

**Planning & Organization Committee and
Recycling Board Members**

Daniel O'Donnell, **President**
Environmental Organization

Tim Rood, **1st Vice President**
City of Piedmont

Toni Stein, **2nd Vice President**
Environmental Educator

Adan Alonzo, Recycling Programs

Greg Jones, City of Hayward

Bernie Larrabe, Recycling Materials Processing Industry

Peter Maass, City of Albany

Dianne Martinez, City of Emeryville

Michael Peltz, Solid Waste Industry Representative

Jerry Pentin, City of Pleasanton

Steve Sherman, Source Reduction Specialist

**AGENDA
MEETING OF
PLANNING AND ORGANIZATION COMMITTEE
AND
ALAMEDA COUNTY RECYCLING BOARD**

Thursday, November 12, 2015

7:00 p.m.

**Castro Valley Public Library
3600 Norbridge Avenue
Castro Valley, CA 94546
510-667-7900
(Directions attached)**

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

III. ANNOUNCEMENTS BY THE PRESIDENT

Page **IV. CONSENT CALENDAR (P&O & RB)**

- | | | |
|---|---|--------------------|
| 1 | 1. Approval of the Draft Minutes of October 8, 2015 (Wendy Sommer) | Action |
| 5 | 2. Board Attendance Record (Wendy Sommer) | Information |
| 7 | 3. Written Report of Ex Parte Communications | Information |

V. OPEN PUBLIC DISCUSSION

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.

VI. REGULAR CALENDAR (P&O & RB)

- | | | |
|---|---|--------------------|
| 9 | 1. Definition of "Adequate Commercial Recycling" for Purpose of Determining Municipal Eligibility to Receive Measure D Per Capita Allocations (Gary Wolff & Tom Padia) | Information |
|---|---|--------------------|

Staff recommends that the Recycling Board find that Pleasanton has not yet satisfied the criteria for an adequate commercial organics recycling program, and that their quarterly Measure D payments continue to be calculated but placed in a holding account, pending a future action by the Board on this matter.

We further recommend that staff be directed to: 1) agendize a presentation by Pleasanton to the Board on how Pleasanton intends to create an adequate commercial organics recycling program as soon as feasible after Pleasanton requests such an agenda item, 2) bring a status report about Pleasanton's commercial organics program back to the Board in July 2016, and 3) bring a report on the status of all member agencies under this policy to the Board in November 2016.

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| 15 | <p>2. Pension Liability Payoff and a Related Schedule Proposal (Gary Wolff & Wendy Sommer)</p> <p>Staff recommends that the P&A and P&O Committees recommend that the WMA direct staff at its November 18, 2015 meeting to follow the schedule presented in the staff report, which is intended as a decision making framework based on currently available information; and recommend that the WMA approve the proposed changes to reserves, and payment to PERS, when the mid-year budget revisions are brought before them on December 16, 2015.</p> <p>A recommendation from the P&O to this effect will be understood by staff as direction by the Recycling Board with respect to preparation of its part of the combined agency budget proposals for FY16/17 and FY17/18. Should future modifications to the schedule and associated actions be needed, they will be discussed with the Board.</p> | Action |
| 25 | <p>3. Final Legislative Status for 2015 (Wendy Sommer & Debra Kaufman)</p> <p>This item is for information only. Staff recommends that the Board receives this 2015 legislative status update and update on Cal Green code outcomes.</p> | Information |
| 31 | <p>4. Legislative and Regulatory Priorities for 2016 (Wendy Sommer, Debra Kaufman & Wes Sullens)</p> <p>Staff recommends that the Boards confirm the priorities identified in the staff report for the upcoming legislative year.</p> | Action |
| | VII. OTHER PUBLIC INPUT | |
| | VIII. COMMUNICATIONS/MEMBER COMMENTS | Information |
| | IX. ADJOURNMENT | |

Castro Valley Public Library

3600 Norbridge Avenue
Castro Valley, CA 94546
510-667-7900

Directions

From South Bay:

I-880 N toward OAKLAND.
Merge onto I-238 S toward I-580/CASTRO VALLEY/STOCKTON.
I-238 S becomes I-580 E.
Take the REDWOOD ROAD exit toward CASTRO VALLEY.
Turn LEFT onto REDWOOD ROAD.
Take the 3rd RIGHT onto CASTRO VALLEY BLVD.
Take the 2nd RIGHT onto NORBRIDGE AVE.
Destination will be on the right.

From East Bay:

I-680 S toward SAN JOSE.
Merge onto I-580 W toward OAKLAND.
Take the REDWOOD ROAD exit toward CASTRO VALLEY.
Turn LEFT onto REDWOOD ROAD.
Take the 3rd RIGHT onto CASTRO VALLEY BLVD.
Take the 2nd RIGHT onto NORBRIDGE AVE.
Destination will be on the right.

From San Francisco:

I-80 E toward OAKLAND.
Merge onto I-580 E toward DOWNTOWN OAKLAND/HAYWARD-STOCKTON.
Take the REDWOOD ROAD exit toward CASTRO VALLEY.
Turn LEFT onto REDWOOD ROAD.
Take the 3rd RIGHT onto CASTRO VALLEY BLVD.
Take the 2nd RIGHT onto NORBRIDGE AVE.
Destination will be on the right.

From San Ramon/Crow Canyon Road:

Head NORTHEAST on CROW CANYON RD.
Make a U Turn
MERGE onto I 680 S via the ramp to SAN JOSE
Take the EXIT onto I-580 toward DUBLIN/OAKLAND
Take the EXIT toward CASTRO VALLEY VALLEY.
Turn LEFT onto E CASTRO VALLEY BLVD.
Turn LEFT onto NORBRIDGE AVE.

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DRAFT

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

**Thursday, October 8, 2015
4:00 p.m.**

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

I. CALL TO ORDER

President Daniel O'Donnell called the meeting to order at 4:03 p.m.

II. ROLL CALL

Daniel O'Donnell, Environmental Organization, Chair
Adan Alonzo, Recycling Programs
Don Biddle, City of Dublin for Jerry Pentin, City of Pleasanton
Shelia Young for Greg Jones, City of Hayward
Peter Maass, City of Albany
Bernie Larrabe, Recycling Materials Processing Industry
Michael Peltz, Solid Waste Industry Representative
Tim Rood, City of Piedmont
Toni Stein, Environmental Educator (arrived 4:20 p.m., left 5:15 p.m.)
Matthew Southworth for Steve Sherman, Source Reduction Specialist

Absent:

Dianne Martinez, City of Emeryville

Staff Present:

Wendy Sommer, Deputy Executive Director
Gary Wolff, Executive Director
Rachel Basley, Senior Program Manager
Meghan Starkey, Senior Program Manager
Kathleen Pacheco, Senior Deputy County Counsel
Arliss Dunn, Clerk of the Board

Others Participating:

Carolyn Bloede, Alameda County GSA
Karen Cook, Alameda County GSA
Naomi Lue, Castro Valley Sanitary District
Marisa Gan, City of Livermore
Judy Erlandson, City of Livermore
Kathy Cote, City of Fremont

III. ANNOUNCEMENTS BY THE PRESIDENT

- ♦ Video: Capitol Lawn Conversion

President O'Donnell welcomed Bernie Larrabe to the Recycling Board. Board member Larrabe is the General Manager of Livermore Sanitation Inc. and will be serving in the capacity of Recycling Materials Processing Industry Representative. President O'Donnell displayed a sample of boxed water sold at

Fresh and Easy and stated that we could consider serving the boxed water instead of bottled water at meetings and events.

Wendy Sommer presented a [video](#) and announced that StopWaste staff Teresa Eade, Jeanne Nader and Kelly Schoonmaker provided technical assistance to the California Department of General Services during a demonstration of sheetmulching as an easy and sustainable approach to lawn removal. Over 1,000 square feet of the State Capitol lawn were converted to a new drought-tolerant landscape that will save over 59,000 gallons of water per year. The video is posted on the State's General Services Website and on Youtube.

IV. CONSENT CALENDAR

- | | |
|--|--------------------|
| 1. Approval of the Draft Joint Minutes of September 16, 2015 (Wendy Sommer) | Action |
| 2. Board Attendance Record (Wendy Sommer) | Information |
| 3. Written Report of Ex Parte Communications (Wendy Sommer) | Information |
| 4. Grants Under \$50,000 (RB only) (Gary Wolff & Wendy Sommer) | Information |

Board member Rood made the motion to approve the Consent Calendar with the correction below. Board member Alonzo seconded and the motion carried 10-0 (Martinez, absent).
(Correction: Agenda should state 'Minutes of September 16, 2015, not September 23, 2015).

V. OPEN PUBLIC DISCUSSION

There was none.

VI. REGULAR CALENDAR

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|---|--------------------|
| 1. Recycled Product Procurement Programs Update
(Wendy Sommer, Rachel Balsley & Debra Kaufman) | Information |
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It is recommended that the Board receive this update and hear the report from staff on Agency activities in this area and from the County GSA on ways in which they incorporate recycled content into their purchasing, as well as ways in which they are providing technical assistance to the member agencies, and their methods of tracking success.

Rachel Balsley stated that Board member Stein requested more information about how much recycled content purchasing is done by the State, County, and local governments and how more might be done to increase those local efforts. Ms. Balsley introduced Carolyn Bloede, Alameda County Sustainability Program Manager, and Karen Cook, Alameda County Sustainability Project Manager.

Ms. Balsley, Ms. Bloede and Ms. Cook provided PowerPoint presentations and led the discussion on Agency activities in this area and from the County GSA on ways in which they incorporate recycled content into their purchasing, as well as ways in which they are providing technical assistance to the member agencies, and their methods of tracking success. Both presentations are available at the links provided: <http://www.RB-10-08-15-EPP> and <http://www.RB-10-08-15-EPP-County>. An audio of the entire discussion is available here: <http://www.RPPP/Discussion/10-08-15.mp3>

President O'Donnell thanked the panel for their presentation and discussion.

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| 2. Municipal Panel Presentation: Franchise Contract Management
(Wendy Sommer & Meghan Starkey) | Information |
|---|--------------------|

This item is for information only.

Meghan Starkey provided an overview of the staff report and introduced the panel. The panel consisted of Naomi Lue, Castro Valley Sanitary District; Marisa Gan, City of Livermore; and Kathy Cote, City of Fremont. Panel members spoke on the topic of "Franchise Contract Management" and responded to

questions regarding rate structures and franchise fees and revenue. An audio of the entire discussion is available here: <http://www.Municipal/Panel/Discussion/10-08-15.mp3>

President O'Donnell thanked the panel for their participation.

VII. OTHER PUBLIC INPUT

There was none.

VIII. COMMUNICATIONS/MEMBER COMMENTS

Ms. Sommer distributed a [flier](#) regarding the reusable bag ordinance potential expansion. The flier invites Alameda County retailers and restaurants to provide input at a series of public meetings throughout the county. Meetings will be held in the month of October in the cities of Pleasanton, Union City, and Oakland. Ms. Sommer stated that she would email copies of the flier to Board members.

IX. ADJOURNMENT

The meeting adjourned at 5:20 p.m.

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2015 - ALAMEDA COUNTY RECYCLING BOARD ATTENDANCE

	J	F	M	A	M	J	J	A	S	O	N	D
REGULAR MEMBERS												
A. Alonzo	X	X	X	X	X	X	X	X	X	X		
L. Ellis	X	X	A	X	X	A	A					
G. Jones	X	X	X	X	X	X	X	X	X	I		
P. Maass	X	X	X	X	X	X	A	X	X	X		
D. Martinez								X	X	A		
D. O'Donnell	X	X	X	X	X	X	X	X	X	X		
M. Peltz	X	X	X	A	X	X	X	X	X	X		
J. Pentin	X	X	I	X	X	X	X	I	X	I		
T. Rood	X	X	X	X	X	X	X	X	X	X		
S. Sherman	X	X	X	X	A	X	X	X	X	I		
T. Stein	X	A	X	X	X	X	X	X	X	X		
M. Tao	X	A	X	X	X	A	X					
INTERIM APPOINTEES												
D. Biddle			X					X		X		
S. Young										X		
M. Southworth										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: November 5, 2015
TO: Recycling Board
FROM: Wendy Sommer, Deputy Executive Director
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: November 5, 2015

TO: Alameda County Recycling Board

FROM: Gary Wolff, Executive Director

BY: Tom Padia, Principal Program Manager

SUBJECT: Definition of “Adequate Commercial Recycling” for Purpose of Determining Municipal Eligibility to Receive Measure D Per Capita Allocations

BACKGROUND

At the November 8, 2012 meeting the Recycling Board unanimously adopted a definition and process for assessing the existence of an “adequate commercial recycling program” for the purpose of determining municipal eligibility to receive per capita Recycling Fund monies (approximately \$4,000,000 per year total, allocated to 16 jurisdictions). The County Charter defines “municipalities” as cities or sanitary districts in Alameda County. At the same time as the policy adoption in 2012, the Board committed to review the criteria in two years, in November 2014. The Board reviewed and unanimously reaffirmed the policy at the November 13, 2014 meeting, and directed that a summary of compliance with the policy be provided in November 2015.

Per capita Measure D funding is provided to municipalities only if they meet certain requirements, one of which is the implementation of an “adequate” commercial recycling program. A “de minimus” definition of what constitutes an “adequate commercial recycling program” was adopted by the Recycling Board in 1994, with an explicit statement that it would be reviewed and perhaps revised in the future. The “de minimus” definition was that commercial account holders be notified once per year of the recycling services available to them.

During strategic planning in 2010, environmental group stakeholders asked that the definition be reviewed and improved. In 2011 and 2012 the Board, staff and stakeholders engaged in a process of formulating and evaluating options that ultimately resulted in the policy described below. The new policy went into effect for FY 13/14 (i.e. beginning July 1, 2013). The purpose of the Board policy is to align with and help implement the adopted Strategic Plan goal of “less than 10% good stuff in the garbage” by 2020 and help meet the County Charter goal of “75% and beyond” diversion from landfill. These goals cannot be achieved without significant new diversion from commercial waste generators.

Because participating in the mandatory commercial recycling ordinance (MRO) was considered by staff to create an "adequate" commercial recycling program, staff met several times with the four member agencies that had opted out of Phase 1 of the MRO in order to fully understand their perspectives on other ways to create an "adequate" commercial program. The staff of these four agencies (CVSan, Dublin, Oro Loma Sanitary District, and Pleasanton) indicated informally prior to policy adoption that it was reasonable and achievable.

POLICY ADOPTED NOVEMBER 2012:

The adopted policy has a compliance requirement for recyclables and another one for organics. Each compliance requirement involves satisfying ONE (or more) of three criteria, on and after a date.

The three criteria applicable to commercial recyclables are listed below. An adequate commercial recycling program under the County Charter will satisfy ONE (or more) of these criteria on and after July 1, 2013 unless the Recycling Board adopts an alternative definition after that date.

1. The member agency participates in the ACWMA mandatory recycling ordinance, Phase 1. The Recycling Board has previously formally stated that participation in the ordinance is not necessary, but is more than adequate.
OR
2. The member agency ensures that at least one hour per year of technical assistance work time is actually provided to businesses to encourage and assist commercial accounts to recycle more. The minimum amount of time can be provided by member agency staff, franchised hauler staff, consultants to the member agency or franchised haulers, or any combination of these. The minimum time commitment will be proportional to the number of commercial accounts in the member agency. In addition, a member agency would need to either make source separated recycling services available at open market rates or adopt a rate schedule under which the prices per volume and frequency of source separated services are no higher than that for refuse/garbage service of the same volume and frequency. This second part of criteria 2 is necessary because technical assistance and outreach cannot increase recycling participation if the service is not available at a competitive price.
OR
3. The member agency achieves a 50% participation rate in its commercial recycling program. Participation for recycling shall be calculated as a percentage of total commercial accounts. Participation through centralized processing will count so long as the centralized processing facility meets the less than 10% covered materials residual quality standard defined in the mandatory recycling ordinance.

The three criteria applicable to commercial organics are listed below. An adequate commercial recycling program under the County Charter will satisfy ONE (or more) of these criteria on and after July 1, 2014 unless the Recycling Board adopts an alternative definition after that date.

1. The member agency participates in the ACWMA mandatory recycling ordinance, Phase 2 (or a variation on Phase 2 approved administratively as provided for in the ordinance). The Recycling Board has previously formally stated that participation in the ordinance is not necessary, but is more than adequate.

OR

2. The member agency ensures that at least 3 hours per year of technical assistance work time is actually provided to organics generating businesses to encourage and assist commercial organics accounts to recycle more. The minimum amount of time can be provided by member agency staff, franchised hauler staff, consultants to the member agency or franchised haulers, or any combination of these. In addition, a member agency would need to either make source separated commercial organics services available at open market rates or adopt a rate schedule under which the prices per volume and frequency of source separated services are no higher than that for refuse/garbage service of the same volume and frequency. This second part of criteria 2 is necessary because technical assistance and outreach cannot increase recycling participation if the service is not available at a competitive price.

OR

3. The member agency achieves a 50% participation rate in its commercial organics program. Participation for commercial organics shall be calculated as a percentage of organics generating businesses based on SIC and/or NAICS codes. Participation through centralized processing will count so long as the centralized processing facility meets the less than 10% covered materials residual quality standard defined in the mandatory recycling ordinance.

If Recycling Board staff believes a member agency is not in compliance, it will notify the member agency and refer the situation to the Recycling Board for a decision. If the Recycling Board decides the member agency has not complied with the minimum standard, it may withhold future Measure D payments.

EXPERIENCE TO DATE

Recyclables: All jurisdictions are currently in compliance with this standard. Initially, the cities of Dublin and Pleasanton, the Castro Valley Sanitary District and the unincorporated service area of the Oro Loma Sanitary District unincorporated service area (L1) opted out of Phase 1 of the Mandatory Recycling Ordinance (MRO). In October of 2012 (prior to the RB adoption of the above criteria) the Pleasanton City Council decided to opt back in to Phase 1, and in December of 2013 the Castro Valley Sanitary District Board voted to opt in to Phase 1 and also to Phase 2 if their submittal of a compliance schedule waiver were approved (it was), leaving only Dublin and unincorporated Oro Loma to meet one of the second or third criteria for FY 13/14. Dublin has met the third criteria of a greater than 50% participation rate in their commercial recycling program and Oro Loma has met the second criteria by spending over one hour per commercial account on recycling outreach to commercial accounts (they are at slightly less than 50% commercial account subscription to recycling service; 207 of 439 are participating).

Organics: Only one jurisdiction is currently not satisfying this standard. Six municipalities are opted in to the MRO on the schedule in the ordinance and six more are opted in on an approved Compliance Schedule Waiver or alternative schedule, leaving four opted out jurisdictions that need to meet one of the alternative criteria for FY 14/15 and beyond. Dublin, Oro Loma Unincorporated, Pleasanton, and Union City chose to opt-out of Phase 2 of the MRO. The requirement to enlist over 50% of “high organics generating” accounts (HOGS) to commercial organics collection service (the third criteria) or spend 3 hours of commercial organics outreach per HOG account (the second criteria) was in effect over the course of the past fiscal year (FY 14/15) and reported in October 2015. Status of these 4 jurisdictions:

- Dublin: More than 50% of the HOG accounts are currently subscribed to organics collection service.
- Oro Loma: More than 50% of the HOG accounts are currently subscribed to organics collection service.
- Pleasanton: In 2014, Pleasanton staff expressed concerns about the rate impacts of satisfying any of the criteria for commercial organics. Commercial organics collections are currently not a service available under the franchise. Ongoing negotiations with Pleasanton Garbage Service (PGS) over rates and services have not yet yielded any tangible results in terms of commercial organics collections. Pleasanton did not meet any of the criteria for Phase 2 (organics) in FY 14/15.
- Union City: Opted out of Phase 2 due to unsustainable rate provisions for commercial organics service under franchise. City is working to negotiate modifications that will allow for opt-in to Phase 2. Until then, staff is prepared to document required hours of commercial organics outreach primarily to improve results from current limited set of commercial organics subscribers and to strategically add new accounts incrementally. For FY 14/15, Union City staff submitted documentation showing well over 3 hours of commercial organics outreach per HOG business in Union City.

More About Pleasanton

Staff heard from Pleasanton staff in early 2015 that they were not going to satisfy any of the criteria for an adequate commercial organics diversion program in FY14/15. Staff has been reaching out to City staff since May seeking a cooperative path forward. We’ve asked for a plan that we could perhaps support, either leading to satisfaction of one of the three criteria or perhaps putting forward a fourth ‘alternative’ definition of an acceptable commercial organics recycling program for the Board to consider. The City has not yet provided a plan. However, they indicated during the summer that they were considering implementing a pilot to obtain ‘time and motion’ data which might allow the City and the franchised hauler to agree on the rate impacts of a program. The Pleasanton City Manager recently told StopWaste staff that it is their intention to consider implementation of a local commercial organics recycling program prior to June 30, 2016.

The Pleasanton City Manager has also asked that the funds not be withheld. At the end of FY 14/15, Pleasanton reported having an unspent fund balance of Measure D monies of \$383,000, or nearly two years' worth of disbursements (the current disbursement to Pleasanton is about \$50,000 per quarter). Withholding three quarterly allocations (or somewhat more if it takes longer to fulfill the City's intentions) does not appear to undermine existing programs. However, the City Manager says that the City's annual and accumulated Measure D fund balance enables spending flexibility on an annual basis for eligible City programs, services and activities, as well as possible funding for temporary staffing needs to address the implementation and/or acceleration of necessary programs (e.g. commercial food waste recycling, etc.).

He further points out that he would like the Board to understand that the City of Pleasanton did not opt-out of Phase II commercial recycling in opposition to the initiative, but rather due to the complexity and limitations of its franchise agreement with Pleasanton Garbage Service and its' corresponding rate setting process not "lining-up" with the Stopwaste implementation timelines. He says that the City continues to negotiate with its hauler in good faith on a timeline for implementation, while also trying to minimize rate impacts on residential and commercial customers. In his view, withholding Measure D funds to achieve this locally desired outcome appears punitive; for this reason, he recommends that funds not be withheld. Rather, he recommends that StopWaste and City staff work together to facilitate implementation of Phase II commercial recycling within the 2016 calendar year.

StopWaste staff is appreciative of the challenges facing Pleasanton staff, and the cooperative spirit put forward by the City Manager. However, the City has been trying to resolve these rate impact issues for several years. There is no assurance that they will be able to resolve these issues by mid 2016, and we do not even know what commercial recycling program (or options) they are pursuing.

The City Manager has respectfully asked that if the Recycling Board acts to withhold per capita funds from Pleasanton, that Pleasanton's allocations be set aside in a holding account and that the funds be released to Pleasanton upon implementation of a commercial organics program. This seems reasonable to staff. The issue of whether or when to release the per capita allocations to Pleasanton could be brought back to the Recycling Board whenever the City is prepared to implement a commercial organics recycling program that satisfies one of the existing criteria, or has a proposed 'alternative definition' of adequate commercial recycling for consideration by the Board.

The historical approach of the Recycling Board and WMA to situations like this has been harsher. The Recycling Board policy against 'accumulating too much Measure D money' calls for re-allocating funds that would go to any member agency that has violated the policy to the other member agencies according to the per capita formula in the County Charter. (Violating the policy means accumulating 'too much' and failing to provide a satisfactory plan for spending down the accumulated balance.) That approach was used in slightly different form by the WMA Board in its policy for distributing some of the San Francisco import mitigation payments to member agencies (the formula for redistributing funds to other agencies if a member agency didn't meet the Board-specified criteria to receive funds was not based on population, but on tons disposed from member agencies in a previous year).

RECOMMENDATION

Staff recommends that the Recycling Board find that Pleasanton has not yet satisfied the criteria for an adequate commercial organics recycling program, and that their quarterly Measure D payments continue to be calculated but placed in a holding account, pending a future action by the Board on this matter. We further recommend that staff be directed to: 1) agendaize a presentation by Pleasanton to the Board on how Pleasanton intends to create an adequate commercial organics recycling program as soon as feasible after Pleasanton requests such an agenda item, 2) bring a status report about Pleasanton's commercial organics program back to the Board in July 2016, and 3) bring a report on the status of all member agencies under this policy to the Board in November 2016.

Attachment: Memo on this item from RB Nov. 8, 2012 Agenda Packet

<http://www.stopwaste.org/RB-11-12-12-memo.pdf>



November 5, 2015

TO: Programs and Administration Committee
Planning and Organization Committee/Recycling Board

FROM: Gary Wolff, Executive Director
Wendy Sommer, Deputy Executive Director

SUBJECT: Pension Liability Payoff and a Related Schedule Proposal

BACKGROUND:

Our Agency, like most in the State, has a pension liability balance. This balance is often referred to as an unfunded liability, but it is actually being paid off within our core budget as part of our annual payments to PERS. According to the actuary at CalPERS (PERS) that handles our account, entities in a risk pool such as ours were not allowed to pay off any unfunded pension liability prior to fiscal year 2015-2016 (FY15-16), other than a side pension fund we paid off in 2011 (created in 2003 when we joined a pool).

Government Accounting Standards Board (GASB) Rule 68 now requires that public agencies include this part of our pension liability in their audited financials, beginning with the just completed fiscal year (FY14/15). The preliminary net position of the Agency (assets minus liabilities) as of June 30, 2015, after accounting for this liability, is about \$47 million, so our balance sheet is still strong.

In prior years the liability being created as employees earn more service credit each year, and the previously accrued unfunded pension liability, have been rolled into a single payment expressed as a percentage of payroll. FY15-16 is the first year in which PERS has separated the "normal" payment for liability being created in that year from the payment for previously accrued, but not yet fully funded, liability. In addition, the normal pension payment is still listed as a percentage of payroll (10.1% in FY15-16), but the accrued unfunded pension liability is now paid as a lump sum each year. The lump sum payment in FY15-16 is about \$209,000. PERS has projected lump sum payments for FY16-17 through FY20-21 as about \$244,000, \$281,000, \$320,000, \$361,000, and \$370,000 respectively. These payments include interest at 7.5%, the assumed rate of growth of the PERS investment portfolio.

The size of the previously accrued unfunded pension liability varies from year to year primarily because the investment portfolio return varies. PERS smoothes the impact of each year's variation by recognizing 1/5 of it in the year it occurs and each of the next four years; nonetheless, the impact of year to year market fluctuations can be large. For example, our accrued pension liability as of 6/30/13 was about \$4.8 million but was only about \$3.5 million as of 6/30/14. \$3.5 million is the lowest amount reported in the last four years; \$4.9 million is the highest. This variation occurs even if the portfolio earns 7.5% on average.

In addition, if the long-term rate of return of the portfolio is higher or lower than 7.5%, our accrued unfunded liability will be lower or higher. For example, the \$3.5 million liability as of 6/30/14 would be about \$6.2 million if the long-term future average annual rate of return is only 6.5%; and only about \$1.2 million if the future average annual rate of return is 8.5%.

Over the 20 years ending June 30, 2015, the preliminary reported PERS portfolio return has been 7.76% per year. The preliminary reported return in FY14/15 was only 2.4%, but the preliminary reported portfolio returns in the three and five year periods ending June 30, 2015 were 10.9% and 10.7%, respectively.

"PAYING DOWN" VERSUS "PAYING OFF" THE LIABILITY

These factors make it difficult to entirely "payoff" pension liability. Paying down the liability reduces the interest payments on it, but might not pay it off entirely if the average long-term rate of return on the PERS portfolio falls by even one percentage point per year. And if we pay in "too much" because the portfolio does better than expected, we cannot get the excess back again or use it to reduce our normal annual (percent of payroll) payment. That is exactly what has happened (so far) with our OPEB trust account, which is super-funded by about \$400,000 as of 6/30/14, due to strong recent portfolio gains.

However, paying down the previously accrued pension liability by \$3.5 million would save us more than 7% per year on \$3.5 million (at present) because we earn less than 0.5% per year on our funds held in the County investment pool or in LAIF (the Local Agency Investment Fund). This action would also reduce our annual future payments to PERS by \$200,000 to \$300,000 per year. (Because they use a '5-year ramping up' formula for the unfunded liability payments, the savings will vary by year.) Paying down by that amount will likely not be "too much" given that \$3.5 million is the smallest liability reported by PERS to us in recent years.

DISCUSSION OF OPTIONS TO REDUCE ("PAY DOWN") THE PREVIOUSLY ACCRUED PENSION LIABILITY

Staff committed during the budget process in April and May that we would develop a proposal for partially or fully paying down the previously accrued pension liability, in November or December, 2015. The *first option* is the simplest. We can very likely pay down the liability by up to \$3.5 million without impairing our reserves or our ability to sustain the core budget for the next three fiscal years (that is, through 6/30/18). The conservation easement we recently agreed to sell will likely bring in \$2.9 million by September 2016. And the fiscal reserves held by the two Boards can reasonably be reduced by at least \$0.7 million.

The fiscal reserves were created in 2010 and were sized so that there was a 97.5% chance -- based on statistical models of landfilled tons subject to our fees -- that the reserve would not be needed in the 18 months following the start of each fiscal year. Since any fee action affecting member agency solid waste rates, adopted during a budget process in the spring, cannot take effect any sooner than the following January 1st, under the Joint Powers Agreement (except in an emergency, for which a special procedure exists), 18 months of fiscal reserve allows the agency to not need to consider budget cuts during a budget year unless revenues fall far, far below projections.

We have reviewed the fiscal reserve size every year and reported in the last few years that it may be larger than necessary. However, given the slow speed and fragility of the economic recovery we've held off on taking any action. Resizing to account for the newest data, the end of import mitigation fees from San Francisco around the end of this calendar year, and our practice in the last two fee actions of implementing them the following July 1st rather than the following January 1st, indicates that the reserve could be reduced to \$2.1 million from \$2.8 million. Sizing the reserve to fund two years of revenue shortfalls rather than 1.5 years provides a margin of safety beyond the 97.5% statistical criteria.

A second option is to repurpose a part of our other designated reserves, such as the two organics processing development reserves, which together have a balance of about \$7.1 million. (We also have some contractual reserves, but the funds in them are committed by contract to specified purposes, and cannot be re-allocated unless they are unspent when the contract to which they are committed expires.)

This option may be feasible since there are at least two composting facilities being developed in-County with private funds, and the anaerobic digestion facilities at EBMUD are being expanded. Our reserve funds do not seem to be necessary to directly fund these facilities. On the other hand, it would be premature to commit funds from this reserve to paying down the pension liability. We recommend a project in FY16/17 that reviews progress under the strategic plan, with a primary focus on organics diversion and any infrastructure needed to support that (not just composting facilities), followed by reconsideration of using some of this reserve to pay down the pension liability in the Spring of 2018. This recommendation is placed in an overall schedule in the next section of this memo.

A third option is to use some of our account balances. Account balances are revenues received, but not yet authorized for spending or transferred into a reserve. Some account balances, however, are restricted to specified uses and cannot be spent directly to paydown the pension liability. For example, the household hazardous waste account balance must be used to support the countywide household hazardous waste program, and the revolving loan fund balance is restricted to making loans (unless the Recycling Board was to discontinue the loan program).

The core budget scenario presented in April 2015 along with the budget proposal showed that our account balances, if not used for pension paydown (option 3), are likely adequate to support a deficit budget at about the current level (\$11.4 million), plus 2.5% each fiscal year, through at least the end of FY18/19 (three more fiscal years). We've updated that scenario to account for actual revenue and spending in FY14-15, landfill tonnage data since the budget was prepared, the adoption of AB901, and other factors, and it shows essentially the same result. (See Figures 1 and 2).

Although one could use the conservation easement payment and reduced fiscal reserve balance to extend the date by which a fee action or spending cut will be needed to balance the core budget, doing so would allow the deficit to continue to grow. Approving a deficit budget for two or even three years may be reasonable, but operating with a growing deficit for more than three years seems unreasonable.

There are other options for paying down the pension liability, but they involve "last-resort" types of decisions that do not seem necessary, such as: 4) selling assets (e.g., our land in eastern Alameda County), 5) borrowing at a lower interest rate than we pay PERS (e.g., use our line of credit on 1537 Webster Street), 6) reduce total compensation to staff by either increasing the staff salary contributions to PERS or reducing one or more benefits, or 7) raise fees.

Option 4 is not feasible unless we are sure we will not need reserve landfill capacity in the future, which we cannot be sure of at present.

Option 5 is inferior to other feasible options because the rate we would pay for a loan is significantly higher than the rate we can earn on funds in hand. This means it is far less expensive to pay down the liability from funds on hand, if feasible, than to pay down the liability by borrowing.

Option 6 seems to contain some inherent inequities, and would experience a reduced funding base over the time period that would be required to substantially paydown the pension liability (20-30 years). To see the equity concern, consider two employees with the same salary that are required to contribute the same additional amount to paydown the liability (e.g., 1% of salary), but if one has been employed here for 20 years versus another for 5 years, the one employed longer should, in concept, contribute more to solve the problem. And the one employed longer, on average, will be here fewer years in the future helping to pay down the liability, when, in concept, they should contribute more to the paydown. Furthermore, because employees hired after the statewide pension reform act adopted two years ago have contributed nothing to the 'legacy liability', they should pay nothing toward eliminating it. And retirees cannot be forced to contribute. So the salary base for this solution option will decline over time as people retire and new employees cannot reasonably be asked to pay into the solution.

Finally, Option 7 -- a fee increase to pay for unfunded liabilities rather than a new or continued service -- seems inappropriate to staff, unless absolutely necessary, which it is not.

RECOMMENDED PAY DOWN AMOUNT AND SCHEDULE

The first option, with the second option as a 'back-up plan', seems preferable at this time. If that is not palatable to the Board, staff needs feedback on whether paying down the liability is important enough to pursue other options. We recommend that paydown of the liability occur in two steps. First, \$0.6 million would be sent to PERS following approval of the mid-year budget, using most of the \$0.7 million funds transferred from the fiscal reserve to a new 'pension liability' reserve. Second, another \$2.9 million (or less if funds are not available in the new 'pension liability' reserve) would be sent to PERS after Golden Hills LLC (the windfarm developer on our east county property) pays us for a conservation easement. They will likely pay us by early September 2016, because the price per acre increases by \$500 per acre in early September 2016. They have recently said that they intend to purchase the maximum conservation easement from us approved by the Resource Agencies.

A PROPOSED SCHEDULE THROUGH FY16/17 RELATED TO PENSION PAY DOWN

Figure 3 presents a proposed schedule, through FY16/17 (that is, until about June 30, 2017), that is related to pension pay down. All of the issues touched on in the schedule are related because they involve spending – or planning to spend -- funds that the Boards could choose to spend on pension pay down, the core budget, or one-time items usually funded from reserves.

Approving this schedule would not be the same as approving any item in it. The schedule items are 'directions to staff,' not final decisions. Final decisions will be made later, per the schedule.

1. December 2015. In the mid-year budget proposal, reduce the WMA fiscal reserve by \$0.7 million and create a pension liability reserve initially funded by that amount. Authorize paying PERS \$0.6 million immediately from that reserve. Also, move the \$1 million in the East Bay MUD commercial food waste digester project reserve into the organic processing development reserve, in order to consolidate all funds available for future organics processing development. (The EBMUD project is already fully funded, so this reserve is no longer needed. Spending to support commercial organics diversion in Oakland and other member agencies using the EBMUD facility can be considered via the study described in item 5, below.)
2. February 2016 committee meetings. Discuss criteria for spending part of the organic processing reserve in FY16/17, prior to full evaluation in FY16/17 (see number 5 below). This discussion and partial use of the reserve in FY16/17 is critically important given the percentage of our garbage that is organics suitable for anaerobic digestion, composting, or other resource recovery techniques. The State of California has prioritized such efforts, including possibly substantial funding, so we should be ready to take advantage of opportunities by partnering with the state or others, at minimum.
3. March 2016. Discuss inspector employment assessment by an outside expert with the P&A Committee, in preparation for the April budget proposal.
4. April 2016. Propose core budget no greater than \$11.7 million (current core plus 2.5% inflation). If staff believes more funds are needed, clearly propose the incremental spend and the incremental projects or activities that would be funded by the incremental spend. Also, present the updated core revenue, core spending, and core account balances scenario through mid 2020.
5. April 2016. Include in the budget proposal a project to review progress under the strategic plan and possible adjustments to it, with a focus on how best to spend or reallocate the organic processing reserve. The results of the project will be available no later than the April 2017 budget presentation. This project should also consider whether further pension pay downs would be appropriate based on revised estimates of the financial need for our reserves
6. June or July 2016. Start full compensation and classification study (that is, issue the Request for Proposals for external review). The results will be available no later than the March 2017 P&A Committee meeting and sooner if substantial discussion of them seems necessary.

7. September 2016. Pay PERS up to \$2.9 million, after receiving payment for a conservation easement from Golden Hills LLC.
8. April 2017. Propose a core budget no greater than \$11.8 million (current core plus 2.5% inflation for two years, less \$200,000 per year of savings due to pension pay down). If staff believes more funds are needed, clearly propose the incremental spend and the incremental projects or activities that would be funded by the incremental spend. Also, present the updated core revenue, core spending, and core account balances scenario through mid 2020.
9. April 2017. Based on the scenario update in schedule item 8, either propose a fee action or budget cuts effective in FY19/20 or sooner (that is, effective July 1, 2019 or sooner), or defer that discussion to a specific later date if the scenario update indicates that neither higher fees nor budget cuts is estimated to be necessary to fund the core budget in FY19/20.

RECOMMENDATION

Staff recommends that the P&A and P&O Committees recommend that the WMA direct staff at its November 18, 2015 meeting to follow the schedule presented above, which is intended as a decision making framework based on currently available information; and recommend that the WMA approve the proposed changes to reserves, and payment to PERS, when the mid-year budget revisions are brought before them on December 16, 2015. A recommendation from the P&O to this effect will be understood by staff as direction by the Recycling Board with respect to preparation of its part of the combined agency budget proposals for FY16/17 and FY17/18. Should future modifications to the schedule and associated actions be needed, they will be discussed with the Board.

Attachments: Figure 1: Financial Scenario with Growing Core Budget

Figure 2: Financial Scenario with Core Budget that Peaks in FY17/18

Figure 3: Proposed Pension Pay Down Schedule Through FY16/17

Figure 1: Financial Scenario with Growing Core Budget

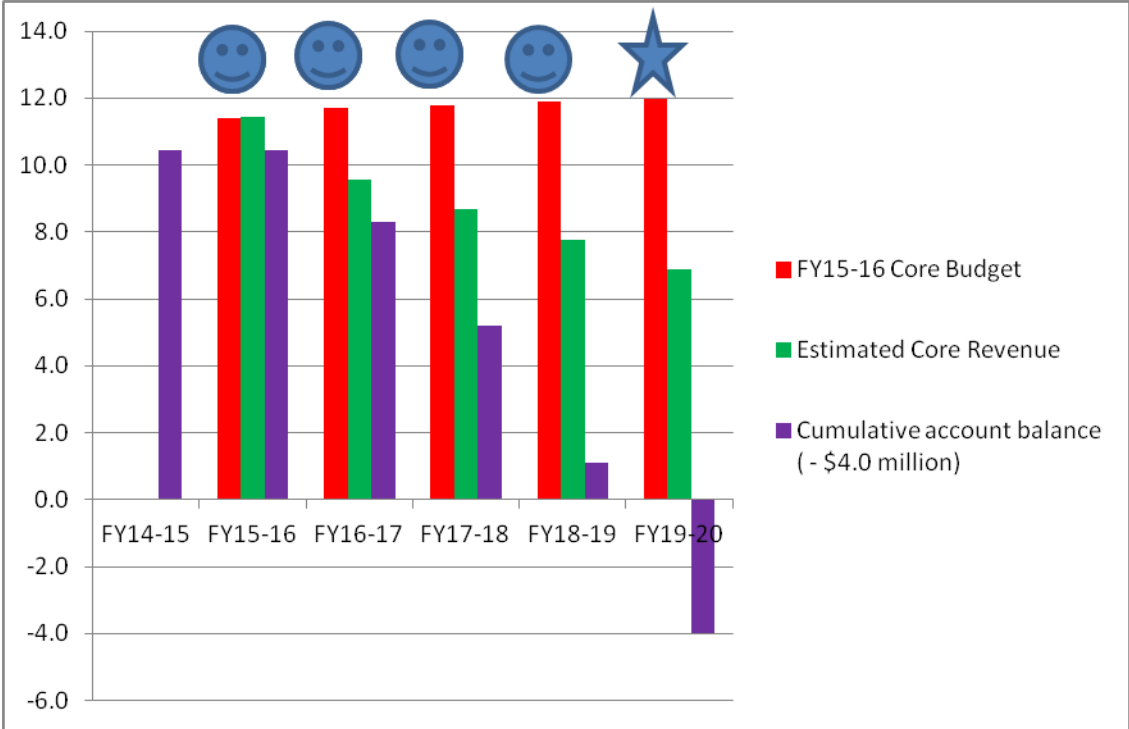


Figure 2: Financial Scenario with Core Budget that Peaks in FY17/18

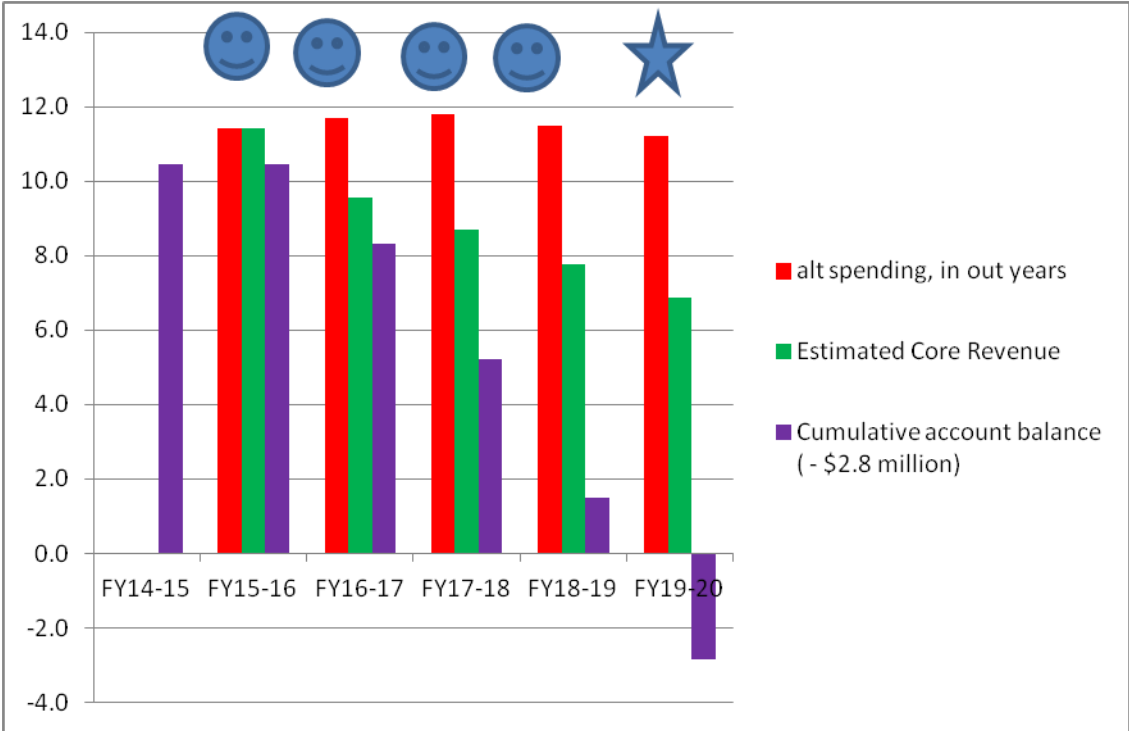
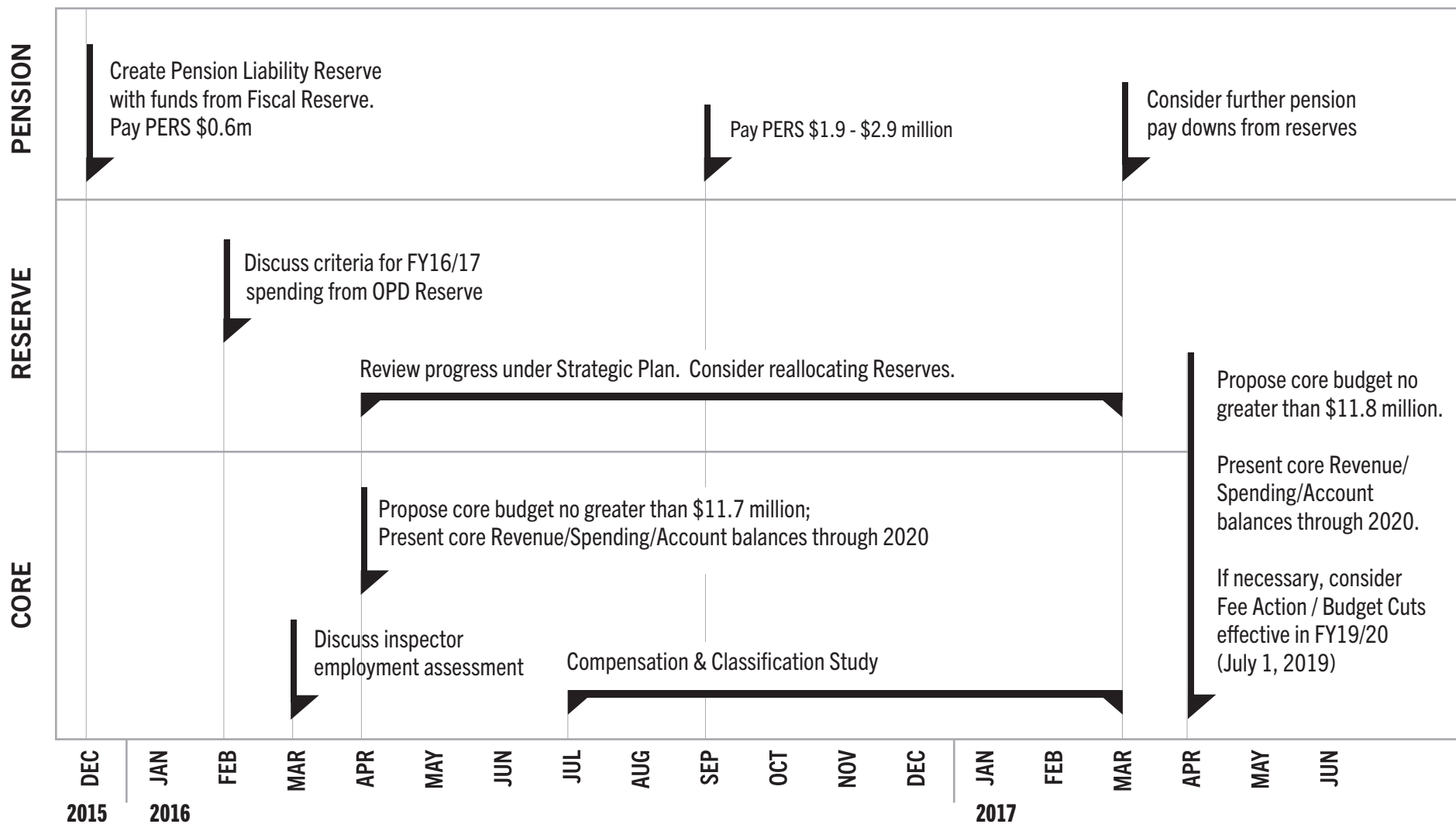


Figure 3: Proposed Pension Pay Down Schedule Through FY16/17



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November 3, 2015

TO: Recycling Board

FROM: Gary Wolff, Executive Director
Wendy Sommer, Deputy Executive Director

BY: Debra Kaufman, Senior Program Manager
Wes Sullens, Program Manager

SUBJECT: Final Legislative Status for 2015

BACKGROUND

The first year of the 2015/16 legislative session has adjourned. The report below highlights the final status of the thirty one bills the Agency took positions on in April, 2015. The report also provides an update on our CalGreen code work this year which was one of the year's regulatory priorities.

In November 2015, the Waste Management Authority Board approved these three legislative priorities: 1. Improving the state's disposal reporting system, 2. Extended producer responsibility and 3. Green buildings and construction via the Cal Green Code update. Staff will return in November – starting at the Committee meetings -- to obtain input from the Boards on priorities for the 2016 legislative year.

DISCUSSION

StopWaste works in Sacramento to support its priorities and protect against legislation or regulations that would be detrimental to the agency. Staff prioritizes its time analyzing and working closely with partner organizations to support or oppose those bills that have the greatest potential to impact—either positive or negative—our waste-reduction goals. This typically amounts to 3-5 priority bills each legislative session with additional monitoring of 10-20 bills.

The Agency's lobbyist, Justin Malan, advocates our positions on a daily basis in the legislature. Staff provides testimony on the Agency's position for priority bills on an as-needed basis, and sends letters on all bills that we support and oppose to the author and committee members. In addition to advocating legislative positions through our lobbyist, we also advocate policies that support our mission within the purview of California regulatory agencies (e.g., CalRecycle, the California Air Resources Board, etc.).

In both legislative and regulatory work, we collaborate with multiple partners, recognizing that we are much likelier to be successful when we are part of coalitions rather than acting on our own.

The Agency worked closely this year with Californians Against Waste and the California Product Stewardship Council, providing financial support to both.

Below is the final status of bills the agency took a position on in 2015. Of special note is the passage of AB 901, our top legislative priority and a bill we drafted and sponsored, as well as the adoption of several updates to the Cal Green Code that the Agency advocated for. Other highlights include the adoption of AB 199 which will provide tax incentives for manufacturing that uses recycled content and AB 876 which will

require local governments to plan for and identify space for compost processing. A status of the bills is provided below followed by a detailed update on the CalGreen code status and successes.

Final Status of Bills the Agency took positions on in 2015

AB 45 (Mullin) HHW. This bill prioritized funding for door-to-door HHW collection and had no extended producer responsibility element. It was opposed by many local governments as it provided no financial assistance for existing HHW programs. Oppose.

Status: Dead

AB 190 (Harper) Bags. Oppose.

Status: Dead

AB 191 (Harper) Bags. Oppose.

Status: Dead

AB 199 (Eggman) recycled feedstock. Support.

Status: Signed by the Governor

Current law establishes the California Alternative Energy and Advanced Transportation Financing Authority to provide financial assistance for projects that promote the use of alternative energies and authorizes the authority to approve a project for financial assistance in the form of sales and use tax exclusion. This bill would expand projects eligible for the sales and use tax exclusion to include projects that process or utilize recycled feedstock, but would not include a project that processes or utilizes recycled feedstock in a manner that constitutes disposal.

AB 761 (Levine) Compost application. Support.

Status: Dead.

AB 802 (Williams) Energy Efficiency. Support

Status: Signed by the Governor

This bill will provide a framework for making whole building monthly energy use data available to building owners and managers in California. This will aid in the evaluation of energy efficiency measures. This was a late Agency addition to our “support” list based on its non-controversial nature and its alignment with Energy Council programs and objectives.

AB 864 (Williams) Solid waste facility permits. Oppose unless amended.

Status: Passed Assembly; and gutted and amended to become an oil spill bill

Since this bill was gutted and amended and no longer addresses solid waste issues, we dropped it. It became an oil spill bill and was signed by the Governor

AB 876 (McCarty) Compostable organics. Support.

Status: Signed by the Governor

AB 876 requires local governments to estimate their compost generation over a 15 year period and plan for 15 years of organics processing capacity. Beginning August 1, 2017, a county or regional agency would be required to include in its annual report to the Department of Resources Recycling and Recovery an estimate of the amount of organic waste in cubic yards that will be generated in the county or region over a 15-year period, an estimate of the additional organic waste recycling facility capacity in cubic yards that will be needed to process that amount of waste, and areas identified by the county or regional agency as locations for new or expanded organic waste recycling facilities capable of safely meeting that additional need, thereby imposing a state-mandated local program.

AB 901 (Gordon) Solid Waste reporting requirements. Sponsor/Support.

Status: Signed by the Governor!!

This bill requires disposal facilities to give local governments and agencies like ours access to disposal information that is needed to accurately assess solid waste and recycling related fees. We drafted and co-sponsored this bill with San Mateo County, and CalRecycle. This represented a significant effort for the Agency this year and reflects a significant success for the year.

The bill will provide local governments with access to weight tag specific hauler information from disposal facilities, related to disposal originating in their geographic jurisdiction, subject to strict confidentiality requirements. The bill also provides CalRecycle with enforcement ability if required recycling, composting and disposal information is not provided by disposal, recycling and composting facilities.

This information will help local governments to accurately and fairly collect solid waste, recycling and franchise fees to pay for recycling programs and more accurately assess diversion levels. It will also help the solid waste industry by leveling the playing field so that all haulers and landfills pay the fees that they owe.

Additionally, access to this specific information will help local jurisdictions correct mistakes made with respect to jurisdiction-of-origin of waste and enforce local franchises. This legislation addresses a serious problem faced by operators of landfills and collection fleets, namely that there are operators who collect waste in violation of local franchise agreements and local ordinances or codes.

AB901 levels the playing field for the solid waste industry, protects honest haulers and businesses in the industry, and strengthens local government finance and capacity to enforce franchises. Because of this, the majority of the state's larger haulers supported AB 901 along with local governments and CalRecycle.

AB 997 (Allen) Recycling plastic material. Oppose.
Status: Dead; expected to become a two year bill.

AB 1019 (Garcia) Metal Theft. Support.
Status: Dead

AB 1045 (Irwin) Compost permitting streamlining. Support.
Status: Signed by the Governor

Would require the California Environmental Protection Agency, in coordination with the Department of Resources Recycling and Recovery, the State Water Resources Control Board, the State Air Resources Board, and the Department of Food and Agriculture, to develop and implement policies to aid in diverting organic waste from landfills by promoting the composting of specified organic waste and by promoting the appropriate use of that compost throughout the state. The intent is for this bill to aid in compost regulation streamlining by having the various agencies work more closely together on compost regulation development.

AB 1063 (Williams) Solid Waste disposal fees. Support.
Status: Dead.

AB 1103 (Dodd) Organic waste definitions. Support.
Status: Dead

AB 1136 (Steinorth) Bags. Oppose.
Status: Dead. Expected to be two year bill.

AB 1159 (Gordon) Sharps/Battery EPR. Support .

Status: Dead. Expected to be two year bill. This was the major EPR bill for the year and is expected to come back again in 2016. Heavy industry opposition contributed to the bill's failure.

AB 1239 (Gordon) Tire recycling. Support.

Status: Assembly Dead

AB 1247 (Irwin) Organic input materials as fertilizer. Support.

Status: Dead

SB 662 (Committee on Environmental Quality) Support.

Status: Signed by the Governor

This bill would authorize the Department of Resources Recycling and Recovery to expend money in the Recycling Market Development Revolving Loan Subaccount to make payments to local governing bodies within recycling market development zones for services related to the promotion of the zone.

SB 742 (Hertzberg) Solid Waste. Watch.

Status: Dead

AB 1377 (Thurmond) Recycling green material. Watch.

Status: Dead. Expected to become a two year bill

AB 1419 (Eggman) Recycling center abandonment. Support.

Status: Dead

AB 1447 (Low) Solid waste beverage containers. Support.

Status: Dead.

SB 47 (Hill) Environmental health and synthetic turf. Oppose unless amended.

Status: Dead

SB 162 (Galgiani) Treated wood waste: disposal. Support.

Status: Signed by the Governor

Current law requires the wood preserving industry to provide certain information relating to the potential danger of treated wood to wholesalers and retailers of treated wood and wood-like products. Current law requires these wholesalers and retailers to conspicuously post the information at or near the point of display or customer selection of treated wood and wood-like products, as specified. This bill would update the information required to be posted by wholesalers and retailers of treated wood and treated wood-like products.

SB 225 (Weickowski) Medical waste. Watch

Status: Signed by the Governor

This was originally a tire recycling bill that the Agency supported which was gutted and amended late in the process to become a medical waste bill. The bill would revise the definition of "biohazard bag" and would limit the application of the requirement that film bags used for transport be marked and certified by the manufacturer as having passed specified tests only to those film bags that are used for transport from the generator's facility onto roadways and into commerce to a treatment and disposal facility. The bill would revise the requirements for biohazard bags that are used to collect medical waste within a facility, as specified. This bill contains other related provisions and other existing laws.

SB 732 (Pan) Beverage container recycling. Support.

Status: Dead. Expected to be a two year bill

SB 350 (De Leon) Clean Energy and Pollution Reduction Act. Support.

Status: Signed by the Governor.

SB 778 (Allen) Motor oil standards. Support if amended to raise quality standards for motor oil.

Status: Dead

AB 1435 (Alejo) toxics in packaging. Watch.

Status: Dead

AB 640 (Dahle) household hazardous waste. Watch.

Status: Dead. Expected to become a two year bill.

AB 1256 (Williams) Solid waste administration. Watch.

Status: Dead. Expected to become a two year bill.

Cal Green Code Update

The California Building Standards Commission (BSC) is nearing completion of the triennial building code update and adoption cycle. This code cycle, when concluded, will be the basis of the 2016 California Building Code, which is expected to take effect January 1, 2017.

StopWaste has been advocating for waste reduction and recycling code measures throughout the building code update process. StopWaste gathered input from our Board and has worked with our partners—including but not limited to CalRecycle and the California Invasive Plants Council (Cal-IPC)—to craft and/or support a suite of proposals for the 2016 code.

The most recent code hearing for the building code took place on August 25, 2015. This was a hearing in which the CALGreen Code Advisory Committee (CAC) reviewed and voted on proposed changes to the code. The CALGreen CAC is only an advisory committee, as such their can only recommend what the BSC should put forward in the final code for public comment.

StopWaste was present at the August 25th CAC meeting and participated in supporting several measures that affect materials management and recycling for all buildings that trigger the CALGreen code. A summary of our priority issues and the outcomes from the CAC meeting follow.

- **Compost & Mulch:** In April of 2015, Governor Brown issued an Executive Order that required statewide mandatory water conservation, including water used in landscapes. The Order directed the BSC to enhance water conservation requirements within the building codes, and specifically within CALGreen. The BSC worked with the state Department of Water Resources to update statewide the Model Water Efficient Landscape Ordinance (MWELO), and has since acted to include the MWELO requirements in CALGreen. As a result, compost and mulch are now required in the new MWELO and in CALGreen. StopWaste was involved throughout the MWELO update process, and got recycled content included within the regulations.
- **65% C&D Recycling Requirement:** At the August CALGreen CAC hearing this change to increase the statewide C&C recycling rate to 65% (from 50%) was approved and recommended for public comment.
- **Post Occupancy Organics Recycling:** StopWaste worked closely with CalRecycle to modify the requirements for this code proposal. CalRecycle provided the financial analysis while StopWaste

and others provide technical language and guidance on application. At the August CAC hearing, the code advisory committee recommended for approval this change to the code for all new nonresidential and multifamily buildings or those that alter more than 30% of floor area via renovation.

- **Recycled Content Building Materials:** StopWaste and CalRecycle were proposing to change this requirement from a “voluntary” measure in CALGreen (i.e. Tiers) and make it into a mandatory requirement of the code. This change faced opposition through 2015 because of concerns about cost and availability of products. Therefore, at the August CAC hearing, the proposal was not recommended as part of the mandatory code. However, significant changes to the voluntary “Tier” measure are being included based on the work StopWaste and CalRecycle did on this measure, including a prescriptive compliance option (rather than cost-based). These efforts may lead to the BSC considering this measure as a mandatory requirement in future code cycles.
- **Certified C&D Facility Recycling Rates:** While advocating for increasing the state C&D recycling rate to 65%, StopWaste was consulted by the code adopting state agencies as to what the next increment should be for “voluntary” exceedance of C&D recycling. The current version of CALGreen sets 50% recycling of C&D waste as a requirement, and has additional Tiers of achievement for 65% and 75% (Tier 1 and Tier 2, respectively). But with the state now requiring 65% in the 2016 code, state agencies considered increasing the thresholds to 75% and 85% respectively, but got significant push-back from builders and local government. StopWaste suggested a nuanced update: require for Tier 1 and 2 projects that C&D facilities that process mixed waste must have third-party verified facility diversion rates, but don’t increase the percentages from where they stand (65%/75%). This encourages better reporting and accountability for waste management plans, rather than making the requirements too onerous for project teams. The state agreed and the current version of CALGreen 2016 has a provision for 65%/75% diversion with third party verification of recycling facilities.

As shown above, our efforts with this round of code updates resulted in meeting all but one of our priority areas. However, the code development process is not quite complete. Currently the BSC has issued a full set of proposed revisions to the code which is now out for a 45-day public comment period (open October 9 – November 23, 2015). Following the 45-day review, the BSC expects to refine the code proposals and any corrected or changed code provisions will be issued in a second public review process. Following that, the BSC will vote to approve or disapprove the code changes wholesale (expected January 2016), after which the BSC will take 5 months to publish the new complete code (by July of 2016), then must wait a minimum 180-days before the new code becomes effective (expected January 1, 2017).

RECOMMENDATION

This item is for information only. Staff recommends that the Board receives this 2015 legislative status update and update on Cal Green code outcomes.



November 5, 2015

TO: Programs and Administration Committee
Planning and Organization Committee/Recycling Board

FROM: Gary Wolff, Executive Director
Wendy Sommer, Deputy Executive Director

BY: Debra Kaufman, Senior Program Manager
Wes Sullens, Program Manager

SUBJECT: Legislative and Regulatory Priorities for 2016

BACKGROUND:

The first year of the 2015-2016 regular session of the California Legislature has adjourned. As directed by the Waste Management Authority, StopWaste pursued improving the state’s disposal reporting system, updating the CALGreen Code to include more recycling and composting requirements, and extended producer responsibility as our priorities for the 2015 legislative year. We have been successful with the first two of these priorities and expect to continue working on the third.

While advocating at the state level is important, we have been told by numerous partners that one of the most important things we do to help at the state level is to demonstrate through local ordinances and actions how various approaches can be successful. Our Agency’s bag ordinance, mandatory recycling and organics ordinance, and landfill ban on plant debris have positively influenced similar activities at the state level and helped to drive new laws forward. The County of Alameda’s Pharmaceutical resolution has also provided a model for the state and other local jurisdictions that have adopted the County’s lead through their own local ordinances in the area of EPR for pharmaceuticals, in the absence of a state law. We will continue to help drive state efforts by effectively implementing our own ordinances and providing regulatory input to the state as needed on the new laws in these areas.

Each year, at about this time, the Agency picks a few priority legislative/regulatory areas to focus on in the coming legislative year. These are subject areas that Agency staff and our lobbyist devote more time and attention to, as needed. This could come in the form of additional letters of support to committee members, recruiting support from other government agencies and organizations for certain bills, testifying at hearings, proposing changes to regulations and working more closely with a bill’s sponsors or an Agency’s regulators.

DISCUSSION:

Two of our legislative priorities for the 2015-16 legislative session have been achieved: improving the state's disposal reporting system via the passage of AB 901, and strengthening the CALGreen Code. Since AB 901 has been signed, improving the disposal reporting system no longer needs to be a priority area for 2016, with the possible exception of one outstanding issue discussed in more detail below. With respect to the building code, an opportunity to engage in the 2019 code cycles will begin in 2017. Staff will revisit that priority area in the future as necessary, but are not focusing on this area for the 2016 legislative year.

We propose focusing on the following two priority areas in the 2016 legislative year:

- Extended Producer Responsibility
- Organics regulations and legislation

One additional issue that we would like to pursue but that may or may not be ripe for a priority area, is a follow-up on the disposal reporting system reform. Currently, an outdated law exempts landfills from requiring weighmasters to be certified. Certified weighmasters require a certain level of training and can be held responsible for intentionally providing inaccurate information. Requiring all landfills to hire certified weighmasters would help to continue leveling the playing field for all landfills in California. In addition, accuracy is important, since the tonnages reported by landfills directly affect the Agency's program planning and funding. We would like to investigate whether or not we have other partners on this issue (including haulers, CalRecycle and other local governments), determine whether this is considered a problem for other entities and look into whether we could find a sympathetic author before deciding whether to sponsor a bill and make this a priority this year. Sponsoring a bill is a very large level of effort and it's essential to have good timing, an issue of relevance to many parties, and good, influential partners to make it successful. We would report back to the Board in our April update if this issue emerges as ripe as a priority, after investigating it further.

Bills and/or relevant regulations that fall into categories outside the identified priorities would continue to be monitored, with input and positions on them recommended as appropriate.

The following provides more detail for the top two priorities.

1. Extended Producer Responsibility: Support for EPR as a mechanism to deal with problem products continues to grow. For StopWaste, EPR has the potential to reduce the recently adopted residential fee associated with the financial costs of managing hazardous products that are processed via the four in-County Household Hazardous Waste facilities. We would support any EPR proposal that would actually reduce financial burden locally. We have advocated for the passage of battery and sharps legislation for the past few years and will continue to work on this issue until we achieve success. This may be an area for the Agency to consider addressing on a Countywide level, similar to the County's pharmaceutical ordinance, if a state solution continues to be unsuccessful, especially if other Counties are interested in partnering on this.
2. Organics:
The passage of several organics bills over the last two years, as well as the increased statewide focus on organics processing capacity and getting organics out of the landfill as a climate change strategy raises the importance of paying attention to the development of new organics laws and regulations. Additionally, since organics is the largest category of waste going to the landfill from Alameda County residents and businesses, maintaining a focus on reducing organics from landfills via both our program implementation and via state legislation and regulations is important. We want to ensure that any new laws or regulations are protective of our environment but also not overly onerous for facility operators and our jurisdictions.

The state and Governor have fully recognized the importance of both using compost and mulch as a valuable tool to mitigate the expected decline in soil quality as a result of climate change and the importance of keeping organics out of the landfill to reduce methane production, a potent greenhouse gas and considered a short lived climate pollutant. One of the Governor's key climate change strategy pillars includes reducing the release of methane. Another pillar is managing farms and rangelands so they can store carbon. The application of compost is being explored as one of the methods to achieve that. The California Air Resources Board is proposing an organics landfill ban by 2025, requiring 90% of all organics to be diverted. Laws that have been passed to help implement that include AB 1826 which requires commercial generators to recycle their organic waste, AB 876 (newly adopted) which requires cities to plan for 15 years of organic processing capacity and AB 199 which provides for tax incentives to build compost infrastructure.

StopWaste staff participated this past year in many of the discussions around compost facility regulations, increasing the use of compost and mulch, not only on agricultural lands, but also on urban lands and getting organics out of the landfill. These conversations are expected to continue well into 2016 and staff will continue to play a role advocating for Agency priorities.

Another important discussion this past year revolves around the allocation of cap-and-trade funds, which was not resolved this year. StopWaste will continue to advocate for cap and trade funds to be allocated toward local government energy efficiency programs as well as towards achieving healthy soils through the increased use of compost and mulch and increased organics processing capacity.

In both legislative and regulatory work, we collaborate with multiple partners, recognizing that we are much more likely to be successful when joining coalitions rather than acting on our own. The Agency works most closely with Californians Against Waste and the California Product Stewardship Council (CPSC), providing financial support to both. CAW expects 2016 legislative priorities to include compost market development, organics diversion, and food waste recovery. CPSC expects 2016 legislative priorities to include sharps, batteries and pharmaceuticals.

Another partner we work closely with—primarily via the Energy Council—is the Association of Bay Area Governments. ABAG is considering some legislative actions this year, and we expect to support them as necessary on topics that align with Agency goals and member agency interests. Specifically, ABAG is considering legislation to reduce regulatory barriers for water/energy conservation programs termed "Pay As You Save" (PAYS). We will engage with ABAG to determine if support is needed and how best to support their efforts with PAYS should they move forward with a bill.

As we did last year, we anticipate bringing recommended positions on bills to the Boards in April and an update in June and November.

RECOMMENDATION:

Staff recommends that the Boards confirm the above priorities for the upcoming legislative year.