

SACRAMENTO REGIONAL COUNTY SOLID WASTE AUTHORITY (SWA)

March 20, 2001

Franchisee Administrative Rules No. 2001-1

The following is a compilation – often with additional clarification – of notices, guidelines and administrative rules for permittees operating under the SWA that have been previously promulgated by the County Waste Management and Recycling Department (WMRD). The present rules also provide additional guidance and clarification under the new SWA franchise system, especially on such new issues as payments of franchise fees.

Section A: Franchise System Requirements

A.1) Franchise Fee Collection

SWA Ordinance No. 8 requires that franchisees pay a franchise fee to the SWA. The franchise fee adopted by the SWA Board is 7.25% and is based on all collection fees – including any disposal, materials recovery or processing cost – within the SWA region. This fee may be passed along to customers of the Franchisee. Franchise fees became effective January 1, 2001, and are payable monthly to the SWA. Franchise fees for January 2001 are due March 1, 2001, fees for February are due April 1, 2001, etc. All franchisees are required to collect these fees on behalf of the SWA. Checks should be made payable and addressed to:

**County of Sacramento
Waste Management & Recycling Department
9850 Goethe Road
Sacramento, CA 95827-3561
Attn: Doug Kobold or Anita Wenger**

Late payments will be assessed a late charge of 2% of the franchise fee due. If the franchise fee is more than one month late, an additional 1.5% (compounded) late charge will be assessed for each month past due.

A.2) Calculating the Franchise Fee

The franchise fee is based on the Gross Collection Revenue for each Franchisee and will be calculated using an adjusted gross collection revenue multiplied by the franchise fee percentage (currently 7.25%). To avoid compounding of the franchise fee, Gross Collection Revenue does not include the "pass through" franchise fee collected from service customers. No adjustments for recyclable rebates ~~or~~ will be accepted. The adjusted Gross Collection Revenue is based on Total Gross Collection Revenue, less Public Agencies Collection Revenue, less Elk Grove Collection Revenue as discussed under Section A.5 below.

A.3) Franchise Fee Applicability – Fair Market Value

The franchise fee adopted pursuant to SWA Ordinance No. 8 applies to all sources of collection revenue and include such revenue components as bin rental, delivery, and/or late charges. These types of collection revenues fall under the "fair market value" concept the WMRD clarified for the permittees at the 10/25/00 permittee meeting (shortly after the SWA Board had introduced Ordinance No. 8 as the first step in its adoption). On 10/25, the WMRD notified the permittees that the franchise fee does apply to the broad range of collection revenue sources, and thus that the franchise fee does apply to such specific revenue types as bin rental, delivery and/or late charges.

A.4) Fee Exemptions – Elk Grove and Public Agencies

Since the incorporated area of the City of Elk Grove is currently not a member of the SWA, SWA franchise fees should not be collected in Elk Grove at this time.

In accordance with the provisions of Section 5(B) of Ordinance 8, certain public agency generators (the United States, the State of California, a City, a special district – for example a school district – or other local public agencies) are exempt from the franchise fee, and thus franchisees should not collect franchisee fees from public agency generators.

A public agency is fee exempt when the Franchisee is directly contracting with a public agency for disposal or recycling service. Independent contractors or subcontractors of public agencies are not considered fee exempt. For example, if a Franchisee collects waste from a public agency's construction project, and the public agency directly contracts for waste hauling service with the Franchisee, the service would be fee exempt. However, if a public agency's private construction contractor or subcontractor arranged for the same collection service, the service would not be fee exempt. Similarly, if a public agency's private property management or facilities management contractor were to arrange for collection service, the service would require a franchise fee whether or not the owner of the property was a public agency or private entity. It is the status of the service requestor/contractee not the status of the property owner that determines if the revenue is exempt from the franchise fee.

A.5) Revised Insurance Requirement

County Risk Management has revised the insurance requirement for franchisees. The required Auto Liability for 2001 is \$2,000,000 (instead of \$5,000,000). Franchisees should also note and comply with the insurance provisions of their franchise agreement with the SWA.

A.6) Confidential Information

As has been the past practice on SWA submittals, the County WMRD will retain all information supplied by each Franchisee in the (1) application package, (2) quarterly diversion reports, and (3) franchise fee reporting as Confidential Information – Not for Public Disclosure. This information is not subject to the Public Information Act, and is therefore only accessible by Court Order.

A.7) Bin Labeling

SWA Ordinance No. 8 requires all bins to be labeled with the Franchisee Name clearly shown on the bin. Franchisees must label the bins with their Franchisee name. As stated at the 10/25/00 permittee meeting, WMRD staff intends to target unlabeled bins for enforcement action after March 1, 2001.

Section B: Diversion Guidelines

B.1) Separate Elk Grove Tonnage

Beginning with calendar year 2001, franchisees should no longer include any tonnage collected within the City of Elk Grove in reports to the SWA. The City of Elk Grove is currently not a member of the SWA, and so like any other non-SWA jurisdiction (such as Folsom, Galt, Isleton, and jurisdictions outside of Sacramento County, such as, Roseville, or West Sacramento), SWA franchisees should not include tonnage collected, tonnage disposed, or tonnage diverted – starting with the first quarter reports for calendar year 2001 submitted to the SWA. Since Elk Grove incorporated on July 1, 2000, the WMRD is willing to accept revised third and/or fourth quarter reports that franchisees may wish to submit in which Elk Grove tonnage is not included. However, franchisees must report Public Agencies and Elk Grove Collection Revenues on the monthly "Gross Revenue Return Form" supplied by the WMRD. It is recommended that franchisees keep their own records for tonnages disposed and recycled from customers in the City of Elk Grove.

B.2) Surplus Self-Haul Diversion

Any processing facility may choose to distribute surplus diversion from self-haul (i.e., any self-haul diversion above 30%) to any SWA Franchisee. Diversion documentation (e.g., market receipts) will be required.

Solid waste facilities required to divert 30% of self-haul tonnage may claim on-site reuse of self-haul materials, such as on-site construction or ADC, up to the full 30% self-haul recycling requirement for the facility.

However, please note the following conditions:

- Onsite reuse of self-haul material – no matter the location of reuse -- cannot be used for franchisee diversion.
- Surplus self-haul diversion:
 - that does NOT include on-site reuse, and
 - that is performed at solid waste facilities required to divert 30% of self-haul tonnage,

may be used for franchisee diversion, but such surplus self-haul diversion must be from material marketed offsite.

- Surplus self-haul diversion cannot be retroactively used from previous quarters to meet present or future diversion requirements. However, beginning with the 4th quarter of 2000, surplus self-haul diversion may be credited to a Franchisee either:
 - in the quarter in which it was earned; or
 - carried forward to the next quarter by the facility earning the credit (for example, carrying forward surplus from the 4th quarter of one calendar year to the 1st quarter of next calendar year) to help meet the new quarter's requirement. Please note that a quarter's diversion surplus may only be carried forward for one quarter, from a quarter with surplus diversion to the quarter immediately following that has a diversion shortfall.

The solid waste facility operator must be able to document with marketing receipts the surplus self-haul diversion to be used for franchisees.

B.3) Documentation for On-Site Reuse of Self-Haul or Franchisee Materials

A facility wishing to be credited for on-site reuse activities for either self-haul or for franchisee materials must do the following to document the reuse:

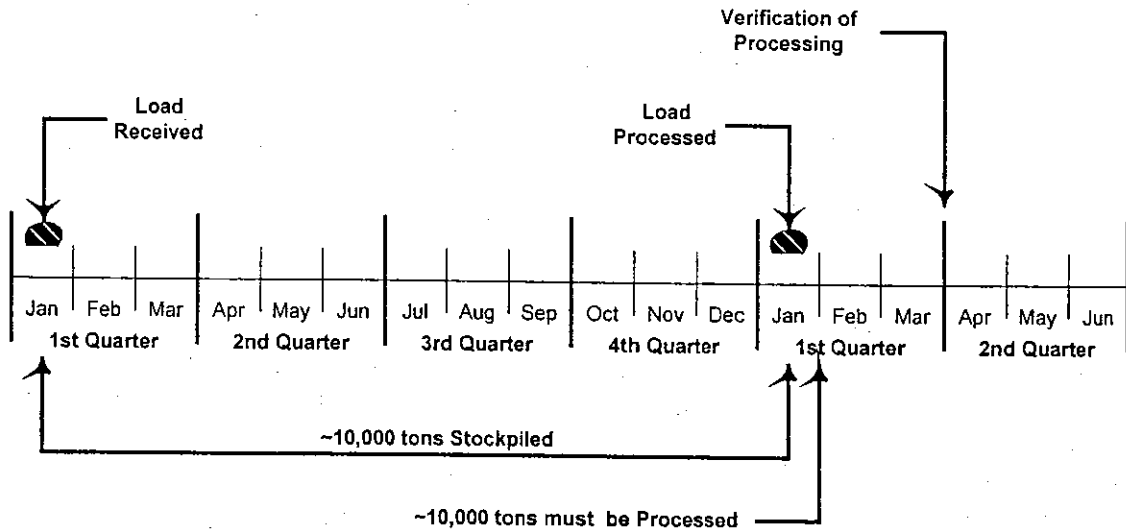
- Maintain a daily record of material type (e.g., inerts, green waste, etc.) and tonnage and source (i.e., franchisee or self-haul) of incoming materials.
- Maintain a record of how the materials were reused on-site, documenting the tonnage used, the type of materials used, and the location, purpose, and timing of each reuse event or activity.

B.4) Guidance on Stockpiling

- Self-haul or franchisee materials may be stockpiled for subsequent reuse or recycling, but for no longer than one year.
- If materials are stockpiled, records must be maintained to document the tonnage received into the stockpile, the date stockpiled, and the date material was moved from stockpile to on-site reuse or to off-site marketing, as well as the nature of the materials used, and the location, purpose, and timing of each reuse event or activity.
- If the stockpiled material is to be credited to a Franchisee, records must be maintained documenting the tonnage of credit attributed to a Franchisee, the date the credit was made, and the name of the Franchisee credited. However, as stated in Administrative Rule B.2 above, no on-site reuse of self-haul materials can be credited towards franchisee diversion.
- Franchisees receiving credit from stockpiled franchisee-generated materials will lose diversion credit and so be liable for incentive fee payments if the facility fails to process the stockpiled material within one year from the date accumulation started.

The following examples illustrate the timing requirement for processing stockpiled materials.

Example 1: If a load of inert materials requiring crushing is received in January, that load must be processed by the end of January of the next year to be credited for the quarter in which it was received. This must be verifiable by the end of the quarter in which that load was processed.



Example 2: Processing must take place no more than one year from the prior processing date. If 10,000 tons of inert material requiring crushing were received since the last crushing cycle, then at least 10,000 tons of material must be crushed for credit to be given for all the tons claimed during the quarters in which the material was stockpiled.

B.5) Who Gets the Credit

The following examples should be taken into consideration to illustrate who gets the diversion credit from recovery facility activities. (The examples assume appropriate documentation of tonnage claims and use.)

Example 1 – MRF Produces ADC for Landfill Use

A MRF processes franchisee waste for recovery. As a result of processing franchisee waste, the MRF produces a material that is acceptable as an Alternative Daily Cover (ADC). The MRF sends this ADC to a landfill, and the landfill uses the ADC in a manner acceptable to the LEA and the CIWMB.

The diversion credit for this ADC recovery will accrue to the MRF operator who may pass the credit on to its franchisee customers as the MRF operator sees fit. The credit will not accrue to the landfill operator who served as the market for ADC no matter how the material was transported to the landfill. In particular, the diversion credit will not accrue to the transporter of the ADC from the MRF to the landfill, even if this transporter is a Franchisee.

Example 2 – Tires for Landfill Reuse

A tire processing facility processes tires, and one of the materials produced may be reused on-site in a landfill for ADC or for landfill construction (e.g., for a drainage or operations layer in a new fill module) or for some other beneficial reuse. The tire facility causes the tires to be transported to the landfill for beneficial reuse. Here, the landfill is serving as the market for tire reuse. The diversion credit will accrue to the tire processor, and will not accrue to either the transporter of the tires or to the landfill that serves as the market for the tires.

If on the other hand, the tire processing facility processes whole tires collected from commercial generators by a Franchisee, where the Franchisee collected the whole tires prior to processing and the whole tires were not being hauled from a Solid Waste Processing Facility or Landfill, and as before, the tires are transported to a landfill for beneficial reuse, then the credit will accrue to the Franchisee.

Example 3 – Landfill Process Tires for On-site Reuse

A landfill accepts whole tires from franchisee and self-haul customers. The landfill processes the tires on-site, and uses the processed tires for ADC or for landfill construction. In this example, the landfill is serving as the market for tire reuse. The diversion credit for self-haul tires will be used by the landfill to meet its 30% self-haul recycling requirement, and the diversion credit for the franchisee tires will be credited towards the landfill's franchisee customers, even if a disposal fee is paid by the customer. In this example, since the tires were reused on-site, any surplus self-haul diversion cannot be credited to franchisees. Diversion credit will not accrue to any party acting as transporter of processed or unprocessed tires, even if this transporter is a Franchisee.

B.6) Surplus Franchisee Diversion and Trading Diversion Credit

For franchisees that achieve more than 30% diversion in a quarter, the surplus diversion may be carried forward and credited to the next quarter to help meet that new quarter's requirement. Surplus diversion cannot be retroactively applied to a previous quarter. Franchisees may also trade surplus diversion claims (i.e., diversion in excess of 30%) to another Franchisee within the same quarter.

A Franchisee's diversion may be reconciled annually, on a calendar year basis, so that the WMRD can determine if any refund is due for incentive fee payments in the calendar year.

Thus, any surplus diversion earned by a Franchisee, beginning with calendar-year 2000, may be either:

- credited to another Franchisee in the quarter in which it was earned; or
- carried forward by the Franchisee earning the credit to the next quarter to help meet the new quarter's requirement (See also Section B.8). Please note that a quarter's diversion surplus may only be carried forward for one quarter, from a quarter with surplus diversion to the quarter immediately following that has a diversion shortfall.

Such trading of surplus diversion credit among franchisees must be reported in the franchisee quarterly diversion reports to the WMRD (Diversion Credit Surplus/Trading Supplement Form).

B.7) Reporting Diversion Credit from Trading

When trading away surplus diversion to another Franchisee, tonnage should be deducted from tons diverted only, not tons collected. Similarly, a Franchisee receiving diversion credit from a trade should add the diversion to the total tons diverted but not tons collected.

In the example portrayed in the following table, Hauler A collects 100 tons in the quarter, and so his 30% recycling requirement is 30 tons. Hauler B collects 50 tons, and so his recycling requirement is 15 tons. Hauler A only recycled 20 tons in the quarter and so his shortfall for the quarter is 10 tons. Hauler B recycled 40 tons in the quarter and so has a surplus. To avoid an incentive fee for his 10 ton recycling shortfall, Hauler A receives 10 tons in trade from Hauler B. Hauler A would then add 10 tons to his tons-diverted value, and Hauler B would subtract 10 tons from his tons-diverted value. Neither hauler would change their tons-collected value. Hauler A would still report 100 tons collected, and Hauler B would still report 50 tons collected. Such trading activity must be reported on the quarterly Diversion Credit Surplus/Trading Supplement Form.

	Tons Collected	Tons Diverted	Tons Disposed	Diversion Rate
Hauler A	100	20	80	20.0%
Hauler B	50	40	10	80.0%
Total	150	60	90	40.0%
Result of Trade (10 tons)				
Hauler A	100	30	80	30.0%
Hauler B	50	30	10	60.0%
Total	150	60	90	40.0%

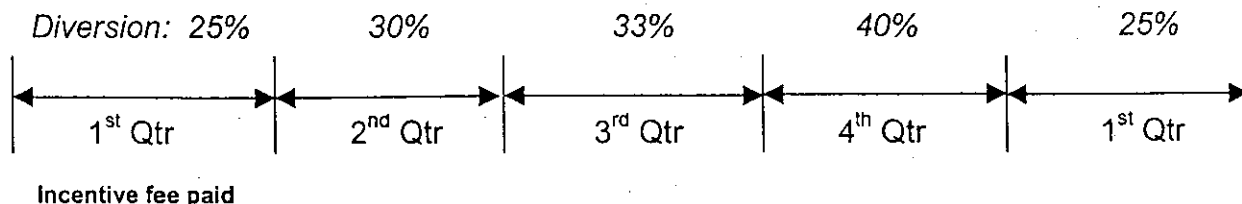
B.8) Annual Reconciliation and Incentive Fee Refunds

Beginning with calendar year 2000 (only calendar year 2000 and beyond may be reconciled), quarterly diversion surplus and shortfall may be evaluated on an annual basis to minimize the incentive fees originally established by SWA Ordinance No. 7. The WMRD will use the following guidelines for annual reconciliation:

- For franchisees who perform below 30% diversion for any individual quarter, diversion performance may be reconciled on an annual basis so that the WMRD can determine whether any refund is due for incentive fee payments in the calendar year. In such a case, incentive fees would be paid by the Franchisee for individual quarters for which diversion was short of the 30% quarterly requirement, but annual diversion would be evaluated by the WMRD based upon all four, calendar year quarters.
- Reconciliation will be based on tonnage collected, diverted, and disposed for the entire calendar year and not on an average of diversion percentages over the year.
- Incentive fees paid for quarters with 30% diversion shortfalls may be refunded, up to the total amount paid, based upon total annual performance (based on tonnage).
- Diversion surplus may be carried forward from the last quarter of one year to the first quarter of the following year.

In the following example (see diagram below), the Franchisee fell short of 30% diversion in the 1st quarter of the calendar year and paid associated quarterly incentive fees for under performance. The Franchisee could be eligible for a refund of incentive fees paid, based upon the annual reconciliation. In the example below, the Franchisee would be refunded the full amount of the incentive fee because the 40 ton shortfall from the 1st quarter was made up by the surpluses in the 3rd and 4th quarters. The 4th quarter surplus remaining in this example after the annual reconciliation is 30 tons (40 tons shortfall in the 1st quarter + 30 tons surplus in the 3rd quarter + 10 tons surplus in the 4th quarter).

This Franchisee may carry forward this remaining surplus of 30 tons from the 4th quarter to the 1st quarter of the next calendar year to make up for the diversion shortfall in the 1st quarter. Please note that a quarter's diversion surplus may only be carried forward for one quarter, from a quarter with surplus diversion to the quarter immediately following that has a diversion shortfall. After annual reconciliation of calendar year 2001, this franchisee would pay an incentive fee for 20 tons shortfall in the 1st quarter of 2002, instead of 50 tons shortfall as reported.



Calendar Year 2001				Calendar Year 2002
800 tons collected	1,000 tons collected	900 tons collected	800 tons collected	1,000 tons collected
200 tons diverted	300 tons diverted	300 tons diverted	280 tons diverted	260 tons diverted
40 tons short	30%	30 tons surplus	40 tons surplus	50 tons short
incentive fee paid				
Annual Reconciliation: 30 ton surplus for year				Reduced to 20 tons short



30 tons of 3rd quarter surplus and 10 tons of 4th quarter surplus used for annual reconciliation, for purposes of determining incentive fee refund. (40 tons shortfall in 1st quarter made up)

The 30 tons remaining from the 4th quarter after annual reconciliation is carried forward to 1st quarter. Incentive fee paid for remaining 20 ton shortfall for 1st quarter, 2002.

The WMRD will evaluate reconciliation, and if appropriate, issue a refund after May 1st on quarterly incentive fees paid in the previous year. Surplus diversion credit resulting from diversion tonnage accepted in trade from another Franchisee will be treated the same as any other diversion surplus for the purposes of the annual reconciliation.

B.9) Processed Market Product Transportation

Any Processed Market Product that is transported by a SWA Franchisee from a processor to a market cannot be counted as diversion and applied to the requirements of SWA Ordinance No. 8. This diversion allocation is the responsibility of the processor to apply to the generator and/or to the jurisdiction of origin of the solid waste processed.

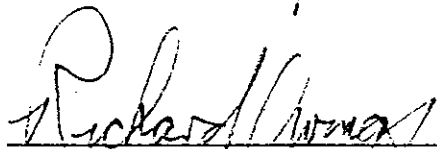
B.10) Diversion Documentation

Diversion for material brought to a processing facility by a Franchisee will not be credited until the Franchisee provides documentation in the form of Market Receipts showing that material was diverted from the waste stream, or at a minimum the material was processed and is being held as inventory (e.g., baled commodities, cleaned and ground feedstock for biomass, etc.) for an end user.

B.11) Wet Weather Adjustment

The WMRD is currently working with a Franchisee and a local facility operator to develop an acceptable method to take wet weather into account for disposal and diversion tonnage. Once this method is developed, the information will be sent to all franchisees for their potential use in adjusting disposal and diversion tonnage for wet weather.

DATE: 3/21/01



Richard D. Owings, Chief
County of Sacramento
Waste Management & Recycling Division

