



**DATE:** October 13, 2016  
**TO:** Programs & Administration Committee  
Planning & Organization Committee/Recycling Board  
**FROM:** Wendy Sommer, Executive Director  
**BY:** Brian Mathews, Senior Program Manager & Enforcement Officer  
**SUBJECT:** Enforcement Update

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**SUMMARY**

This memo provides an update on activities related to the enforcement of Alameda County Waste Management Authority ordinances. The Board requested that staff provide an annual update on the prior year's enforcement activities. This year the update will occur at the Board committee meetings on October 13, 2016.

**BACKGROUND**

The agency's enforcement approach is to emphasize education and technical assistance prior to taking any enforcement action and this is reflected in how resources are allocated. The progressive enforcement approach means multiple opportunities are given to the regulated party, including coordinated offers of assistance from the city, hauler, and the Authority, before penalties are assessed.

There are four projects that have an enforcement component to them: Waste Prevention - Reusable Bag Implementation; Mandatory Recycling Ordinance Implementation; Household Hazardous Waste Facilities; and Fee Enforcement. Of the four, the majority of the enforcement budget will be spent on Mandatory Recycling (\$1,096,685) and Fee Enforcement (\$417,046). The Reusable Bag expansion enforcement activities will not take effect until next year, so only a small amount (\$35,000) is budgeted for this year.

**MANDATORY RECYCLING ORDINANCE**

The table on the next page lists the number of covered accounts in each jurisdiction and their compliance status based on the most recent inspection (inspections as of September 16, 2016). The table also lists the citations issued in each jurisdiction. Approximately one-third of the accounts listed in the "No Violations Noted" column are smaller cart accounts that have not yet been inspected. The other two-thirds are larger commercial accounts that have been physically inspected or multi-family accounts that have been physically inspected or administratively reviewed for compliance (multi-family

accounts cannot be cited for incorrect disposal of materials, only for failure to provide recycling and/or organics service).

### Enforcement Activities by Member Agency

Member Agency	No Violations Noted	# of Accounts out of Compliance	Total # of Citations
Alameda	1,404	34	15
Alameda County	134	14	0
Albany	362	4	1
Berkeley	1,813	136	3
Castro Valley	560	21	7
Dublin	N/A		
Emeryville	425	14	4
Fremont	2,457	269	65
Hayward	3,204	204	14
Livermore	1,319	63	23
Newark	536	86	3
Oakland	7,521	1,148	89
Oro Loma (L1)	N/A		
Oro Loma (L2 & L3)	522	75	8
Piedmont	40	0	0
Pleasanton	350	57	36
San Leandro	1,347	144	18
Union City	754	19	8
<b>Grand Total</b>	<b>22,748</b>	<b>2,288</b>	<b>294</b>
<b>%</b>	<b>91%</b>	<b>9%</b>	

Under the Mandatory Recycling Ordinance, progressive enforcement means regulated parties are given several notices before a citation is issued. The inspection frequency is also adjusted based on compliance history. A business or multi-family property that has two consecutive inspections without violation is inspected less frequently (annually), while a regulated party that has consecutive violations is inspected at increasingly shorter intervals with the objective of bringing them into compliance sooner. The objective is compliance, not penalties.

Official Notification is the first step in the progressive enforcement process to inform the regulated community of obligations under the Ordinance. Notifications are currently being sent in batches of several hundred per week via First Class Mail to all businesses that have not yet received an Enforcement letter. These letters officially inform them of the Ordinance requirements and are not the result of an observed violation.

The Ordinance became effective on July 1, 2012 with jurisdictions participating at different levels and on different schedules. The Authority began issuing citations in August of 2015. Each citation is reviewed and approved by the member agency Primary Enforcement Representative before it is issued. To date, 294 citations have been processed and are either closed, delinquent, or open. Most violations are for

not having recycling service and disposing of recyclable materials in the garbage. Three Mandatory Recycling Ordinance citations have been appealed by the cited parties and all have been upheld.

### **REUSABLE BAGS**

The Reusable Bag Ordinance (ACWMA 2012-02) (RBO) became effective January 1, 2013. The ordinance affects approximately 1,274 retail stores in Alameda County. They include grocery stores, pharmacies, convenience stores that sell milk, bread, soda and snack food, and liquor stores.

After inspecting all covered stores in the first year and a half of the Ordinance, enforcement has focused on those stores which were out of compliance for the most egregious violations: distributing single use bags, not charging at least \$0.10 per bag, and/or not itemizing the bag charge on a customer's receipt. We also inspected 10% of the compliant stores to maintain an enforcement presence and prevent backsliding of compliance within the regulated community, as well as conducting inspections in response to non-compliance reports submitted online via [www.ReusableBagsAC.org](http://www.ReusableBagsAC.org). The current compliance rate is 95% based on the rates of compliance from maintenance and warning inspections.

#### **Bag Ordinance Enforcement Activity to Date**

<b>Activity</b>	<b>Count</b>
Regulated Parties	1,274
Warning Inspections Conducted	123
"Maintenance" Inspections Conducted	130
Stores with continued noncompliance	66
Compliance rate of all stores	94.8%

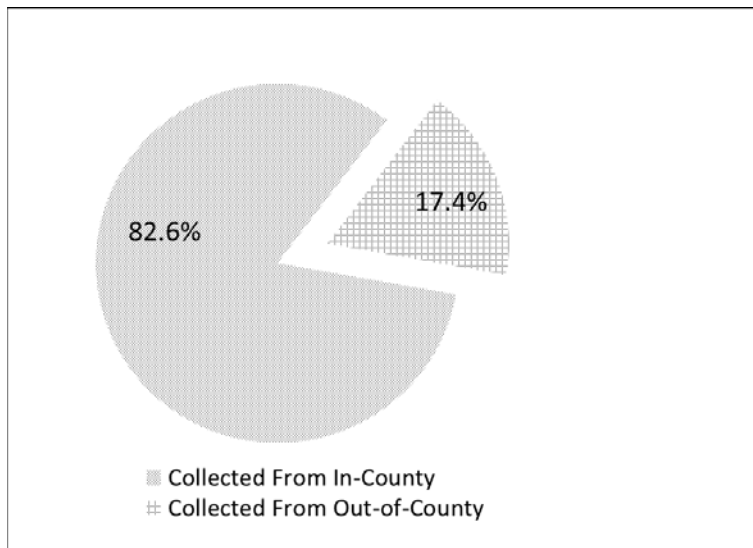
With the adoption of the expanded ordinance, there will be a large increase in covered stores (13,000 new stores). The ten-fold increase in covered accounts along with the change to a complaint based enforcement program will require adjustments to the implementation of the ordinance. Staff recommends compiling and responding to a years' worth of complaints prior to consideration of broadening the enforcement effort with a random inspection protocol. Allowing a year for an "assessment period" would be the most cost effective and prudent use of Agency resources prior to revising/enhancing a complaint based inspection process.

### **FACILITY FEE COLLECTION**

The Authority's facility fee of \$4.34 per ton landfilled applied historically only to 'disposed tons' (mostly, conventional waste from residences and businesses) at landfills in Alameda County, or disposed tons hauled by franchised haulers to out-of-county landfills.

The Authority Board adopted the Facility Fee Ordinance (ACWMA Ord. 2009-01) in 2009 in order to provide clear administrative procedures for enforcing collection of the facility fee. Prior to adopting the ordinance, the only means of enforcing the fee was by litigation. The chart below illustrates the relative amount of waste to which the facility fee applies in-county versus out-of-county. The chart is based on

calendar year 2015 and may not reflect the actual tons due to adjustments made for misreported, misclassified waste, or fraudulent disposal activity.



The Facility Fee enforcement effort is targeted toward collection of the \$4.34 Facility Fee on waste that is transported by non-franchised haulers and landfilled outside the county. For 2015, if 100% could be collected the amount would be \$854,730. However, due to certain limitations the amount actually collected is lower. Limitations include the number of landfills which cooperate by providing the disposal information versus those that don't, misallocation of waste to Alameda County, misreporting of disposal tonnage, and misclassification of waste. Last year the legislature passed AB-901, which requires landfills to disclose their customer information to local jurisdictions for the purpose of fee collection. The majority of landfills cooperate, three don't. The disposal tonnage represented by the non-cooperating landfills is 28% of the out of county disposal. Regardless, approximately 8% of fees owed on the tons disposed at uncooperative landfills is voluntarily paid, leaving a deficit of approximately \$170,000.

The remaining cooperative landfills make up 72% of the out-of-county disposal. For 2015 fees owed, the enforcement staff is taking action to collect approximately \$411,860. The remaining amount is uncollectable for the reasons stated above. As more voluntary payments are made, staff will review the procedures and methods to secure the fees which support agency operations and the solid waste infrastructure of the county.

#### **Household Hazardous Waste and Plant Debris Landfill Ban Ordinances**

The Household Hazardous Waste ordinance is a fee collection activity with a limited number of regulated parties. No enforcement action has been initiated since its adoption, and if enforcement is needed resources from the Facility Fee enforcement will be used. The Plant Debris Landfill Ban ordinance is monitored and enforced as part of the Mandatory Recycling Ordinance implementation.

#### **RECOMMENDATION**

This report is for information only.