



**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

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## **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>