

Sarah Vared, **President**
Source Reduction Specialist

Deborah Cox, **1st Vice President**
ACWMA

Jillian Buckholz, **2nd Vice President**
Recycling Programs

Bernie Camara, Recycling Materials Processing Industry

Bob Carling, ACWMA

Darby Hoover, Environmental Organization

Tianna Nourot, Solid Waste Industry Representative

Jim Oddie, ACWMA

Dave Sadoff, ACWMA

Francisco Zermeño, ACWMA

Vacant, Environmental Educator

Wendy Sommer, Executive Director

AGENDA

MEETING OF THE PLANNING COMMITTEE AND ALAMEDA COUNTY RECYCLING BOARD

Thursday, October 10, 2019

4:00 P.M.

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

Meeting is wheelchair accessible. Sign language interpreter may be available upon five (5) days' notice to 510-891-6500.

I. CALL TO ORDER

II. ROLL CALL OF ATTENDANCE

III. ANNOUNCEMENTS BY PRESIDENT

IV. OPEN PUBLIC COMMENT

An opportunity is provided for any member of the public wishing to speak on any matter within the jurisdiction of the Board, but not listed on the agenda. Each speaker is limited to three minutes.

Page V. CONSENT CALENDAR

1 1. Approval of the Draft Minutes of September 12, 2019 (Jeff Becerra)

25 2. Board Attendance Record (Jeff Becerra)

27 3. Written Report of Ex Parte Communications (Jeff Becerra)

VI. REGULAR CALENDAR

29 1. Mandatory Recycling Ordinance Project Update (Rachel Balsley)
This item is for information only.

33 2. Municipal Panel: Climate Action Plans & Recycling (Meghan Starkey)
This item is for information only.

VII. MEMBER COMMENTS AND COMMUNICATIONS FROM THE EXECUTIVE DIRECTOR

VIII. ADJOURNMENT

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**MINUTES OF REGULAR MEETING OF THE
PLANNING COMMITTEE
AND
ALAMEDA COUNTY RECYCLING BOARD**

Thursday, September 12, 2019

7:00 P.M.

**City of Dublin Civic Center
Regional Room
100 Civic Plaza
Dublin, California 94568
(925) 833-6645**

I. CALL TO ORDER

Second Vice President Jillian Buckholz called the meeting to order at 7:00 p.m.

II. ROLL CALL OF ATTENDANCE

Jillian Buckholz, Recycling Programs
Bernie Camara, Recycling Materials Processing Industry
Bob Carling, ACWMA
Deborah Cox, ACWMA
Tianna Nourrot, Solid Waste Industry Representative
Jim Oddie, ACWMA
Dave Sadoff, ACWMA
Francisco Zermeño, ACWMA

Absent:

Sarah Vared, Source Reduction Specialist
Vacant, Environmental Educator
Vacant, Environmental Organization

Staff Present:

Wendy Sommer, Executive Director
Jeff Becerra, Communications Manager
Pat Cabrera, Administrative Services Director
Justin Lehrer, Senior Management Analyst
Jeanne Nader, Program Manager
Farand Kan, County Counsel
Arliss Dunn, Clerk of the Board

III. ANNOUNCEMENTS BY THE PRESIDENT

There were none.

IV. OPEN PUBLIC COMMENT

Arthur Boone provided public comment regarding the amicus brief filed in reference to the lawsuit filed by himself and Antoinette Stein versus the Alameda County Waste Management Authority. Mr. Boone distributed a copy of the amicus brief (attached).

V. CONSENT CALENDAR

- 1. Approval of the Draft Minutes of August 8, 2019 (Jeff Becerra)**
- 2. Board Attendance Record (Jeff Becerra)**
- 3. Written Report of Ex Parte Communications (Jeff Becerra)**
- 4. Grants Issued Under Executive Director Signature Authority (Wendy Sommer)**

There were no public comments for the consent calendar. Board member Zermeño made the motion to approve the consent calendar. Board member Carling seconded and the motion carried 6-0: (Ayes: Buckholz, Camara, Carling, Nourot, Sadoff, Zermeño. Nays: None. Abstain: None. Absent: Cox, Oddie, Vared. Vacant: Environmental Educator, Environmental Organization)

VI. REGULAR CALENDAR

- 1. Employment Status Change for Board Members (Pat Cabrera)**

This item is for information only.

Pat Cabrera provided an overview of the staff report. A link to the report is available here: [Board-Member-Status-Change.pdf](#). There were no public comments on this item.

- 2. National Sword Update and Local Impacts (Meghan Starkey)**

This item is for information only.

Meghan Starkey provided an overview of the staff report and presented a PowerPoint presentation. A link to the report and the presentation is available here: [National-Sword-Update.pdf](#)

President Cox and Board member Oddie arrived during the discussion. President Cox chaired the remainder of the meeting. Board member Carling inquired if the task force is communicating and reaching out to other task forces around the state. Ms. Starkey stated that industries are communicating with one another and other jurisdictions phone in to our meetings. Ms. Sommer added the state is thinking of convening a task force and consulted with us on how we are convening so that they can replicate it. Ms. Sommer added the larger question is how we address this issue at the statewide level. Board member Oddie inquired as to the impetus to the Processing & Materials Changes. Ms. Starkey stated that the decision was made between the jurisdictions and haulers. Board member Oddie inquired if the haulers came to the cities or vice versa. Ms. Sommer stated that the haulers went to the cities. Ms. Sommer added we learned at the P&A meeting that Waste Management will continue to accept gable top milk cartons in the recycling for Emeryville, and Oro Loma Sanitary District will need to put their milk cartons in the recycling bin (instead of the composting bin). Board member Sadoff inquired about the issue of contamination fees. Board member Camara stated that for LSI, if there is more than 5% contamination in the recycling bin they will be charged at the garbage rate. Ms. Sommer added at the P&A meeting, Board member Young mentioned that Waste Management would be conducting a pilot study with cameras on trucks. Board member Nourot stated that Waste Management is willing to do whatever it can to reduce the rate of contamination. Board member Zermeño inquired if there is some movement or political will for creating places that would handle our waste. Ms. Sommer stated that California has some of the strictest environmental regulations around permitting and it is very difficult to site facilities. The agency along with our partners such as CalRecycle and Californians Against Waste is tackling the issue by trying to affect legislation. Board member Zermeño inquired if the committee is considering approaching companies like Amazon to address the packaging issue. Mr. Lehrer stated that we have a

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fairly limited amount of influence with companies such as Amazon but we have spoken to representatives from Amazon and have heard that they are interested in improving their packaging. Board member Buckholz stated that she had read an article in the Mercury News that talks about two pieces of legislation that have recently been proposed and one of the bills puts the onus on the industry, which mandates that manufacturers can't create materials that our facilities cannot recycle and the other bill states that the plastic must contain some recycled content. Board member Buckholz will forward the article to the Clerk of the Board to share with Board members. Ms. Sommer stated that the state legislation is SB 54 and AB 1080 sponsored by Assembly member Lorena Gonzalez and Senator Ben Allen and stated that we should support the language but she is concerned about how the policies will be implemented at the local level and whether local jurisdictions are willing to implement these measures without a funding mechanism. Board member Buckholz stated that she heard that some campuses are stockpiling materials and inquired if the facilities are doing this as well. Ms. Starkey stated the facilities in Alameda County are not stockpiling materials because it will increase residual, which will then require them to apply for a solid waste facility permit. Ms. Starkey added the Alameda County Local Enforcement Agency (LEA) is staying on top of this issue. Board member Buckholz inquired how we are messaging to the public. Ms. Starkey stated we are messaging to the public that "when in doubt, find out." Board member Zermeno stated that there is an entity in San Leandro that recycles and reuses textiles. Board member Cox announced that Assembly member Bill Quirk in partnership with StopWaste, Castro Valley Sanitary District, and ACI, will be hosting a recycling event at the Castro Valley Library on October 12. The event will help customers to learn what bin to put things in.

There were no public comments on this item. First Vice President Cox thanked staff for the presentation.

3. Grants Update (Justin Lehrer & Jeanne Nader)

This item is for information only.

Justin Lehrer and Jeanne Nader provided an overview of the staff report and presented a PowerPoint presentation. A link to the report and the presentation is available here: [Community-Grants-Presentation.pdf](#)

Ms. Nader distributed a flier for the Community Outreach Grant program and asked that Board members distribute the flier to organizations that might be interested in the program. The flier will be provided electronically as well. A link to the website is available here: [Community-Outreach-Grant-Program](#). Board member Zermeno noted that there was funding in the budget this year for innovative packaging but none for next year. Mr. Lehrer stated that the money is still available but it is rolled into the general packaging funding. Mr. Lehrer added there was money left over from last year but we are hoping to utilize it in support of a pilot program for schools that will offer bulk milk dispensers instead of cartons. Board member Oddie stated that he recently moved and used reusable bins and they worked great. There were no public comments on this item. First Vice President Cox thanked staff for the presentation.

VII. COMMUNICATIONS/MEMBER COMMENTS

Board member Buckholz announced that she would be meeting with Cassie Bartholomew, Cal State East Bay, the city of Hayward and staff from the dining hall to discuss doing a food waste campaign in the residence hall.

VIII. ADJOURNMENT

The meeting adjourned at 8:02 p.m.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE FIRST APPELLATE DISTRICT

DIVISION 2

ARTHUR BOONE, ANTOINETTE STEIN

Petitioners and Appellants

vs.

WASTE MANAGEMENT AUTHORITY
OF ALAMEDA COUNTY

Respondent.

WASTE MANAGEMENT OF ALAMEDA
COUNTY,

Real Party in Interest

Case No. A154804

**Appeal from Judgment of the Alameda County Superior Court, Hon.
Roni McLaren judge presiding.**

AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS

JODENE LOUISE ISAACS (SBN 226895)
5135 ANZA STREET
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Attorney Submitting on behalf of Zero Waste USA, Urban Ore,
Conservatree, and Green America

Document received by the CA 1st District Court of Appeal.

COURT OF APPEAL		FIRST APPELLATE DISTRICT, DIVISION TWO	COURT OF APPEAL CASE NUMBER: A154804
ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: Jodene Isaacs FIRM NAME: Environmental Advocates STREET ADDRESS: 5135 Anza Street CITY: San Francisco TELEPHONE NO.: 510-847-3467 E-MAIL ADDRESS: jisaacs@enviroadvocates.com ATTORNEY FOR (name): Submitting on behalf of Amici		STATE BAR NUMBER: 226895 STATE: CA ZIP CODE: 94121 FAX NO.:	SUPERIOR COURT CASE NUMBER: RG17858423
APPELLANT/ ARTHUR BOONE, ANTOINETTE STEIN PETITIONER: RESPONDENT/ WASTE MANAGEMENT AUTHORITY OF ALAMEDA REAL PARTY IN INTEREST: COUNTY			
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS			
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE			
<p>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</p>			

1. This form is being submitted on behalf of the following party (name): Zero Waste USA, Urban Ore, Conservatree, Green Am

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 9/11/19

Jodene Isaacs

(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

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I. INTRODUCTION

The amici represented in this brief each have spent several decades doing groundbreaking work within the recycling field, which includes composting. We also have always been particularly concerned about ensuring that processes encourage, support and manifest the greatest positive environmental benefits from the system and we discourage those that undermine it.

We are greatly concerned about the damage that the recycling system has already suffered from mixed-waste recycling collection programs and are troubled by the potential for that damage to be extended to composting programs.

The following brief describes why the recycling and composting systems are so important for both the environment and health. It identifies how poor management of collected materials damages, and already has damaged, the recycling and composting systems. It explains the critical need to support their functioning at their highest and best use.

This issue, while argued here regarding programs in Alameda County, California, has great impact both nationally and globally, as well, in no small part because the Waste Management Authority of Alameda County (“WMA”) is looked to as a ground-breaking leader in the field. A misstep on their part can have far-reaching implications and effects.

For all these reasons, we believe that this project deserves much deeper analysis and evaluation.

II. THE OVERALL GOALS OF RECYCLING AND COMPOSTING.

As professionals in the recycling industry, we know that separating recyclable and compostable materials at their source, before the materials undergo any processing for market, is the best and most efficient way to ensure that the long-term health of both humans and the natural world are protected from harmful waste-handling practices.

A. Conserving the Earth's Resources is a Fundamental Purpose of Recycling.

Virgin resources come from the Earth. It would be hard to overstate the long-term negative environmental impacts of mining and forestry, which extract material resources from the natural world, often at great cost in terms of finance, energy, and waste of byproduct materials. They also destroy the habitats that many wilderness-dependent species large and small need for survival. Species that cannot adapt to loss of habitat simply die off and eventually go extinct.

Today we also know that the methods industries use to extract materials, refine them, and bring them to market influence the chemical balances of the atmosphere. They contribute to climate change well before consumers see any products.

Moreover, most mineral resources are found in pockets, and the best deposits of many necessary materials were played out decades ago. Further mining today requires even more extensive damage to wild environments in search of virgin resources that are both dwindling and are of lower quality. Forests and other renewable resources are now frequently harvested at rates exceeding the resources' ability to renew themselves. Fires in the Amazon

recently attracted the world's attention, but they are not new, and satellite photos of the Northwestern US also reveal astonishing deforestation.

Meanwhile, the current population of the US will expand by 25% by 2060.¹ Demand will grow for the very materials whose supply is shrinking.

The most effective way to protect the Earth's climate and remaining wild places from mining, forestry, and other extraction is to conserve and reuse the resources that have already been removed.

That simple truism is the environmental basis on which the recycling industry was founded and has grown. The industry's commandments to Reduce, Reuse, and Recycle, including composting – the 3Rs – are a catchy way to remember that conservation must necessarily follow a hierarchy of methods that adhere to the dictates of the Second Law of Thermodynamics. The Second Law's implications are vast. The one most pertinent to this discussion is that every time a material changes form, energy is released in a less concentrated, less useful form than was embodied in the original.

Concentrating desired qualities instead of letting them be dispersed still follows the Second Law. Concentrating energy in one place requires inputs of energy from somewhere else. An example is to refine virgin ores into metals. Refining requires huge inputs of energy from somewhere else, which is available because some other resource such as coal or oil has been extracted and concentrated, with costs, to provide energy for this use. Therefore, once a refined metal has been used to make a product such as an

¹ Projected Population Size and Births, Deaths, and Migration, Projections for the United States: 2017-2060, <https://www.census.gov/data/tables/2017/demo/popproj/2017-summary-tables.html>.

aluminum can, the can and its already-refined resource can be said to “embody” – to be a physical representation of – the energy used in extraction, refining, and manufacturing.

Once the product is used, it will eventually be discarded and, hopefully, recovered. The fewer changes the recovery process puts the material through, the more of the material’s structural integrity and embodied energy are conserved. That is why Reuse is higher on the hierarchy than Recycling. Reuse puts an object back into commerce in its already-manufactured form, conserving materials, manufacturing energy, and cultural value. Recycling reprocesses an object for another round of manufacturing, conserving only the material and some embodied energy. More energy inputs are needed for the processing to turn the discard into feedstock for another process. Composting is one form of recycling.

If an aluminum can and its embodied energy are wasted through burial or some other mishandling, the metal is no longer available for use and must be replaced through more extraction.

III. PROPERLY SEPARATING MATERIALS AT THEIR SOURCE IS ONE OF THE MOST CRITICAL COMPONENTS TO RECYCLING SUCCESS.

A. Making New High Quality Products from Recovered Materials Requires Clean Uncontaminated Materials.

"Recycling" does not happen until manufacturers actually use recovered materials to make new products or compost is produced suitable for agriculture or similar needs. In the practical world, it is necessary to collect discards from consumers to reuse the objects as-is or to process them as a recyclable commodity. This is where markets and resource quality

come into the picture. The industries looking to post-consumer resources as feedstock for manufacturing need the recovery processes to keep materials as clean as possible. "Clean" means uncontaminated, which in turn means unmixed. For example, a maker of glass needs recovered glass feedstock that, besides being color sorted, is free of rags or pieces of plastic or banana peels. A paper manufacturer needs post-consumer fiber free of tiny pieces of glass that abrade equipment and degrade the product. The more mixed a resource is, the more energy inputs are needed to clean up the material, if it even can be brought up to the specifications the buyer needs to meet.

Commonly, people refer to the collection of materials in community programs as "recycling" and aim for the goal of keeping materials out of landfills and incinerators. While both are essential, "recycling" is not accomplished until the materials are actually made into new products that purchasers want to buy. Collection programs need to keep the materials as clean as possible in order to maximize how many are actually recycled.

B. Poor Sorting Practices Are the Major Cause of the Current Recycling Collapse in the United States.

Since 2011, the US recycling system has suffered dramatic damage in thousands of places, including the San Francisco Bay Area. The culprit is a collection method called single-stream, which allows consumers to put mixed recyclables into a single bin. Once the materials are mixed, sorting them requires a lot of energy and cannot get them as clean as they would have been if they had not been mixed in the first place. One way to look at this dilemma is to compare it to making an omelet and then trying to get the eggs out whole again afterwards. The automated sorting systems that the solid waste industry prefers routinely produce many tons of "residuals" that

cannot be recycled. Some facilities handling single-stream materials produce residuals as high as 40% of incoming tonnage.

For composting of the type Waste Management of Alameda County ("WMAC") wants to do, an even bigger problem is contaminating the supposedly "clean" plant debris and food with the actual nonrecyclable residuals and outthrows from sorting facility processing, which are "dirty."

C. Mixed-Waste Processing Is Damaging the Recycling Industry's Ability to Sell Recovered Materials.

At the height of its export system for post-consumer resources, the US sent approximately 40% of its recyclables to China each year,² much of it from single-stream collection programs. But two years ago, China rejected the high contamination levels in single-stream's mixed process and stopped accepting materials from recycling programs in the US and other countries that do not meet their increasingly stringent quality standards. This market shutdown threw single-stream collection programs into chaos. Meanwhile, programs such as Berkeley's that use source-separated collection to provide clean, separated recyclables can still find buyers in China and other overseas ports.³

In the nearly five decades of recycling's development, well-meaning citizens learned to trust recyclers and thought they must be doing right by using collection systems that mix recyclables before separating them. Citizens have thought their materials were being recycled. Now, however,

² Javorsky, Nicole, "How American Recycling Is Changing After China's National Sword," CityLab, www.citylab.com, April 1, 2019

³ Multiple personal communications and public reports to the Berkeley Zero Waste Commission from Jeffrey Belchamber, General Manager of Berkeley Recycling.

they are told that formerly low-wage countries such as China are slamming their doors closed to shipments of their donated materials. They were dismayed and felt betrayed to learn the recyclables were not being recovered, and their good-faith participation was for naught. As other Asian countries closed their ports, too, sales of what used to be called “commodities” had suddenly become “garbage,” and piles backed up in warehouses. Some caught fire. Some were diverted to local landfills.

This disastrous market collapse happened despite years of warnings from source-separation recyclers, whom waste companies largely ignored. Some waste companies kept tinkering with systems that weren’t working. Some developed a new employee function called “bale trimmer,” someone who walks around export bales of cardboard or plastic and cuts off visible contaminants such as rags or stray pieces of something sticking out of the bale, which might cause an inspector at the destination port to send an entire shipload of bales back where it came from. By 2017 it was clear that the “resources” these plants were “recovering” from single-stream collection could not meet the new, more stringent quality standards, which are unlikely to change anytime soon.

D. Mixed-Waste Composting Has Failed Elsewhere

Mixed-waste composting is an acknowledged failure in Europe, where the technology was tried first. Now we in Alameda County are being asked to support the biggest waste company in the world in its effort to launch a mixed-waste processing facility for anaerobic digestion that is not only a one-off, but may also be the biggest in the world. The company hopes to launch this irresponsible system even though it is a direct threat to the developing industry that makes clean compost. If the facility is allowed

to operate as designed, it will be a major threat to clean composting because it will produce something called “compost-like-output,” or CLO.

Variable batches of a dirty compost-like product will contain unpredictable mixes of materials that should not be used to build soil. It will be unlikely to find a paying market. So where will this product go?

Europe’s experience is enlightening. Countries such as Germany and Spain got into mechanical-biological processing first. But the European Union itself has voted to abandon mixed-waste composting because of quality issues.

International researchers report increased levels of heavy metals in compost made from organics mixed with municipal solid waste. They identify troublesome household trash components such as consumer electronics, ceramics, plastics, glass, and wine bottles’ lead-foil closures as materials that increase the percentage of lead and other heavy metals in mixed-materials compost products.

Studies have found that compost made from source-separated organics contain far fewer heavy metals compared to compost combined with mixed household waste.^{4,5}

Some focused studies target thermal-paper cash register receipts which, ironically, consumers have been encouraged to put into their trash

⁴ Page, K., and M.J. Harbottle, P.J. Cleall, T.R. Hutchings, "Heavy Metal Leaching and Environmental Risk from the Use of Compost-like Output as an Energy Crop Growth Substrate," *Science of the Total Environment*, Vol. 487, 15 July 2014

⁵ Chimuka, Luke and Thomani E. Manungufala, "Sources, Bioavailability and Fate of Heavy Metals and Organic Contaminants in Compost Manure," *Dynamic Soil, Dynamic Plant*, Global Science Books, 2009

rather than recycle. The reason is that the receipts contain a toxic chemical, bisphenol-a (BPA), which should not be recycled into new products. It is toxic to handle and is an endocrine disruptor linked to birth defects, developmental and neurological problems particularly in children, and serious reproductive health problems for women. In response, makers of thermal paper have shifted from BPA to BPS, originally thought to be safer. But recent studies suggest that BPS may be even more harmful.^{6,7}

In a recent article published in *Waste Advantage* magazine, Lupke Arsova of Gershner, Brickner and Brattan reports that “in Germany the compost product is not allowed for agricultural application, while in Spain, although the quality of the compost is acceptable, the local farmers do not want to use it.... As waste processing facilities, these plants are also challenged by public acceptance due to odor issues.”⁸

Despite this very recent collapse of markets for resources from the mixed-recyclables single-stream process, such as its parent company pioneered during its startup phase in Chicago⁹, WMAC is building in San Leandro a similar kind of mixed-waste process for plant debris, food, and other carbon-rich discard streams. This new version mixes collected organics with residual trash, which is even more problematic than the mixed

⁶ Lucia, Michael, "Despite Changes, Cash Register Receipts May Still Pose Health Risks," Center for Environmental Health, November 10, 2016

⁷ Porter, Beth and Ayate Temsamani, "Skip the Slip, Environmental & Human Health Impacts of Paper Receipts," Green America, June 2019

⁸ Lupke Arsova, Consultant II, GBB, Fairfax, VA; "Waste Conversion Mechanical Biological Treatment for Material and Energy Recovery from Mixed Municipal Solid Waste (MSW)," 2011.

⁹ This references the notorious "blue box" collection system.

recyclables scheme that has just crashed, leaving the US recycling system struggling and damaged.

E. Single-Stream Collection Undermines the Zero Waste, Circular Economy that Community Recyclers Are Trying to Build.

Recycling, when functioning at a high level, is a continuous-loop system that operates this way:

1. Discarded materials are collected and sorted, then
2. Delivered to manufacturers, who use those materials to make new products, in order to
3. Distribute and sell these products to buyers, who then
4. Use the products and, when done, discard them back into the collection systems in #1 above.

Because recycling is a whole system, with each step relying on the success of the others, the participants within each step must ensure that their efforts contribute to the healthy functioning of the whole system, not only their own outlook. If one of the steps in the system is undermined – for example, if poor quality materials are delivered to the manufacturer, or a cereal company buys a manufacturer's boxes and finds small bits of glass in them from contaminants in the feedstocks – then the system starts to break down. Manufacturers refrain from investing in recycling technology, and buyers refuse to buy the products. The planet loses significant environmental and resource conservation advantages that should have been created through cleanstream recycling.

F. A Case In Point: Effects Within the Paper Industry

To understand what mixed-waste composting could do to clean-compost producers, consider how single-stream collection has affected the

papermaking industry. Recycled-paper mills want to use discarded paper from recycling programs to make new, high-quality papers and paper products. Too often when they use single-stream materials as feedstock, they find too much material that 1) cannot be made into paper; 2) damages the manufacturing equipment; 3) requires far more maintenance and downtime; and 4) results in huge piles of rubbish that the mill must pay to get rid of.

Single-stream bales of paper come into paper mills loaded with glass, plastics, and metals that should not be there. Even when paper recycling mills have added re-sorting lines to the front end of manufacturing, they cannot entirely prevent glass that has been reduced to gritty sand, or the polystyrene foam bits that slip through tiny openings, or the many other contaminants that get into their machinery along with the recyclable fibers that they need.

These contaminants grind down machinery that often costs hundreds of millions of dollars or more, clog its systems, require much more clean-out and service downtime, and spew out huge waste piles that the mill has to pay to remove. At the same time, the manufacturers of other kinds of recycled products that need the recyclable plastics, glass, or metals that are mixed into these poorly-sorted paper bales lose out on the material their machinery needs because it went to the cardboard mill instead. Even when the plastics industry attempted to "mine" the contamination waste piles at paper mills, they discovered that the plastics that they wanted were also now too contaminated for them to use, as well.

Paper mill manufacturers have reported that as much as 30% of each paper bale from single-stream programs is contaminants and cannot be used

to make paper. Meanwhile, the lack of adequate sorting loses much of the high grades of office paper that are required as postconsumer feedstock for paper products such as printing and copy papers. These products are made in a process that is the most environmentally damaging of all the papermaking processes. The office paper is collected, but then it disappears into poorly-sorted single-stream paper bales. From there it goes to brown-paper or packaging mills that do not require the quality paper. Proper sorting at point of discard, and preventing mixing, would increase recycled content in paper products that should be the first targets for incorporating recycled content in order to reduce some of the most damaging virgin resource impacts.

Recycled-content products are meant to reduce the negative impacts that otherwise are created from manufacturing nonrecycled-content products. For example, manufacturing one ton of 100% recycled-content copy paper, compared to manufacturing one ton of virgin paper, saves 4 tons of trees, 10 million BTUs of energy, more than 10,000 pounds of CO₂ greenhouse gas equivalent, and 1900 gallons of water. While reducing solid waste (along with air and water pollutants from landfills and incinerators), recycling also prevents disturbances of forests, threatened habitats, and wetlands.¹⁰

Most recyclable materials can be recycled many times, providing their environmental savings over and over. If manufacturers lose access to useful materials because of attempts to recycle mixed waste, those environmental benefits cannot be achieved.

¹⁰ Environmental impact estimates were made using the Environmental Paper Network Paper Calculator Version 4.0. For more information visit www.papercalculator.org.

G. High Quality Recycling Is Necessary to Safeguard the Earth's Environmental Future

Many community recycling programs, no longer able to sell their mixed single-stream materials to China, have had to close down recycling centers, cut back their programs, or landfill or incinerate their collected recyclables.¹¹ Residents become cynical, feeling that their recycling efforts were for naught, and that reduces their enthusiasm for participating.

When the modern recycling movement sprang up spontaneously all over the country in response to the first Earth Day in 1970, it was a visionary social and environmental movement focused on how individuals could contribute to protecting the environment. Recycling empowered communities to take charge of their surroundings and improve the ecosystem and often their economic development opportunities as well. The recycling system has become more bureaucratized and corporatized, but residents still expect that the work they contribute to the system through collecting and separating their discards has value and helps to protect the environment. Mismanagement leaves them feeling disappointed, disempowered, and discouraged.

The purpose and point of “do no harm” is violated by compost-like-output. Despite having caused serious damage to the recycling system with single-stream collection, multinational WMAC is now proposing to use an even more degraded combination of municipal mixed waste that includes organics, to make compost-like-output. This sends the community residents all the wrong messages about responsible handling of resources.

If they are not already participating in the recycling program, then

¹¹ Javorsky, op.cit.

they are putting all their discards into their trash bin. That means that their trash bin will be loaded with materials that should have been recycled, including paper, plastics, and metals. Trying to skim off the recoverables and digest whatever is left wastes most of their economic development potential.

Those residents who have been recycling faithfully are likely to become discouraged when they find that materials in the trash get processed expensively even though they weren't sorted for recycling. Why, they start to ask, should they bother putting in the effort to sort?

Even more troublesome, making compost from organics that are contaminated by the lead and other heavy metals that are incorporated in plastics, metals, and other materials results in a poor quality compost-like product.

The European Compost Network, composed of all 63 bio-waste organizations from 28 European countries, and representing more than 3,000 experts, states that maintaining the confidence of both private and professional compost customers requires separately collected biofeedstocks that are treated to high standards.

In 2018, the European Union voted that, "as of January 1, 2027, municipal bio-waste entering aerobic or anaerobic treatment may only be counted as recycled if . . . it has been separately collected or separated at source."¹² Our concerns are rooted in practical necessity and deserve to be

¹² Council of the European Union, "Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste," February 23, 2018

studied further to prevent or limit damage to recycling and high-quality composting.

Farmers are in a position similar to manufacturers who try to use recycled feedstocks coming from mixed-recyclables collection programs. Farmers want to use compost to produce superior food products. They do not want to use compost that might be contaminated with toxics from the mixed-waste plastics, metals, and paper that end up combined with the organics. They rightly fear that loosing this compost-like-output into the environment will undermine their agricultural business, degrade the value of the compost brand, and potentially harm community health. In a fertile agricultural state such as California, our farmers and our food require high-quality compost that can be produced only from source-separated organics. Even where mixed-waste compost might be used in non-agricultural situations, it can leach heavy metals into the soil, rain runoff, and groundwater.

IV. CONCLUSION

We ask the court to rule that the Alameda County Waste Management Authority should have required a new Environmental Impact Report when the project expanded dramatically and after it switched to dirty mixed feedstocks. The signers of this document who backed Measure D are disappointed that WMA has failed to uphold the high standards for which they were chartered and for which they have been known. By ignoring the effects of switching feedstocks away from source-separated organics and to mixed unrecyclable “residuals,” they allowed this project to proceed without studying the all-too-likely negative outcome of these major changes to scale and volume.

Measure D produced a revenue stream that few other recycling programs around the US could even hope to achieve. The studies and innovative approaches that WMA has funded are known to community recycling programs all over this country and internationally. WMA stands as one shining example of the leading edge of recycling progress.

But the honor is theirs to lose. We, like the litigants, are mystified and saddened by WMA's stance on this issue. We thank Toni Stein and Arthur Boone for courageously calling the agency to account. We believe that promoting mixed-waste composting, rather than finding ways to increase effective source separation, generates the potential to increase the loss of confidence in recycling, further undermining the good system and empowering the bad one.

This should not be allowed to happen. Humanity and the planet need good recycling and a healthy recycling system.

CERTIFICATION OF WORD COUNT

The undersigned certifies that this brief complies with CRC 8.204(c) (1) in that it contains 3,990 words pursuant to Microsoft Word program.

RESPECTFULLY SUBMITTED,

/S/ Ruth Abbe
Ruth Abbe
President
Zero Waste USA
San Francisco Bay Area

/S/ Dr, Daniel Knapp, Ph.D.
Dr. Daniel Knapp
President and General Manager
Urban Ore
Berkeley, California

/S/ Susan Kinsella
Susan Kinsella
Executive Director
Conservatree
San Francisco Bay Area

/S/ Todd Larsen
Executive Co-Director
Green America
Washington, DC

Document received by the CA 1st District Court of Appeal.

PROOF OF SERVICE

I, Jodene Isaacs, do hereby declare:

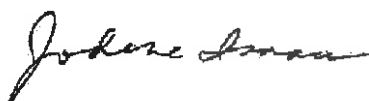
I am employed in the City and County of San Francisco, California, I am over the age of 18 years and not a party to the within action. On this day I served the following documents by mail, postage prepaid, on the party listed below:

AMICUS BRIEF IN SUPPORT OF APPELLANTS

On the parties listed below, by placing a true copy thereof in a sealed envelope, and the envelope addressed as follows

Hon. Roni McLaren, Judge
Alameda County Superior Court
1225 Fallon St.
Oakland. Ca 94612

DATED: September 11, 2019



Jodene Isaacs

Document received by the CA 1st District Court of Appeal.

2019 - ALAMEDA COUNTY RECYCLING BOARD ATTENDANCE

	J	F	M	A	M	J	J	A	S	O	N	D
REGULAR MEMBERS												
J. Buckholz	X	X	X	X	X	A	X	X	X			
B. Camara	X	A	X	X	X	X	X	X	X			
B. Carling								X	X			
D. Cox	X	X	X	X	X	X	I	X	X			
N. Deming	X	X	X	X	X							
D. Martinez	X	X	X	A	X	A	X					
T. Nourot	X	X	X	X	A	X	X	X	X			
J. Moore	X	X	X									
J. Oddie	X	X	A	X	X	X	X	X	X			
D. Sadoff	X	X	X	X	X	X	X	X	X			
S. Vared	X	X	X	A	X	X	X	X	A			
F. Zermeño		X	X	X	X	X	X	I	X			
INTERIM APPOINTEES												
S. Young							X					
J. Kassan								X				

Measure D: Subsection 64.130, F: Recycling Board members shall attend at least three fourths (3/4) of the regular meetings within a given calendar year. At such time, as a member has been absent from more than one fourth (1/4) of the regular meetings in a calendar year, or from two (2) consecutive such meetings, her or his seat on the Recycling Board shall be considered vacant.

X=Attended

A=Absent

I=Absent - Interim Appointed

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DATE: October 10, 2019
TO: Recycling Board
FROM: Jeff Becerra, Communications Manager
SUBJECT: Written Reports of Ex Parte Communications

BACKGROUND

Section 64.130 (Q)(1)(b) of the Alameda County Charter requires that full written disclosure of ex parte communications be entered in the Recycling Board's official record. At the June 19, 1991 meeting of the Recycling Board, the Board approved the recommendation of Legal Counsel that such reports be placed on the consent calendar as a way of entering them into the Board's official record. The Board at that time also requested that staff develop a standard form for the reporting of such communications. A standard form for the reporting of ex parte communications has since been developed and distributed to Board members.

At the December 9, 1999 meeting of the Recycling Board, the Board adopted the following language:

Ex parte communication report forms should be submitted only for ex parte communications that are made after the matter has been put on the Recycling Board's agenda, giving as much public notice as possible.

Per the previously adopted policy, all such reports received will be placed on the consent calendar of the next regularly scheduled Recycling Board meeting.

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DATE: October 10, 2019

TO: Programs & Administration Committee
Planning Committee/Recycling Board

FROM: Rachel Balsley, Senior Program Manager

SUBJECT: Mandatory Recycling Ordinance Project Update

SUMMARY

This memo provides an update of the Mandatory Recycling Ordinance (MRO) and highlights some of the progress through Fiscal Year 2018-19. Staff will also share a presentation at the October 10, 2018, Programs & Administration and Planning Committee/Recycling Board meetings.

DISCUSSION

Program Overview

Ordinance 2012-01, the Mandatory Composting and Recycling Ordinance, was adopted in January 2012. Phase 1 was effective July 1, 2012, with recycling requirements for commercial accounts with four or more cubic yards of weekly garbage service and multifamily properties (five or more units). Phase 2 started July 1, 2014, in participating jurisdictions,¹ adding discarded food and compostable paper to the list of covered materials and expanding to all businesses.

The WMA has a routine inspection program with progressive enforcement, meaning regulated parties receive two notices before a citation (and fine) is issued:

- Official Notification Letter – informs covered accounts of the ordinance requirements; may or may not be the result of an observed violation
- Notice of Violation/Warning Letter – sent after an official notification has been issued, and upon observation of a violation

Before a citation is issued, it is reviewed and approved by the member agency's Primary Enforcement Representative. Fines range from \$100 to \$150 per violation for the first citation. Fine amounts increase on subsequent citations at the same account within 12 months.

¹ Member Agencies were given the option to opt-out or delay aspects of each Ordinance phase.

The WMA has prioritized enforcement of commercial accounts with one or more cubic yard of weekly garbage service, about 68% of covered commercial accounts. Smaller commercial accounts (typically once a week garbage *cart* customers) are not currently being inspected.

For multifamily enforcement, an administrative process is used to review hauler service data since the MRO simply requires the *provision* of recycling and/or organics collection service and gaining access at multifamily sites is often difficult. If an official complaint is submitted through the Ordinance website to inform the WMA of a site that is not providing the required service to residents, that account may receive an on-site inspection. Routine on-site inspections were performed at roughly 50% of multifamily sites in each participating jurisdiction during 2013 and 2014.

Technical assistance is provided by WMA's contracted TA provider, Cascadia Consulting Group, focusing primarily on Ordinance compliance. Properties may directly request assistance through the ordinance help line or website. In addition, the TA team proactively contacts many businesses and multifamily properties to offer compliance assistance after they violate the Ordinance.

The MRO website, www.RecyclingRulesAC.org, is the hub of outreach and TA with detailed information about the requirements, support materials, and tools to assist in compliance.

Highlights from Fiscal Year 2018-19

Enforcement activities throughout the county

The WMA conducted over 5,300 inspections throughout the county in FY 2018-19 with two full-time contracted inspectors for the majority of the year. Close to 1,300 additional inspections were conducted in Oakland with direct funding provided by the City of Oakland. Over 1,400 commercial accounts were sent an enforcement letter based on an observed violation. Moreover, about 1,800 administrative notifications were mailed to primarily new accounts officially informing them of the MRO requirements.

Enforcement is progressing

In FY 2018-19, 610 accounts were sent a citation (and fine), compared to 471 accounts in FY 2017-18. Of the approximately 2,000 citations issued to-date, 26 have been appealed by the cited parties and all have been upheld after formal appeal hearings were conducted.

Providing more feedback on improper sorting

In FY 2018-19, 54% of the inspections resulted in at least one MRO violation. After inspection protocol changes were implemented in February 2018, businesses are receiving more feedback about improper sorting than in prior years. A violation for recyclables in the garbage was the most common and given in 38% of inspections, while 15% of inspections found a violation for garbage in the recycling. While not all businesses generate organics and discarded food is often more difficult to see in significant quantities, 15% of inspections had a violation for organics in the garbage and 8% had a garbage in organics violation.

Stricter enforcement on organics service

Historically in MRO enforcement, a commercial account was only given a violation for lack of organics service if a significant quantity of organics was observed in the garbage during the inspection. “Significant quantity” is currently defined as 20 gallons in a garbage bin. However, given study data showing the continued high amounts of organics going to the landfill and the state regulation AB 1826 lowering the threshold of accounts that must have organics service, enforcement protocols were modified earlier this calendar year. In addition to accounts where a significant quantity of organics is observed, violations for lack of organics service are also now given to accounts that have four or more cubic yards of total weekly solid waste service and that are known to have a food generator permit.

Businesses continue to add recycling and organics service

More businesses subscribe to new recycling service every year, with 70-92% of commercial garbage accounts in most member agencies now having some level of recycling service. This is a significant increase when compared to 20-82% in 2011, prior to implementation of the MRO. The percentage of commercial garbage accounts that have organics service in most member agencies is now between 15-69%² compared to 0-17% in 2011, although it’s not expected that all commercial garbage accounts will need organics service. More than 7,000 of the nearly 20,000 covered commercial garbage accounts have organics service.

Enforcement is advancing at multifamily properties

In FY 2017-18, multifamily properties began receiving Notice of Violation/Warning letters for a lack of recycling and/or organics collection service, with letters batched in a city-by-city process. Of the approximately 2,700 multifamily accounts reviewed in seven jurisdictions in FY 2018-19, 357 accounts were sent enforcement letters for lack of service (usually organics service). Member agency reported data for FY 2017-18 indicates approximately 97% of multifamily properties have recycling service and 89% have organics service. It is expected that non-compliant multifamily accounts will begin getting citations in FY 2019-20.

The TA team assisted 574 commercial and multifamily accounts

The Cascadia TA team contacted 673 commercial and multifamily accounts to offer assistance. A total of 527 commercial accounts, and 47 multifamily accounts, received on-site, phone, and/or email assistance in FY 2018-19. Of the multifamily properties assisted, 14 properties requested and received residential outreach including group presentations or door-to-door communication about proper recycling and composting at their site. The TA team documented 80 service changes to start or expand recycling and/or organics collection programs. These service changes equate to approximately 9,100 cubic yards of annual new diversion. A little more than half (58%) of the service changes resulted in an increased solid waste bill, while 34% resulted in a cost savings, and 8% had no change in cost.

² The percentage commercial garbage accounts that have recycling and organics services is based on member agency data submitted for FY 2017-18 in the fall of 2018 in their Measure D annual report. FY 2018-19 data is expected to be available in November/December 2019.

Additional details regarding technical assistance are in the StopWaste Business Assistance Program Fiscal Year 2018-19 Annual Report. A full copy of the annual report is available [here](#).

Sites are utilizing free indoor green bins and support materials

The Free Indoor Food Scrap Bin Program continues to help businesses build internal infrastructure for proper sorting of organics. Over 310 sites were approved to receive free indoor green bins and over 2,700 pieces of equipment were distributed in FY 2018-19. Close to 18,000 stickers to label indoor bins were mailed to 435 sites last fiscal year. A new series of three instructional videos in English, Spanish and Chinese provide an overview of the recycling rules, steps for setting up indoor recycling stations, and proper sorting. These videos are utilized by the TA team when in the field and by businesses that opt to tackle compliance on their own. Other support materials including the Bags to Bins customizable poster tool, enhanced Sign Maker tool, and Indoor Bin Guide are also helpful resources for setting up and improving diversion programs.

Looking Ahead

Inspectors on staff

This fiscal year, the WMA has transitioned from contracted inspectors to two full-time employee inspectors that work primarily on the MRO, but also support enforcement of the Reusable Bag Ordinance, and data sampling for the Measurement & Analysis project.

Strategic planning and more outreach to high organics generators

Strategic planning efforts are underway regarding the project's communications and outreach tactics. This includes a campaign targeted at high organics generating businesses, as well as possible revisions to the MRO website, enforcement letters, and other support materials.

Full county participation

The City of Dublin, the last jurisdiction in the County to participate, is now opted-in to the MRO with requirements effective January 1, 2020, and enforcement actions on their approximately 550 commercial and multifamily accounts will begin in July.

Compliance assistance with state regulations

Planning is underway to conduct an AB 341/AB 1826 mailing on behalf of the jurisdictions to non-compliant accounts. A separate SB 1383 presentation in November will provide updates on the development of the aggressive new state requirements. Some of the mandates on generators to divert more and on jurisdictions to enforce the requirements are similar to what the WMA has been doing for MRO implementation. However, based on CalRecycle draft regulations, it is anticipated that an ordinance amendment will be required prior to the 2022 effective date to better align the MRO with SB 1383 compliance.

RECOMMENDATION

This report is for information only.



DATE: October 10, 2019

TO: Planning Committee/Recycling Board

FROM: Meghan Starkey, Senior Management Analyst

SUBJECT: Municipal Panel: Climate Action Plans & Recycling

SUMMARY

Climate action planning and solid waste and recycling services are often thought of as separate functions within local government, with only minimal overlap related to transportation and recovery of discarded materials. Recently, however, evolution of thinking in both climate action planning and recycling has created new opportunities for collaboration.

At the Planning Committee/Recycling Board meeting, staff from Albany, Dublin, and Fremont will share their experiences in materials management strategies to lessen the environmental impacts and emissions associated with all aspects of material consumption, not just when they are put into a bin of one kind or another.

DISCUSSION

On a global scale, nearly half of all emissions come from the production of materials: anything from consumer goods, to concrete, to food, generates impacts well before delivery of the product to the community. An increasing understanding that “materials matter” is informing climate action thinking, and pointing out the potential to reduce climate impacts by lessening these upstream impacts of materials, regardless of where they occur. Simultaneously, recent developments in international recycling markets and state legislation regarding organics is pressuring recycling programs from another direction but with the same conclusion: preventing materials from being produced lessens the negative impacts and cost of handling them later. Strategies that speak to both sides of materials are increasingly becoming common in climate action plans. These ideas and more will be shared with the Planning Committee/Recycling Board at the October 10 meeting.

RECOMMENDATION

This item is for information only.