



Memorandum

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

DATE: August 31, 2007
 TO: Board of Directors
 FROM: Adhoc Finance Committee - Chair Leo Laska
 SUBJECT: Report on August 27, 2007 Meeting

The Adhoc Finance Committee met on August 27th from 9 a.m. to 11 a.m. at the administrative offices of the Pebble Beach Community Services District. Other members of the committee are Directors Bales, Gray and Pendergrass. The meeting agenda is attached along with a staff report on Declining Refuse Tonnage and two articles related to flow control, recycling, and the cost of waste management services. Also included is a copy of the Joint Powers Authority (JPA) Agreement of the Monterey Regional Waste Management Authority.

A report was received on staffing levels, which are within expenditure guidelines of the current year budget. Staff will continue to closely monitor those levels. A report was received on the operation of the landfill gas project, which is presently operating with all four generators producing electricity. Finally, a preliminary report was received on the projected five year finances for the District which revealed the need for a near term significant increase in revenues and/or reduction in operating expenses.

Staff reported operations are being carried out within expenditure limits of the fiscal year budget. However, revenues for the year are anticipated to be below projections. The decline in revenues is the result of a significant decline in tonnages to the MRWMD facility and is the topic of the enclosed memo. Attached to the memo is a graph showing a ten-year history of waste deliveries into the site, peaking in 2005 at 280,000 tons, declining since then to an estimated 250,000 tons (including 15,000 tons of Santa Cruz County refuse). To compare apples to apples, without Santa Cruz County refuse, the tonnage into the site would be 235,000 tons, also shown on the graph. Staff used a figure of 260,000 tons in the budget revenue estimates. There are several reasons for the decline in the tonnages, as outlined in the memo.

There was discussion on various means to increase revenue or to further reduce operating expenses including:

Revenue:

- Reduce leakage of tonnage to other regional landfills by requesting cities/county to strengthen franchise agreements and/or strengthen the JPA related to flow of material in the waste shed, and/or reducing tipping fees for demolition material originating from the former Fort Ord.
- More aggressively seek regional waste including:
 - Watsonville; up to 15,000 tons per year for disposal; waste for processing.
 - Santa Clara County; up to 80,000 tons per year for disposal.
 - Salinas Valley Solid Waste Authority; waste for processing.
- Increasing landfill tipping fees will only be considered after all alternatives to increase revenue and decrease expenses have been evaluated and implanted.

Reduce Expenses:

- Reduce wage and benefit expenses below current budget levels, by further staffing reductions.
- Continue further reductions in operating costs and further deferrals of capital costs.
- Reduce landfill gate hours from current 6 days/week, 68 hours/week.
- Reduce staffing in materials recover facility, shorten operating hours.
- Close the household hazardous waste (HHW) and/or the Last Chance Mercantile (LCM) program one or more days per week (from current 6 days/week operation).

Recommendations from Adhoc Finance Committee to Staff:

Finances:

- A 5-Year Operations and Financial Strategic Plan, or Strategic Operating Plan, will be developed by staff outlining priorities for raising revenue and reducing expenses, showing anticipated outcomes with such actions, to be presented at the next meeting of the Adhoc Finance Committee, tentatively scheduled for October.
- Reserve level (25% of operating expenses) will be held at current levels, but may be temporarily reduced in consideration of current finances.

Revenues:

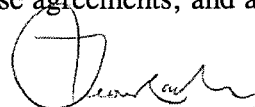
- Staff will act immediately to improve revenue, within direction already provided by the Board.

Expenditures:

- Continue to monitor staff levels closely. Staff to develop alternative operating and staffing plan.
- Evaluate each vacant position which occurs by attrition. Vacancies will not be filled except under certain circumstances and with approval of the General Manager.
- Expense spending will be more closely monitored and controlled by management.

Declining Tonnages:

- Staff was directed to consider a structure to reduce the amount of waste from traveling outside the watershed of the Monterey Peninsula Landfill.
- Review and consider strengthening wording in the Joint Powers Authority (JPA) Agreement of the Monterey Regional Waste Management Authority related to responsibilities of the member agencies to direct waste to the Monterey Peninsula Landfill. (A copy of the JPA Agreement is attached for your information.)
- Consider convening a meeting of District member agencies this fall to include City Managers and/or Public Works Directors to consider:
 - Implications to the District and its member agencies with declining tonnages.
 - Proposed statewide, mandated increases in recycling rates from 50% to 75% and associated responsibilities and costs to the local community.
 - The importance of unified support within the District for community infrastructure for recycling and waste management.
 - Existing JPA Agreement, and city/county hauler franchise agreements, and any need for revisions.



Leo Laska

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MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Home of the Last Chance Mercantile

MEETING OF THE MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT AD HOC FINANCE COMMITTEE

Monday
August 27, 2007
9:00 a.m.

Pebble Beach Community Services District
Administrative Offices
3101 Forest Lake Road
Pebble Beach, CA.

Attending: Board Chair Laska; Directors Bales, Gray and Pendergrass
William Merry, General Manager:
Tim Flanagan, Assistant General Manager
Chuck Rees, Finance Manger:
Richard Norton, Administrative Services Manager
Don Prescott, Information Systems Manager

1. Introductory Comments (William)
2. Report on Status of FY 07/08 Budget (Chuck, Rich)
3. Report on Declining Tonnages into Site (Don)
4. Report on Landfill Gas Project and Related Capital Spending (Tim)
5. Revised Five Year Financial Projections (Chuck)
6. Strategic Planning Work Plan Implications (William)
7. Next Meeting

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Memorandum

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

DATE: August 22, 2007
TO: General Manager
FROM: Information Systems Manager
SUBJECT: Declining Refuse Tonnage

DISCUSSION

Refuse, for which the District currently charges \$43/ton, accounts for 63% to the District's FY 07-08 revenue budget as shown in Attachment 1. Over the past five years the District has experienced significant swings in refuse tonnage. In 2001, over 240,000 tons of refuse was received. By 2005 that tonnage increased to just less than 280,000, an increase of 16% in 5 years. For 2007 staff projects the tonnage will drop to 250,000 tons, a decrease of 11% in two years. An 11-year history of refuse tonnage along with staff projections for the next three years is provided in Attachment 2. The projection includes 15,000 tons of regional waste, shown separately because of its lower revenue generation.

Staff has been aware that the great majority of this swing is due to activity on the former Fort Ord, but felt it necessary to investigate further. Historical data was explored for trends in customer type and origins. Discussions were held with franchise waste haulers, large contractors/commercial customers, and the Salinas Valley Builders Exchange. Also contacted was staff at SVSWA, CIWMB, CSUMB, and project managers at the Marina Strategic Development Center (SDC).

Conclusions:

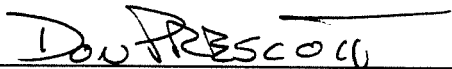
- Reviewing tonnage by customer type (Attachment 3) shows the same upward trend, peaking in 2005 and declining thereafter.
- The single largest reason for the increase in refuse from 2002 to 2005 was the activity on the former Fort Ord. Major projects include:
 - Seaside Highlands – demolition of Hayes Park housing area,
 - Marina Heights – demolition of Abrams and Upper Patton Park housing area, and
 - Department of Army Residential Community Improvement (RCI) – demolition of Hayes Park, Fitch Park and La Mesa housing areas
- The decline in franchise hauler waste is believed to be largely from “poaching” rather than increased recycling. Commercial haulers are dropping off trailers for smaller hauling jobs which is reducing franchise dropbox business. This could be leading to a loss in franchise fees for local cities. The curbside diversion activity reported by the franchise haulers for the annual reports shows only moderate annual increases.
- The reduction in contractor activity is a reflection of both a slow down in the housing market reducing residential work, and a down turn in the business cycle reducing commercial activity. Examples include the reduction in demolition waste from CSUMB which accounted for over 900 tons last year. Additionally, lack of a funding has halted the current year RCI work.

- As the District's fees for refuse increases, contractors are becoming more aggressive in recycling and finding alternative disposal sites. One contractor acknowledged taking greenwaste to Hollister for a better price. The increased diversion activity is not reported to any agency, which is why CIWMB developed the adjustment factor method of measuring diversion. As local jurisdictions continue to adopt the C&D ordinance, records of these recycling efforts should improve.
- From conversations with contractors and SDC project managers, staff has become aware that a large percentage of refuse from some of these projects has gone to other landfills. Through June 2007, 2,691 tons of debris from the Dunes project (formally known as University Village) has been sent to Altamont Landfill in Alameda County. Staff estimates over 3,000 tons of refuse from the 2005 RCI – Seaside project and over 10,000 ton from the Marina Heights project has gone to Kirby Canyon landfill in San Jose. Tonnage from RCI – Monterey is also believed to have gone to Kirby Canyon. Little of this tonnage has been reported to CIWMB. Staff is continuing to investigate refuse leaving the District.

Staff does not expect an immediate increase in tonnage from the build out and occupation of the former Fort Ord. The housing market has slowed and the projects will be built over the next 5 to 10 years. However, there are still opportunities for the District to receive material from the former Fort Ord. These include:

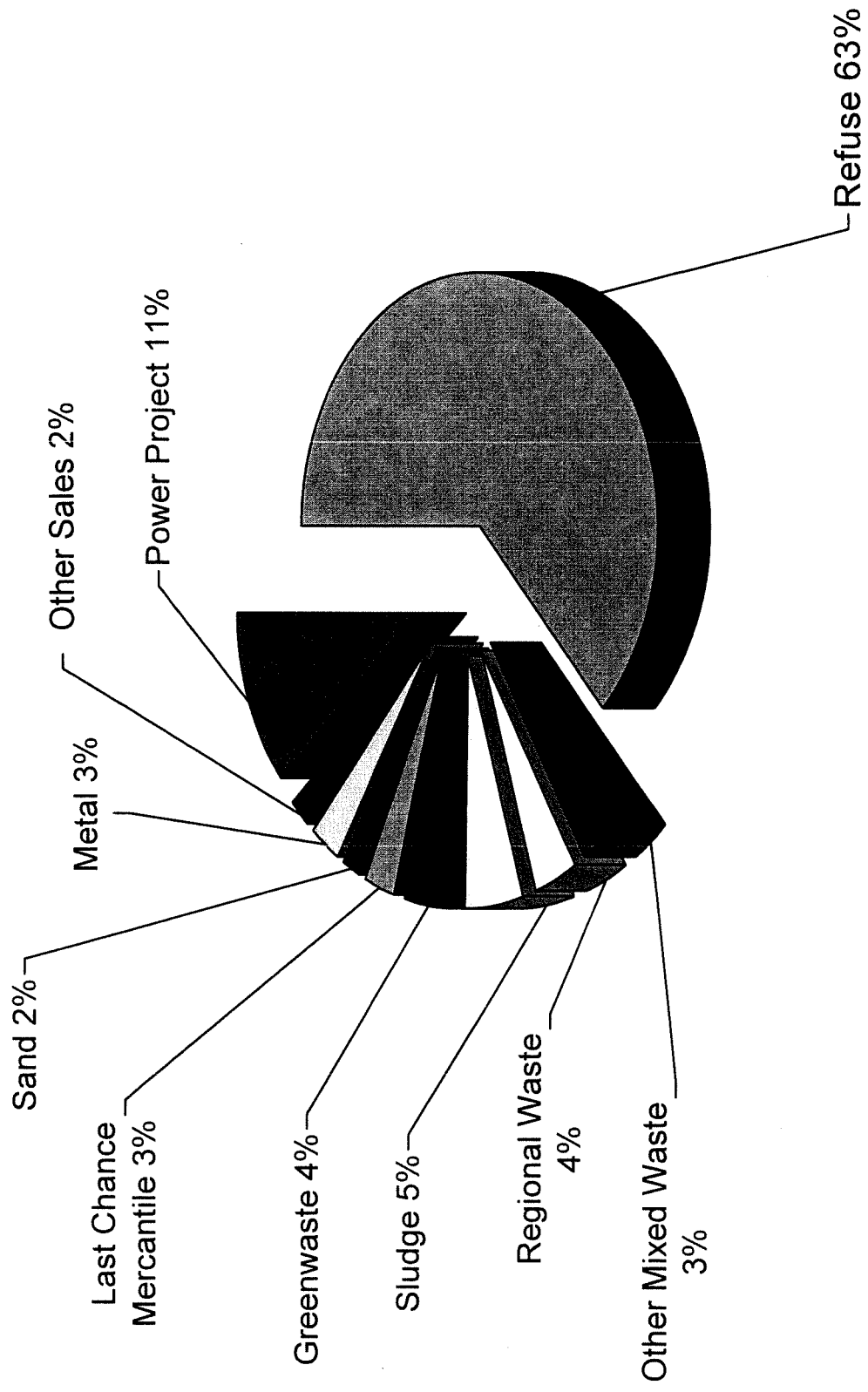
- Cypress Knolls – This project has 230 duplex housing buildings to be deconstructed. Work is projected to begin in January 2008 but may be delayed. The contractor has not been selected. SDC estimated tonnage is pending, but District staff estimates 10,000 – 15,000 tons of refuse are possible.
- Marina Heights – Demolition of the 46 remaining buildings is expected to begin in January/February 2008 generating an estimated 1,800 tons of refuse.
- Dunes – Half the of projected demolition remains. Much of this is the lead painted buildings the District cannot accept but another 2,600 tons of refuse may still remain.
- The RCI project (with funding) will continue for another 8-10 years and could generate 5,000 – 10,000 tons a year as it has in the past.

Staff plans to meet with the City of Marina staff to discuss SDC's project refuse.



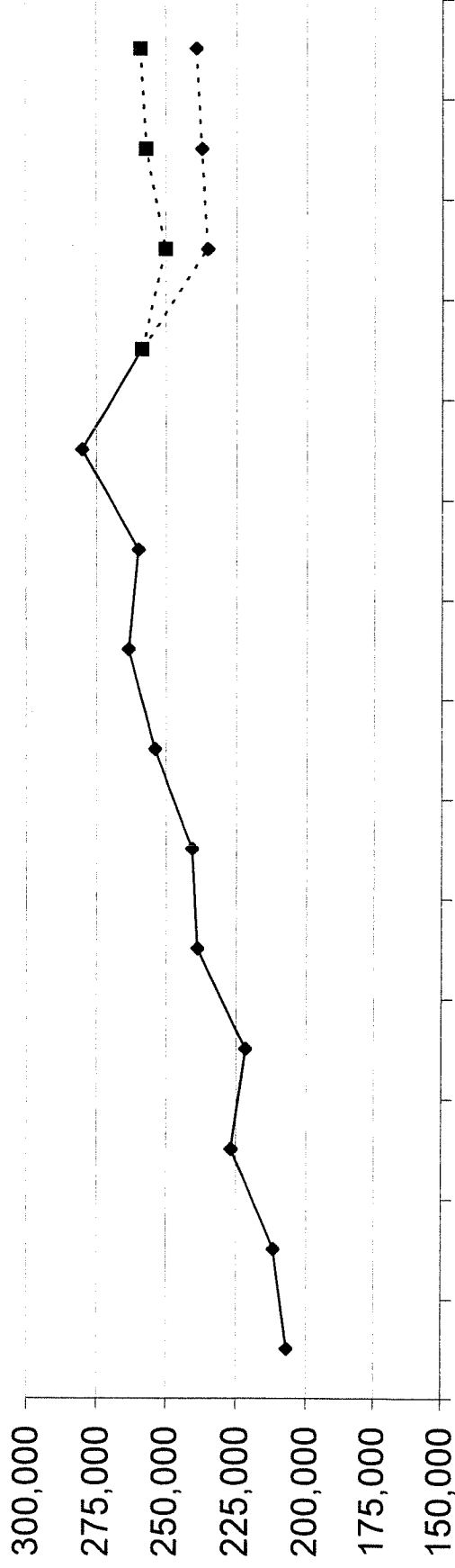
Don Prescott

MRWMD Budget Revenues FY 07-08



MRWMD Refuse Tonnage

1996 through 2009



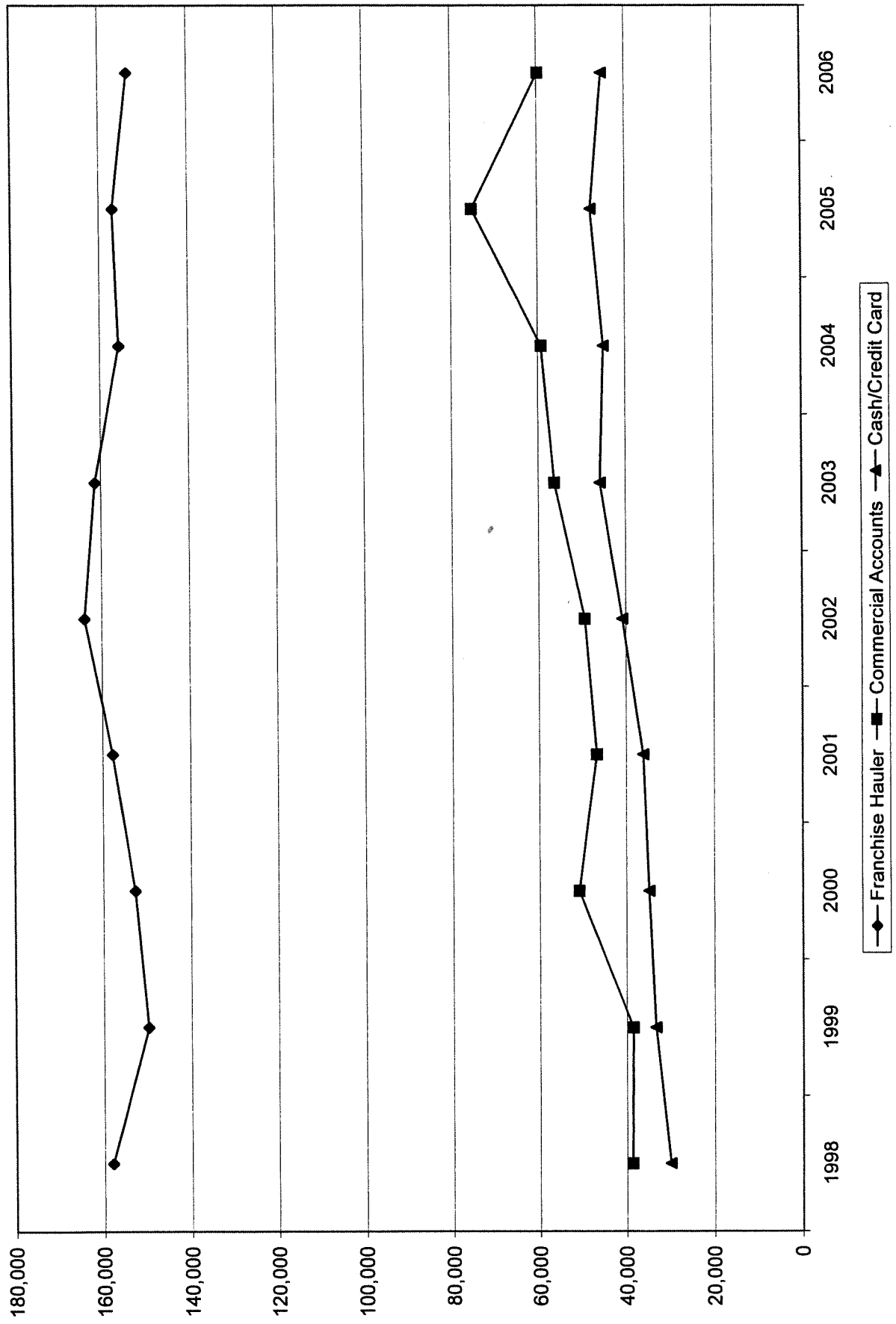
1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Refuse Tonnage	207,159	211,961	226,798	221,833	238,598	240,539	253,989	263,415	259,879	279,904	258,564	235,000	237,000	239,000
Tonnage Change		4,802	14,837	-4,965	16,765	1,941	13,450	9,426	-3,537	20,025	-21,340	-23,564	2,000	2,000
Percent Change		2%	7%	-2%	8%	1%	6%	4%	-1%	8%	-8%	-9%	1%	1%

Refuse with Santa Cruz County

258,564 250,000 257,000 259,000

MRWMD Refuse Tonnage 1998 through 2006 Tonnage by Customer Type



Bargain Bin

Waste Age

Jul 1, 2007, By Chaz Miller

Quick, which is the least expensive: natural gas, heating oil, electricity, cell phone service, cable TV or your local trash service? The answer, of course, is your local garbage and recycling collection. On average, residential trash collection costs between \$12 and \$20 per month. Even if you are at the high end of that average, you will be paying twice as much for cable TV, two and a half times as much for your basic cell phone service and far more for the other services. If you were to pay UPS or FedEx to ship a bag of your trash to the local landfill, they'd charge you more than \$20 for the one bag. Just think how much they would charge you for a month's worth of trash.

I got to thinking about this the other day after I read a few stories about local governments and trash fees. One involved a town council in Massachusetts that decided to end its annual \$180 trash collection fee. Instead, the council planned to use tax money from the town's general fund to pay for garbage collection. The council members who voted to end the fee failed to disclose what cuts they would make in other programs to pay for trash collection. Some, however, opined that they could just require their 35,000 residents to haul their trash to the local transfer station. I don't know how they planned to fund the transfer station or their disposal costs. Maybe they are looking for a free landfill.

Not directly charging taxpayers for garbage collection isn't uncommon. One city is even prevented from doing this by a local ordinance. In 1919, San Diego taxpayers were upset that the city was making money by selling its garbage to pig farmers. They rose up in righteous indignation and passed the "People's Ordinance," forbidding the city from charging them for garbage collection. Since the People's Ordinance only applies to single-family housing, San Diego continues to happily charge multi-family housing and condo owners for garbage collection.

San Diego and many other cities use their general fund to pay for their solid waste and recycling costs. After all, garbage may be free but somebody's got to pay for it. But when the money comes from the general fund, no one knows what his or her individual share is.

Several times a week, I read online newspaper stories about local trash collection costs. In towns that have contracts for trash collection, those per household charges are approved by the town council and printed in the local paper. As a result, those taxpayers know exactly what they are paying.

Price signals are important. They allow us to compare products. While price shouldn't be the only reason for buying a service or product, it will always be an important consideration. Hiding the cost of garbage and recycling collection in the general fund makes it impossible for taxpayers to make an informed decision about the cost of this service and the value they are receiving.

For the same reason, advanced recycling fees that consumers see in the purchase price for electronics products make more sense than so-called manufacturers responsibility systems that hide the cost of recycling. When individual consumers are paying the fees, they know what the real cost of recycling is. In a free economy, transparency and openness always trump secrecy and hidden costs.

Opinions in this column do not necessarily reflect the National Solid Wastes Management Association or the Environmental Industry Associations. E-mail the author at: cmiller@envasns.org.

The columnist is state programs director for the Environmental Industry Associations, Washington, D.C.

Supreme Court's decision on trash boosts recycling

By Elizabeth Cooper

Aug 07, Utica, NY [2007]

In April, the U.S. Supreme Court decided a case involving the Oneida-Herkimer Solid Waste Authority.

The decision, *United Haulers Association, Inc. vs. Oneida-Herkimer Solid Waste Management Authority*, said communities could have laws to direct all waste and recyclables generated within their jurisdiction to their public facilities.

To the average citizen, this might not seem like an earth-shattering event, but it's locked into place a system that's the main reason Oneida County's tipping fees are higher than those of some other counties. But, those fees fund not just the landfill, but an efficient and comprehensive recycling system and saves residents in other areas, including household hazardous waste disposal.

Recycling is at the heart of the matter, waste authority Executive Director Hans Arnold said. "Recycling couldn't exist without flow control," he said. In essence, requiring that local trash go to waste authority facilities ensures sufficient revenue exists to support it, he said.

Yet despite the finality of the Supreme Court decision, debate continues. "There is no question it's a bad decision," Syracuse-based environmental lawyer Richard J. Brickwedde said. "The last thing we need in particular in Upstate New York is a higher cost of doing business and a higher cost of living." Not so, Syracuse University law professor David Driesen said. "I think it's good," Driesen said. "You have to have sufficient moneys to finance recycling."

Arnold said he believes local residents want their community to recycle and take better care of its hazardous waste, and they believe it is for the greater good. They also want the process to be cheap and easy, because then they are more likely to do it, he said. "When Mrs. Smith decides to clean out her garage, there's paint, there's pesticides and pool chemicals," he said. "We charge no fee. (In other places) it could be \$300. People simply aren't going to pay \$300."

The county's tipping fee of \$72 a ton for all garbage might be higher than in other communities, but it covers the costs of such other programs, he said. Recycling is costly

When the state's recycling law went into affect in the late 1980s, it mandated that every community in New York provide some way for residents to recycle. Oneida and Herkimer counties were ahead of other areas in enacting their legislation. "We never said we would make money at recycling," Arnold said. "We had to consider the long-term benefits of recycling and how it would make landfills last longer."

The county invested \$10 million in its recycling center in Utica, which went on line in 1991. Fifty people work there, sorting, bailing and cleaning the tons of items that come in. The authority sells all of the recycled waste it processes: Plastics can be turned into carpeting, new or cardboard cereal boxes, and so on.

The problem is that the revenue from those sales doesn't cover the costs of the program. Each category of recyclable material is sold on the open market, and prices fluctuate. Larger businesses will sell their recyclables themselves for a profit when the price is right and give it to the Solid Waste Authority when it isn't, Arnold said. "We are the market of last resort," Arnold said, meaning that when the authority gets the materials, they are at their lowest value. "When the price is down, we get the highest volume."

Nonetheless, he said, the recycling program is important. "That's what was at risk if we didn't have the ability to control flow," he said.

Another county's view

Broome County, which is similar in size to Oneida County, does not have a flow-control law, but might implement one in the future.

Broome County's Commissioner of Public Works Henry Weissmann said like Oneida and Herkimer counties, most of Broome's waste was going to the municipal system anyway.

As for recycling, he said, the county doesn't have a facility of its own, although it takes in an estimated 50 percent of the recyclable material generated in the county. "That's an expense to the county at this point, so we are not interested in collecting any more of those recyclables," Weissmann said. Private haulers take the rest.

Broome sends what recyclables it gets in bulk to Syracuse, where it is sorted and processed. "The decision was made about five years ago that it was more economical for us to pay someone else than to build a facility and market our product," he said.

Tipping fees in Broome County are \$40 per ton. The Supreme Court decision upheld waste authorities' right to have flow control laws, but didn't require them.

Additionally, if an authority's landfill is operated by a private entity, flow control laws cannot be implemented. In its decision, the court recognized that governments had a special responsibility. "But states and municipalities are not private businesses - far from it," according to the court's majority opinion, delivered by Chief Justice John G. Roberts Jr. "Unlike private enterprise, government is vested with the responsibility of protecting the health, safety and welfare of its citizens."

Hauler's view

Spohn Disposal Service operates both locally and in counties not covered by the Oneida-Herkimer Solid Waste Authority, but owner Mike Spohn said the authority is worth the higher tipping fees. "The waste authority is user friendly," he said, noting the services it offers, such as taking refrigerators and other similar items for free. Some other landfills charge for such services, so Spohn said he saves money.

The Oneida-Herkimer facility also takes care of sludge and industrial waste, he said. If an area's solid waste authority doesn't provide those things, the waste has to be taken to a place that does, and that costs money. "This is a very comprehensive, well thought out authority," Spohn said. Madison and Otsego counties' operation is not as good, he said, and that's part of the reason he no longer operates in those areas. "At other places, what is missing is how they go about it," he said. "They think price is what does it. For me, price doesn't do it."

NOTE: * Added by W. MERRY
for emphasis 9/12/07

JOINT EXERCISE OF POWERS AGREEMENT
FOR THE
MONTEREY REGIONAL WASTE MANAGEMENT AUTHORITY

THIS AGREEMENT is made and entered into by and between those certain public agencies, hereinafter designated as "eligible public agencies," which have duly executed, pursuant to resolution or ordinance, a counterpart hereof, as follows:

ARTICLE I. RECITALS

1.01 Presently Existing District. Each of the parties hereto is presently a member of the Monterey Regional Waste Management District, hereafter referred to as "MRWMD," a Garbage and Refuse Disposal District organized pursuant to California Public Resources Code §§49100 et seq.

1.02 Joint Exercise of Powers. Each of the parties to this Agreement is a public agency duly authorized and empowered by law to contract for the joint exercise of powers under Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (§§6500 et seq.), and each party further has and possesses the common power and authorization to acquire, construct, maintain, operate, regulate and control facilities for the landfill disposal or recycling of garbage, waste, rubbish or other refuse material, hereafter "waste," and to contract for the disposal of same.

1.03 Desire to Vest Power. Each of the parties hereto desires to vest the power to control the activities of the established organization of the parties comprising the MRWMD, to ensure that the facilities are owned and operated in a manner which will maximize the use and life of the existing landfill, as well as any subsequently acquired landfill property or related activities, as envisioned at the establishment of MRWMD, for the benefit of lands and inhabitants within the MRWMD's currently existing boundaries, and to assist in the financing, acquisition and construction of such recycling and refuse facilities as may be necessary to meet the expanding requirements of new state and federal environmental laws.

ARTICLE 2. CREATION OF AUTHORITY

2.01 Joint Powers Agency. In consideration of the mutual promises and covenants contained herein, there is hereby created by agreement of the parties hereto a joint powers agency, with the powers and authority as hereinafter set forth.

2.02 Name of Agency. The joint powers agency created hereby shall be known as and designated the "Monterey Regional Waste Management Authority," hereinafter referred to as the "Authority."

2.03 Purpose. The purpose of this Agreement is to create a separate public agency to undertake and implement the common power and authority of its members to study, plan for, design, finance, construct and operate, and to contract for same, refuse landfill disposal and recycling facilities within the boundaries of the Authority.

2.04 Powers. The Authority shall have all powers necessary to carry out the purpose of this Agreement, except the power to tax. The Authority shall have the power, in its own name, to do any and all of the following:

- a) To make and enter into contracts;
- b) To employ agents and employees and to contract for professional services;
- c) To acquire, convey, construct, finance, re-finance, regulate, manage, maintain and operate buildings, works and improvements;
- d) To acquire, hold, improve and convey real and personal property;
- e) To sue and be sued in its own name;
- f) To incur and discharge debts, liabilities and obligations;
- g) To issue securities, bonds, notes, warrants, other evidences of indebtedness and certificates of participation in Authority leases or contracts to finance costs and expenses incidental to the projects of the Authority;
- h) To apply for and execute appropriate grants or contracts of financial assistance from state and federal agencies;
- i) To issue revenue bonds in accordance with the State of California statutes more specifically set forth in Article 5, paragraph 5.01 hereinbelow;
- j) To establish, levy and collect charges, fees, rates and tolls for the use of Authority disposal and recycling facilities, as well as for any other services or facilities provided by the Authority;
- k) To lease or sell any facilities operated or owned by the Authority;
- l) To loan proceeds from the issuance of bonds or securities;
- m) To exercise the power of eminent domain and to condemn any real property necessary to carry out the objects or purposes of the Authority;

n) To require member entities of the Authority to direct their franchise haulers or operators to deliver all waste, refuse and collected materials to specific facilities of the Authority; *

o) To contract by separate agreement with Authority members for the Authority to assume the responsibility and liability of the member agencies for compliance with the requirements of Assembly Bill 939 (the California Integrated Solid Waste Management Act of 1989), and subsequent related legislation; and in the event of such an agreement, the power to require contracting member agencies to conform with certain minimum standards of A.B. 939 program service and compliance. *

p) To adopt, as authorized by law, resolutions or ordinances necessary to carry out the purposes of this Agreement; and *

q) To the extent not herein specifically provided for, to exercise any and all other powers common to the parties hereto.

To the extent not otherwise herein specifically provided for, the foregoing powers shall be exercised by the Authority in the manner and according to the methods provided in the laws applicable to a California Garbage and Refuse Disposal District, as set forth in Public Resources Code §§49100 et seq.

2.05 Compliance With State Waste Management Regulations. The Authority may agree to accept the responsibility for costs incurred by member agencies as a result of A.B. 939 and subsequent related legislation, so long as waste management plans are prepared by Monterey County, and attempt to coordinate recycling activities on a regional basis. Any member agency may, at its own expense, modify its individual "Source Reduction and Recycling Elements" or other A.B. 939 plan. If future legislation allows single district-wide plans to be prepared on a "waste-shed" basis, the Authority may agree to assume full financial responsibility for those plans.

2.06 Separate Legal Entity. The Authority created hereby is a public entity duly formed and existing under the laws of the State of California, and is a legal entity separate and distinct from its member agencies, the parties hereto. The debts, duties and obligations created pursuant to this Agreement shall be solely the obligation of the Authority and not those of its officers, employees, Board of Directors or its member agencies.

2.07 Eligible Public Agencies. The eligible public agencies which may become parties to this Agreement and members of the Authority are specified as follows:

- a) The City of Carmel-by-the-Sea;
- b) The City of Del Rey Oaks;
- c) The City of Marina;
- d) The City of Monterey;
- e) The City of Pacific Grove;

- f) The City of Sand City;
- g) The City of Seaside; and
- h) The County of Monterey.

An eligible public agency shall become a party hereto and a member of the Authority upon execution of this Agreement and any addenda, amendment or supplement thereto. The Authority may approve membership of other public agencies at any time, by a two-thirds (2/3rds) vote of the Board of Directors and upon such terms and conditions as the Authority may prescribe. Membership of the Authority shall be limited to the County of Monterey and incorporated cities and other public agencies and districts within Monterey County.

2.08 Service to Adjacent Territory. Unless otherwise determined by a duly enacted resolution of the Board of Directors, Authority disposal and recycling facilities may only be utilized for the benefit of citizens, residents and businesses within its boundaries. (It should be noted that the current practice of MRWMD the Board, within its discretion, is to provide services to the entire area of Monterey County, upon payment of an additional out-of-District fee.)

ARTICLE 3. ORGANIZATION

3.01 Board of Directors. The powers of the Authority shall be vested in and exercised by and through its governing body, known as the Board of Directors. Each member entity shall have one representative on the Board who shall be appointed, serve terms and receive compensation as prescribed in Public Resources Code §§49121 through 49123. All vacancies on the Board shall be filled in the same manner as the original appointment. Board members of the Authority shall also be appointed to and serve concurrent terms on the Board of Directors of the MRWMD.

3.02 Meetings. The Board shall establish a time, place and date for its regular meetings. Regular meetings may be adjourned from time to time. Special meetings may be called by the Chairman of the Board or by a majority of the members of the Board.

3.03 Quorum. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of Authority business.

3.04 Voting. The vote of a majority of the members of the Board of Directors present at any regular, adjourned or special meeting shall be sufficient to pass and act upon any matter properly before the Authority, and each member of the Board shall have one vote.

3.05 Officers. There shall be selected from the membership of the Board of Directors a chairperson and a vice-chairperson, who shall act in the absence of the chairperson, and if the Authority has no manager as provided for in Section 3.06 hereinbelow, a se-

cretary, and such other officers as the Board may deem necessary. Pursuant to Government Code §§6505.5 and 6505.6, the general manager shall be the treasurer of the Authority, to be the depository, have custody of all money of the Authority from whatever source and have the powers and duties as set forth in said §6505.5. The administrative services officer shall be the auditor-controller of the Authority, and shall draw all warrants and pay demands against the Authority approved by the Authority Board or general manager. The treasurer and auditor-controller hereby designated may be changed by action of the Board of Directors. All officers shall serve for a term of one (1) year from the date of their election or until their successors are elected. The chairperson, or vice-chairperson, in the absence of the chairperson, is authorized to execute all documents in the name of the Authority, and the secretary is authorized to attest to the same.

3.06 Manager and Other Employees. The Board may employ or contract for the services of a manager and such other employees and assistants as may be appropriate. Should the Board employ or appoint a manager, that person shall be the chief administrative officer and shall assume such other duties and responsibilities as the Board may direct. The manager shall also serve as secretary to the Authority and shall have the power to certify Authority documents, as required by law. The manager shall serve at the pleasure of the Board.

3.07 Public Meetings. All meetings of the Board shall be open to the public and shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, being §§54950 et seq. of the California Government Code.

3.08 Rules. The Board may adopt from time to time such rules and regulations for the conduct of its affairs as may be required.

ARTICLE 4. FINANCIAL PROVISIONS

4.01 Costs of Operation. All costs of operation of the Authority shall be received from:

a) Revenues from fees and charges for the use of, or the impact of new development or the addition of new service territory upon, facilities owned, operated or to be acquired by the Authority; *

b) Revenues from taxes, fees and charges levied or collected by the MRWMD, pursuant to written agreement between said MRWMD and the Authority;

c) Revenues from the sale of recyclables, sand, landfill gas, electrical power, land leases and other similar sources;

d) Grant funds received from state or federal agencies;

and

e) Funds from the sale of securities, bonds or certificates of participation issued by the Authority.

4.02 Limitation on Authority. The Authority shall have no power to incur any indebtedness, nor to enter into any contract, which may be a charge payable by any member hereunder, without the express consent of the governing body of such member. The Authority shall have no power to borrow money or issue bonds which will in any way be a charge or lien on any member or any member's property.

4.03 No Liability of Member. No member shall be liable for any indebtedness of the Authority except that which is expressly consented to by its governing body. All persons dealing with the Authority shall be hereby notified that no member shall be liable for the debts of the Authority.

4.04 Subsequent Members. As determined by the Authority Board, members who are permitted to join the Authority after taxes, money, property or services shall have been contributed by existing members, or the residents-taxpayers thereof, may do so only pursuant to such terms and conditions, including the payment of an annexation or reimbursement fee, as may be determined by the Authority Board of Directors, in its sole discretion. The Authority's determinations and calculations under the section shall be conclusive, and any reimbursement or annexation fee required hereunder shall be a condition to membership.

4.05 Fiscal Year. The fiscal year of the Authority shall be from July 1 to June 30, following.

4.06 Accounting Procedures. Full books and accounts shall be maintained for the Authority in accordance with practices established by or consistent with those utilized by the Controller of the State of California for like public agencies (see Government Code §26909). In particular, the controller and treasurer of the Authority shall comply with the requirements of the statutes governing joint powers agencies as set forth in Articles 1 and 4, Chapter 5, Division 7, Title 1 of the Government Code (§§6500 et seq.).

4.07 Audit. The General Manager of the Authority shall cause the accounts and records of the Authority to be audited annually in accordance with the provisions of California Government Code §6505, and copies of such audit report shall be filed with the Monterey County Auditor and each member of the Authority within six (6) months of the end of the fiscal year under examination.

4.08 Official Bonds. The manager and such other employees or agents as the Board may direct shall file an official bond in the amount determined by the Board. The cost of said bond(s) shall be borne by the Authority.

ARTICLE 5. BOND FINANCING

5.01 Revenue Bonds. The Authority shall have the power and authority to issue and sell revenue bonds in accordance with the procedures and requirements set forth in:

a) Articles, 2 and 4, Chapter 5, Division 7, Title 1 of the California Government Code, commencing with §6540;

b) Chapter 6, Division 2, Title 5 of the California Government Code, commencing with §54300;

c) Chapter 5, Part 3, Division 5 of the California Public Resources Code, commencing with §49160; and

d) Any other then-applicable law regarding or permitting the issuance of revenue bonds by a joint powers agency.

ARTICLE 6. PROPERTY RIGHTS

6.01 Authority Facilities. All facilities, assets and property acquired or constructed by the Authority shall be held in the name of the Authority for the benefit of its members in accordance with the terms of this Agreement; provided, however, that the Authority Board may determine, in its discretion, that such facilities, property or assets may more appropriately or beneficially be held in the name of the MRWMD, pursuant to written agreement with the Authority.

6.02 Transfer of Facilities Upon Dissolution. Upon termination of this Agreement and dissolution of the Authority, as hereinafter provided for in paragraph 7.02, the facilities, assets and property of the Authority shall be transferred and conveyed to the MRWMD or to such other successor entity as may be created hereafter by the members of the Authority to own and operate the garbage and refuse disposal and recycling facilities contemplated by this Agreement for the benefit of all lands and inhabitants within the boundaries of the Authority.

ARTICLE 7. WASTE FLOW CONTROL

7.01 Waste Flow Control. Recognizing that the establishment of a definite and reliable waste flow to the Authority is essential to the Authority and to the securing of adequate financing for the acquisition and construction of necessary recycling and recovery facilities, the parties hereby agree that, commencing upon January 1, 1994, or upon the earlier expiration date of existing refuse collection franchise agreements and use permits for transfer stations, each of the parties shall amend or condition its franchise agreements and use permits to require:

a) each hauler or operator to deliver all refuse collected, which will not be recycled or processed at a materials recovery

facility ("MRF"), and all waste materials resulting from processing at a MRF within the boundaries of the Authority, to a landfill or other facility operated by or for the Authority; and

b) each hauler or operator to transport all construction and demolition material, concrete, asphalt, wood waste and yard waste to a recycling or disposal facility operated by or for the Authority. *

ARTICLE 8. MISCELLANEOUS PROVISIONS

8.01 Effective Date. This Agreement shall become effective, and the Authority shall be created, when the governing bodies of all eight (8) of the eligible public agencies listed in paragraph 2.06 hereinabove shall have either authorized or specifically declined to authorize execution of this Agreement, or in the event that any public agency should simply fail to execute the Agreement, then on April 1, 1993.

8.02 Termination. This Agreement may be terminated and the Authority dissolved by a two-thirds (2/3rds) vote of the Board of Directors, ratified by two-thirds (2/3rds) of the member agencies; provided, however, that there shall be no termination and dissolution a) if same would conflict with or violate the terms or conditions of any securities or revenue bonds issued by the Authority, and any related documentation, and b) in any event until any and all revenue bond debt incurred by the Authority for the construction or acquisition of disposal or recycling facilities has been fully amortized and retired or such debt is refinanced by the MRWMD or other successor entity.

8.03 Insurance for Tort Liability. Throughout the term of this Agreement the Authority shall maintain in force a comprehensive general and automobile liability insurance policy or policies, with minimum coverage of \$1,000,000.00 insuring the Authority, its employees and agents, from any loss, liability or claims arising out of or in any way connected with this Agreement or the operation of the Authority. In addition, in contemplation of the provisions of Government Code §895.2, imposing certain tort liability upon public entities which are parties to a joint powers agreement, such policies shall also name all parties to this Agreement as additional insureds, with such insurance coverage to be construed as primary insurance, and shall further provide that thirty (30) days' written notice be given to all additional insureds of cancellation or nonrenewal of said policies.

8.04 Arbitration. If a dispute arises as to the construction, interpretation or implementation of any provision of this Agreement, the issues in dispute or matter requiring actions shall be submitted to binding arbitration. For such purpose, an agreed arbitrator shall be selected by all members of the Board, or in the absence of such an agreement, the Board, by majority vote, shall select an arbitrator and the member or members in dissent shall select another arbitrator, and the two (2) arbitrators so selected

shall select a third arbitrator. The arbitrator or the three (3) arbitrators acting as a panel, as the case may be, shall proceed to arbitrate the matter in accordance with the provisions of Title 9, Part 3, of the California Code of Civil Procedure.

8.05 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, agreements, appointments or designations hereunder shall be given, in writing, and addressed to the principal office of each member of the Authority.

8.06 Severability. If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement, or the application thereof to any member agency or circumstance, shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. Each of the parties hereto hereby declares that it would have entered into this Agreement, and each term, provision, promise, covenant and condition thereof, irrespective of the fact that one or more terms, provisions, promises, covenants, or conditions, or the application thereof to any member agency or circumstance, be held invalid, unenforceable, void or voidable.

8.07 Amendment. This Agreement may not be amended without the consent of two-thirds (2/3rds) of all existing members of the Authority at the time of amendment.

8.08 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

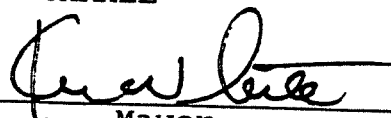
8.09 Assignment. The parties hereto shall not assign any rights or obligations under this Agreement without the written consent of all other parties.

8.10 Additional Documents. The parties hereto agree upon request to execute, acknowledge and deliver all additional papers and documents necessary or desirable to carry out the intent of this Agreement.

8.11 Captions. Captions of the articles, sections and paragraphs of this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision contained herein.

IN WITNESS WHEREOF, the parties hereto, by and through their respective duly authorized representatives, have executed this Joint Exercise of Powers Agreement for the Monterey Regional Waste Management Authority on the date so indicated.

CITY OF CARMEL

By 
Mayor