



**DATE:** September 9, 2015

**TO:** Alameda County Waste Management Authority Board

**FROM:** Gary Wolff, Executive Director

**BY:** Brian Mathews, Senior Program Manager & Enforcement Officer

**SUBJECT:** Enforcement Update

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**BACKGROUND**

This memo updates the Authority Board on activities related to the enforcement of Alameda County Waste Management Authority ordinances. The Board has requested an annual update on the prior year's enforcement activities. The memo is in five parts: General Overview, Mandatory Recycling, Reusable Bag, Facility Fee collection, and HHW Fee ordinances. The plant debris landfill ban ordinance is implemented in conjunction with the mandatory recycling ordinance.

At the September 2014 Authority Board meeting, staff presented the second update on enforcement activities conducted for the implementation of ordinances adopted by the Board. Some key reminders from that update are:

- Ordinances have been adopted when a voluntary approach was deemed insufficient by the Board after a public engagement process.
- Ordinances are an attention-getting device to facilitate behavioral change toward social norms that support one or more social benefits.
- The agency's approach is to emphasize education and technical assistance prior to enforcement, and this approach is reflected in how resources are allocated.
- Authority enforcement efforts take a progressive approach. This means multiple opportunities are given to the regulated party, including coordinated offers of assistance from the City, hauler, and the Authority, before monetary penalties are assessed.
- Revenue generation from fines is not an objective of our enforcement program.

**How Much is Spent on Enforcement?**

The budget for enforcement activities are distributed through five projects: (1250) Waste Prevention - Reusable Bag Implementation; (2090) Mandatory Recycling Ordinance Implementation; (2312) Household Hazardous Waste Facilities; (3220) Disposal Reporting; and (3240) Fee Enforcement. See the Table below for details on these five projects.

The FY15-16 budget has an increase for enforcement activities of \$52,223 as compared with the FY 14-15 budget. Increases of about \$11,000 for new fee collection work associated with the new HHW fee and a \$95,000 for increased work in the Mandatory Recycling Ordinance (MRO) for implementing Phase II (adding organics and small businesses) were not fully offset by decreases in enforcement of the reusable bag ordinance and disposal reporting. The bulk of the MRO increase is attributable to postage (\$60,000). The direct labor allocation to enforcement activities is 3.01 full time equivalents (FTEs) distributed across 12 staff. This is slightly less than in FY 14-15 due to the implementation of an on-line reporting system for facility fee collection.

The current budget (FY15-16) for enforcement activities as a percentage of each project cost varies: the enforcement component is 21% of Reusable Bag Implementation, 51% of the Mandatory Recycling project, less than 1% of Household Hazardous Waste Facilities, and 11% of disposal reporting. Of the five projects only project 3240 – Fee Enforcement -- is 100% dedicated to enforcement activities.

Project	Direct and Indirect Staff Cost plus Overhead Hard Cost	Project Hard Cost	Total Enforcement Activities in Project Budget	% of Total Project Budget
1250 - Reusable Bag	\$55,690	\$0	\$55,690	21%
2090 - Mandatory Recycling	\$670,824	\$503,000	\$1,173,824	51%
2312 – HHW Facilities	\$11,075	\$0	\$11,075	<1%
3220 - Disposal Reporting	\$42,880	\$0	\$42,880	11%
3240 - Fee Enforcement	\$194,664	\$162,000	\$356,664	100%
<b>Total</b>	<b>\$975,133</b>	<b>\$665,000</b>	<b>\$1,640,133</b>	

<b>Core Budget</b>	<b>\$11,414,810</b>
<b>% of Core</b>	<b>14.30%</b>
<b>Total Agency</b>	<b>\$38,034,486</b>
<b>% of Total Agency</b>	<b>4.31%</b>

**Who Enforces?**

The Executive Director (ED) is the Enforcement Official as specified by the ordinances. In that capacity the ED has final authority and responsibility for implementing the ordinances. The ED

has delegated to Brian Mathews (Senior Program Manager), the role of Lead Enforcement Officer with the responsibility of interpreting the ordinances and maintaining policies and procedures necessary for the fair, equitable and transparent enforcement process. The enforcement team also includes Tom Padia, Elese Lebsack, Adrienne Ramirez, Nisha Patel, and other staff on occasion; Authority Counsel, two retired annuitants from the County Sheriff's office, and three inspectors employed by a contractor.

Enforcement of the Mandatory Recycling and Reusable Bag ordinances is done in consultation and coordination with the Primary Enforcement Representative (PER) of each member agency. No citations will be issued for either ordinance without the approval of the PER who is designated by the chief executive of each participating member agency.

Enforcement is a partnership between the Authority, member agency staff, franchised haulers, and the regulated community. It requires timely and accurate communications. To facilitate the interactions we need a common understanding of the procedures and practices of enforcement. The Authority provides regular updates to the member agency technical advisory committee and routinely sends to all member agency PERs updates and guidelines of how the ordinances are being interpreted, implemented and enforced. The mandatory and bag ordinances each have their own websites ( [www.recyclingrulesac.org](http://www.recyclingrulesac.org) and [www.reusablebagsac.org](http://www.reusablebagsac.org) ) which provide detailed and up-to-date frequently asked questions (FAQs) and answers, resources such as signage and handout templates, and staff contacts. A hotline is in place for phone inquiries and email addresses are provided for enforcement staff.

Training and communication are key components to successful ordinance implementation. Agency enforcement staff and contractors have all been certified by the CalEPA Basic Inspector Academy; a two-part 40 hour course which familiarizes staff with topic areas such as constitutional protections, environmental law, safety, interview skills, elements of a violation, evidence, note taking and report writing. Each course has a mock inspection, enforcement and trial element. Most member agency staff in the role of PER have also passed the CalEPA course or have equivalent experience. Monthly inspector trainings are conducted in-house by qualified staff, and inspection materials are updated frequently to keep current the understanding of how inspections should be conducted and how inspectors should conduct themselves. Senior program staff has more extensive training including code enforcement and course work on criminal investigations and environmental law.

### **How Do We Enforce?**

The intent of enforcement is to change behavior rather than to punish or generate revenue through fines. This intent is codified by the enforcement policies for each ordinance which require a three step process of Official Notification, Warning, and finally as a last resort, Citation. Implementing these policies requires staff and inspector trainings, inspections, and official communications with regulated parties about enforcement (including legal review). It also requires integrating these enforcement activities with other activities such as outreach

material development, media, website development, technical assistance, hauler-customer-jurisdiction relations, budget and project management, etc.

At each step of the enforcement workflow, education and technical assistance are emphasized and offered from multiple sources, including web-based materials, handouts during inspections, brochures included in Official Notifications, hotline assistance and on-site training provided by StopWaste or member agency staff, contractors, or franchised haulers.

Enforcement activities are complex and typically involve greater legal and financial exposure for the agency than most other activities. Consequently, we have and will continue to invest in our staff capabilities via training. In FY 14-15, one staff completed a 40 hour course on rules and responsibilities of initiating an accusatory process, and another completed a course on the California Public Records Act. In addition, the Board recently approved reclassification of two existing positions from senior program services specialists to executive assistant and program manager, in part to reflect the key roles and complex duties associated with enforcement.

## **MANDATORY RECYCLING ORDINANCE**

### **Summary of Ordinance**

The Mandatory Recycling Ordinance (ACWMA Ord. 2012-01) (MRO) was adopted by the Authority Board on January 25<sup>th</sup>, 2012. For most regulated businesses, multi-family property owners, and transfer stations and landfills, the ordinance became effective July 1, 2012 with enforcement starting January 1, 2013. (Note: Pleasanton chose to participate in the countywide ordinance on an 8 month delayed implementation schedule.) Not all member agencies participate in the ordinance; the covered jurisdictions are Unincorporated Alameda County, Alameda, Albany, Berkeley, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City. Dublin, and the portion of the Oro Loma Sanitary District not in San Leandro or Hayward, are not participating. Approximately 90% of the county is covered by the ordinance. Castro Valley Sanitary District initially opted out of the ordinance but has since opted in for all accounts for Phase I and Phase II materials (with a delayed implementation date for Phase II materials via a compliance schedule waiver.)

The MRO was developed to be implemented in two phases with the first phase requiring the separation of traditional high value dry recyclables such as bottles, cans, cardboard and paper from the disposal stream. Phase I requirements applied to commercial properties with 4 cubic yards of service and above and multi-family properties with 5 units or more. Phase II of the ordinance became effective July 1, 2014 with enforcement beginning January 1, 2015 and added food scraps and compostable paper to the list of materials that must be separated from the garbage and expanded the ordinance to all commercial accounts regardless of garbage service size. Several jurisdictions have asked for and been granted compliance schedule waivers which delay the enforcement of Phase II requirements until the jurisdiction has the pieces in place for their community to comply.

The ordinance requires multi-family commercial property owners to provide recycling containers adequate to receive all covered materials generated by their tenants, arrange for covered materials collection service, and distribute educational materials upon move-in and move-out of tenants, as well as annually to on-going tenants.

An alternative compliance path for commercial and multi-family property owners who don't want to separate "covered materials" is to have their waste collected and processed through a High Diversion Mixed Waste Processing Facility (HDMWPF). In July 2014, the Authority tested and certified the Davis Street Transfer Station Dry Mixed Waste Line at their Material Recovery Facility for Phase I recyclables (bottles, cans, paper, corrugated cardboard). That facility is now going through upgrades to accommodate multi-family (MF) material sourced from the City of Oakland and will be recertified once the upgrades and a trial-run period has been completed. Through the testing and certification process Waste Management of Alameda County demonstrated that its facility could process mixed waste and have less than 10% of the residual stream be composed of high value Phase I covered materials. The San Leandro facility is the first and only (to our knowledge) facility in the State of California with this certification.

Member agencies opted into Phase II effective July 1, 2014 are Alameda, Albany, Berkeley, Emeryville, Livermore, Piedmont and unincorporated Alameda County. Castro Valley, Fremont, Hayward, Newark, Oakland, and San Leandro have opted into Phase II on a delayed implementation schedule. The Cities of Dublin, Pleasanton, and Union City and the Oro Loma Sanitary District (for the unincorporated area within the District) have opted out of Phase II. Union City staff has stated an intention to opt into Phase II after franchise issues are resolved.

### **Enforcement To Date**

Table 1 summarizes enforcement activity to date under the MRO. The number of inspections is higher than the number of covered accounts because many commercial properties have been inspected two or three times, sometimes as part of a progressive approach to enforcement and sometimes because access was limited on the first visit.

The ordinance prohibits the disposal of covered materials and initially the violation threshold for a "covered material in the garbage" violation was set at approximately 25% or more by volume of the contents of a container. With the implementation of Phase II and the beginning of citations, a new inspection metric has been tested and approved, 10 gallons in a cart, or 20 gallons in a bin. These volumes are equivalent to approximately the threshold of the 10% De Minimus waiver granted in the ordinance. Typically a cart is 96 gallons and 10 gallons would be slightly over the 10% threshold. The volume of a 1 cubic yard bin is about 202 gallons. Using 20 gallons as the threshold is easy to quantify/visualize for the inspectors in quantities of five gallon buckets. Two five gallon buckets of covered material in a cart and four five gallon buckets in a bin constitute a violation. The new violation threshold aligns with our countywide objective to achieve less than 10% "good stuff in the garbage".

The ordinance actually has a zero tolerance for disposal of recyclable material, which renders arguments about exact quantities unnecessary if we need to issue a citation. Nonetheless, we use a violation threshold above the legal threshold of zero, in order to make clear to the regulated community that we are not enforcing against petty violations. If a business is sent an Official Notification, they are given 90-120 days to correct the deficiency. If no violation is found upon re-inspection, the frequency of future inspections will be reduced.

**Table 1: Mandatory Ordinance Enforcement Activity to Date**

Activity	Count 2014	Count 2015	% Change
Regulated Parties	10,416	24,739 <sup>1</sup>	238%
Inspections Conducted <sup>2</sup>	16,224	23,974	132%
Official Notifications Sent <sup>3</sup>	1,889 (18%)	3,161 (12.7%) <sup>4</sup>	
Warnings Sent <sup>5</sup>	272 (2.6%)	478 (1.9%) <sup>4</sup>	
Citations Pending	N/A	63	

1. 7,203 Multi-Family accounts, 17,535 business accounts. Business accounts increased nearly 400% from 4,415 in 2014

2. Inspections conducted are to date from inception of the ordinance and are higher than regulated parties at the 2014 update due to repeat inspections.

3. The majority of notices sent are for not having recycling service. This is a 'one-time violation' once corrected.

4. The lower percent in 2015 is due to the increased number of accounts under Phase II

5. 1.9% of the regulated community have violated the ordinance twice

6. 63 citations were pending meaning the member agency Primary Enforcement Representative is reviewing the citation to approve or disapprove it.

**Technical Assistance Related to the Ordinance**

The Business Technical Assistance (TA) team provided assistance to every covered commercial account that requested TA from us, unless the member agency or hauler asked that the account be referred to them for follow-up. In total, the team reached 1,264 covered commercial accounts in FY14/15. Of those businesses reached, 33% were accounts that had been worked with in a prior year and 67% were businesses that the TA team had not previously reached out to before. The Technical Assistance Team documented a total of 309 businesses that began new recycling and/or organics collection programs. The TA team targeted businesses in two ways: through enforcement referrals such as official notification letters and the Ordinance Help Line, and through proactive targeting coordinated with City staff to reach out to businesses with little or no recycling service, with the former being an increasing proportion after enforcement actions began with Phase II newly covered accounts in January 2015. A pilot program providing technical assistance to multi-family property owners and manager to implement or improve their organics collection programs was also conducted that reached 61 multi-family properties

A full report of the FY 14-15 Business Technical Assistance project will be available in October, with some highlights from the year below

- Businesses are far more responsive to set up a recycling program after receiving a letter of violation than they were in the past, under a voluntary setting. In many cases, businesses contact their service providers without assistance or prompting from our Business TA team to initiate new recycling service after receiving an enforcement letter.
- The Customer Relations Management (CRM) system we have developed has allowed Client Representatives to communicate with enforcement staff and be on the same page about where a business is on the enforcement spectrum. Additionally, photos from inspections allowed Client Representatives to have a more engaging and informed conversations with businesses around compliance issues.
- Through a new Free Indoor Food Scraps Bin program within the Mandatory Recycling Ordinance project, over 320 businesses were approved allocations of up to \$500 worth of organics collection equipment to help start-up or improve their food scraps diversion programs.

### **Enforcement Challenges and Lessons Learned**

The enforcement effort relies heavily on data from six major and several minor service providers who all track and manage their customer account information differently. Data from the haulers are difficult to maintain because the data sets are not formatted for easy synchronization with our data management system. The hauler data sets are often incomplete for our needs, which necessitate reformatting for electronic transfer. The lengthy process of data manipulation results in our day to day data being out of date. A tremendous amount of coordination is needed with haulers to verify information and do data clean-up. After two cycles of data updates staff is exploring different approaches to securing hauler account data.

A critical piece of infrastructure is the Microsoft Dynamics CRM database we developed and deployed (and are continuing to develop and deploy as Phase II begins) which provides inspectors and technical assistance with real time account information and allows them to collect data on tablets and upload pictures of compliance issues for timely processing by enforcement staff. Maintaining the software platform and data management will continue to be a challenge moving forward.

Another challenge has been access at multi-family and commercial properties. Inspectors strictly adhere to constitutional privacy protections and only conduct plain view inspections at the point of garbage collection. If access is not immediately available, permission is sought from a property manager or responsible party. Frequently property managers are absent and/or security barriers stymie inspectors' access to the garbage collection location. Still, nearly 75% of multi-family buildings that we attempted to inspect (and we inspected more than 50% of all multi-family buildings) were inspected successfully in the first round. Of violations found, 98% were for inadequate recycling service.

As Phase II is implemented the no-access challenges will only increase. Many cart accounts do not set their cart out until the night before, and/or carts, due to their size, are stored on the premises out of plain view sight. To overcome these access challenges, the enforcement staff is expanding its administrative compliance review procedure previously only used for multi-family to commercial accounts with carts. The procedure entails reviewing hauler account information to determine if recycling service is being provided. If no record of recycling service is evident, the property is sent an Official Notification requiring them to get recycling service or demonstrate through invoice or other records that service is being provided. Future inspections for multi-family buildings will focus on those situations where the property owner or manager does not respond to the notice in a satisfactory manner.

As Phase II rolls out new challenges are being identified and addressed: 1) the number of covered business accounts increased by nearly 300%, 2) not all business accounts generate sufficient amount of organics to warrant getting organics recycling service, 3) inspection resources will be stretched to maintain a “routine” inspection program. To manage the increase, cart accounts will be inspected opportunistically when co-located with bin service. The remaining will go through an administrative review. By not inspecting business cart accounts, the increase in the inspections is somewhat more manageable at a 200% increase over Phase I inspections. Additional agency resources will eventually be needed for inspections.

Not all business accounts will need to get organics recycling service because they don't generate significant quantities of organics. The MRO team will target organics inspections to High Organics Generators (HOG's) identified as those businesses that have food handling permits from the County or City of Berkeley Environmental Health Departments, California Dept. of Food and Agriculture, or other food permitting regulators like USDA. This will facilitate an “innocent-until-proven-guilty” enforcement approach, and reduce the burden on the regulated community of having to get organics recycling service they may not use very much.

The MRO enforcement team is working to absorb the increase in demand for inspection within the resources already allocated. Using the administrative review process is one approach which does not increase the agency's exposure to risk while keeping the regulated community informed of the need to conform to new requirements. Another approach being considered is to use blanket notifications, meaning to send “Official Notifications” to all regulated parties, regardless of whether an inspection was conducted and a violation observed or not.

In the three step enforcement process (Official Notification, Notice of Violation (warning), Citation) the “Official Notification” serves the same purpose as a speed limit sign does for traffic compliance. Much like a speed limit sign, the “Official Notification” informs the regulated community of their obligation to adhere to certain limits on disposal. It is not a legal requisite that a violation be observed during an inspection to warrant issuance of an Official Notification. We have done that to date because mandatory recycling was new, but mandatory recycling is

no longer new -- it began more than three years ago. Blanket notifications seem reasonable as an efficiency measure going forward.

Finally, despite our best efforts, sometimes we get it wrong. The inspector didn't see the recycling container or the database of hauler account information was not up to date for that account, etc. We've sent out Official Notifications erroneously. When an Official Notification has gone out erroneously and is brought to our attention, we ask the customer to provide some form of receipt showing the service is being provided and update our records. We also apologize for the error and explain what we are doing to prevent such errors in the future.

In early August, Brian Mathews presented an overview of the Phase II Mandatory Recycling enforcement program in contrast to the requirements of AB 1826, (requires organics recycling at businesses of certain types by 2020) to attendees of the California Resource Recovery Association meeting in Los Angeles. As Phase II rolls out, we will likely have the largest locally enforced mandatory recycling program in California.

## **REUSABLE BAGS**

### **Summary of the Ordinance**

The Reusable Bag Ordinance (ACWMA 2012-02) (RBO) was adopted by the Authority Board on January 25<sup>th</sup>, 2012. The purpose of the ordinance is to reduce the use of single use carryout bags and promote the use of reusable bags at the point of sale in Alameda County. All fifteen member agencies with stormwater management responsibilities, covering the entire County, chose to participate. The ordinance affects approximately 1,288 full-line, self serve retail stores in Alameda County. They include grocery stores, pharmacies, convenience stores that sell milk, bread, soda and snack food, and liquor stores.

### **Enforcement To Date**

Much like the MRO, the RBO ordinance implementation relies heavily on education and outreach rather than on enforcement. Marketing materials, table top and counter displays at check-out locations, posters, post-cards and other informational material have been critical to informing affected businesses and customers of the change. There was an extensive outreach campaign in 2012, prior to the beginning of enforcement in 2013. Enforcement activities are summarized in Table 2.

**Table 2: Bag Ordinance Enforcement Activity to Date**

<b>Activity</b>	<b>Count</b>
Regulated Parties <sup>1</sup>	1,288
Previous Enforcement Inspections <sup>2</sup>	1,368
Notifications Sent <sup>3</sup>	207 (16%)
Planned Follow-ups <sup>4</sup>	207

1. Regulated parties dropped as a result of an inspection which found they did not meet the definition of Store per the ordinance.  
2. All covered stores were inspected once by the end of FY 13-14. Inspections are greater than regulated parties per note number 1.  
3. Enforcement actions only occur for distributing single use non-reusable bags, or not charging or not itemizing the charge on the customer receipt.  
4. 207 Stores will be re-inspected in FY 14-15 using MRO inspection resources.

**Enforcement Challenges and Lessons Learned**

The biggest lesson learned is the unintended consequence of some stores migrating to ‘thicker plastic’ bags which may or may not meet the strict definition of reusable in the ordinance. A second lesson is that the ordinance relies on a definition of reusable bag which can only be determined by laboratory testing and therefore it can be costly to engage in an enforcement action. In addition, the lab tests the Authority has conducted have had mixed results with some bags passing and seemingly identical bags failing. The factors which dictate pass/fail sometimes are as minor as which batch of resin was used or other factors of manufacturing which cannot be anticipated or tested for.

There are many vendors and varieties of thicker plastic bags and issuing citations against those that fail testing would not address the entire problem. It is most often the small corner market that is buying bags by the case who would suffer from a more deliberate enforcement effort. They are buying bags which are being marketed to them as meeting the requirements of the ordinance, and some do and some don’t. The ordinance does not apply to manufactures and distributors where enforcement could affect more of a change. To enforce based on the strict definition in the ordinance would require a significant increase in the testing budget of the project. Laboratory test results would be the evidence to take enforcement action which would hold up to challenge and to show plastic bags did not meet the reusable standard in the ordinance. In the meantime, we point stores to the website which has a list of compliant bags which are available and have been tested. We call this the ‘safe harbor’ list of bags.

The Authority Board will be considering the merits of expanding the ordinance to all retail stores and possibly include restaurants. As proposed by staff an expansion of the project would necessitate a change in the enforcement approach from a routine inspection program to a complaint-based program. Under a complaint-based approach, once a complaint is received the enforcement staff will need to conduct an inspection to verify the complaint and determine

if a violation has occurred. The process for enforcing against violations would conform to the General Enforcement Ordinance adopted by the Authority Board in 2013 and the Reusable Bag Ordinance. As with the current approach resources will need to be dedicated to maintaining the administrative process, but we expect that need to be smaller under the new approach.

### **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 phrase 'disposed tons' is a term of art created by the CA legislature in 1995 when they created a category of wastes deposited in landfills but not considered as disposed (so-called "beneficial reuse," which includes "alternative daily cover.")]

The Authority Board adopted the Facility Fee Collection 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 litigation. In 2009, the Board expanded the coverage of the fee to all waste (disposed and other) originating in Alameda County and deposited in landfills anywhere in California. This expansion in the coverage of the fee was done to create a more equitable distribution of fee burden across types of waste and landfill locations. However, the fee on "other waste" (contaminated soils, biosolids, auto shredder fluff, and other wastes categorized as beneficially reused by the landfill operator) was sunset as of January 1, 2013 as part of agreements with the two companies that own landfills in County (Waste Management and Republic Services) in exchange for investments in diversion facilities and assistance in designing a more effective fee system.

Collecting the fees on waste exported from the County continues to be challenging. For the most part, once a hauler has been identified and the obligations of the ordinance are made know to them, the hauler generally complies. In FY 2014-15 Authority Staff collected \$273,449 in out of county fees. That figure is less than what was collected in FY 13-14. The fee is enforced in arrears when non-payment occurs. FY 14-15 saw decline in collections as less waste went out of county, or went to landfills which shield the haulers from discovery of waste being disposed.

In FY 14-15 the Facility Fee enforcement team introduced an on-line fee payment program to facilitate a more user friendly and paperless reporting and payment process. The platform is a web-based program which allows regulated entities to register, report and remit the Facility Fee payments on line. The program, MyGov, is widely used in city building departments for project permitting and inspection. Those same features have been customized to track Facility Fee payments and enforcement actions.

To date, the only appeal of a Facility Fee citation occurred in FY 13-14. The amount of the citation was for \$70,983 of which \$66,583 was Facility Fees and the remainder was the fine for

non-payment. The regulated party challenged several aspects of the citation including our authority to issue an administrative citation, the regulated party's obligation under the ordinance, and the administrative process. The appeal process called for a review in front of an appeal hearing officer, arranged by Pat Cabrera in her role as hearing administrator (separate by policy from the ED's role as Enforcement Official), and was held at the Authority offices. Brian Mathews, supported by Authority Counsel, and Alameda County Sheriff's Office contract Investigator Dean Stavert, represented the Authority at the hearing. The regulated party was represented by an attorney who strongly made the case for dismissal. The appeal hearing officer upheld the citation against the regulated party, who then exercised their right under the appeal process to request Superior Court review of the citation. Authority Counsel was then placed in a leadership role for the collection process. Before the calendared hearing was to occur, however, the regulated party sought to settle. The settlement we agreed to was for the full amount of the citation (fee plus fine).

Although the appeal process was new to us, and resource intensive, it was a positive experience overall that validated our enforcement policies and procedures. One lesson learned from the process resulted in a minor modification to future citation language.

Challenges continue for Facility Fee enforcement. To collect fees from fee evaders, solid evidence is required. Obtaining such evidence is a significant work effort, and there are limitations to how effective our fee enforcement can be under current conditions. Options to strengthen our position include statewide legislation, local legislation, or legal actions to obtain information under current laws. These options have been discussed with the Board previously, and we will continue to consult with the Board as we work to more effectively collect fees in the future. Note also that reducing fee evasion is not just a revenue issue, it is also essential to be fair to those who do pay fees.

One very positive effort this year is our work with State Assemblyman Gordon (San Mateo County), CalRecycle, other local government agencies, and the industry, to develop language in Assembly Bill 901 that would significantly improve the data available to local government from disposal facilities for fee collection purposes, and CalRecycle's legal authority to enforce the requirements of the DRS. We are hearing that the legislation is likely to pass.

#### **RECOMMENDATION**

This report is for information only.