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CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Dan Kalb
Councilmember - District 1
e-mail: DKalb@oaklandnet.com

(510) 238-3266
FAX (510) 238-6910
TDD (510) 839-6451

To: Members, Oakland City Council
From: Councilmember Dan Kalb 
RE: StopWaste Household Hazardous Waste Services and Proposed Annual Fee
City Council Meeting of April 22nd - Agenda item #11

Attached is background information on the Alameda County Waste Management Authority's (StopWaste) Household Hazardous Waste collection program and a proposed \$9.55 annual fee to enable effective expansion of this service for residents in Oakland and throughout Alameda County.

Certain common household products can be toxic or otherwise dangerous to human health, pets and our local environment. It is important, both to comply with the law and as a common sense protection, to dispose of these item properly. As our City's representative to the StopWaste Board of Directors, I am seeking your input on this matter. My recommendation is to vote to approve this modest \$9.55 annual fee in order to reduce the volume of hazardous waste that is disposed of in an improper manner.

Gary Wolff, Ph.D., the StopWaste executive director, will make a brief presentation at our Council meeting and be available to answer questions.



March 20, 2014

TO: Waste Management Authority Board

FROM: Gary Wolff, Executive Director

SUBJECT: Household Hazardous Waste Services and Fee Ordinance

The decisions before the Board

The decision before the Board today is whether to adopt an ordinance that imposes a fee for continued operation and expansion of the countywide household hazardous waste program (Attachment A). But if the fee is to be implemented, there are at least three decisions by the Board, followed by an action by the Executive Director.

To support sound decision-making, and given the lengthy history of discussion of this issue with the Board (Attachment B), this memorandum provides a summary of the relevant information. The memo also includes many details and supporting documents in attachments. The number of protests against the fee will be reported to the Board after the close of the public hearing. Staff will not know that number in advance.

As stated, the first decision is whether to adopt the draft fee ordinance.

The second decision is whether to approve a final Fee Collection Report. The draft Fee Collection Report (available for review at our front desk) is a list of parcels and the fee that would apply to each parcel if the number of households in the list for each parcel is correct. However, the public process we are in at present allows parcel owners to inform us that the number of households on their parcel is incorrect, so the fee that would apply is different than shown in the draft report. The Board will be asked to approve a final Fee Collection Report after the protest period is over and we have corrected inaccuracies in the draft Report. The Fee Collection Report can also be used to describe alternate sources of funds with which to pay the fee; for example, if there were a legally appropriate source of funds to reduce the fee for low-income owners of residences (e.g., general tax revenue or franchise fee revenue in a member agency), the specific residences to receive this assistance, and the specific source of funds, can be specified in the Fee Collection Report.

The third decision is whether to approve amended Memoranda of Understanding (MOUs) with the County and the City of Fremont for operation of the HHW facilities they control.

The second and third decisions must be completed no later than the July WMA meeting if the fee action is to be implemented this year. The fee ordinance requires that the amended MOUs be finalized before implementation. In addition, the Executive Director cannot transmit instructions to the County Assessor's office about collection of the fee (by approximately August 10th) unless the final Fee Collection Report has been approved by the Board before that date.

Some historical information about the countywide HHW Program

The current countywide household hazardous waste (HHW) program began in the early 1990s in response to state law that famously required 50% 'diversion from landfill' of general municipal waste by the year 2000 (AB939: the Integrated Waste Management Act of 1989). Each of the 14 Cities in Alameda County, and the County, are obligated to plan for safe collection, recycling, treatment, and disposal of HHW. Section 25218.1(e) of the Health and Safety Code defines HHW as "hazardous waste generated incidental to owning or maintaining a place of residence."

The 14 Cities and the County (in consultation with the two sanitary districts that operate in the unincorporated part of the County) decided that a countywide system of drop-off facilities would be more cost-efficient than separate programs by each government entity. The system was funded from the beginning with a fee per ton (currently \$2.15) of disposed (landfilled) waste. In some years the fee generated more revenue than was required to fund operations and a temporary surplus accumulated in an HHW trust fund maintained by the County. In more recent years the fee has been inadequate to pay for on-going operations and the trust fund balance has been reduced. The recent imbalance is primarily because disposed tons have been declining as recycling increases. The financial history and operating statistics for the program as of April 2013 are summarized in Attachment C. Like recycling, there has been a steady upward trend in program use for more than two decades, as public norms and behavior have changed.

A productivity analysis was conducted in February 2012 to identify possible ways to cut operating costs (Attachment D). Some efficiency improvements were identified and implemented. We subsequently thoroughly investigated the possibility of additional revenue from manufacturer stewardship programs (like PaintCare) that include end-of-product-life management costs in the price of the products covered by the stewardship program, or by state or local advance disposal fees that impose end-of-product-life management costs as a fee at the point of purchase for those products. Both are ideal long-term solutions, but neither is practical as a complete solution today (see Attachment E). These solutions, however, have been integrated with the fee ordinance such that increased revenue from such sources in the future will automatically decrease the annual HHW fee in subsequent fiscal years.

Current HHW Program Services

The countywide HHW program currently operates four drop-off facilities, collects from around 30 satellite locations, and 'live answers' around 30,000 phone inquiries per year. Three of the

facilities (Oakland, Hayward, and Livermore) are on land owned by the County and are operated by County staff. One facility is part of the privately owned and operated Fremont Transfer Station; but that facility is controlled in substantial measure by the City of Fremont under long-term agreements for operation of the Station.

The Oakland, Hayward, and Livermore facilities are open to Alameda County households 4 hours per day every week on Thursday, Friday, and Saturday in Oakland and on those same days twice per month in Hayward and Livermore (excluding Holidays). The Fremont facility is open to households four days a week (Wed-Sat) and for more hours because the City of Fremont has chosen to pay for these additional hours of service via their garbage rates.

The facilities are also open to small businesses (conditionally exempt small quantity generators, or CESQGs) on other days and times during the week. It is not legal to service CESQGs and residents during the same working hours. At present, CESQGs must pay to use the facilities. The typical unloading time for a customer is around 3 minutes, in order to make the service as convenient as possible. Facility workers have many other duties, however, when cars or businesses are not dropping off HHW. These include testing and sorting dropped off materials into approximately 35 categories, and properly labeling, handling or bulking the materials for reuse, recycling, or disposal. All of the facilities operate a 'swap area' where reusable HHW is given away. About 45,000 households were served in FY2012-13, and about 1443 tons of HHW were managed in that year. By comparison, about 3400 tons were landfilled in 2008.

The proposed HHW service and fee

The proposal before the Board now was developed through an analysis of service level and funding options that was first presented comprehensively in April 2013, and that is described in more detail below. The current proposal involves the following significant changes (additional details are available in Attachment F, Table 1):

- expansion of hours and days open to residents (a 1/3 increase in days open per month; an additional 1.5 hours per day on Wed/Th/Friday, and an additional 3 hours per day on Saturdays, at the county-operated facilities),
- 12 one-day drop-off events held around the County to make drop-off more convenient,
- an outreach campaign targeted at neighborhoods or communities that use the facilities less in order to equalize usage over time to the extent possible, and
- a point-of-purchase outreach campaign to encourage owners of residences and their tenants to 'buy what they need, use what they buy, and properly manage the rest.' We hope and intend that the point of purchase campaign, along with legislative advocacy, will make renewal of this fee at the end of its 10 year life unnecessary.
- Waiver of the CESQG fee that now applies to owners of residential rental property.
- Adding electronic waste to the materials accepted at the County operated facilities

- Together, these changes are expected to increase the number of households served per year from about 45,000 to about 78,000, and to increase tons of HHW managed per year from about 1443 to about 2500.

The fee of \$9.55 per household per year will sunset (end) in 10 years, and will be reduced automatically starting in year 3 if revenue from the \$2.15 per ton fee or cost offsets due to manufacturer stewardship or advance disposal fees (e.g., PaintCare) are higher than specific dollar figures by year listed in the ordinance. Given that PaintCare is a new program, it seems reasonable that the fee will in fact be lower than \$9.55 per household in its third or later years. This innovative automatic fee reduction mechanism is proposed because legislators asked us directly, when we sponsored the Corbett household battery stewardship bill in the California legislature several years ago, whether adopting the bill would reduce costs to fee- or rate-payers in Alameda County. We said it would reduce future costs, but could not demonstrate a specific and firm benefit to fee- or rate-payers. The automatic reduction mechanism in this ordinance makes clear to legislators that any bill that actually reduces the cost of handling HHW locally will directly reduce the financial burden on fee-payers in Alameda County.

The Legal Authority for the Fee

Attachment G is a memo by our General Counsel describing our legal authority to adopt this fee. In short, the Health and Safety Code explicitly permits cities and counties and sanitary districts to adopt fees to pay for their sanitation systems, including garbage and refuse collection, and to collect those fees through the property tax rolls. This power is shared by all our member agencies, and under our Joint Powers Agreement that power is granted to our governing Board. HHW is a component of garbage and refuse, as demonstrated in numerous waste characterization studies in our County and other parts of California. Proposition 218, a California Constitutional Amendment adopted in 1997, imposed additional decision-making process requirements for charges associated with refuse collection, which we have followed. Proposition 26, another California Constitutional Amendment, adopted in 2010, expands the definition of special taxes by narrowing the definition of local government fees. But this fee satisfies at least the benefits conferred and the 218 process exceptions to the definition of a special tax in Proposition 26, and is therefore a fee

The Austerity Option

If the proposed fee is not adopted, the existing countywide HHW Program will need to reduce services to 'live within' the existing and projected revenue stream. In order to continue to operate the HHW Program through the year 2020, cuts in facility hours of operation will be required. The Austerity Option described in Attachment F describes the reduced availability of HHW services that will likely occur if the proposed fee is not adopted.

The Austerity Option, in summary, involves the following significant changes from the existing Program (additional details are available in Attachment F, Table 1):

- About a 40% reduction in days and hours of operation for both residents and small businesses (CESQGs) at the Oakland, Hayward, and Livermore facilities.
 - A reduction in households served from about 45,000 to about 20,000.
 - A reduction in HHW managed per year from about 1443 tons to about 640 tons.
 - Exact reductions at the Fremont facility are unknown, but very likely per Fremont staff.
- The City will need to decide how to respond to reduced revenue from the countywide program, if the Austerity Option is implemented. They currently supplement funding from the countywide program with additional funding from their garbage rate base.

The Rental Housing Association of Southern Alameda County

Mr. Tim May of the Rental Housing Association (RHA) of Southern Alameda County, and some other speakers, asked the Board at its February 26th meeting to reduce the fee for multi-family households to \$5.00 per year (their request and concerns are included in Attachment H). They believe that households of different sizes, or in multi-family buildings rather than single family buildings, produce different quantities of HHW. They did not present evidence to support their belief, but questioned our 2008 Waste Characterization Study (WCS) and a similar 2009 statewide WCS study by CalRecycle, both of which found that multi-family and single-family households disposed about the same amount of HHW.

The RHA expressed three specific concerns. First, the definition of multi-family waste in the study would allow up to 20% of the truckload to be commercial, rather than multi-family waste. We investigated this concern, and found that the actual samples taken in 1995, 2000, and 2008, according to the site supervisor for all three studies, were 'pure' multi-family waste (email from Matt Southworth in attachment H). The site supervisor reported that the multi-family waste was visually separable from commercial waste when each truckload was dumped, and therefore 'pure' multi-family waste samples were easy to obtain. The prime consultant for the 2008 study also confirmed that multi-family samples did not contain commercial waste (Memorandum from Leidos Engineering in Attachment H).

Second and third, the RHA expressed concern about the statistical methods used in the analysis, and about the practice of including 2, 3, and 4 residential-unit buildings in the single family category. Attachment H is a reply to the specific concerns expressed, written by the people who performed the statistical analysis in the 2008 study. They report that they followed well established methods, including standards of the American Society of Testing Materials (ASTM) and written guidance from CalRecycle about WCS. They conclude that it is unlikely that the amount of HHW differs between single and multi-family residences.

The RHA said that Danville and the South Bayside Waste Management Authority (SBWMA; covering eight governmental jurisdictions in southern San Mateo County) charge multi-family units approximately half of what they charge single family units. The reference to Danville was

apparently an error. The HHW facility that serves Danville is located in Martinez and is managed by the Central Contra Costa Sanitary District (CCCSD). CCCSD staff report that Danville residents pay about \$14.54 per year for the HHW facility as part of their \$405 per year per residential unit sewer fee. The sewer fee is collected through the property tax rolls in Danville and most of the CCCSD service area. The Proposition 218 protest process is used when there are changes in the sewer fee, including the HHW portion of the fee, which is not itemized.

San Ramon and the SBWMA do charge multi-family residences about half as much as single family residences for on-call HHW service.¹ On-call service involves collection of HHW at the residential curb by appointment, and is provided by a division of Waste Management. *Because the cost of these services is recovered through refuse rate charges made by the private franchised hauler, there is more legal flexibility about how costs are allocated across customer classes than is the case for our fee proposal.* It is worth noting that the on-call service is in addition to, not instead of, drop-off HHW facilities, which are paid for in San Mateo County through a per ton landfill fee, and in San Ramon through a combination of garbage and sewer rates.

When asked if they used WCS data as the basis for the differential fees for on-call service, both San Ramon and SBWMA staff said no. San Ramon staff said they are not aware of any WCS for San Ramon or Contra Costa County. SBWMA staff sent us two recent WCS; a 2012 study of single family residential and a 2013 study of multi-family residential. Both had a limited number of samples (60 in each study) as compared with our 2008 study (333 single family samples and 202 multi-family samples). Nonetheless, the SBWMA information is consistent with our finding of no difference between the sectors, or that the multi-family sector may produce more HHW (including e-waste). The 60 random single family samples had a mean of 0.9% HHW (including e-waste); the 30 multi-family samples that were random had a mean of 2.6% HHW (including e-waste). The large difference in single and multi-family results may be due to the small number of samples. There were also 30 not-so-random SBWMA multi-family samples taken in order to see if there were any patterns of waste composition that depend on the number of units in the complex or the level of recycling (high/low). With respect to HHW, there was no clear pattern. Although the sample number is small and the samples were not random, the study does not support the 'common sense' assertion of the RHA that larger buildings produce less HHW.

¹ Payments to the contractor in 2013 were, in San Ramon, \$0.25 per multi-family household per month and \$0.59 per single family household per month. Single family rates are reported to increase to \$0.64 per household per month in 2014, \$0.69 per household per month in 2015, and \$0.74 per household per month in 2016. Multi-family rates are reported to increase by a refuse rate index every January. San Ramon staff did not have participation data to share, but as noted in the HFH Report in Attachment D (beginning at page 15), participation in on-call programs is a significant determinant of cost. Payments in the SBWMA are \$0.20 per multi-family household per month and \$0.45 per single family household per month. About 5% of households reportedly use the service each year. They expect rates to go up on January 1, 2015.

The preponderance of evidence is that granting the request from the Rental Housing Association would be unfair to owners of single-family residences. And this is not surprising. Consider the many factors that could affect the quantity of HHW produced at any residence over time other than whether the building is multi-family or single family: size of the building, age of the building, type of construction, maintenance practices (while occupied or while vacant, etc.), habits of the residents, number of residents, size of the residence, level of recycling, owner-occupied versus rental,² and so forth.

In contrast, the preponderance of evidence supports an equal fee per household. This is because the primary benefit of the fee is that owners of residences have an equal opportunity to dispose of HHW in a safe and legal manner. That is, all households have equal 'entitlement' to use the facilities to get rid of as much HHW as they produce, in practice.³ Our studies (1995, 2000, 2008) have consistently shown HHW (including electronic waste) present in residential garbage and refuse in the range of 0.6% to 1.0%. Other studies (e.g., CalRecycle, 2009; SBWMA 2012 and 2013) find similar or higher percentages (0.8% to 2.5%). Relevant tables from the studies are provided in Attachment I.

Finally, the RHA suggests some ways in which we might replace the \$700,000 or so per year of reduced revenue that would result from their proposal, but none of the suggestions is feasible. First, they suggest that we require those who haul residential waste out of county to pay the per-ton HHW fee. That is already the case for franchised haulers. A new fee action that would be difficult to enforce would be required to impose the HHW per ton fee on non-franchised haulers leaving the County. That might be a viable action to take, but as we've discussed in the context of fee evasion issues, a new ordinance to address hauling to out-of-county landfills will take at a year or more to develop and implement. Second, the RHA suggests that we not expand days of service at the HHW facilities because they believe the facilities are "already underutilized." But the productivity analysis in Attachment C found that the facilities are operated efficiently now. If we want to increase convenience and therefore support the historic upward trend in facility use -- an important policy direction the Board previously made -- we will need to expand to manage more HHW. Third, the RHA suggests we somehow negotiate with haulers so that the haulers provide the additional \$700,000 per year. Apart from the fact that we don't have any direct

² We were unable to find data on the percentages of single, and multi-family, residences in Alameda County that are rented versus owner-occupied, as requested by one Board member on February 26th. However, around 45% of total residences in Alameda County are rented, per the US Census. About 30% of total residences are in multi-family buildings, so although the rental and multi-family categories overlap, there are many rented single family residences and many owner-occupied multi-family residences.

³ There are some limitations specified in law, but they are so large as to not limit use in practice. Residents can drop-off no more than 15 gallons or 125 pounds of HHW in any one trip to the facilities, but can make as many trips to the facilities as they wish. Conditionally Exempt Small Quantity Generators (CESQGs, the equivalent of small businesses in the jargon of the HHW regulations) can drop-off no more than 220 pounds per month plus an unlimited quantity of latex paint, household batteries, and fluorescent lamps. Under the fee proposal, CESQGs that are owners of residences will be able to register as such, and pay no fees for use of the HHW Program other than the \$9.55 per year.

contract relationships with haulers, and our member agencies prefer to negotiate such contracts themselves, there is ample evidence from rate reviews and competitive bids in recent years that haulers do not have \$700,000 of 'excess revenue' to redirect into support of the countywide HHW Program.

Other Service Options Previously Evaluated

Some people have asked why only two options appear in the HFH Consultants report on options (Attachment F). That is because we previously evaluated other options, and a notification and protest process involving multiple options would be extremely confusing. The Board narrowed the options down to expansion or austerity through the series of meetings listed in Attachment B, before initiating the notification and protest process.

Two discarded options, however, are worthy of a short summary. First, the status quo option was discarded because it could not accommodate the historic upward trend of facility use. Many Board members seemed to believe that it would not be worthwhile to go through a funding decision and implementation process that would not provide adequate funding just a few years from now. In addition, many Board members said it was essential to increase the convenience of the system, which means the status quo is not acceptable.

Second, on-call service (as in San Ramon and the SBWMA) was considered, but rejected for public funding. This is because experience elsewhere indicates that on-call service does not fully replace permanent HHW facilities, and that the full comparable cost of on-call service is likely higher per household served than drop-off service (see pages 15-20 of Attachment C). The provider of on-call services in San Ramon and the SBWMA told us that they would not collect on-call and then deliver to our HHW facilities; that is not their business model. Consequently, we are pursuing an approach that secures funding for the permanent HHW drop-off facilities, but that initially reaches out to residents through means other than on-call service (12 one-day events per year, and point of purchase information). And if appropriate, we can add on-call service in future years as a fee-for-service paid by those who want it. We could do that by contracting with one or more companies that will collect on-call and deliver to the four permanent facilities. The fee-for-service would pay for transportation only; that is, the drop-off facilities would not charge for materials collected and delivered through the on-call service.

In addition, the issues of Sunday operation of the four HHW facilities, and weekly versus every other week service in Hayward and Livermore, were discussed extensively. The landfills and transfer stations in our County are not open on Sundays, with the exception of the Pleasanton Garbage Service Transfer Station. We found that Los Angeles operates its HHW drop-off centers on Saturdays and Sundays, and by analyzing their data compared with ours, we found that the number of users of the service on Sundays is well less than on Saturdays and is comparable to weekday use in our County. Consequently, the Board concluded that having 12 one-day drop-off events per year at locations around the County, primarily on Sundays, and

having every week Friday and Saturday service in Livermore and Hayward (along with every week Wednesday through Sunday service in Oakland and Fremont) would maximize convenience for customers. The one-day drop-off events may cost a modest amount more than the permanent facilities, per household served, but the additional convenience was deemed significant enough to justify a small additional cost. On the other hand, there may be an opportunity to save some money, or provide more one-day drop-off events, by combining some of the 12 new full-service HHW one-day drop-off events with one-day drop-off events held now and paid for by some of our member agencies for a limited number of HHW categories.

Other Funding Mechanisms Previously Evaluated

We also previously evaluated a variety of funding mechanisms, summarized as follows.

Increasing the per-ton fee was considered an inferior funding source because landfilled waste is declining in our county. That is good: less waste has many benefits for the community. But the decline also means that revenue from this source would decline. That in turn means the fee would have to either be much larger at first, to compensate for lower revenue later, or the fee would need to be adjusted upward every few years as tons decline. Neither structure would provide stability in fees so that fee payers can plan their expenditures and budgets. In addition, residential waste is not tracked separately every year, at present, so there would be additional administrative costs under this funding option.

Imposing a fee through garbage and refuse bills was also an option. There are at least 16 garbage and refuse rate systems in our county, administered by 16 government entities and at least four private contractors. In three cases, garbage and refuse rates are already collected through the property tax rolls. Although this approach is feasible, it is also much more complicated than our proposal. Collecting a uniform fee through the property tax rolls countywide has the lowest administrative cost of any option (less than 2% of gross revenue), while collection through the garbage and refuse billing systems would likely cost between 3% and 10% of gross revenue.

Some member agency staff suggested that we assign a proportional share of the countywide expense to each member agency so that they could determine how best to pay that share. That option was deemed too burdensome and expensive for member agencies.

As noted on the second page of the memo, we also thoroughly investigated the possibility of additional revenue from manufacturer stewardship programs (like PaintCare) that include end-of-product-life management costs in the price of the products covered by the stewardship program, or by state or local advance disposal fees that impose end-of-product-life management costs as a fee at the point of purchase for those products. Both are ideal long-term solutions, and the proposed fee ordinance lowers the fee if these funding sources grow as we hope they will, but neither is practical as a complete solution today.

Finally, with respect to funding mechanisms for HHW collection, some parties asked if the countywide program and HHW collection through franchise agreements of some materials (e.g., household batteries and motor oil) involve 'paying twice' for services. The answer is no. For example, most motor oil from residences is collected curbside, or at oil change centers. The drop-off centers don't get much motor oil. Oil that is collected curbside is paid for in the rate; oil that is dropped off is paid for in the HHW fee, but in no instance does collection of a gallon of oil get charged twice. It is also relevant that the HHW drop-off centers take the full range of HHW materials, which means that the centers often receive materials such as motor oil or household batteries from customers in jurisdictions that offer that service through their franchisee at the curb, but because the customer wants to get rid of all their HHW at the same time, it is more convenient for them to bring it all to the HHW drop-off center.

Public Communications and Outreach

This decision process began as early as July 2010, when the Boards adopted a strategic workplan for the year 2020 that identified advance disposal fees or extended producer responsibility legislation and stewardship plans as top priorities for possible future funding of the countywide HHW system. We eventually concluded that these approaches are not immediately feasible in Alameda County, but might be able to replace or substantially reduce traditional funding over enough time (e.g., 10 years).

In April 2013, we began to discuss other options with the WMA Board and Recycling Board (in its role as a committee of the WMA). HHW was a topic of discussion in 2013 at the Brown Act noticed Board and committee meetings listed in Attachment B. Beginning in September 2013, we began a public outreach campaign to solicit public input on the preferred approach of the Board at that time. The effort included (not necessarily in chronological order):

- A dedicated email address for inquiries about our "HHW Service and Fee Proposal"
- A web page for information on the proposal, updated frequently
- Four community meetings in October (video of Livermore meeting posted to website)
- Special outreach to rental property associations (emails and phone calls)
- First and second mailed notifications to owners of residences
- Newspaper advertisements
- City Council presentations or information items
- Responses to email and phone inquiries
- Responses to some letters to the editor

Since we began to discuss the Board's preferred option with the public in October 2013, we have received and replied to about 400 contacts from the public (around 80 email strings, 275 phone calls, and 45 walk-ins; with some multiple phone contacts by the same person). This memo addresses the issues raised in the comments received. In a few cases, a commenter asked that

their comments be shared with the Board and the public. Attachment J contains such comments, along with a recent newspaper article that has not yet been provided to the Board.

Some people commented through these venues or at the February 26 meeting that they did not receive the first mailed notification send in early January, or that the notification contained the wrong number of residential units on their property. As stated at the January WMA meeting, the mailhouse we used 'de-duplicated' the mailing list without our consent, causing some of the January mailing to be sent less than 45 days prior to the February 26 meeting. That is why the Board directed us in January to extend the protest period until March 26 and to mail again. We mailed to the full list of record owners on February 5, 2013.

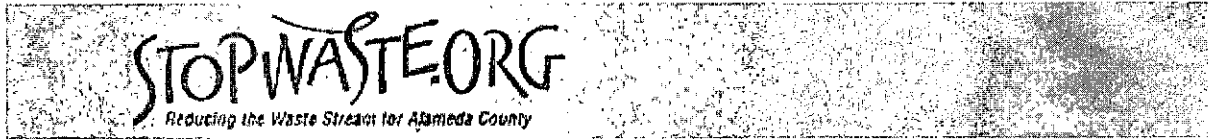
With respect to the number of units, we are obligated to give record owners a chance to tell us that the number of units is incorrect, and to change the Fee Collection Report accordingly if their correction appears to be accurate. We will do that, after the protests have been tallied and reported to the Board, if the Board adopts the fee ordinance.

With respect to anyone who says they did not receive the first or second mailed notices, we can only mail the notifications; we cannot ensure they are delivered. This is what the Health and Safety Code and Proposition 218 require. We've also, of course, gone beyond the legal requirements by implementing customer service practices to assist people who may have not received mailings.

For example, we posted a generic 'tear-off' form for filing a written protest on our website shortly after the first mailing was made, and we have provided that form or explained to people what must be included in a letter to constitute a valid protest. In cases where the name or address of the record owner is reported to us as inaccurate, we've recorded that information so that we can amend the Fee Collection Report before it is finalized. However, the law requires that changes of name and address must be initiated by the record owner themselves directly with the assessor's office. We cannot make those changes ourselves, nor can the assessor's office without a direct request from the record owner. We have been and will continue to help record owners make changes of name or address requests to the assessor's office.

Finally, some comments objected to the protest process procedure as not being a full election, or as being biased in favor of adoption of the fee, or for various other reasons (they had to place a stamp on the pre-addressed protest form). Those criticisms fail to acknowledge that the protest procedure was adopted by a statewide voter initiative (Prop 218) amending the California Constitution. Although some people would prefer that the Constitution be different than it is, we are following the law as determined by the people as a whole, and in many respects went beyond the minimum requirements of the law in order to be as transparent as possible.

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FAQ on HHW Program Fee

Why is this fee needed?

Revenue from the fee will be used to support the countywide household hazardous waste program, which provides safe, legal, environmentally sound collection and disposal services for residential household hazardous waste such as paint, solvents and pesticides. The fee will support continuation of existing and expansion of services to all residents of Alameda County. Without these services, most household hazardous waste will be illegally and improperly disposed of (e.g., abandoned on streets, poured down drains, placed in garbage or recycling carts) Improper disposal is often dangerous, litters our streets and waterways, and can detract from residential property values.

How are these programs paid for now, and what happens if the proposed fee is not approved?

The HHW collection program is currently paid for through a \$2.15 per ton fee on municipal solid waste disposed in landfills. However, the fee has not changed since 2000, and the program either needs to be cut back dramatically or provided with additional funding. A report by HFH Consultants comparing services with and without approval of the fee, is available [here](#), and a summary of these changes is available [here](#) (see page 5).

How much is the proposed fee, and who pays it?

The proposed annual fee is \$9.55 per household (such as a single-family home, apartment or condominium) collected through the property tax roll. There are approximately 371,400 single-family homes and 159,700 units in multi-family buildings in Alameda County.

The fee will generate approximately \$5 million per year in funding for household hazardous waste collection services. The fee can be used only for the Alameda County Household Hazardous Waste Collection and Disposal Program.

Will the fee increase, and how long will it be in effect?

The fee does NOT go up with inflation or for any other reason. The fee will be reduced if program revenues or cost offsets from other sources are greater than projected. The fee will be applied for 10 years beginning July 1, 2014, and ending June 30, 2024.

How have property owners been involved in the review process for the proposed fee?

In addition to a number of publicly noticed ACWMA board and committee meetings starting in April 2013, a series of community meetings on the proposed fee were held in Livermore, Castro Valley, Berkeley and Fremont in October 2013. ACWMA staff has made presentations before several city councils, spoken directly with the residential rental property owners associations in Alameda County, and are available to answer questions about the services and fee. All residential property owners in the county were notified by mail of the fee proposal and their opportunity for input.

What is the process for protesting the fee?

The protest period ended at the end of the public hearing held on the issue on March 26, 2014. Property owners were able to object to adoption of this fee by signing and mailing back the response card that was mailed to them. A copy of the ACWMA resolution describing the protest process is available [here](#).

The ACWMA will consider adopting the fee at a public meeting on April 23, 2014. The meeting will take place at 3:00 p.m. at 1537 Webster St., Oakland.

Why is the fee the same for single-family homes and apartments?

Waste characterization studies for Alameda County and the state of California as a whole found that residential hazardous waste is about the same percentage of residential refuse regardless of whether it was generated at a single-family or multi-family residential unit. Even vacant residential properties require hazardous waste collection and disposal in connection with property improvements, maintenance or landscaping. Note that residential rental property owners may use the services funded with this fee at no additional charge if they register as small quantity generators (at present, all small quantity generators are required to pay for household hazardous waste services).

Why not fund HHW services and facilities with fees on the products when they are sold?

This approach is called Extended Producer Responsibility (EPR) when the manufacturer of the product includes in its price enough money to fund a stewardship program that covers the costs of collection and disposal of HHW. Or sometimes an Advance Disposal Fee (ADF) is charged by the store when the product is purchased, and that money is used to fund collection and disposal of HHW. Both are great solutions that we support and are working toward. We supported creation of the California PaintCare Program, a stewardship program run by paint manufacturers. And we sponsored Senator Corbett's household battery bill for two years, which would have, if adopted, created a stewardship program paid for as part of the price of household batteries. EPR and ADF policies are becoming more common. That is why our fee proposal automatically reduces the fee for households as cost offsets to our countywide HHW program from any EPR or ADF policy grow over time (for example, PaintCare is currently saving our program over \$250,000 per year). That is also why our fee proposal includes a sunset (end) date of June 30, 2024. We will be working to greatly expand EPR or ADFs in the next decade, with the intention that property owners will not need to pay our proposed fee after June 30, 2024.

Why not fund HHW services and facilities by a fee on each ton of municipal waste landfilled?

Landfilled waste is declining in our county, and that is good. Less waste has many benefits for the community. But the decline also means that revenue from this source would decline. That in turn means the fee would have to either be much larger at first, to compensate for lower revenue later, or the fee would need to be adjusted upward every few years as tons decline. Neither structure would provide stability in fees so that fee payors can plan their expenditures and budgets. In addition, residential waste is not tracked separately every year, at present, so there would be additional administrative costs under this funding option.

Why not fund HHW services and facilities based on the size of garbage or refuse containers?

We investigated this option in detail. There are at least 16 garbage and refuse rate systems in our county, administered by 16 government entities and at least four private contractors. In three cases, garbage and refuse rates are already collected through the property tax rolls. Although this approach is feasible, it is

also much more complicated than our proposal. Collecting a uniform fee through the property tax rolls countywide has the lowest administrative cost of any option (less than 2% of gross revenue), while collection through the garbage and refuse billing systems would likely cost between 3% and 10% of gross revenue. In addition, the quantity of HHW generated by a customer is not necessarily proportional to the amount of garbage and refuse they produce.

Who is the Alameda County Waste Management Authority?

The Alameda County Waste Management Authority (ACWMA) is a public agency established in 1976 to provide waste management planning and programs in Alameda County. Its 17-member governing board includes elected representatives from the County Board of Supervisors, all 14 cities in the county, and two sanitary districts that serve primarily unincorporated areas. The County of Alameda and the City of Fremont operate the HHW facilities through agreements with ACWMA. The ACWMA has the power to enact this fee pursuant to the joint powers agreement for waste management between its members.

How do I properly dispose of household hazardous waste?

[Click here](#) for more information.

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ORDINANCE 2014-__

**AN ORDINANCE ESTABLISHING A HOUSEHOLD HAZARDOUS WASTE
COLLECTION AND DISPOSAL FEE**

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

Section 1. Findings

The Authority finds that:

(a) It has been standard practices since the early 1990s for Cities and Counties in California to periodically characterize the components of garbage and refuse sent to landfill in order to facilitate planning for diverting recoverable and harmful materials from landfill disposal. Waste characterization studies for Alameda County, and the State of California overall find that household hazardous waste (HHW; see Health & Safety Code Section 25218.1 (e)) is about the same weight or percentage of residential garbage and refuse regardless of whether the dwelling unit is in a single family or multi-family residential building. Furthermore, vacant Households also require household hazardous waste collection and disposal in connection with property improvements, maintenance, or landscaping.

(b) State law precludes disposal of household hazardous waste in municipal landfills such as those serving Alameda County residents and the Alameda County Integrated Waste Management Plan calls for removing hazardous wastes from the solid waste stream for proper separate management through separate collection and other programs.

(c) In Health and Safety Code section 25218 the State legislature has found that "residential households which generate household hazardous waste and conditionally exempt small quantity generators which generate small amounts of hazardous waste in the state need an appropriate and economic means of disposing of the hazardous waste they generate" and disposal of household hazardous waste "into the solid waste stream is a threat to public health and safety and to the environment." The Health and Safety Code further provides for the establishment of "household hazardous waste collection facilities", which are defined in Section 25218.1 (f) as facilities operated by public agencies or their contractors for the purpose of collecting, handling, treating, storing, recycling, or disposing of household hazardous waste and hazardous waste from conditionally exempt small quantity generators.

(d) The Alameda County Environmental Health Department, with policy direction and funding provided by the Waste Management Authority, operates three permanent Household Hazardous Waste (HHW) collection facilities located in the northern, southern, and eastern sections of the County and BLT Recycling, under contract with the City of Fremont, operates a fourth HHW collection facility at the Fremont Transfer Station, partially funded by the Authority. These facilities are operated in accordance with Health & Safety Code 25218 et seq, and under two memoranda of understanding (MOUs) between the Authority and the County

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of Alameda and the Authority and the City of Fremont. These MOUs will be revised to implement this ordinance.

(e) These Household Hazardous Waste collection facilities benefit and serve Alameda County residential property owners by collecting and providing a legal, safe, place for disposal of HHW materials generated in Alameda County in compliance with the law. The services and facilities of this program may be used only by Alameda County Households. The Household Hazardous Waste Collection and Disposal Fee funds this program and may not be used for any other purpose. The program was evaluated in an October 4, 2013 memorandum from HF&H Consultants, LLC to the Alameda County Waste Management Authority which determined that the funds generated by the fee do not exceed the costs of the program services and facilities.

(f) The costs of the program's HHW collection and disposal services and facilities for Alameda County Households are offset in part by funds received or cost reductions associated with product stewardship programs implemented in accordance with State law (such as the PaintCare Product Stewardship Program established at Public Resources Code sections 48700 et seq. which reduces costs associated with collection and disposal of architectural paints and provides funds for processing those materials). These programs are expected to expand in the future and the amount of the fee will be reduced commensurate with the cost offsets or funding associated with these programs. In anticipation of full cost offset and funding from these programs in the future the fee sunsets in 2024.

(g) Article 4 of Health & Safety Code Division 5, Part 3, Chapter 6 authorizes public agencies including cities, counties, and special districts, upon a two-thirds vote of the legislative body, to prescribe and collect fees for garbage and refuse collection services and facilities on the tax roll. This ordinance prescribes a fee for collection and disposal at the four HHW facilities in Alameda County of the HHW component of garbage and refuse generated by Alameda County Households.

(h) The Authority has the power to enact this Ordinance pursuant to the Joint Exercise of Powers Agreement for Waste Management. That agreement grants the Authority all of the powers necessary to implement the Alameda County Integrated Waste Management Plan including the power to levy and collect fees and charges for programs such as HHW collection and disposal services and facilities.

(i) This Ordinance was introduced on December 18, 2013 at which time the Board set a public hearing for consideration of the Ordinance on February 26, 2014 and directed the Executive Director to prepare a report containing a description of each parcel of real property with one or more Households, the number of Households on each parcel, and the amount of the charge for each parcel computed in conformity with this Ordinance. The Board directed the Executive Director to publish and cause a notice in writing of the filing of said report and the proposal to collect the annual charge on the tax roll together with the time and place of hearing thereon, to be mailed to each person to whom any parcel or parcels of real property described in said report is listed as owner in the last equalized assessment roll available on the date said report is prepared (a "Record Owner"), at the address shown on said assessment roll or as known to the

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Executive Director. On January 22 the Board continued the protest hearing date to March 26, 2014. Notice of the new hearing date and extended protest period was published and mailed in accordance with law. This Ordinance was re-introduced with clarifying amendments on February 26, 2014.

(j) Following the protest hearing the Board considered all objections or protests to the report and this Ordinance. Protests were received from the Record Owners of (1) less than a majority of the separate parcels of property described in the report and (2) less than a majority of the Households on property described in the report. The Board approved the ordinance by a two-thirds majority or greater of the Board membership.

(k) 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, section 15308.

Section 2. Definitions

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

(e) “Fee” means the fee described in section 3 of this ordinance.

(f) “Fee Collection Report” means the annual report containing a description of each parcel of real property with one or more Households served by the Household Hazardous Waste Collection and Disposal Program, the number of Households on each parcel described, the amount of the charge for each parcel for the year, computed in conformity with this Ordinance, and whether the Fee is to be collected on the tax roll or by other means.

(g) “Household” means a residential dwelling unit (e.g., a single family home, apartment unit or condominium unit in a multi-unit building, etc.). Nothing in this Ordinance is intended to prevent an arrangement or the continuance of an existing arrangement under which payment for garbage and refuse collection and disposal service is made by residents of a household who are not the owner or owners thereof. However, any such arrangement will not affect the property owner’s obligation should such payments not be made.

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(h) "Household Hazardous Waste Collection and Disposal Program" means the Proposed System Expansion Option described in the October 4, 2013 memorandum from HF&H Consultants, LLC to the Alameda County Waste Management Authority.

(i) "Other Revenue" means the sum of (1) revenue received from the household hazardous waste fee of \$2.15 per ton pursuant to Authority Resolution No. 140 and Resolution No. 2000-03 and (2) Product Stewardship Offsets.

(j) "Product Stewardship Offset" means funds received by the Household Hazardous Waste Collection and Disposal Program or operational cost reductions at the program attributable to household hazardous waste product stewardship programs implemented in accordance with federal, state, or local laws.

(k) "Small Quantity Generator" has the same meaning as Conditionally Exempt Small Quantity Generator as defined in California Health and Safety Code Section 25218.1 as it now exists or may be amended from time to time hereafter.

Section 3. Household Hazardous Waste Collection and Disposal Fee

(a) An annual household hazardous waste collection and disposal fee of \$9.55 or such lesser amount established by the standards below shall be paid by each Household in Alameda County beginning July 1 2014 and ending June 30, 2024 in the manner set forth in this ordinance.

(b) No later than December 31 of 2015 and each year thereafter the Executive Director shall prepare a report identifying the amount of Other Revenue received by the Household Hazardous Waste Collection and Disposal Program in the prior fiscal year. If the report of Other Revenue exceeds the projected amount specified in subsection (c), the fee shall be reduced for the following fiscal year by an amount equal to the excess revenue divided by the number of Households subject to the fee in the prior fiscal year. If revenues equal or fall below that specified in subsection (c) there shall be no increase in the fee. The Fee per Household shall never be greater than \$9.55 per year.

(c) The fee is based on the following projected Other Revenue:

Fiscal Year	Projected Product Stewardship Offset	Projected Tip Fee	Total
2014-2015	\$263,225	\$1,849,000	\$2,112,225
2015-2016	\$263,225	\$1,713,550	\$1,976,775
2016-2017	\$263,225	\$1,578,100	\$1,841,325

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2017-2018	\$263,225	\$1,442,650	\$1,705,875
2018-2019	\$263,225	\$1,307,200	\$1,570,425
2019-2020	\$263,225	\$1,171,750	\$1,434,975
2020-2021	\$263,225	\$1,171,750	\$1,434,975
2021-2022	\$263,225	\$1,171,750	\$1,434,975
2022-2023	\$263,225	\$1,171,750	\$1,434,975
2023-2024	\$263,225	\$1,171,750	\$1,434,975

(d) The fee shall be used exclusively for the Household Hazardous Waste Collection and Disposal Program.

(e) As a condition of receiving payments funded by the Fee, a collection and disposal service provider (e.g., at present, the County of Alameda and the City of Fremont) must agree that no charge will be imposed on (1) residents of Alameda County Households for services included in the Household Hazardous Waste Collection and Disposal Program or (2) Small Quantity Generators who are owners of residential rental property in Alameda County for disposal of household hazardous wastes from Households in Alameda County. Any such agreement shall be in the form of a contract or memorandum of understanding (MOU) approved by the Board. The Executive Director shall not cause the fee to be collected as described in Section 4 of this ordinance until revised MOUs with the County of Alameda and the City of Fremont have taken effect.

Section 4. Administration

(a) Each year the Executive Director shall cause a Fee Collection Report to be prepared in accordance with this Ordinance and applicable law.

(b) The Fee Collection Report shall be reviewed by the Board to ascertain the accuracy of the information contained therein. A notice of the report's availability and a time and place of a public hearing on the report and the collection of such charges on the tax roll shall be published as set out in Government Code Section 6066 in a newspaper of general circulation printed and published within the County. At the conclusion of the hearing, the Board shall make its determination upon each charge and its collection on the tax roll or by other means. The determination of the Board shall be final. Upon such final determination, on or before August 10 of each year, the Executive Director shall endorse the final report with a statement that it has been finally adopted by the Board, and shall file the signed report with the County Auditor. Authority staff is hereby authorized to undertake all administrative tasks to implement collection

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of the Fee, including, but not limited to an agreement with Alameda County for collection, which may provide payment to Alameda County of its reasonable costs of collection.

(c) The Fee for the period of July 1st, to and including June 30th of each fiscal year shall be entered as a charge on the tax roll against the parcels identified in the Fee Collection Report as paying through the tax roll. The Fee shall be collected at the same time and in the same manner as ad valorem taxes and other charges as are otherwise collectible by the county. All laws applicable to the levying, collection and enforcement of ad valorem taxes shall be applicable to such charges as provided herein except as otherwise provided by law. Fees paid with the tax bill shall be deemed to have been paid by those Households located on that property/parcel.

(d) The annual Fee for any Household located on property which is not designated for collection on the tax roll in the Fee Collection Report shall be collected by the Executive Director and shall be due and payable at least once per year on a schedule to be determined by the Executive Director.

Section 5. Enforcement. The Executive Director and the County of Alameda are authorized to undertake all appropriate actions necessary to collect the Fee in the manners authorized by law.. The Executive Director may direct collection and disposal service providers to deny access to services included in the Household Hazardous Waste Collection and Disposal Program for Households with unpaid charges.

Section 6. 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 7. Notice. 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 ___ day of _____, 2014, by the following vote:

AYES:

NOES:

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ABSTAINING:

ABSENT:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of the ORDINANCE NO. 2014-__.

GARY WOLFF

EXECUTIVE DIRECTOR

Attachment ■: Advance Disposal Fees or Extended Producer Responsibility as Funding Options

We studied the possibility of advance disposal fees paid at the point of purchase when "HHW products" are sold since shortly after our most recent strategic plan was adopted in 2010. This would cause each person who decides to use those products to bear the 'full cost' of their purchasing decision. That is not intended in a punitive way, but as a way of being fair to those who use less of these products. We've found that an advance disposal fee system at retail locations could be implemented locally, but only with a degree of complexity that seems inadvisable now (or perhaps ever).

The Strategic Plan for the Agency, adopted in July 2010, included research on Advance Disposal Fees. Advance Disposal Fees (ADFs) are consumer fees on hard-to-recycle, hazardous and litter prone products. These fees would be paid to retailers at the point of purchase and remitted from retailers to our Agency and/or member agencies to support the high cost of proper disposal. The intent of these fees is to help recover costs for end-of-life management of these products (whether it is for litter control, hazardous waste handling or recycling). There is a good rationale for requiring those who buy the products to pay for their ultimate disposal. Advance disposal fees were examined as a way to help the Agency diversify revenue sources beyond per-ton landfill fees, and send a price signal to both manufacturers and consumers of these products that they are costly to properly handle at end-of-life.

The jurisdictions in Alameda County as a whole spend a considerable amount annually to deal with the end-of-life of products including about \$22 million for curbside recycling, about \$26 million for litter control and about \$3.5 million for household hazardous waste facilities (the latter reflects the costs for collecting and processing only a fraction of the HHW products that need to be disposed of each year). Using fees to partially offset these costs has been considered and adopted by a few other states and communities, including a 20 cent litter fee on cigarette packs in San Francisco.

The research we have conducted to date on ADFs has been pursued simultaneously with exploring the use of alternative strategies for managing problematic materials, including statewide extended producer responsibility (EPR) legislation, retailer take-back programs, and the potential for product bans where appropriate. Staff continues to first and foremost prioritize statewide manufacturer responsibility through statewide legislation, but the political will has not always been there to make this successful for the primary hazardous product categories. Paint is an example of where this approach has been partially successful and batteries are an example of where it has not yet been successful, but active dialogue is still occurring in Sacramento.

In October 2011, staff brought a status report on ADFs to the board that outlined some of the obstacles standing in our way of implementing ADFs. That memo concluded that using ADFs to support the HHW program via administration through the state Board of Equalization (BOE), who administers other statewide retail product fees, would be expensive, time consuming, and unlikely to lead to a suitable outcome for us. This is because BOE staff told us they would need detailed legislation describing every product category to be covered and the fees for each product category, and in addition said they could not agree to a cap on their expenses which would

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jeopardize or make revenue yields too uncertain. That 2011 report also concluded that a local administration system would require a broader base of local support and resources.

To fully pursue the possibility of an ADF that could be administered locally, staff spent time in 2012 year researching whether a local administration system would have that broader base of support and if so, what resources would be required to implement such a system. To do that, staff met or talked with senior staff at the County and three other member agencies, spoke with several Chamber of Commerce representatives, and sought feedback from retailers themselves through surveys and a stakeholder meeting. What we found from that research is that a local administration of an ADF is possible, but not a favored policy from the business community. Retailers and business associations favor a statewide solution to the problem, to help put all retailers on the same footing. The Chambers thought that the retailers would be more supportive of providing information on hazardous products and the high cost of disposal than in charging a fee. Feedback from three member agencies indicated that it could be doable from an administrative standpoint but expressed concerns regarding either timing of implementation and the sensitivity of levying fees (particularly ones that weren't their own). There was a willingness from the County to collect these fees, and we did secure a quote from a billing and collection company that already serves municipal government (for other revenue collection functions), and which thus far appears to be the most feasible and cost-effective means of administering the billing and collection component of this system.

Another element of this project was to determine which product categories would be most suitable for such a fee, and what the estimated costs and revenues would be. Through our research, the product categories of batteries, solvents, fertilizers and aerosols were the best candidates for an ADF. Other product categories did not lend themselves to an ADF for a variety of reasons including complexity of product category, and absence of sales data, such as toxics. Paint, which once was the best product category for an ADF is no longer on our immediate list due to the passage of a statewide manufacturer responsibility law for paint, administered through PaintCare. However, it appears to us that Paint Care fees do not cover the full cost of handling paint at end of life, and Paint Care does not address the full range of paint products (e.g., automotive and marine paints are excluded).

In addition to the costs of billing and collection there would still be other costs to implement the program including contract management, public outreach and auditing. There could be initial set up fees (depending on who actually did the billing and collection), however if we used the outside service those costs appeared to be nominal. Various methodologies estimate the ongoing annual costs to range from approximately \$340,000 to \$820,000, with our best guess being about \$500,000. This cost estimate does not include any reimbursements or offsets to the retailers for their setup costs. These costs are not purely administrative, however, but include strong communications components that may influence purchasing behavior significantly, which would in the long-run significantly help reduce the cost of operating drop-off centers and other approaches to HHW management.

On the revenue side, revenue potential is constrained by the partial coverage of existing programs, such as Paint Care. While PaintCare does not fully reimburse HHW facilities for their

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paint costs, or cover all paint products, it would be difficult and probably confusing to customers to layer another paint fee on top of the state fee.

Ultimately, we found that the net revenue that we could obtain would be modest unless we imposed relatively high advance disposal fees. Our research indicated that a 20% implementation cost was probably reasonable for this type of program. Therefore, to maintain those costs at no more than 20% of total revenue, product fees would at least need to be approximately \$0.06 for each battery (\$0.24 for a pack of 4), \$0.06 for each aerosol can, and \$1.00 for each container of solvent and fertilizer. Many staff members think that this level of product fee does not appear to be reasonable at this time, although what is reasonable is a matter of judgment.

On the other hand, staff believes that ADFs may be a viable strategy to be reconsidered in the future, especially if statewide EPR legislation is not successful for more product categories, such as batteries. Likewise, upon review of the progress of the PaintCare program, (the enabling legislation requires annual reporting to CalRecycle), the paint products category could also be reevaluated as a potential candidate for an ADF. And it is also possible that retailers will support ADFs at some future time, as some retailers already support voluntary take-back mechanisms for products through their stores (e.g., fluorescent lamps, paint, batteries).

Based on all of the potential obstacles to successful implementation of an ADF including the uncertainty in actual net revenues and input from the business community, we did not recommend moving forward with any form of ADF in April 2013. Instead, we brought forward other more traditional funding approaches for the countywide HHW program. However, as mentioned above, it does appear to have potential for further review and possible implementation in the future. And future revenue from ADFs or EPR could be used to reduce the future burden of any more traditional funding approach that is adopted.

As an alternative to ADFs, we are recommending an education campaign at the retail site to preserve some of the benefits that an ADF would have conferred. A retail point of purchase education campaign would inform consumers about the high cost of these products, about HHW alternatives where third party certified alternatives exist, and proper disposal, (e.g., bringing it to one of the four countywide facilities). We will work with retailers to find space in the store to communicate to consumers that these products are costly to dispose of, and that they should only buy what they need, use what they buy, and dispose any leftovers at HHW facilities.

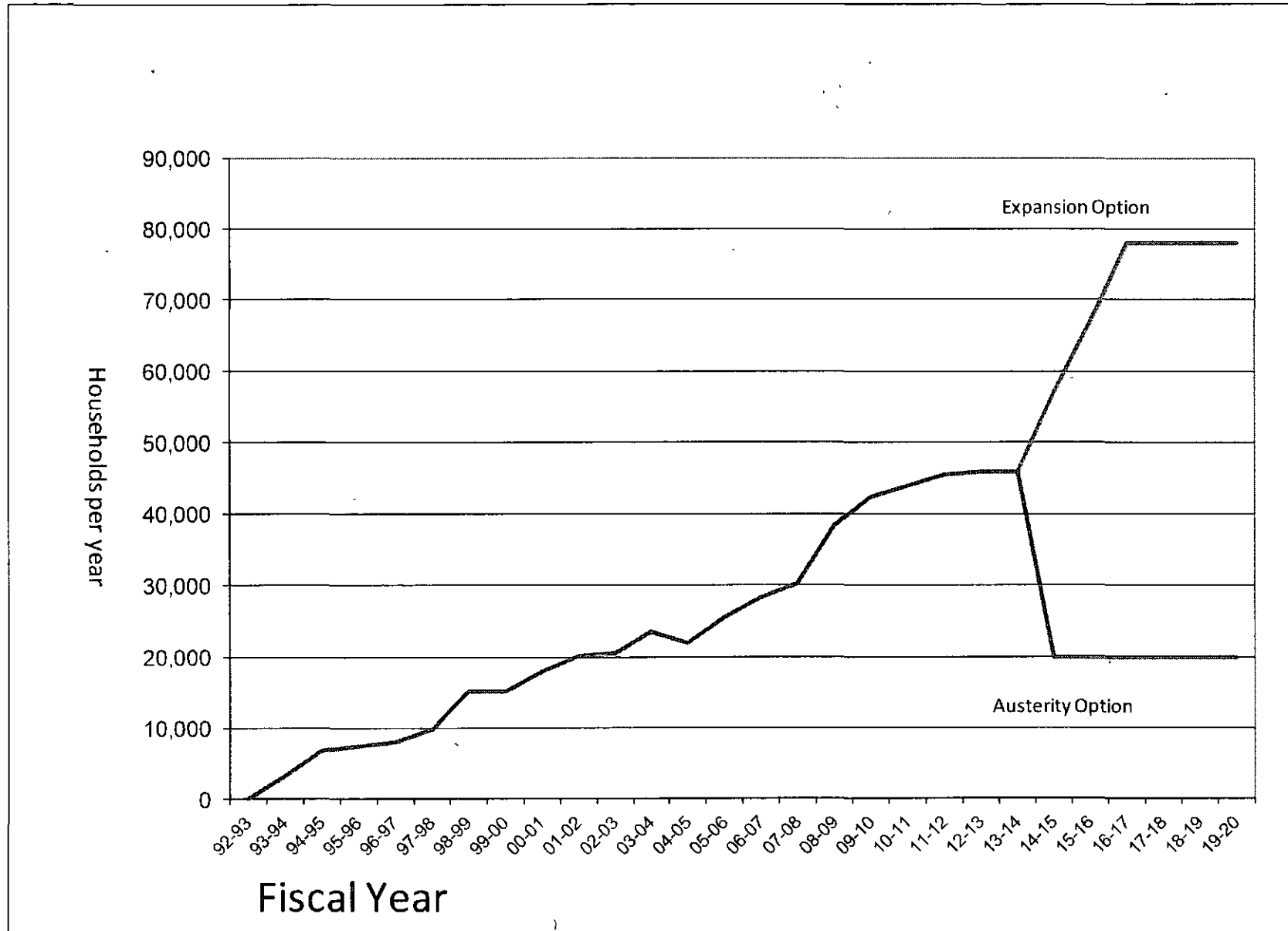
This partnership campaign with retailers will build on the work already being conducted by the county-wide stormwater program (their campaign is called "Our Water, Our World"), with respect to fertilizer and pesticide alternatives. It would take that good work several steps further, and address other household hazardous waste products. The EPA and others have recognized the success of the Our Water, Our World pesticides alternatives campaign with grant funding, but funding does not currently exist to expand that to other hazardous product categories. As such, funding for this alternatives campaign, estimated at about \$300,000 annually is built into all HHW programmatic options except for the austerity option. It is also included in our core budget proposal for FY13-14, so that this work can begin immediately. Funding it through the HHW program budget in future years would protect it against reductions in our core budget in future years, should that occur. \$300,000 per-year for source reduction and prevention of HHW seems

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a reasonable spending level given the very high cost of handling HHW products at end of life once they are purchased (more than \$2,000 per ton). Source reducing about 4-5% (150 tons) of the 3400 tons of HHW going to landfills (in 2008) would save as much money in end of life management as this outreach effort would cost.

Based on the possibility of future HHW ADF fees, or EPR initiatives that bring in revenue or offset costs (paid for by manufacturers or indirectly for purchases of products), we recommend that any HHW fee include an adjustment mechanism to permit the fee to decline automatically in the future should these other, more equitable sources of funding for end of life management of HHW products come into existence.

ATTACHMENT 1
ATTACHMENT 1
HHW SYSTEM HOUSEHOLD PAST, AND PROJECTED PARTICIPATION
(1993-2020)



SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F (415) 552-5816
www.smwlaw.com

RICHARD S. TAYLOR
Attorney
rtaylor@smwlaw.com

MEMORANDUM

TO: Alameda County Waste Management Authority Board of Directors
FROM: Richard S. Taylor, General Counsel
DATE: March 20, 2014
RE: Authority to Adopt the Household Hazardous Waste Collection and Disposal Fee and Have the County Collect it on the Property Tax Rolls

Members of the public have inquired as to the legal basis for the Alameda County Waste Management Authority (“WMA”) to adopt the Household Hazardous Waste Collection and Disposal Fee (“HHW Fee”) and have the County Auditor Controller collected the Fee on the property tax rolls. This memorandum responds to those inquiries.

I. The Legal Authority of the WMA.

The WMA is a joint powers agency created under the Joint Exercise of Powers Act set forth in Government Code section 6500 and following. That act allows public agencies to enter an agreement to exercise powers common to the contracting agencies. Alameda County, all of the cities in Alameda County, and the Castro Valley and Oro Loma Sanitary Districts have entered a joint exercise of powers agreement establishing the WMA to adopt and implement the Alameda County Integrated Waste Management Plan and related waste management programs, including the Household Hazardous Waste Collection and Disposal Program that would be funded by the HHW Fee. That agreement authorizes the WMA to “perform all acts necessary for the exercise of said powers” including, but not limited to, the power to levy fees. (Joint Powers Agreement for Waste Management § 5(1).)

II. Health and Safety Code Section 5470 *et seq.* explicitly authorizes adoption of the HHW Fee.

The Household Hazardous Waste Collection and Disposal Fee Ordinance (“Ordinance”) is authorized by Health and Safety Code sections 5470 and following (“the

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Memo to Alameda County Waste Management Authority Board of Directors
March 20, 2014
Page 2

statute”). That statute authorizes any “entity” to adopt a fee or charge “for services and facilities furnished by it . . . in connection with its water, sanitation, storm drainage, or sewerage system.” (Health & Safety Code § 5471.) The statute defines “charge” as “any fee . . . for services and facilities furnished by an entity in connection with its sanitation or sewerage systems, including garbage and refuse collection. (*Id.* §5470(f).)

A. The WMA is an “entity” that may adopt a fee under section 5471.

The statute defines “entity” to include “counties . . . cities [and] sanitary districts . . .” (5470(e).) As noted above, under the Joint Exercise of Powers Act, a joint powers agency may exercise powers shared by its member agencies. (Gov’t Code § 6502.) The WMA’s member agencies include the County, cities, and sanitary districts. Because all of these entities are authorized to adopt a fee under section 5471 and the Joint Powers Agreement for Waste Management authorizes the WMA to impose fees, the WMA also has the power to do so.

B. The HHW Fee is a type of fee that may be adopted under section 5471.

As discussed above, the statute authorizes a local agency to adopt a fee for refuse collection services and facilities. (Health & Safety Code §§ 5470(f), 5471.) Here, as discussed in more detail in the staff report for the HHW Fee to which this memo is attached (“Staff Report”), the fee funds the operation of four HHW collection facilities in the County. These facilities are part of the sanitation system in Alameda County, which also includes waste transfer stations and landfills. This system operates to collect and dispose of refuse including household hazardous waste. Kern County, for example, imposed a fee collected on the tax rolls pursuant to the statute to cover the costs of landfill operations. (*Kern County Farm Bureau v. County of Kern* (1993) 19 Cal.App.4th 1416.¹) Accordingly, the HHW Fee is a fee for refuse collection services and facilities and may be adopted under the statute.

¹ The *Kern County* case was decided before adoption of Proposition 218. Proposition 218 placed into the Constitution many of the procedural requirements already embodied in Health & Safety Code section 5470 et seq. and did not limit the types of fees that may be adopted under the statute. Proposition 218 did adopt new substantive requirements for fees and these are discussed in section III.A of this memorandum.

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C. The HHW Fee may be collected on the property tax roll.

The statute authorizes any local agency that has adopted a section 5471 fee to “elect to have such charges collected on the tax roll in the same manner, by the same persons, and at the same time as, together with and not separately from, its general taxes.” (Health & Safety Code § 5473.) It also directs the county tax collector to “include the amount of the charges on bills for taxes levied against the respective lots and parcels of land.” (Health & Safety Code § 5473.6; *see also* § 5473.4 (“the auditor shall enter the amounts of the charges against the respective lots or parcels of land as they appear on the current assessment roll”).) Accordingly, the WMA may have the County auditor collect the HHW Fee on the property tax bill.

III. The Fee is not a tax requiring voter approval

The California Constitution requires voter approval for taxes. (Article 13C § 2.) In 2010, State voters approved Proposition 26, which defined a “tax” to mean “any levy, charge, or exaction of any kind imposed by a local government, except” for seven specified exceptions. (Article 13C § 1(e).) The HHW Fee falls within at least two of these exceptions as discussed in subsections A and B below and thus is not a tax requiring voter approval.

A. The Fee is adopted in accordance with Proposition 218

Proposition 26 provides that property-related fees imposed in accordance with the provisions of Article 13D (also known as Proposition 218) are not taxes. (Article 13C § 1(e)(7).) Proposition 218 provides that a public agency may impose fees for refuse collection services provided that it complies with the following procedural requirements and the fee satisfies various substantive requirements discussed below. (Article 13D § 6(a),(b).) As discussed above, the HHW Fee is a fee for refuse collection services.

1. The WMA has satisfied Proposition 218’s procedural requirements

Proposition 218’s procedural requirements for fees are as follows:

1. *The agency must identify the parcels upon which the fee will be imposed.* The WMA satisfied this requirement by preparing a Fee Collection Report (described in the Staff Report) listing the parcels that would be subject to the Fee. The report has been available for public review since January 6, 2014.

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2. *Notice of the proposed fee must be mailed to the record owner of each identified parcel including the amount and basis of calculating fee, the reason for which it is imposed, and the date, time and location of a public hearing on the fee.* Notice of the proposed fee was mailed in early January. Due to a mailing house error, some of those notices were mailed less than 45 days prior to the originally scheduled protest hearing of February 26, 2014. The Board continued the protest hearing to March 26, 2014 and notice of the new protest hearing was mailed on February 5, 2014. The notices described the amount of the fee, a description of the Household Hazardous Waste Collection and Disposal Program, and the date, time, and location of the protest hearing.
3. *The agency must conduct a public hearing on the fee at least 45 days after mailing the notice and consider all protests against the fee.* The notice of the protest hearing was mailed 49 days before the protest hearing being held March 26, 2014. As discussed in the Staff Report, the Board will consider all protests at the protest hearing.
4. *The agency may not impose the fee if written protests are presented by a majority of the owners of the identified parcels.* As discussed in more detail in the Staff Report, if the WMA receives written protests from more than a majority of the owners of the identified parcels, the WMA may not adopt the HHW Fee. The protests are being tabulated by the County Registrar of Voters in accordance with the procedures set forth in Resolution #WMA 2013-06 as amended by Resolution #WMA 2014-02 ("Procedures Resolution"). Section 5(f) of these procedures calls for counting a single protest per parcel; if a parcel has multiple owners, each owner may protest independently but only one protest will be tabulated in connection with that parcel.

In addition to Proposition 218's majority protest requirement, the WMA imposed a separate limitation on its ability to adopt the HHW Fee. In section 7 of the Procedures Resolution, the WMA determined that it may not adopt the fee if it receives protests from the owners of parcels with more than a majority of the residential units that would be subject to the fee even if protests are received from fewer than half the parcels that would be subject to the fee. In counting protests received, the tabulator is recording both the number of protests as well as the number of residential units on each parcel for which a protest is filed. If protests are filed by either a majority of the owners of parcels subject to the fee or by owners of parcels with a majority of the residential units subject to the fee, the HHW Fee cannot be adopted.

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2. The HHW satisfies Proposition 218's substantive requirements

In addition to the foregoing procedural requirements, Proposition 218 (Article 13D § 6(b)) requires that fees such as the HHW Fee satisfy five substantive criteria as set forth below:

1. *Revenues derived from the fee may not exceed the funds required to provide the service.* The HHW Collection and Disposal Program was evaluated in a October 4, 2013 memorandum from HF&H Consultants, LLC to the WMA which determined that the funds generated by the fee do not exceed the costs of the refuse collection services. Section 3(b) of the Ordinance requires fee reductions if revenues from Program operations and other sources exceed projections in order to further ensure that the revenues derived from the fee do not exceed the funds required to provide the service.
2. *Revenues derived from the fee may not be used for any purpose other than that for which the fee is imposed.* Section 3(d) of the Ordinance provides that the HHW Fee funds may not be used for any purpose other than the HHW Collection and Disposal Program evaluated in the HF&H Report.
3. *The amount of the fee may not exceed the proportional cost of the service attributable to the parcel.* Each parcel subject to the HHW Fee is charged its proportional share of the refuse collection service costs because the fee is based on the number of residential units located on the parcel. As explained in the Staff Report, residential households generate HHW and the HHW facilities offer collection services to each residential unit equally. Accordingly, total Program costs were divided by the number of residential units and each parcel pays a fee based on the number of units located on the parcel. Parcels with a greater number of residential units will pay a higher total fee because waste characterization studies demonstrate that those parcels generate a greater amount of HHW.

Apportioning the costs of program among classes of parcels, which the WMA has done based on the number of residential units, is a standard mechanism in setting fees. For example, in *Griffith v. Pajaro Valley Water Management Agency* (2012) 220 Cal.App.4th 586, the court upheld a groundwater augmentation charge that the Agency apportioned among different broad categories of users. The court rejected plaintiff's argument that Proposition 218 requires a parcel-by-parcel proportionality analysis, holding that the question of proportionality is not measured on an individual basis, but collectively, considering all rate payers.

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The *Griffith* court also rejected plaintiff's argument that the charge was a tax under the standards articulated in *Silicon Valley Taxpayers Association v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, which invalidated an assessment adopted under Section 4 of Proposition 218. The *Griffith* court held that cases such as *Silicon Valley* that analyze Proposition 218's standards for assessments are inapplicable to property-related fees adopted under Section 6 of Proposition 218. Here, Section 6 explicitly includes fees for refuse collection services such as the HHW Fee and *Silicon Valley* is inapplicable.

4. *No fee may be imposed unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.* The refuse collection services funded by the HHW Fee are immediately available to all owners of residential units including their families and tenants as required by Proposition 218. The HHW facilities are available to accept HHW from owners and occupants of residential units during any posted business hours.

In *Paland v. Brooktrails Township Community Services District* (2010) 179 Cal.App.4th 1358, the court upheld a minimum monthly charge imposed by a water district for maintenance and operation of the water system. The plaintiff in *Paland* argued that because the fee was imposed on parcels even when the owner did not use any water, the fee was a standby charge that must be classified as an assessment under Proposition 218. The court rejected this argument, finding that the charge was a fee for services immediately available to the property owner. It held that a service is "immediately available" when an agency has done everything it needs to do to make the water service available to the property owner, and it is only the unilateral acts of the property owner that causes the service not to be actually used. Here too, the services of the HHW Program are available to benefit all residential units at any time.

5. *No fee may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.* The HHW Fee is not imposed for a general governmental service. The HHW collection and disposal service is not available to the public at large because only owners of residential units and their tenants may use the service. The refuse collection services are not available to industrial or commercial property owners or residents from outside of the County. Moreover,

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the Ordinance prohibits diverting fee revenues to other general governmental programs. As noted in *Griffith v. Pajaro Valley Water Management Agency* (2012) 220 Cal.App.4th 586, this standard is met when “the revenues derived from the fee or charge are required to provide the service, and [are] used only for the service;” rather than for “general governmental service.”

Under the California Constitution, the WMA bears the burden of proving that the HHW Fee is not a tax. For the reasons discussed above, the HHW Fee is a valid refuse collection fee imposed in accordance with the provisions of Proposition 218. The Fee satisfies all of Proposition 218’s substantive requirements.

B. The Fee is for a service that benefits owners of residential units.

While the HHW Fee falls within the Proposition 26 exception for fees adopted in accordance with Proposition 218, the Fee also falls within other Proposition 26 exceptions. For instance, Proposition 26 provides that fees imposed for a specific government benefit or privilege to the payor are not taxes. (Article 13C § 1(e)(1).) The benefit must be granted directly to the payor and must not be provided to those not charged. The HHW Fee meets these requirements.

First, the HHW collection facilities directly benefit and serve owners of parcels with residential units by both collecting and disposing of HHW generated on their property and by providing a legal, safe, place for disposal of HHW materials in compliance with the law. The WMA recognizes that there are incidental benefits from the HHW Program. For instance, visitors to the county, as well as property owners, will enjoy cleaner streets free of HHW debris. Nonetheless, these incidental benefits from the HHW collection services do not change the direct benefit provided by the Program to owners of residential units in the County. For example, garbage collection fees are not taxes even though there may be some incidental benefit to the public at large or other residents of the household in having garbage regularly collected, rather than dumped on the streets. Similarly, the groundwater management programs funded by the charge upheld in *Griffith v. Pajaro Valley Water Management Agency* (2012) 220 Cal.App.4th 586 provided incidental benefits to the environment.

Second, the HHW facilities do not provide refuse collection services or benefits to those not charged. The HHW facilities only collect HHW from residential units within the County. They do not collect HHW from commercial or industrial properties.

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Proposition 26 also includes additional substantive requirements that mirror those for Proposition 218. Specifically, the WMA must demonstrate that (1) the amount of the Fee is no more than necessary to cover the reasonable costs of the governmental activity, and (2) that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity. (See Article 13C § 1(e)(concluding paragraph).) The HHW fee satisfies these requirements as discussed in Section III.A.2 of this memorandum.

5716115



To: Gary Wolff – Executive Director, Alameda County Waste Management Authority
From: Navid Nowakhtar - Economic Consultant, Leidos Engineering, LLC
Subject: **Alameda County 2008 Waste Characterization Study Methodology**
Date: March 14, 2014

Dear Gary:

Per the request of the Alameda County Waste Management Authority (the Authority), Leidos Engineering, LLC (Leidos) has provided a response to comments raised regarding the methodology underpinning the 2008 Alameda County Waste Characterization Study (WCS). Leidos is an organization whose predecessor firm, R. W. Beck, Inc., which was acquired by Leidos subsequent to 2008, conducted the 2008 WCS. The core team members of that project were involved in the review of and response to the comments in question. The comments raised on the methodology of the 2008 WCS were provided to Leidos by the Authority, and are assumed to have been originated by the South County Rental Properties Association. Leidos has interpreted the commentary assumed to have been originated by the South County Rental Properties Association, and makes no warranty or claim of attribution with respect to the commentary or its source due to lack of specific information.

Based on the information provided by the Authority, the comments on the 2008 WCS centered on the following issues:

- The appropriateness of the use of the mean as a basis for determining the composition of the waste stream;
- The appropriateness of the methodology deployed to develop confidence intervals for the composition of the waste stream;
- The differential in household hazardous waste (HHW) composition between the single family and multi-family sectors, and
- The basis for determination of whether a given sample constitutes single-family versus multi-family waste, and more specifically, the basis and assignment protocol for duplex, tri-plex, and quad-plex type residences.

Each of these comments has been reviewed by Leidos, and we offer the following responses:

- Use of the mean as a basis for determining the composition of the waste stream is in alignment with ASTM International standard D5231 – 92 (2008)¹. ASTM International, previously known as the American Society for Testing and Materials, was formed in 1898 as an international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services. Furthermore, within the state of California, CalRecycle publishes waste characterization regulations² that also refer to the calculation of the mean and associated standard deviation to perform a waste characterization study. The 2008 WCS was conducted in accordance with such standards and regulations.
- With regard to the appropriateness of the method to compute confidence intervals, the methodology deployed in the 2008 WCS uses what is referred to as a statistical transformation. Statistical transformations are applied to raw data in instances where such transformations are deemed appropriate to generate a data set that is in alignment with the assumptions of a statistical inference procedure that is to be applied (in this instance, computation of a 90 percent confidence interval using a student's t-distribution range of critical values, the specific critical values for which converge to standard normal, or z distribution critical values as the sample size increases). The data associated with the 2008 WCS was transformed in order to manage the skewness of the data and address the challenges associated with a range of percentages that are in some instances very small across each of the waste characterization categories. The confidence intervals shown in the 2008 WCS report tables reflect results that have been transformed back to the original scale using the inverse of the transformation that was applied to the data. Evidence of the use of the transformation is noted in each of the results tables in the 2008 WCS, wherein the raw standard deviations cannot be applied directly to determine the upper and lower bounds of the 90 percent confidence intervals reported. As with any waste characterization study or other study involving the development of a sampling plan, care was taken to balance the precision requirements of the study with the cost and resources associated with arbitrarily large sample sizes.
- With regard to the differential in composition of HHW between single-family and multi-family residences, it should be noted that the estimates of total tonnage generated in both sectors was

¹ Refer to <http://www.astm.org/Standards/D5231.htm>.

² Refer to <http://www.calrecycle.ca.gov/Regulations/Title14/010009.htm>.

provided to R. W. Beck, Inc. by the Authority, and that the development of the characterization results was unrelated to the disaggregation of total tonnage into its constituent parts (i.e., the waste sort was conducted independently to determine the final composition of each sector's waste stream).

The table below summarizes the calculated mean HHW composition percentage for multi-family and single-family sectors in the three most recent Alameda County WCS:

Sector	1995 WCS	2000 WCS	2008 WCS
Multi-Family	1.0%	0.8%	1.0%
Single-Family	0.6%	0.6%	0.7%

While Leidos has not conducted any post-study analysis for this response memorandum, the percentages shown in the table above do not support the notion that multi-family residences generate less HHW than single-family residences on a percent of total basis. Probabilistically, the 2008 WCS 90 percent confidence interval for HHW composition percentage ranges from 0.6% to 0.9% for the single family sector, and between 0.8% and 1.4% for the multi-family sector. This also suggests that the notion that multi-family residences generate less HHW than single family residences is unlikely to be supported by the available data.

Leidos also computed the tonnage of HHW in each sector on a "per-unit" basis, as based on the housing unit data summarized in the 2008 WCS report and the disaggregated tonnage estimates in each sector. Based on said results, the single-family sector generated 2,050 tons of HHW across 343,355 units, and the multi-family sector generated 1,374 tons of HHW across 219,609 units. This results in a per unit tonnage amount of approximately .0059705 tons/unit for single-family and .00625657 tons/unit for multi-family. Consistent with the statistics above, it is likely that the metrics around HHW generation and composition are comparable across the sectors.

- Finally, with regard to the basis for determining whether a given sample constitutes single-family versus multi-family waste, the 2008 WCS was conducted in alignment with the state of California's definition of the housing sectors³. This definition includes duplexes and 3-4 unit

³ Refer to http://www.sfdof.org/handls_ssd/oculmopdms/6euments/CURBNCITDS.d12.

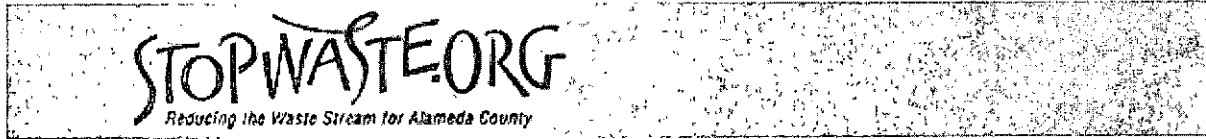
structures in the multi-family sector. The 2008 WCS derived estimates of housing units from the State of California Department of Finance Table E-5⁴, and such housing units that constituted "single-attached" and "single-detached" were associated with single-family, and "two to four" and "five plus" units were associated with multi-family. Furthermore, our sample assignment process (i.e., how a sample was deemed to belong to a given sector) was conducted in accord with the above standards. As noted in the report associated with the 2008 WCS, multi-family waste collected can be at times intermingled with commercial waste, and care was taken to ensure that segregated multi-family waste was obtained. Furthermore, the Field Supervisor was responsible for recording the source of the samples, the type of vehicle delivering the load, and accompanying the host facility equipment operator that obtained each sample to verify the source and appropriate means of obtaining the sample. Given this approach, there is no downward impact or deflation of single-family percentages for the composition of HHW as a result of the inclusion of duplex, tri-plex, and quad-plex units into that sector.

Should you have any questions or concerns regarding the material in this memo, please do not hesitate to contact us.

Sincerely,

Leidos Engineering, LLC

⁴ Refer to <http://www.socalwater.com/resources/our-work/energy-and-utilities/2011-2012/wr-1120/wr-1120>.



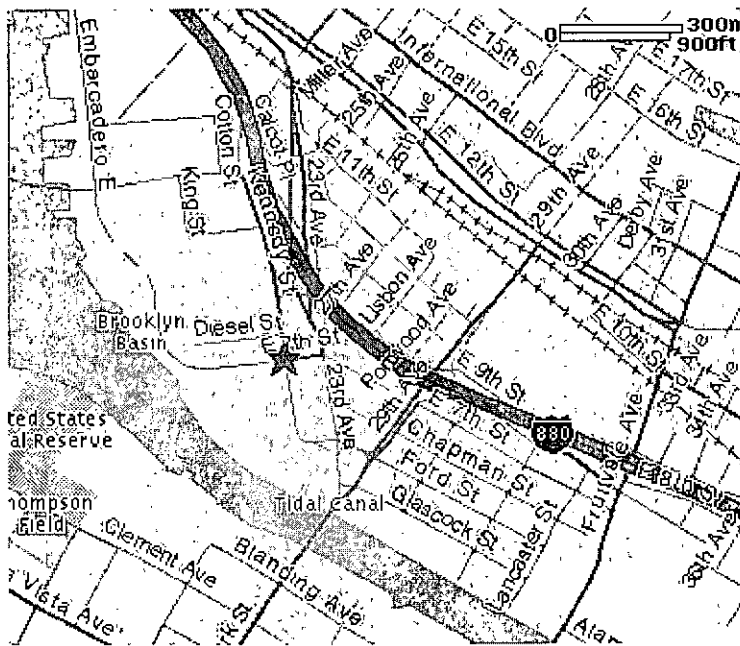
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Oakland HHW Facility



Oakland Facility
2100 East 7th St., Oakland

Open every Thursday, Friday and Saturday
We will be closed:
Thanksgiving week November 28-29-30
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