

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources

BOARD AGENDA # *B-4

Urgent

Routine

AGENDA DATE May 1, 2012

CEO Concurs with Recommendation YES NO

(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Set a Public Hearing for May 22, 2012, at 9:05 a.m., to Consider an Increase in the Disposal Fee at the Stanislaus Waste-to-Energy Facility

STAFF RECOMMENDATIONS:

Set a public hearing for May 22, 2012, at 9:05 a.m., to consider an increase in the disposal fee at the Stanislaus waste-to-energy facility.

FISCAL IMPACT:

There is no fiscal impact associated with setting a public hearing. If the Board of Supervisors approves the staff recommendation, the cost of disposal at the Stanislaus waste-to-energy (WTE) facility will increase from \$28 per ton to \$39 per ton effective July 1, 2012. Increasing the disposal fee would allow for payment of the WTE project's increased cost under the existing Service Agreement with Covanta Stanislaus, Inc., or under the proposed New Service Agreement if it is approved by the Board of Supervisors and the Modesto City Council.

(Continued on next page)

BOARD ACTION AS FOLLOWS:

No. 2012-205

On motion of Supervisor Withrow, Seconded by Supervisor Chiesa

and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

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FISCAL IMPACT (Continued):

If a fee adjustment is approved, the increase in annual revenue is estimated to be \$2,750,000, which would be used for the following expenses: \$2,500,000 for increased service fee payments to Covanta, \$125,000 for the Fink Road Landfill to cover the WTE portion of the scale house operations, and \$62,500 each for the Stanislaus County Department of Environmental Resources and the City of Modesto to cover the administration costs associated with the WTE project.

The current disposal (tip) fee at the WTE facility of \$28 per ton consists of \$22 per ton for waste processing, \$3 per ton for the Assembly Bill 939 Program and another \$3 per ton for the Household Hazardous Waste Program. The tip fee has been as high as \$40.25 per ton in the past.

Although the impact of an \$11 per ton increase in the tip fee will vary by jurisdiction, rough projections indicate the increase in the garbage rate could range from \$0.50 to \$1.50 per month for a typical residential customer.

DISCUSSION:

On January 10, 2012, the Board of Supervisors and Modesto City Council approved a Term Sheet to be used in the development of a New Service Agreement with Covanta Stanislaus, Inc. (Covanta), for the operation of the waste-to-energy (WTE) facility. The Term Sheet had been proposed after several years of negotiations between Covanta and the Contracting Communities (City of Modesto and Stanislaus County collectively) to enter into a new Service Agreement. Staff anticipates returning to the Board of Supervisors and the Modesto City Council by June 30, 2012, to request approval for the New Service Agreement.

Existing Service Agreement

Under the current Service Agreement, the Contracting Communities pay Covanta a service fee for the operation and maintenance of the facility and are also responsible for all pass through costs associated with the facility (taxes, insurance, permit fees, ash disposal, etc.). In addition, the Contracting Communities are responsible for any costs associated with unforeseen circumstances such as changes in law, major upgrades, or any acts, events, or conditions that have a material adverse effect on the operation of the facility. The Contracting Communities also retain the disposal fees, 90% of the electric revenue generated by the facility, 50% of the metal recycling revenue, and 30% of the supplemental waste revenue.

The County acts as Treasurer for the Contracting Communities and has established a separate agency enterprise fund for the operation and maintenance of the WTE facility, the Resource Recovery Account (RRA). Through a series of tip fee increases and the refinancing of the debt on the facility in 2000 at a favorable interest rate, the Contracting Communities built up this account to the point where they were able to completely pay off the debt on the project in 2008 and still maintain an operating reserve of over \$19 million. This reserve has been used to stabilize disposal fees at the facility.

For the fiscal year ending June 30, 2011, the Contracting Communities collected \$7,030,953 in disposal fees, \$5,488,362 in their share of electricity revenue, \$300,352 in their share of metal recovery, and \$369,498 in their share of supplemental waste revenue, for total operating revenue of \$13,189,165. For the same period, operating expenses totaled \$16,689,187 with the largest expenses being \$11,348,289 for the facility operations and maintenance service fee paid to Covanta and \$3,397,810 in facility pass through costs. This resulted in an operating loss for the year of \$3.5 million. This loss was covered through the use of the reserves in the RRA.

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The long term nature of the original Service Agreement facilitated the establishment of a Power Purchase Agreement (PPA), between Covanta and PG&E for the delivery and purchase of electricity, which expired on January 1, 2010. Given that no long term contract is currently in place, Covanta has not negotiated a new PPA and is currently selling electricity at Short Run Avoided Cost (SRAC) rates which are considerably less at the present time than could be obtained through a new PPA. Consequently, the electricity revenue to the Contracting Communities has fallen dramatically resulting in increased service fee payments to Covanta and an estimated operating loss of over \$225,000 per month (average amount – varies month to month based on current electricity rates). The aggregate operating loss has resulted in a decline in reserves from a cash balance on January 1, 2010 (when the PPA expired), of \$19,551,851 to a cash balance on April 1, 2012, of \$11,707,394.

As the SRAC rates have declined even further this year, the projected loss if the facility continues to operate under the existing Service Agreement will be greater than \$3.5 million for the current fiscal year and in foreseeable future years, which necessitates an increase in the tip fee of at least \$11 per ton as soon as possible.

The Household Hazardous Waste (HHW) Program is operated by the Department of Environmental Resources (Department) and is available to all residents countywide. This Program provides for the diversion of HHW from sewer systems, landfills, and roadside dumping through the operation of a permanent collection facility and mobile collection events. The HHW Program is funded by the fee charged at WTE facility, which will remain at \$3 per ton.

The City of Modesto, the remaining eight cities within Stanislaus County, and the unincorporated County communities all benefit from the use of the WTE facility via credits for waste diversion from landfills to meet the State mandates established by Assembly Bill (AB) 939. Each jurisdiction also receives revenues for their solid waste programs from the AB 939 Program fee at a rate of \$3 per ton of waste delivered to the WTE facility on their behalf by their contracted haulers. The AB 939 Program fee will remain at \$3 per ton.

Proposed New Service Agreement

Under the proposed New Service Agreement, the existing service fee structure with Covanta would change dramatically. Covanta's service fee to operate the facility would no longer have facility operations and maintenance, pass through costs, and electricity revenue credit components. Rather, the service fee would be based on the tonnage of acceptable waste processed by the facility. The Contracting Communities, however, will retain 25% of the costs associated with any unforeseen circumstances of facility operations, for which they will set aside a reserve of \$3.75 million from the RRA.

The Contracting Communities would be required to pay Covanta a service fee of \$32 per ton of acceptable waste processed through the facility and would guarantee sending 243,300 tons to the facility annually. The service fee would escalate each July 1st based on the Consumer Price Index (CPI), "Urban Wage Earners and Clerical Workers, All items, West – Size B/C." This is the same index which is used to establish the Stanislaus County franchise maximum rates for solid waste collection services. In order to ensure that the service fee remains competitive and reasonable compared to rates charged by surrounding agencies, the automatic annual CPI escalation will have a cap on the annual rate to not exceed 120% of the average of the posted gate rates per ton for landfills within a 50 mile radius. If the New Service Agreement is approved, adjusting the tip fee using the same annual escalation method and cap as Covanta's service fee will ensure that there are sufficient funds in the RRA in future years to pay for Covanta's service fee, HHW and AB 939 Programs, the Fink Road Landfill for the WTE portion of scale house operations, and the Contracting Communities administration

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costs. Staff will evaluate this next year before Covanta's first CPI escalation on July 1, 2013, to determine if a corresponding adjustment to the tip fee is warranted.

If approved by the Board of Supervisors and Modesto City Council, the New Service Agreement based on the negotiated terms would reduce the risk exposure of the Contracting Communities from the current level of 100% liability for any unforeseen circumstance costs to 25% liability for unforeseen circumstance costs, require an increase in tip fees of \$11 per ton while establishing stable and predictable tip fees for the next 15 years, assist local agencies in continuing to meet diversion requirements, preserve landfill capacity, and keep the RRA from declining further due to continued operating losses. The tip fee at the WTE facility under the scenario of a New Service Agreement, therefore, would need to be increased to \$39 per ton to cover the \$32 per ton payment to Covanta, \$6 per ton for the AB939 and HHW Programs, and \$1 per ton to cover scale house and administrative costs.

Proposition 26

As the Board is aware, Proposition 26 was approved by California voters on the November 2010 ballot. Its passage amends sections of the California Constitution to define many fees as taxes, stipulating that they can no longer be levied or increased unless passed by not less than a two-thirds majority vote. The Proposition, however, exempts specific types of fees from this requirement as follows: 1) charges imposed for entrance to or use of local government property; and 2) charges for a specific benefit, privilege, or governmental service granted directly to the payor. County Counsel has opined that WTE disposal fees are exempt from the provisions of Proposition 26.

Conclusion

In order to keep the stakeholders informed during this process, Department staff met separately with the City Managers of the eight cities and the County's three franchised haulers in September and October 2011, to discuss the Covanta Service Agreement negotiations and the likelihood of a \$10-\$11 increase in the WTE disposal fees.

On April 30, 2012, the Solid Waste-to-Energy Executive Committee considered the proposed increase in the WTE disposal fee and recommended the matter for consideration by the City of Modesto and the Stanislaus County Board of Supervisors. If the Board of Supervisors sets a Public Hearing as requested, Department staff will appear before the Board on May 22, 2012, to recommend the adoption of a \$11 per ton increase in the disposal fee at the WTE facility.

Increasing the fees on waste disposed of at the WTE facility requires concurrence by the Modesto City Council and the Stanislaus County Board of Supervisors. County staff expects a similar proposal to be considered by the Modesto City Council at their meeting on May 22, 2012.

POLICY ISSUE:

The Board of Supervisors is required to set a public hearing prior to increasing fees. Approval of this agenda item to set a public hearing to consider an increase in the disposal fee at the Stanislaus waste-to-energy facility is consistent with the Board's priorities of A Safe Community, A Healthy Community, A Well Planned Infrastructure System, and the Efficient Delivery of Public Services. Increasing the tip fee to reduce risk exposure, establish stable and predictable fees for the next 15 years, and keep the RRA from declining further due to continued operating losses assists in promoting a safe and healthy environment and improving the quality of life in Stanislaus County.

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STAFFING IMPACTS:

There are no staffing impacts associated with this item.

CONTACT PERSON:

Sonya K. Harrigfeld, Director of Environmental Resources Telephone: 209-525-6770

**STANISLAUS COUNTY
NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that on May 22, 2012, at the hour of 9:05 a.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will conduct a public hearing in the basement Chambers, 1010 Tenth Street, Modesto, CA, to consider an increase in the disposal fee at the Stanislaus waste-to-energy facility. A recommendation will be made that this fee increase be effective July 1, 2012, as follows:

**CURRENT DISPOSAL FEE: \$28/ton
PROPOSED DISPOSAL FEE: \$39/ton**

AT THE ABOVE NOTICED TIME AND PLACE, interested persons will be given an opportunity to be heard. Material submitted to the Board of Supervisors or the Department of Environmental Resources for consideration (i.e., petitions, etc.), will be retained by the County. If a challenge to the above process is made in court, persons may be limited to raising only those issues they or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board or the Department of Environmental Resources. For further information, contact the Department of Environmental Resources at (209) 525-6700 or at 3800 Cornucopia Way, Suite C, Modesto, CA.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: May 1, 2012

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk of
the Board of Supervisors
of the County of Stanislaus,
State of California

BY:


Elizabeth King, Assistant Clerk of the Board



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**DECLARATION OF PUBLICATION
(C.C.P. S2015.5)**

**COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am a printer and Principal clerk of the publisher of **THE MODESTO BEE**, printed in the City of **MODESTO**, County of **STANISLAUS**, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of **STANISLAUS**, State of California, Under the date of **February 25, 1951, Action No. 46453**; that the notice of which the annexed is a printed copy, has been published in each issue there of on the following dates, to wit:

May 12, 2012, May 18, 2012

I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at

MODESTO, California on

May 22nd, 2012

(By Electronic Facsimile Signature)

Marie Dickmann

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