

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

DEPT: Environmental Resources *SKA*

BOARD AGENDA # 9:05 a.m.

Urgent

Routine

AGENDA DATE May 22, 2012

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Public Hearing to Consider an Increase in the Disposal Fee at the Stanislaus Waste-to-Energy Facility

STAFF RECOMMENDATIONS:

Conduct a public hearing to consider an increase of \$11 per ton in the disposal fee at the Stanislaus Waste-to-Energy facility.

FISCAL IMPACT:

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, under negotiation, if it is approved by the Board of Supervisors and the Modesto City Council.

(continued on next page)

BOARD ACTION AS FOLLOWS:

No. 2012-260

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.

## Public Hearing to Consider an Increase in the Disposal Fee at the Stanislaus Waste-to-Energy Facility

### 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-related scale house operations cost, 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. Each respective staff anticipates returning to the Board of Supervisors and the Modesto City Council on June 26, 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 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 and offset any operating deficit that accumulates.

## Public Hearing to Consider an Increase in the Disposal Fee at the Stanislaus Waste-to-Energy 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 as follows: \$11,348,289 for the facility operations and maintenance service fee paid to Covanta, \$3,397,810 in facility pass through costs, and \$1,943,088 for the Assembly Bill 939 and Household Hazardous Waste Programs and City/County administration and outside legal/audit 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.

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 \$300,000 per month (average amount – varies month to month based on current electricity rates). The aggregate operating loss has resulted in a 44% decline in reserves from a cash balance on January 1, 2010 (when the PPA expired), of \$19,551,851 to a cash balance on May 1, 2012, of \$10,982,717.

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

## Public Hearing to Consider an Increase in the Disposal Fee at the Stanislaus Waste-to-Energy Facility

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 WTE portion of scale house operations, and the Contracting Communities administration costs. County 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.

## Public Hearing to Consider an Increase in the Disposal Fee at the Stanislaus Waste-to-Energy Facility

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.

A notice of the proposed increase in fees at the Stanislaus Waste-to-Energy facility (Attachment "A") was published on May 12, 2012, and May 18, 2012, in the Modesto Bee.

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 hold a public hearing prior to increasing fees. Approval of this agenda item to authorize 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. By 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.

### 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

# Proposed Waste-to-Energy Disposal Fee

Sonya K. Harrigfeld, Director

Jami Aggers, Assistant Director

Mandip Dhillon, Solid Waste Program Manager

May 22, 2012

# Background

- On January 1, 2010, the 6-year extension option of the original 20-year WTE facility agreement with Covanta Stanislaus, Inc., was exercised.
- 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.



# Under the Existing Service Agreement:

- Contracting Communities are responsible for Covanta's Service Fee, broken down as follows:
  - Operations & Maintenance costs of the facility (escalated annually using a CPI Index)
  - Pass-through costs associated with the facility (i.e., taxes, insurance, permit fees, ash disposal, etc.)
  - 100% of Costs associated with any unforeseen circumstances (changes in law, major upgrades or any acts, events or conditions that can have an adverse effect on the operation of the facility)

# Under the Existing Agreement cont'd.

- The Contracting Communities 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.

# Under the Existing Agreement cont'd.

- Total Operating Revenue for FY ending 6/30/11 was \$13,189,165
- Total Operating Expense for FY ending 6/30/11 was \$16,689,187
- Net Operating Loss = \$3.5 million, which was covered by Resource Recovery Account (RRA) Reserve

# Under the Existing Agreement cont'd.

- Over the years, RRA Reserve was built up to \$19.5 million by Jan 1, 2010, through series of disposal fee increases, refinancing of debt at a favorable interest rate, and good rates on sale of electricity
- The RRA Reserve enabled disposal fee to remain at or below \$28/ton for last ten years
- Disposal fee has been as high as \$40.25/ton in the past

# Under the Existing Agreement cont'd.

- Today, project is debt-free, however, electricity revenue has declined significantly over the past 3 years (by greater than 60% overall)
- As a Result, RRA reserve has declined to \$10.9 million as of May 1, 2012
- Since electric rates continue to decline while facility costs continue to increase, the existing agreement scenario necessitates at least an \$11/ton increase in disposal fee as soon as possible to sustain an adequate RRA reserve.

# Proposed New Service Agreement

- Covanta service fee structure will change: it won't be based on operations & maintenance costs, pass-through costs and electric revenue credit components
- Rather, it will be based on a per-ton processing fee to Covanta.
- And, Covanta will retain 100% of electric, metal recycling and supplemental waste revenues

# Proposed New Service Agreement cont'd.

- However, the Contracting Communities unforeseen circumstances cost liability of facility operations will be reduced to 25%, for which they will set aside a reserve of \$3.75 million from the RRA
- The starting rate of Covanta service fee will be \$32 per ton of Acceptable Waste processed through the facility.

# Proposed New Service Agreement cont'd.

- The Covanta service fee will be escalated each July 1<sup>st</sup> based on the Consumer Price Index (CPI), “Urban Wage Earners and Clerical Workers”, All Items, West – Size B/C
- The service fee escalation will be capped at 120% of the average posted gate rates of landfills within a 50-mile radius



# If the New Agreement is Approved:

- It would reduce the risk exposure of the Contracting Communities from 100% to 25% for unforeseen circumstance costs
- Assist local agencies in continuing to meet waste diversion requirements of the State
- Preserve landfill capacity

# If the New Agreement is Approved, cont'd.

- Facilitate stable and predictable disposal fees at the waste-to-energy facility for the next 15 years
- Require an \$11 per ton increase in disposal fees to reduce the current operating loss

# Disposal Fee Breakdown

- Increase from \$28/ton to \$39/ton for:
  - \$32/ton to Covanta
  - \$3/ton to AB 939 Program
  - \$3/ton to Household Hazardous Waste Program
  - \$1/ton for scale house operations and County/City Administrative costs

# Staff Recommendation

- Approve the recommended \$11 per ton adjustment to the Waste-to-Energy facility disposal fee effective July 1, 2012.

Questions?