

ORDINANCE 2009-01
AN ORDINANCE ESTABLISHING PROCEDURES AND
REPORTING REQUIREMENTS FOR THE COLLECTION OF
THE COUNTYWIDE SOLID WASTE FACILITY FEE

The Board of the Alameda County Waste Management Authority ordains as follows:

SECTION 1 (Enactment)

The Board of the Authority does hereby enact this Ordinance in full consisting of Section 1 through Section 13.

SECTION 2 (Findings)

(a) The Authority finds that Public Resources Code Section 41901 authorizes a city or county to impose fees in amounts sufficient to pay the costs of preparing, adopting and implementing a Countywide Integrated Waste Management Plan (CoIWMP).

(b) The Authority finds that the Joint Exercise of Powers Agreement for Waste Management delegates to the Authority the member agencies' powers to impose said fees.

(c) The Authority finds that it has adopted a budget each fiscal year that defines the revenue sources and expenditures necessary to prepare, adopt and implement the Alameda County CoIWMP.

(d) The Authority finds that it adopted Resolution No. 120, which became effective February 1, 1991, establishing a facility fee pursuant to Public Resources Code Section 41901 of \$1.50 per ton of Solid Waste disposed, and that on June 25, 2008 it adopted Resolution No. 2008-06 increasing the facility fee to \$2.00 per ton of Solid Waste disposed. The Authority found that these actions were necessary to fund the costs of preparing, adopting, and implementing the Alameda County CoIWMP.

(e) The Authority finds that on May 27, 2009, it adopted Resolution No 2009-3 approving a facility fee of \$4.34 effective January 1, 2010 on: (i) all tons of Solid Waste Deposited in Landfills in Alameda County regardless of how such waste is classified under state law (e.g., disposal or diversion), unless prior to May 27, 2009 the Authority entered into an agreement providing for a different fee structure, and (ii) all tons of Solid Waste originating in Alameda County and Deposited in Landfills outside of Alameda County but within the State of California, regardless of how such waste is characterized under state law (e.g., disposal or diversion). The Authority found that action was necessary to fund the costs of preparing, adopting, and implementing the Alameda County CoIWMP.

(f) The Authority finds that on May 22, 1991 it adopted Resolution No. 144, providing for the standardization of the revenue payment process at the three operational landfills in Alameda County.

(g) The Authority finds that pursuant to Public Resources Code Section 41781, Solid Wastes originating in Alameda County but disposed at out-of-county landfills continue to count as disposal for purposes of calculating compliance with the mandated waste diversion goals contained in Section 41780 of the Public Resources Code.

(h) The Authority finds that accurate records regarding the weight of Solid Wastes originating in Alameda County and Deposited in Landfills are essential to all of the jurisdictions within Alameda County for the purpose of monitoring and calculating compliance with state law, Alameda County Charter Section 64.040A(1), (2), and the goals, objectives, and policies of the Alameda County CoIWMP.

(i) The Authority finds that accurate records regarding the weight of Solid Wastes Deposited in Landfills in Alameda County and Solid Waste originating in Alameda County but Deposited in Landfills out-of-county are essential to the effective collection of several fees levied by the Authority.

(j) The Authority finds that on April 26, 1995 it adopted Ordinance 95-1, which contains reporting requirements regarding the origin and weight of Solid Waste received at landfills.

(j) The Authority finds that on December 17, 1997 it adopted Resolution No. 97-28, which provided for collection of the “facility operators fee” and “household hazardous waste fee” at transfer stations in Alameda County.

(k) The Authority finds that on September 26, 2001, Ordinance 2001-01 provided for the collection of a facility fee and household hazardous waste fee on Solid Waste generated in county and exported to an out-of-county landfill without first going through an in-county transfer station.

(l) The Authority finds that this Ordinance supersedes Ordinance 95-1 and supersedes those portions of Resolution 97-28 and Ordinance 2001-01 that pertain to the collection and remittance of the Authority’s Facility Fee, as well as the measuring and reporting of Solid Waste disposed and diverted, but it does not affect those portions that pertain to the Authority’s Household Hazardous Waste Fee.

(m) The Authority finds that it has the power to enact this Ordinance pursuant to the Joint Exercise of Powers Agreement for Waste Management.

(n) The Authority finds that enactment of this Ordinance is not a “project”

subject to the requirements of the California Environmental Quality Act, California Code of Regulations, title 21, section 15378(b)(4); further, even if it were a “project,” it would be categorically exempt from the California Environmental Quality Act pursuant to California Code of Regulations, title 21, sections 15306 and 15308.

SECTION 3 (Definitions)

The following definitions govern the use of terms in this Ordinance:

(a) “Alameda County” or “County” means all of the territory located within the incorporated and unincorporated areas of Alameda County.

(b) “Authority” means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management.

(c) “Board” means the governing body of the Authority made up of elected representatives of the member agencies pursuant to the Joint Exercise of Powers Agreement for Waste Management.

(d) “Deposited in Landfills” or “Deposited at the Landfill” means final deposition of Solid Waste, in landfills permitted by the State of California, above liners (or above the permitted base of the landfill if a liner is not required) and below final cover within the permitted fill area. Any Solid Waste used to create a foundation layer for final cover in excess of three (3) feet on average shall be considered “Deposited at the Landfill” unless a greater thickness of foundation layer is specifically required by the Regional Water Quality Control Board.

(e) “Disposed Waste” means Solid Waste that is not Other Waste.

(f) “Executive Director” means the individual appointed by the Board to act as head of staff and perform those duties specified by the Rules of Procedure and by the Board.

(g) “Facility Fee” means the Authority’s Facility Fee, as adopted by Resolution No. 120 and amended by Resolution 2008-06, Resolution 2009-3, and any subsequent amendments.

(h) “Jurisdiction of Origin” means the city, special district, or geographic area in which the Solid Waste originated. For the purposes of this Ordinance, Jurisdictions of Origin consist of:

- (1) Each incorporated municipality within Alameda County
- (2) The Castro Valley Sanitary District
- (3) The three portions of the Oro Loma Sanitary district, as follows: the unincorporated area, the area within the municipal boundaries of the City of San Leandro,

and the area within the municipal boundaries of the City of Hayward. Records shall be kept separately for each of these three areas.

(4) The unincorporated section of the County not included within the above.

(5) Each county within the state other than Alameda County.

(i) "Other Waste" means Solid Waste that conforms to the requirements of one or more of the following: (i) it is deposited in a manner such that it is classified under state law as beneficial reuse that counts as diversion for the purpose of compliance with Public Resources Code Section 41780 *et. seq.*; (ii) it is earthen material including contaminated soils as defined in Title 14, California Code of Regulations, Section 17361 (b), and soil with contaminants other than petroleum hydrocarbons that has been approved for use as landfill daily or intermediate cover by the Regional Water Quality Control Board and any other government agencies from which approval is required, such as the Department of Toxic Substances Control or Air Quality Management District; or (iii) it is inert materials as defined in Title 27, California Code of Regulations, Section 20230.

(j) "Permitted Waste Facility" means a Solid Waste disposal or non-disposal facility (e.g., transfer station or recycling or composting facility) that has a permit from the California Integrated Waste Management Board, a California Regional Water Quality Control Board, or a city or county.

(k) "Solid Waste Originating in Alameda County" means all Solid Waste discarded within Alameda County unless it was first discarded outside the County and brought into the County for recycling or composting. To have "originated" within a particular jurisdiction means the Solid Waste was first discarded in that jurisdiction unless it was first discarded outside that jurisdiction and brought into that jurisdiction for recycling or composting.

(l) "Solid Waste Enterprise" means any government agency, individual, partnership, joint venture, unincorporated private organization or private corporation that collects, transports, transfers, processes or disposes of Solid Waste originating in Alameda County that is eventually Deposited In Landfills.

(m) "Solid Waste" means all materials of any kind or nature as defined in Public Resources Code Section 40191.

SECTION 4 (Facility Fee Collection for Disposed Waste Deposited in Landfills)

Solid Waste Enterprises shall collect and remit to the Authority a Facility Fee of \$4.34 on each ton of Disposed Waste that is handled or received by the Solid Waste Enterprise, as follows:

(a) A Solid Waste Enterprise that operates a Permitted Waste Facility landfill in the County shall collect and remit the fee on all tons of Disposed Waste Deposited At The Landfill. However, the operator of the Permitted Waste Facility landfill in the County need not collect or remit the fee if some other Solid Waste Enterprise has assumed this obligation and the Solid Waste Enterprise provides written evidence of this fact to the Executive Director.

(b) A Solid Waste Enterprise that operates a non-disposal Permitted Waste Facility in the County shall collect and remit the fee on all tons of Disposed Waste Originating in Alameda County that are transferred to Permitted Waste Facilities or other Solid Waste Enterprises outside Alameda County and eventually Deposited in Landfills. However, the operator of the non-disposal Permitted Waste Facility in the County need not collect or remit the fee if the receiving Permitted Waste Facility or other Solid Waste Enterprise, or the entity producing or contracting for the transport of the Disposed Waste, has assumed this obligation and the Solid Waste Enterprise provides written evidence of this fact to the Executive Director.

(c) A Solid Waste Enterprise that directly transports Disposed Waste Originating in Alameda County from within the County to an out-of-county, in-state Permitted Waste Facility or other Solid Waste Enterprise shall collect and remit the fee for each ton of Disposed Waste it delivers to the Permitted Waste Facility or other Solid Waste Enterprise that is eventually Deposited In Landfills. However, such Solid Waste Enterprise need not collect or remit the fee if the receiving Permitted Waste Facility or other Solid Waste Enterprise, or the entity producing or contracting for the transport of the Disposed Waste, has assumed this obligation and the Solid Waste Enterprise provides written evidence of this fact to the Executive Director.

SECTION 5 (Facility Fee Collection for Other Waste Deposited in Landfills)

Solid Waste Enterprises shall collect and remit to the Authority a Facility Fee of \$4.34 on each ton of Other Waste that is handled or received by the Solid Waste Enterprise, as follows:

(a) A Solid Waste Enterprise that operates a Permitted Waste Facility landfill in the County shall collect and remit the fee on all tons of Other Waste Deposited At The Landfill. However, the operator of the Permitted Waste Facility landfill in the County need not collect or remit the fee if some other Solid Waste Enterprise has assumed this obligation and the Solid Waste Enterprise provides written evidence of this fact to the Executive Director.

(b) A Solid Waste Enterprise that operates a non-disposal Permitted Waste Facility in the County shall collect and remit the fee on all tons of Other Waste

Originating in Alameda County that are transferred to Permitted Waste Facilities or other Solid Waste Enterprises outside Alameda County and eventually Deposited in Landfills. However, the operator of the non-disposal Permitted Waste Facility in the County need not collect or remit the fee if the receiving Permitted Waste Facility or other Solid Waste Enterprise, or the entity producing or contracting for the transport of the Other Waste, has assumed this obligation and the Solid Waste Enterprise provides written evidence of this fact to the Executive Director.

(c) A Solid Waste Enterprise that directly transports Other Waste Originating in Alameda County from within the county to an out-of-county, in-state Permitted Waste Facility or other Solid Waste Enterprise shall collect and remit the fee for each ton of Other Waste it delivers to the Permitted Waste Facility or other Solid Waste Enterprise that is eventually Deposited In Landfills. However, such Solid Waste Enterprise need not collect or remit the fee if the receiving Permitted Waste Facility or other Solid Waste Enterprise, or the entity producing or contracting for the transport of the Other Waste, has assumed this obligation and the Solid Waste Enterprise provides written evidence of this fact to the Executive Director.

SECTION 6 (Payover Schedule)

The Solid Waste Enterprise shall remit the Facility Fee, or provide written evidence of the assumption of this obligation by others, for all tons of Solid Waste subject to the fee, to the Executive Director by the 15th day of each month for Solid Waste collected in the preceding month. If payment for the Facility Fee is not received by the Authority on or before the due date, it shall be deemed delinquent, and the Authority shall consider the Solid Waste Enterprise to have violated this Ordinance for each day that the fee is overdue. If the Facility Fee is not received by the Authority within sixty (60) days of the due date, the amount due and unpaid shall also be subject to a late charge at the interest rate the Authority would have earned on such funds.

SECTION 7 (Reporting)

(a) Each Solid Waste Enterprise subject to the fee collection requirements specified in Section 4 or 5 shall report to the Executive Director the weight of Solid Waste physically collected from within each Jurisdiction of Origin, the Permitted Waste Facilities or other Solid Waste Enterprises to which Solid Waste is delivered, and the weight of Solid Waste that is ultimately Deposited in Landfills and therefore subject to the Facility Fee. To that end:

(1) Each Solid Waste Enterprise shall ensure that all Solid Waste it transports, transfers, processes or receives is accurately weighed (or its weight is accurately estimated if the Solid Waste Enterprise demonstrates to the Executive Director that weighing is impractical and the method for the

estimate provides a reasonable approximation of the tonnage) unless the owner of a Permitted Waste Facility receiving Solid Waste from the Solid Waste Enterprise, or the entity producing or contracting for the transport of the Solid Waste, assumes this obligation, and written evidence of this assumption of the obligation is provided to the Executive Director by the Solid Waste Enterprise that would otherwise have this obligation. These weights shall be used for purposes of reporting tonnage under this Ordinance.

(2) Each Solid Waste Enterprise shall keep records of the tonnage of Solid Waste from each Jurisdiction of Origin for all Solid Waste it transports, transfers, processes or receives (or shall keep records of an accurate estimate of the tonnage if the Solid Waste Enterprise demonstrates to the Executive Director that determination of the Jurisdiction of Origin is not possible and the method for the estimate provides a reasonable approximation of the tonnage) unless some other Solid Waste Enterprise assumes this obligation, and written evidence of this assumption of the obligation is provided to the Executive Director by the Solid Waste Enterprise that would otherwise have this obligation. These records shall be used for purposes of reporting tonnage under this Ordinance.

(3) Each Solid Waste Enterprise shall report to the Executive Director the full names and addresses of the permitted and un-permitted facilities, if any, to which it delivers Disposed Waste and to which it delivers Other Waste.

(4) Each Solid Waste Enterprise shall report to the Executive Director by Jurisdiction of Origin the tons of Solid Waste that it transports, transfers, processes or receives that are ultimately Deposited in Landfills. For each Jurisdiction of Origin, the reports shall identify the tons of total Other Waste, separately identifying the tons of Other Waste pursuant to subsections (i), (ii) and (iii) of the definition of Other Waste in Section 3 of this Ordinance. With respect to the tons of Other Waste under subsection (i) of the definition of Other Waste in Section 3 of this Ordinance, the reports of Solid Waste Enterprises that operate a Permitted Waste Facility landfill shall identify the tons used for (A) alternative daily or intermediate cover, separately identifying processed green material, sludge and sludge derived materials, ash and cement kiln dust materials, auto shredder waste, contaminated sediment, dredge spoils, foundry sands, energy resource exploration and production wastes, compost materials, processed construction and demolition wastes and materials, and shredded tires, (B) final cover foundation layer, (C) liner operations layer, (D) leachate and gas collection system materials, (E) construction fill, (F) road base; (G) wet

weather operations pads and access roads, and (H) soil amendments for erosion control and landscaping. The reports of Solid Waste Enterprises that do not operate a Permitted Waste Facility landfill shall identify A through H above if such information is available. If the Jurisdiction of Origin is unknown and cannot be estimated, the Solid Waste Enterprise shall indicate the tonnage for which the Jurisdiction of Origin is unknown and demonstrate why it cannot be determined or estimated.

(b) The Solid Waste Enterprise shall report the information described in this Section to the Authority on a monthly basis, by the 15th day following the end of the month in which the Solid Waste was collected, received or transported.

(c) An extension of the deadline specified in subdivision (b) of this Section may be granted by the Executive Director upon a showing of good cause. In the event that a Solid Waste Enterprise fails to meet this required deadline, the Authority shall consider the Solid Waste Enterprise to have violated this Ordinance for each day that the report is overdue.

SECTION 8 (Information Format)

All of the information required by this Ordinance to be transmitted to the Authority shall be transmitted in a form that has been reviewed and approved in writing by the Executive Director.

SECTION 9 (Record Retention and Inspection)

All records prepared pursuant to and documenting compliance with this Ordinance shall be maintained for a period of at least five years. If the Solid Waste Enterprise has an office in the County, the records shall be maintained within the County. The Solid Waste Enterprise shall provide a copy of such records upon receipt of a written request from a representative of the Authority. The Authority may inspect and audit the operations and records of Solid Waste Enterprises in order to ensure compliance with fee payment and reporting requirements.

SECTION 10 (Appeal)

(a) If a Solid Waste Enterprise experiences unique circumstances that make it impossible to comply with Sections 7 through 9 of this Ordinance, the Solid Waste Enterprise may appeal the requirements of those Sections to the Executive Director. The appealing enterprise must propose an alternative or alternatives to the requirements of those Sections. The Executive Director may grant the appeal if she/he finds that a proposed alternative satisfies the purposes of those Sections.

(b) Decisions of the Executive Director may be appealed to the Board, which

shall make its determination according to the criteria in subdivision (a) of this Section.

SECTION 11 (Enforcement)

(a) Violation of any provision of this Ordinance may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, the Authority may recover its attorneys' fees and costs from any person who is determined by a court of competent jurisdiction to have violated this Ordinance.

(b) Violation of any requirement of this Ordinance shall constitute a misdemeanor punishable by a fine not to exceed \$500 for the first violation, a fine not to exceed \$750 for the second violation within one year, and a fine not to exceed \$1000 for each additional violation within one year. Violation of any requirement of this Ordinance may also be enforced as an infraction punishable by a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for the second violation within one year and a fine not to exceed \$500 for each additional violation within one year. Each Ordinance requirement violated shall constitute a separate violation for each day on which a violation of the requirement occurs. The Authority may recover costs and attorneys' fees incurred in connection with successful enforcement of this Ordinance.

(c) Violation of any provision of this Ordinance shall constitute grounds for assessment of an administrative citation and fine by the Authority in accordance with Government Code section 53069.4 or as the code shall subsequently be amended or reorganized. A separate citation and fine may be imposed for each requirement of this Ordinance violated for each day on which a violation occurs. The fine shall not exceed the amounts detailed in Section 11(b) of this Ordinance. The citation shall list the specific violation and fine amount and describe how to pay the fine and how to request an administrative hearing to contest the citation. The fine must be paid within 30 days of the citation and must be deposited prior to any requested hearing. A hearing will be held only if it is requested within 30 days of the citation. Evidence may be presented at the hearing. The Executive Director, or its designee, shall conduct the hearing and issue a final written order. If it is determined that no violation occurred, the amount of the fine shall be refunded. The Authority shall serve the final order on the party assessed an administrative citation by first class mail. The Authority may recover costs and attorneys' fees incurred in connection with successful enforcement of this Ordinance.

(d) Enforcement pursuant to this Section shall be undertaken by the Authority through its Executive Director, counsel or designated representative. Any amount due as a result of an enforcement action shall be in addition to any other amounts due, and the violator must still comply with all provisions of this Ordinance.

SECTION 12(Severability)

If any provision of this Ordinance or its application to any situation is held to be

(d) Enforcement pursuant to this Section shall be undertaken by the Authority through its Executive Director, counsel or designated representative. Any amount due as a result of an enforcement action shall be in addition to any other amounts due, and the violator must still comply with all provisions of this Ordinance.

SECTION 12(Severability)

If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 13 (Notice and Verification)

This Ordinance shall be posted at the Authority Office after its second reading by the Board for at least thirty (30) days and shall become effective thirty (30) days after the second reading.

Passed and adopted this 16th day of December, 2009, by the following vote:

AYES: Carson, Freitas, Green, Hildenbrand, Keating, Sullivan, Quan, Waespi, West, Wile, Williams, Wozniak

NOES: Landis

ABSTAINING: None

ABSENT: Henson, Johnson, Natarajan, Santos

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of the ORDINANCE NO. 2009-01.


GARY WOLFF
EXECUTIVE DIRECTOR