

Material Recovery Facility

Reason For The Report

The 2003/2004 Grand Jury received a citizen's complaint concerning the operation of the El Dorado County Materials Recovery Facility (MRF) in Diamond Springs.

Scope of the investigation

People interviewed

- Complainant
- Director, County Environmental Management Department and staff members
- MRF staff

Documents reviewed

- County Environmental Management Department documents
- El Dorado County Agreement with Waste Management, Inc.
- New proposed County waste disposal Agreement
- Notice of Default from the County to MRF franchise
- Photographs and video of facility activities
- The Integrated Waste Management Act of 1989 (AB939)

Sites visited

- MRF, several occasions
- Board of Supervisors meetings

Background

In December 1996, the Union Mine Disposal site was closed to the public. Western El Dorado Recovery Systems, Inc. opened a materials recovery facility in Diamond Springs. The County contracted with Western El Dorado Recovery Systems, Inc., to help facilitate compliance with California law AB939 which mandates a 25% diversion from landfills by 1995 and 50% by 2000, or face a \$10,000 per day fine.

In the late 1990's Waste Management, Inc. assumed responsibility for both El Dorado Disposal, Inc., and Western El Dorado Recovery System, Inc. The MRF in Diamond Springs is considered a "dirty materials recovery facility" because its operations separates the non-recyclable material from the recyclables. Recycled materials are sent to a "clean materials recovery facility" in California where paper, cardboard, metal, glass and plastic are further separated. In early 1997 the County began the transition into a permanent "exporting county" by taking all waste that could not be recycled to landfills outside of the county.

The Grand Jury toured the MRF on several occasions observing the following: waste drop area, recycling area, separating area, green waste area, carcass bin, thrift shop, and camera monitoring room.

Facts

1. Waste Management, Inc., is currently operating under the original El Dorado Disposal Company Agreement.
2. The State mandated recycling requirements of AB939, have not been met by the county since 1995.
3. The County received a “good faith” extension (July 2000 to July 2004) from California’s 50% recycling requirement of AB939. Another extension request is being considered.
4. On 7/17/02, the County issued a Notice of Default to Waste Management, Inc., for failure to operate the transfer station/recycling facility in accordance with the contract.
5. The County will incur a \$10,000 a day fine, if they do not meet the 50% recycling requirements.
6. The County is no longer making regular on-site inspections of MRF to assure compliance with AB939.
7. The state requires that non-recycled materials be hauled away within 24 hours.
8. There is a manual sorting of waste conducted at the MRF to help meet the recycling requirement.
9. A camera system has been installed to monitor operational activities at MRF.
10. There is a non-refrigerated bin provided for animal carcasses.
11. There is only one register at the MRF for non-commercial refuse drop off payment.

Findings

1. By not enforcing the State mandated recycling requirements, County faces a \$10,000 a day fine.

Response to Finding 1: The respondent disagrees wholly with the finding. Every California county, city, and regional agency potentially faces a \$10,000 per day fine by not enforcing the State mandated “diversion” requirement. The finding, as stated, infers that the County is not enforcing the State mandated diversion requirement. The County disagrees with this inference. The California Integrated Waste Management Board (CIWMB) determines compliance with the 50% diversion requirement by using a two-part criterion, namely:

- Implementation of each jurisdiction’s Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE), referred to as “program implementation”; and
- Diversion rate achievement.

The County has (and continues) to implement the programs adopted in its SRRE and HHWE in addition to developing and implementing new programs while expanding existing programs. The Materials Recovery Facility is one of 46 programs being implemented by the County. The implementation status of 43 of these programs was described in the most recent County AB 939 annual report, as required, to the CIWMB (see attached report). The remaining three programs are new programs not previously selected, which are now being implemented.

The two-fold test is noteworthy to recognize because there have been jurisdictions, which have not been deemed in compliance, because:

- 1) They exceeded the 50% diversion rate requirement but could not demonstrate satisfactorily to the CIWMB that programs supporting the diversion rate were sufficient; or
- 2) They were implementing selected programs but did not achieve the 50% diversion rate requirement. For example, the City of Point Arena in Mendocino County attained a 20% diversion rate in 2000 and was deemed to be in compliance and not considered for a \$10,000 per day fine.

Although El Dorado County did not achieve the 50% diversion rate requirement in 2000, it was granted a time extension by the CIWMB under the SB 1066 Extension option. When the CIWMB approved the County's request for a time extension, the CIWMB deemed that the County was demonstrating a "good faith effort" to fulfill compliance with AB 939. During meetings with CIWMB staff, they have indicated that the County is implementing programs and demonstrating a "good faith effort" to reach the diversion rate goal. The CIWMB officially accepted the County's diversion results for 1997 and 1998. And, the CIWMB officially approved the County's results for 1995, 1996, and 1999.

In addition, the County has taken enforcement actions with respect to Waste Management's operation of the Materials Recovery Facility. As the Grand Jury report notes, the County has issued a Notice of Default to Waste Management, Inc., notifying Waste Management, Inc. that it is in default of its Materials Recovery Facility Operations Agreement with the County. The County's Notice of Default concludes that Waste Management, Inc. is not operating the Materials Recovery Facility, as required by its Agreement with the County, by processing all incoming loads of solid waste to remove the recyclable materials from those loads. In response to the County's Notice of Default, Waste Management has made improvements in the operation of the Materials Recovery Facility. These improvements include an increase in the number of pickers that are staffing the picking lines at the Materials Recovery Facility, as well as taking source separated recyclables collected by Waste Management, Inc. to Waste Management's recycling facility in Lodi, California. The Lodi facility reportedly recycles in the range of 85-90% of all incoming materials.

Lastly, County staff has negotiated a new agreement with Waste Management, Inc., which combines Waste Management's collection and recycling facility operations under the umbrella of a single agreement. The new agreement will provide incentives for Waste Management, Inc. to increase its recycling levels, as well as provide the County with additional enforcement tools, including cross default provisions, in the event that Waste Management, Inc. does not increase its recyclable materials.

The County takes its AB 939 responsibilities seriously, and believes that it is exercising a "good faith effort" to fully comply with AB 939 while also working with CIWMB staff to improve program implementation. The County does not believe that it faces the

prospect of being assessed a fine. If it were, it would have been issued a compliance order by the CIWMB – the initial step leading to a conduct of a public hearing and possibly a penalty assessment.

2. Instead of enforcing the State mandated recycling requirements, of 50%, the County continues requesting extensions. Currently, the recycling is approximately half of the mandated requirement.

Response to Finding 2: The respondent disagrees wholly with the finding. The State-mandated requirement for the County is a 50% diversion rate requirement. The term “diversion” includes four component generic program types, namely: source reduction, recycling, composting, and special waste diversion. The County wants to ensure that it is understood that the County must meet more than “recycling” requirements. Recycling is only one component of “diversion”.

The County is not responsible to “enforce” AB 939 requirements but must comply with AB 939 mandates. Compliance is determined by the extent of program implementation and the associated diversion rate. As noted in the response to Finding 1, the County is implementing its selected programs and new programs. When the CIWMB Board considered the County’s 1999-2000 year performance, it granted a SB 1066 time extension because the County was implementing its programs through “good faith efforts’ but staff indicated to the CIWMB Board that the County be granted some extended time to coordinate program performance with diversion rate measurement.

The CIWMB Board has approved SB 1066 time extensions for more than 121 cities and counties. And when El Dorado County was being considered for a time extension (July 23, 2002), it initially requested an extension to July 1, 2005. CIWMB staff also recommended this request. However, the CIWMB Board did not want to establish a precedent in 2002 of approving any jurisdiction’s time extension beyond December 31, 2004. Furthermore, it is noted in the resolution approved by the CIWMB Board on July 23rd, 2002 that:

“...if the jurisdiction has not achieved 50% diversion within two years, it may still apply for an additional time extension pursuant to Public Resources Code (PRC) Section 41820.”

SB 1066 only allows the requesting of two time extensions, and cumulatively, the extensions expire on January 1, 2006. The County’s 2nd request for a time extension is through December 31, 2005.

Notwithstanding the above, the County filed the SB 1066 extension to allow the County and its South Lake Tahoe franchise, South Tahoe Refuse, Co., Inc., and the Herhof Corporation of Frankfurt, Germany time to complete the extraordinary permitting process, unique to Lake Tahoe, for our \$22 million dollar Municipal Solid Waste (MSW) composting project. The project is anticipated to receive the Tahoe Regional Planning Agency (TRPA) permit by October 2004 and construction is scheduled to begin in May

2005. This project will significantly contribute to the County's recycling/diversion effort. This is the same project the 2000/01 Grand Jury recommended to pursue and the County has given it full attention to insure that it is built.

Additionally, the County is concerned that the diversion rate measurement methodology used by the CIWMB may not result in accurate diversion rate measurement. The calculation of any local government's compliance with AB 939 diversion goals is a complicated process and can be skewed if the County has an inaccurate "base year" calculation or has not fully accounted for all of the diversion activities taking place in the County. This is a problem that has confronted many cities and counties in the last several years. As a result, the CIWMB has recently approved revised "base year" and diversion calculations for many cities and counties, and has thereby approved alternative methods for reporting the success of various cities and counties in meeting their AB 939 diversion goals.

AB 939 requires that a county submit information to the CIWMB "data which is as accurate as possible, on the quantities of solid waste generated, diverted, and disposed, to enable the board, to the maximum extent possible, to accurately measure the diversion requirements..." (PRC Section 41331)

The County has begun an evaluation of the initial base year data used for this purpose and found that some diversion measurement "indicators" may support the hypothesis that the County's base year (1990) waste generation amount may not be accurate. The County has advised the CIWMB of its intent to conduct a new waste generation study for the year 2003, which will be more accurate than its 1990 base year. This study may indicate that the County's diversion rate is actually much higher than the current 2002 diversion rate of 32% and may even exceed 50%.

The County is midway through the study and is planning to submit the request for a new base year waste generation amount by the end of the year (12/31/04). More than 150 jurisdictions have submitted requests for new base year waste generation amount.

The County has indeed requested extensions from the State in order to meet the 50% diversion goal but, as noted above, the County is also hopeful that if the CIWMB approves a new base year calculation for the County, that the County's existing diversion efforts would then be considered to be in compliance with AB 939. For that reason, the County disagrees with the Grand Jury's findings that the County's current recycling level is approximately half of the mandated requirement. The County is also taking several steps to require Waste Management, Inc. to increase its recycling efforts.

3. The County has proposed a new Agreement with Waste Management, Inc.

Response to Finding 3: The respondent agrees with the finding. Waste Management, Inc. is operating under preexisting agreements (assigned from the former local long term owners of EDSI to Waste Management, Inc.) that extend through December 31, 2012. Notwithstanding the foregoing, County staff agrees with the tenor of the Grand Jury's

finding that additional efforts need to be made by Waste Management, Inc. to divert recyclable materials from landfilling. The County is endeavoring to use all the contractual and enforcement tools at the County's disposal to reach this goal.

4. Non-recycled materials are not hauled away within 24 hours as required by state law.

Response to Finding 4: The respondent disagrees wholly with the finding. The statutory enforcement and monitoring authority for the Materials Recovery Facility is the Local Enforcement Agency (LEA), which is the El Dorado County Public Health Department, which contracts with the Placer County Environmental Management Department for inspections and enforcement of the State "Minimum Standards for Solid Waste Handling and Disposal Facilities (Chapter 3 of Division 7 of Title 14 of the California Code of Regulations). Strict adherence to the regulatory requirements is administered, enforced, and ensured through monthly inspections by the LEA. In accordance with the LEA, Title 14 California Code of Regulations (CCR), Section 17410.1 Solid Waste Removal states:

A) All solid wastes shall be removed at the following frequencies at an alternative frequency approved by the LEA in order to prevent propagation or attraction of flies, rodents or other vectors:

1. Operators shall remove solid waste accepted at the site within 7 days from the date of receipt.
2. Facilities shall remove solid waste accepted at the site within 48 hours from the time of receipt.
 - As noted, removal of the waste is within 48 hours and not 24 hours as indicated by the Grand Jury

5. The County is no longer making on-site inspections of the MRF operations on a regular basis.

Response to Finding 5: The respondent disagrees wholly with the finding. The County continues to conduct periodic on-site inspections of the Materials Recovery Facility. Staff also relies on site monitoring of the cameras, by real time digital camera surveillance, which has only been partially installed. Currently, the digital system only has four (4) viewing stations, however, the County plans to expand the system to include 12 viewing stations.

In addition, it should be remembered that the operations of the Materials Recovery Facility are only one facet of the overall scope of the recycling programs, which Waste Management, Inc. is currently implementing.

6. The camera system, monitored at the Environmental Management Department, does not provide adequate monitoring of the recycling activities.

Response to Finding 6: The respondent disagrees partially with the finding. The County agrees that the camera system standing alone does not provide adequate monitoring of all Waste Management's recycling activities, nor was it intended to. The monitoring of Waste Management's recycling activities requires a range of monitoring and enforcement actions, including periodic on-site inspections of the Materials Recovery Facility, camera monitoring of Materials Recovery Facility activities, and review of the periodic reports of Waste Management, Inc. on the success of its various recycling programs. The new contract proposed with Waste Management, Inc. would improve the monitoring and enforcement tools available to the contract.

7. The animal carcass bin is not always properly closed.

Response to Finding 7: The respondent disagrees partially with the finding. In accordance with the LEA, California Waste Management Board staff Sue O'Leary, Christine Karl, John Whitehill, and Tim Willette met with Mike Goudreau of Waste Management on April 16, 2004 regarding any issues that could be found regarding the Material Recovery Facility. During this inspection, the facility was in full compliance in regard to all operations at the facility. The LEA will work with the operator to close the lid on the animal bin and ship the materials on the next available vehicle bound for the landfill in Lockwood, Nevada.

8. The MRF does not have the State required animal carcass freezer.

Response to Finding 8: The respondent disagrees wholly with the finding. In accordance with the LEA, Title 14 CCR does not require the operator to have an animal carcass freezer. The LEA can suggest that a freezer for the animal carcass, but it is not a requirement of the California Code of Regulations.

9. County residents can incur long wait times to drop off their refuse.

Response to Finding 9: The respondent disagrees partially with the finding. This has been a frequent problem at the Materials Recovery Facility, especially on Saturday and Sunday when there is a significant impact from self-haulers. County staff has discussed this issue on several occasions with Waste Management, Inc. and the LEA has suggested that traffic must be managed more efficiently on peak days. This measure requires that County residents be served in a timely manner, and they be directed to the appropriate areas at the facility using a proper traffic flow.

In accordance with the LEA, Waste Management, Inc. has installed an additional computer at the gatehouse so that an extra employee can calculate the loads and receive payment during peak hours at the facility. In addition, in the new agreement there is a proposal that would cause Waste Management, Inc. to pay the County liquidated damages if the wait times at the Materials Recovery Facility are excessive.

Recommendations

1. The County must enforce the State-recycling requirements of 50%.

Response to Recommendation 1: The recommendation has been implemented. As noted earlier, the County is not responsible to “enforce” AB 939 requirements but is responsible to comply with AB 939 requirements. Compliance is determined by the extent of program implementation and the associated diversion rate. The County has reported on the status of its implementation of all selected programs in its 2002 AB 939 annual report to the CIWMB.

The State-mandated requirement for the County is a 50% diversion rate requirement. The term “diversion” includes four component generic program types, namely: source reduction, recycling, composting, and special waste diversion. The County wants to ensure that it is understood that the County must meet more than “recycling” requirements. Recycling is only one component of “diversion”.

The County will continue to fully comply with AB 939 and strive to expand program implementation effectiveness and accurate diversion rate measurement methodologies. The County will enforce provisions in its current agreement with all its solid waste providers (e.g., EDSI, STR, WERS, Amador) to fulfill their responsibilities pertinent to the County’s ability to achieve compliance with AB 939.

2. The County must expedite the new Agreement with Waste Management, Inc., or contract with a company that will meet state AB939 mandates.

Response to Recommendation 2: The recommendation has not yet been implemented, but will be implemented in the future. The County engaged in negotiations with Waste Management, Inc. regarding a new contract. The new contract was approved by the Board of Supervisors on August 31, 2004. Under the new contract, which has a term that extends to December 31, 2012, Waste Management, Inc. will implement additional recycling services.

3. The County must enforce California State Regulations requiring all non-recycled material be removed within 24 hours, including weekends.

Response to Recommendation 3: The recommendation has not yet been implemented, but will be implemented in the future. During the weekends, non-recycled materials are transported to Lockwood late on Saturday morning and then again early Monday morning. The County has discussed a recommendation with the LEA to require Waste Management, Inc. to remove the non-recycled material within a 24-hour period – including weekends. The LEA has indicated that this recommendation will be stipulated in the new Permit for the MRF.

4. The County must not rely exclusively on camera monitoring of the MRF activities, and must re-instate on-site inspections to ensure AB939 compliance.

Response to Recommendation 4: The recommendation has been implemented. The County agrees that the camera system standing alone does not provide adequate monitoring of all Waste Management's recycling activities, nor was it intended to. The monitoring of Waste Management's recycling activities requires a range of monitoring and enforcement actions, including periodic on-site inspections of the Material Recovery Facility, camera monitoring of Materials Recovery Facility activities, and review of the periodic reports of Waste Management, Inc. on the success of its various recycling programs. The new contract proposed with Waste Management, Inc. would improve the monitoring and enforcement tools available to the contract.

The County continues to conduct periodic on-site inspections of the Materials Recovery Facility, but because of the multitude of tasks facing the staff of the Environmental Management Department, staff also relies on spot monitoring of the cameras, which have been installed at the MRF to assist County staff in surveillance of the Materials Recovery operations. The LEA makes regular monthly inspections on the entire Materials Recovery Facility on a regular basis. In addition, it should be remembered that the operations of the Materials Recovery Facility are only one facet of the overall scope of the recycling programs, which Waste Management, Inc. is currently implementing.

5. The County must enforce compliance with state law regarding a freezer for animal carcasses.

Response to Recommendation 5: The recommendation will not be implemented because it is not warranted. Title 14 CCR does not require the operator to have a carcass freezer. The LEA can suggest an animal freezer for the animal carcasses, but it is not required. The LEA will work with the operator to close the lid on the animal bin and ship the material on the next available vehicle bound for the landfill in Lockwood, Nevada. Waste Management, Inc. will be required to monitor the animal carcass bin four (4) times a day and document the inspection with the date, time, and employees initials.

6. The County must direct Waste Management, Inc., to improve non-commercial customer service at the MRF.

Response to Recommendation 6: The recommendation has been implemented. The County has directed Waste Management, Inc. to improve non-commercial customer service at the MRF. The LEA has stated that Waste Management, Inc has installed an additional computer at the gatehouse so that an extra employee can calculate the loads and receive payment during peak hours at the facility. In addition, depending on high demand, an employee may walk the traffic flow line and pre-calculate the cost of the load. The LEA will discuss the findings of the Grand Jury to the operator and will alleviate the problem.

The Environmental Management Department will request that the Planning Department verify the MRF's Special Use Permit #S94 08 with regards to compliance standing of the mitigation measures that were developed to address identified impacts including, but not limited to, the following issues:

“...access and circulation impacts upon the local road system as well as long term regional circulation impacts; noise impacts to the adjacent residential sites located south of the project site; the identification and disposal of hazardous waste, odor, vector control, fire danger, storm water drainage, etc.”

The County is hopeful that it can negotiate a new agreement with Waste Management, Inc., which will provide for additional enforcement tools to ensure shorter waiting lines at the Materials Recovery Facility.