill 1826 (AB 1826) (Chapter 727, Statutes of 2014) mandated that generators of a designated threshold of waste would be responsible for arranging organic waste recycling services. Currently, that threshold sits at four cubic yards of solid waste generated per week. 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.

The recommended amendment 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.

Department staff met with the County's ESAP haulers for approximately 10 months to negotiate and reach concurrence with the terms presented in the recommended amendment. Upon concurrence, staff drafted the amendment, and provided it to ESAP haulers for review and execution. Seven of eight haulers executed the amendment. One hauler, Western Solid Waste, declined to execute the amendment and is not included in today's agenda item. Because the recommended amendment establishes organics collection rates, Western Solid Waste's failure to sign precludes it from the ability to charge for organics collection, which ultimately jeopardizes the County's compliance with recent State legislation regulating the diversion of organic waste.

#### Future Considerations

It should be noted that the State has enacted legislation (Senate Bill 1383, Chapter 395, Statutes of 2016) that requires jurisdictions to implement more widespread organics programs up to and eventually including residential level organics collection, pursuant to subsequent regulations to be issued by CalRecycle as directed by the Legislature. Because of this, Department staff will need to reevaluate the organics collection program and rates later to determine if rate adjustments, program requirements, agreement terms, and County ordinances adequately address these future regulations. Any proposed changes will be presented to your Board for consideration.

#### REFERENCE MATERIAL:

- 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. 17-564 with Allied Waste Services of North America, LLC
- On file with Clerk - Amendment II to Agreement No. 17-565 with Granite Solid Waste, Inc.
- On file with Clerk - Amendment II to Agreement No. 17-566 with Mid Valley Disposal, LLC
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#### CAO ANALYST:

Sonia M. De La Rosa