

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM**

Meeting Date: June 19, 2007

Executive Summary

Request for Amendment of Final Resolution

Prepared by: *Doreen Carle*

| | | | |
|-------------------|---|------------------------------|--|
| Applicant: | California Waste Solutions, Inc. and/or its Affiliates | Amount Requested: | \$25,905,000 |
| Project | City of San Jose (County of Santa Clara) and City of Oakland (Alameda County) | Application No.: | 788 (SB) |
| Location: | | Final Resolution No.: | 462 |
| | | Prior Actions: | IR 06-10 approved 10/24/06 FR 462 approved 03/20/07 |

Type of Business: California Waste Solutions, Inc. and/or its Affiliates (the “Company”), provides residential recycling services for the City of San Jose and the City of Oakland.

Background Information:

- Initial Resolution Number 06-10 was approved on October 24, 2006 in the amount of \$25,905,000.
- Final Resolution Number 462 was approved on March 20, 2007 in the amount of \$25,905,000.

Discussion/Request: The Initial Resolution, which was just presented at this board meeting, amended the Project to approve the increase in the bond amount to the overall Project due to an increase in the cost of the land acquisition. The site has changed, as outlined below.

The request to amend the final resolution consists of adding a new site to the Project. The new contiguous site is located at 1120 and 1158 Berryessa Road in San Jose. There are two components to the use of the new site: 1) The Company will sublet the land from Norcal Waste Systems, Inc. (“Norcal”) with an option to purchase, and 2) the Company will lease the improvements from Norcal with an option to purchase. The site will be used for truck parking, a maintenance shop, office, and related facilities. Staff has received a copy of the sublease and lease agreements. Additionally, the loan agreement will contain a covenant whereby the Company agrees that if it or one of its Affiliates no longer leases the site, it will either: 1) purchase the leased site, 2) relocate and use the component financed with the 2007A Bonds to another Company-owned site, or 3) prepay the portion of the 2007A Bonds that were used to finance any component of the Project located at the leased site.

As previously discussed, the Company was awarded a contract with the City of San Jose to provide services to collect, sort, and process residential recyclables. The remaining Project components will continue as outlined on Final Resolution Request 462 (Attachment A) that was approved at the March 20, 2007 board meeting.

Public Benefits: The Company represents that the Project is designed to generate the public benefits and pollution control benefits as represented in the attached Final Resolution Request.

Financing Details: The Company anticipates a negotiated tax-exempt, weekly reset, variable rate bond issue with a term not to exceed 30 years for the qualifying portion of the project. The Company plans to secure the bonds with an irrevocable, direct pay Letter of Credit that is rated at least “A-” by Fitch Rating Agency or equivalent. The target date for financing is July 2007. A TEFRA hearing was held on November 28, 2006. A second TEFRA hearing was held on February 16, 2007 to include an additional Project address. A third TEFRA hearing was held on May 16, 2007 to include a new Project address. None of the TEFRA hearings resulted in any comments received in support of or in opposition to this Project.

Financing Team:

Underwriter: Westhoff, Cone & Holmstedt

Bond Counsel: Law Offices of Leslie M. Lava

Financial Advisor: Andrew S. Rose

Issuer’s Counsel: Stradling Yocca Carlson & Rauth

Legal Questionnaire: Attached are the previous legal analyses prepared for prior actions on the Initial Resolution and Final Resolutions (see Attachments B and C).

In summary, the legal analyses address solid waste and air quality permit matters, CalOSHA administrative and criminal investigation matters, and Clean Water Act violations pursued by the U.S. EPA. The solid waste and air permit issues have been resolved. The CalOSHA administrative matter and the related criminal investigation by the Alameda County District Attorney’s Office are unresolved to date.

With respect to the Clean Water Act violations, staff contacted U.S. EPA staff who stated that an order similar to the one issued on California Waste Solutions’ Oakland facility was issued against its San Jose facility. U.S. EPA staff said that the Company is making an effort to comply with the orders issued by U.S. EPA and that after the facilities come into compliance with those orders, the penalty phase of the action will begin.

Staff Recommendation: Given (1) that the Company represents that the outcome of the CalOSHA appeal and the criminal investigation will not have an adverse effect on the Company’s ongoing financial viability, (2) the Company’s efforts to address the safety and permit issues at its facilities, and (3) the apparent ongoing attention and oversight the Company’s facilities and activities are receiving from legal and regulatory authorities, there is no indication that these issues threaten the ongoing financial liability of the Company. Therefore, staff recommends approval of the request for Amendment of Final Resolution Number 462 in an amount not to exceed \$25,905,000 for California Waste Solutions, Inc. and/or its Affiliates.

Final Resolution No. 462
Application No. 788 (SB)

**AMENDMENT OF FINAL BOND RESOLUTION OF THE
CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
RELATING TO FINANCING FOR SOLID WASTE DISPOSAL FACILITIES
FOR CALIFORNIA WASTE SOLUTIONS, INC. AND/OR ITS AFFILIATES**

June 19, 2007

WHEREAS, the California Pollution Control Financing Authority (the “Authority”) by its Resolution No. 462 (the “Final Resolution”) has heretofore approved the application of California Waste Solutions, Inc., a California corporation (the “Applicant”), for financial assistance to finance acquisition, construction, rehabilitation or improvements to certain solid waste disposal facilities and acquisition of solid waste collection trucks, carts, bins, containers and other vehicles and equipment, all of which will be used to serve the Applicant’s customers throughout its service territory in Santa Clara County, California, as further described in its application for such approval, and has authorized the issuance of revenue bonds to provide such financial assistance; and

WHEREAS, the Term Sheet to the Final Resolution defined one of the locations of the “Project” as “1655 Berryessa Road, San Jose, California 95133”; and

WHEREAS, the Borrower has notified the Authority that this address has changed and has requested the Authority to amend the Term Sheet to the Final Resolution in order to change this address and the Authority now desires to amend the Term Sheet to the Final Resolution in order to change one of the addresses listed under the “Project” to “1120 and/or 1158 Berryessa Road, San Jose, California 95133”; and

WHEREAS, the Authority has determined that it is necessary and advisable that the foregoing be approved.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority, as follows:

Section 1. The Authority hereby approves the change in the definition of “Project” contained in the Term Sheet from “1655 Berryessa Road, San Jose California 95133” to “1120 and/or 1158 Berryessa Road, San Jose, California 95133”.

Section 2. Except as amended by Section 1 hereof, all provisions and conditions of the Final Resolution, including the Term Sheet, shall remain unchanged and in full force and effect.

Section 3. The Executive Director of the Authority is hereby authorized and directed to do any and all ministerial acts in order to communicate this Amendment of Final Resolution and otherwise to effectuate the purposes of this Amendment of Final Resolution.

EXHIBIT A

TERM SHEET

| | |
|---|--|
| Name of Issue: | California Pollution Control Financing Authority Variable Rate Demand Solid Waste Disposal Revenue Bonds (California Waste Solutions, Inc. Project), Series 2007A (the “Bonds”) |
| Maximum Amount of Issue: | \$25,905,000 (tax-exempt) |
| Issuer: | California Pollution Control Financing Authority (the “Authority”), Sacramento, CA |
| Applicant | California Waste Solutions, Inc. |
| Borrower: | California Waste Solutions, Inc. and/or Duong Family Investments, LLC |
| Affiliate | “Affiliate” of the Applicant means any person or entity which meets the definition of “Participating Party” under the Act and controls, is controlled by, or is under common control with, the Applicant, as shown by the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through majority equity ownership, contract or otherwise. |
| Trustee: | The Bank of New York Trust Company, N.A. |
| Senior Underwriter or Placement Agent: | Westhoff, Cone & Holmstedt |
| Bond Counsel: | Leslie M. Lava, Esq. Sausalito, CA |
| Remarketing Agent: | Westhoff, Cone & Holmstedt |
| Project: | Finance (i) improvements to a materials recovery facility and the acquisition of equipment, rolling stock and vehicles for the collection, processing and transfer of solid waste and other equipment functionally related thereto, all to be located at 1005 Timothy Drive, San Jose, California 95113, (ii) the acquisition of land, the acquisition and renovation of buildings thereon to house a materials recovery facility, offices and truck maintenance, washing and storage, and the acquisition of equipment, rolling stock and vehicles for the collection, processing and |

Agenda Item – 4.C.1.

transfer of solid waste and other equipment functionally related thereto, all to be located at 1120 and/or 1158 Berryessa Road, San Jose, California 95133, (iii) improvements to materials recovery facilities and the acquisition of equipment, rolling stock and vehicles for the collection, processing and transfer of solid waste and other equipment functionally related thereto, all to be located at 1819 and/or 1820 Tenth Street, Oakland, California 94607 and/or 3300 Wood Street, Oakland, California 94608, and (iv) the acquisition of drop boxes, bins, carts and containers to be located with customers in the City of San Jose, California and various other incorporated and unincorporated portions of Santa Clara County, California.

| | |
|--|---|
| Maximum Bond Term: | Not to exceed 30 years |
| Type of Sale: | Negotiated sale |
| Description of Minimum Denominations: | \$100,000 or any integral multiple of \$5,000 in excess thereof while in variable rate mode |
| Financing Structure: | Variable rate demand bonds; convertible to fixed rate pursuant to the Indenture |
| Maximum Interest Rate: | 12% |
| Letter of Credit: | Provided by East West Bank, with a confirming letter of credit provided by California State Teachers' Retirement System, or another bank approved by the Executive Director or Deputy Executive Director that is rated at least "A-". |
| Other Credit Enhancement: | Not applicable |
| Anticipated Bond Rating: | "AAA/F1+" (minimum "A-") |
| Type of Financing: | Solid waste disposal revenue bonds |
| Prepared by: | Leslie M. Lava, Esq. (415) 331-6464 April 18, 2007 |

ATTACHMENT A

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM**

Meeting Date: March 20, 2007

Executive Summary

***Request for Final Resolution Approval and Assistance
From the Small Business Assistance Fund***

Prepared by: *Doreen Carle*

| | |
|--|--|
| Applicant: California Waste Solutions, Inc. and/or its Affiliates | Amount Requested: \$25,905,000 |
| Project | Application No.: 788(SB) |
| Location: City of San Jose (County of Santa Clara) and City of Oakland (Alameda County) | Final Resolution No.: 462 |
| | Prior Actions: IR 06-10 approved 10/24/06 |

Type of Business: California Waste Solutions, Inc. and/or its Affiliates (the “Company”), provides residential recycling services for the City of San Jose and, the City of Oakland.

Project Description: The Company was recently awarded a new contract with the City of San Jose to provide services to collect, sort and process residential recyclables. The Company also may collect and process commercial recyclable material throughout the City of San Jose.

The Company anticipates using bond proceeds to finance project components located in the cities of San Jose and Oakland as described below.

1005 Timothy Drive, San Jose – new sort line equipment in its Materials Recovery Facility (MRF).

1655 Berryessa, San Jose and/or 1901 Junction Avenue, San Jose – acquisition of land, acquisition and renovation of buildings to house offices, a facility for truck maintenance, washing and storage, and possibly future recycling operations.

1819-1820 Tenth Street, Oakland and/or 3300 Wood Street, Oakland – sort line improvements to one or both of these existing MRFs.

The Company plans the acquisition of equipment, rolling stock and collection vehicles to be located at each site. Additionally, the Company plans to acquire drop boxes, bins, carts and containers to be located with customers in the City of San Jose and various other incorporated and unincorporated areas of Santa Clara County.

The Authority has received a letter in support of the Project from Larry Reid, a City of Oakland Council Member (Attachment A).

The Company also requests approval of a Small Business Assistance Fund (SBAF) resolution in an amount not to exceed \$250,000.

Public Benefits: The Company represents that the Project is designed to generate the public benefits described below.

Waste Diversion. The Company represents, based on past collection data, that there may be approximately 80% diversion of the residual recyclable waste material collected.

Pollution Control: The Company represents the Project will generate the pollution control benefits described below.

Air Quality. The new California Air Resources Board (CARB) compliant vehicles will emit much less nitrogen oxide (NOx) and particulate matter when compared to conventional, diesel-powered collection vehicles currently in use. The efficiencies of automated collection vehicles also will result in the use of fewer trucks and fewer collection trips.

Water Quality. The Company’s MRF operates on concrete or asphalt paved surfaces. Use of paved surfaces will inhibit ground water contamination.

Energy Efficiency. Fuel consumption will be reduced due to the reduced number of trucks and collection trips.

SBAF Assistance: The Company is a small business eligible for Small Business Assistance Fund (SBAF) assistance in an amount not to exceed \$250,000.

Permits: The Company provided staff with copies of its discretionary permit for its Timothy Street MRF site and represents that land acquired will be appropriately zoned and utilized for truck storage, maintenance and possible recycling operations. The Company also represents that other equipment purchases and equipment upgrades will not require discretionary permit or environmental approvals.

Anticipated Financing Details: The Company anticipates a public offering of a 7-day variable rate bond issue with a term not to exceed 30 years. The Company plans to secure the bonds with an irrevocable, direct pay Letter of Credit from East West Bank, and confirmed by California State Teachers’ Retirement System, that is rated “AAA/F1+“ or better by Fitch Ratings.

Financing Team:

Underwriter: Westhoff, Cone & Holmstedt

Bond Counsel: Law Offices of Leslie M. Lava

Financial Advisor: Andrew S. Rose

Issuer’s Counsel: Hawkins Delafield & Wood LLP

Legal Questionnaire: Attached is the current legal analysis prepared for this Final Resolution request as Attachment B. Also attached is the original legal review memorandum prepared for the Initial Resolution request held at the Authority’s October 24, 2006 meeting as Attachment C.

The Company disclosed solid waste permit, air quality permit and OSHA issues in its legal questionnaire. As staff discussed at the Initial Resolution stage, the permit issues have been resolved, but the OSHA issue remains outstanding. The Company has taken significant steps since the original incident to ensure workers’ safety. As follow-up to the legal review documented in Attachment C, staff again contacted CalOSHA and the Alameda County District Attorney’s office. Staff found that the CalOSHA citation and CWS’ appeal of the citation, and the criminal investigation are still outstanding. Additionally, staff contacted representatives from

the USEPA, Region 9; in summary, the USEPA representatives said that CWS is making an effort to comply with both the December 2006 and February 2007 orders. They said that the investigations are still open and penalties may be assessed in the future. The USEPA's concern does not involve a particular incident but rather involves CWS' overall practices. At the time the orders were issued, it was found that the Company did not properly train its staff on general "housekeeping" and controls over its outside activities, and it is its outside activities which led to improper discharges into the stormwater systems at both facilities. The USEPA representatives do not anticipate that the Company will have difficulty complying with the order at its San Jose facility. When asked if the CalOSHA matter and/or the criminal matter, with any of the possible outcomes (including losing the appeal of the CalOSHA matter and being prosecuted for the criminal matter by Alameda County), will have a negative impact on CWS' ongoing financial viability, CWS' counsel responded that it does not believe the OSHA matter will have a material adverse effect.

Staff Recommendation: Given (1) that the Company represents that the outcome of the CalOSHA appeal and the criminal investigation will not have an adverse effect on the Company's ongoing financial viability, (2) the Company's efforts to address the safety and permit issues at its facilities, and (3) the apparent ongoing attention and oversight the Company's facilities and activities are receiving from legal and regulatory authorities, there is no indication that these issues threaten the ongoing financial liability of the Company. Therefore, staff recommends approval of Final Resolution No. 462 in an amount not to exceed \$25,905,000 and the SBAF Resolution in an amount not to exceed \$250,000.

ATTACHMENT A

**CALIFORNIA WASTE SOLUTIONS,
INC. AND/OR ITS AFFILIATES**

Bond Amount: \$25,905,000

San Jose (Santa Clara County), CA

Oakland (Alameda County)

Application No. 786(SB)

March 20, 2007

STAFF SUMMARY – CPCFA

Prepared by: *Doreen Carle*

ISSUE:

California Waste Solutions, Inc. and/or its Affiliates requests approval of (1) Final Resolution No. 462 for an amount not to exceed \$25,905,000 to finance equipment purchases, the acquisition of land, buildings and renovation and (2) a Small Business Assistance Fund (SBAF) Resolution in an amount not to exceed \$250,000.

CDLAC Allocation. The Company has applied to the California Debt Limit Allocation Committee for allocation at its scheduled March 21, 2007 meeting.

TEFRA. A TEFRA hearing was held on November 28, 2006. A second TEFRA hearing was held on February 16, 2007 to include a new Project address. No comments were received in support of or in opposition to the financing.

SBAF. The Company is a small business eligible for SBAF assistance in an amount not to exceed \$250,000.

BORROWER:

The Company incorporated in California on January 27, 1992, and provides residential solid waste collection services. The Company represents that it employs approximately 250 employees and currently processes recycling material in the City of San Jose in Santa Clara County. Under its new contract with the City of San Jose, the Company will be responsible for both collection and processing of residential recyclables. In addition, the Company recently entered into a contract in the country of Vietnam to operate the country's first solid waste treatment complex to be located in the outlying district of Ho Chi Minh City. The Company will operate under the name Vietnam Waste Solutions and is expected to become operational in March 2007.

The principal shareholders for California Waste Solutions, Inc. are as follows:

| | |
|--------------|---------------|
| David Duong | 42.0% |
| Linda Duong | 32.5% |
| Victor Duong | <u>25.5%</u> |
| Total | 100.0% |

Legal Questionnaire. Attached is the current legal analysis prepared for this Final Resolution request as Attachment B. Also attached is the original legal review memorandum prepared for the Initial Resolution request held at the Authority's October 24, 2006 meeting as Attachment C.

ATTACHMENT A

The Company disclosed solid waste permit, air quality permit and OSHA issues in its legal questionnaire. As staff discussed at the Initial Resolution stage, the permit issues have been resolved, but the OSHA issue remains outstanding. The Company has taken significant steps since the original incident to ensure workers’ safety. As follow-up to the legal review documented in Attachment C, staff again contacted CalOSHA and the Alameda County District Attorney’s office. Staff found that the CalOSHA citation and CWS’ appeal of the citation, and the criminal investigation are still outstanding. Additionally, staff contacted representatives from the USEPA, Region 9; in summary, the USEPA representatives said that CWS is making an effort to comply with both the December 2006 and February 2007 orders. They said that the investigations are still open and penalties may be assessed in the future. The USEPA’s concern does not involve a particular incident but rather involves CWS’ overall practices. At the time the orders were issued, it was found that the Company did not properly train its staff on general “housekeeping” and controls over its outside activities, and it is its outside activities which led to improper discharges into the stormwater systems at both facilities. The USEPA representatives do not anticipate that the Company will have difficulty complying with the order at its San Jose facility. When asked if the CalOSHA matter and/or the criminal matter, with any of the possible outcomes (including losing the appeal of the CalOSHA matter and being prosecuted for the criminal matter by Alameda County), will have a negative impact on CWS’ ongoing financial viability, CWS’ counsel responded that it does not believe the OSHA matter will have a material adverse effect.

Prior Actions. Initial Resolution No. 06-10 was approved on October 24, 2006 in the amount of \$25,905,000.

Prior Financings. Prior CPCFA financings are listed below.

| <u>ISSUE</u> | <u>ISSUE DATE</u> | <u>AMOUNT ISSUED</u> | <u>BONDS CURRENTLY HELD BY INVESTORS</u> |
|----------------------------------|-------------------|----------------------------|--|
| California Waste Solutions, Inc. | 05/30/02 | \$11,275,000 | \$10,110,000 |
| California Waste Solutions, Inc. | 08/05/04 | <u>8,350,000</u> | <u>8,350,000</u> |
| Total | | <u>\$19,625,000</u> | <u>\$18,460,000</u> |

PROJECT DESCRIPTION:

The Company was recently awarded a new contract with the City of San Jose to provide services to collect, sort and process residential recyclables. The Company also may collect and process commercial recyclable material throughout the City of San Jose.

The Company anticipates using bond proceeds to finance project components located in the cities of San Jose and Oakland, as described below.

1005 Timothy Drive, San Jose. The Company plans to add new sort line equipment to its Materials Recovery Facility (MRF).

1655 Berryessa, San Jose and/or 1901 Junction Avenue, San Jose. The Company anticipates the purchase of land, the acquisition and renovation of buildings to house offices, a facility for truck maintenance, washing and storage, and possibly future recycling operations.

ATTACHMENT A

1819-1820 Tenth Street, Oakland and/or 3300 Wood Street, Oakland. The Company plans sort line improvements to one or both of these existing MRFs.

The Company plans the acquisition of equipment, rolling stock and collection vehicles to be located at each site. Additionally, the Company plans to acquire drop boxes, bins, carts and containers to be located with customers in the City of San Jose and various other incorporated and unincorporated areas of Santa Clara County.

Costs associated with the Project include:

| | |
|---------------------------------|----------------------------|
| Collection Trucks (42) | \$11,033,400 |
| Carts, bins & containers | 472,697 |
| Other Rolling Stock | 193,000 |
| Sort Line Equipment & Expansion | 6,000,000 |
| Land | 6,000,000 |
| Site Preparation & Improvements | 450,000 |
| Bond Issuance Expenses | <u>1,755,903</u> |
| Total: | <u>\$25,905,000</u> |

Note: The Project costs reported in the Borrower’s application and shown here in staff’s report are estimated costs. At the time this financing closes, the estimated Project costs will be finalized and stated in the Tax Certificate. Variations from the costs shown in the application and in this report may occur prior to the closing due to increased costs of certain components of the Project from original estimates, determination by bond counsel that certain costs do not qualify for tax-exempt financing, and other reasons. In addition, such costs may vary after closing due also to increased costs, as well as common design and equipment modifications during construction, differences in equipment due to future changes in law or regulation or for other reasons. However, the Borrower confirms, through submission of a signed application and will confirm through covenants and representations in various bond documents, that all assets purchased with bond proceeds will qualify for tax-exempt financing, that they will be used to complete the Project as described, and that the average life tests required by federal law and described in the Tax Certificate will continue to be met. Tax-exempt financing may be only one source out of multiple sources of financing for a given project.

PUBLIC BENEFITS:

Waste Diversion. The Company represents, based on past collection data, that there may be approximately 80% diversion of the residual recyclable waste material collected.

POLLUTION CONTROL:

The Company represents the Project will generate the pollution control benefits described below.

Air Quality. The new California Air Resources Board (CARB) compliant vehicles will emit much less nitrogen oxide (NOx) and particulate matter when compared to conventional, diesel-powered collection vehicles currently in use. The efficiencies of automated collection vehicles also will result in the use of fewer trucks and fewer collection trips.

Water Quality. The Company’s MRF operates on concrete or asphalt paved surfaces. Use of paved surfaces will inhibit ground water contamination.

Energy Efficiency. Fuel consumption will be reduced due to the reduced number of trucks and collection trips.

ATTACHMENT A

PERMITTING & ENVIRONMENTAL APPROVALS:

The Company provided staff with copies of its discretionary permit for its Timothy Street MRF site. Land acquired will be appropriately zoned and utilized for truck storage, maintenance and possible recycling operations. Other equipment purchases and equipment upgrades do not require discretionary permit or environmental approvals.

ANTICIPATED TIMELINE:

The Company began equipment purchases in October 2006 with an anticipated completion date of December 2007. Renovation is anticipated to begin in January 2007 and be completed in July 2007.

FINANCING DETAILS:

The Company anticipates a public offering of a 7-day variable rate bond issue with a term not to exceed 30 years. The Company plans to secure the bonds with an irrevocable, direct pay Letter of Credit from East West Bank, and confirmed by California State Teachers' Retirement System, that is rated "AAA/F1+" or better by Fitch Ratings.

FINANCING TEAM:

Underwriter: Westhoff, Cone & Holmstedt
Bond Counsel: Law Offices of Leslie M. Lava
Financial Advisor: Andrew S. Rose
Issuer's Counsel: Hawkins Delafield & Wood LLP

RECOMMENDATION:

Given (1) that the Company represents that the outcome of the CalOSHA appeal and the criminal investigation will not have an adverse effect on the Company's ongoing financial viability, (2) the Company's efforts to address the safety and permit issues at its facilities, and (3) the apparent ongoing attention and oversight the Company's facilities and activities are receiving from legal and regulatory authorities, there is no indication that these issues threaten the ongoing financial liability of the Company. Therefore, staff recommends approval of Final Resolution No. 462 in an amount not to exceed \$25,905,000 and the SBAF Resolution in an amount not to exceed \$250,000.

ATTACHMENT B

Legal Analysis for Final Resolution

California Waste Solutions, Inc. (“CWS” of “the Company”)

LEGAL DISCLOSURE

See Attachment C, the original legal review memorandum.

As follow-up to the legal review documented in Attachment I, staff again contacted CalOSHA and the Alameda County District Attorney’s office. Staff found that the CalOSHA citation, and CWS’ appeal of the citation, and the criminal investigation are still outstanding.

In its Legal Questionnaire, the Company made the following representation concerning the above matters:

“Applicant is committed to the safety of its employees in all of its facilities, and management and its counsel are confident that Cal/OSHA’s citations will not stand. Yet while Applicant strongly disagrees with Cal/OSHA’s conclusions, the Applicant retained outside safety consultants and together with those consultants, has undertaken a review of its safety programs company-wide, including the matters identified in the citation and especially those relating to “lock out/tag out.” This process included “stand-downs” to assess hazards and provide additional instruction to its employees. As a result, additional safety procedures and rules are in place now to ensure to the extent possible that this or any similar tragedy never occurs again in any of its facilities.”

On February 19, 2007, CWS’ finance team provided the following information as part of its update on the legal status questionnaire:

“...the OSHA appeal is Cal Waste’s and they have chosen to postpone active prosecution of the appeal at least for a while while awaiting any word on the required criminal review...while the law requires that any death or serious injury be referred to the local district attorney, there is no requirement that the district attorney do anything with it. That means that the DA does not even have to tell a company that it does not plan to act. It has now been two years since the accident but Cal Waste hopes that at some point, the DA will in fact inform them that he will not pursue any action...”

ADDITIONAL FINDINGS

CPCFA staff found that, on December 5, 2006, the USEPA, Region 9, issued an order to CWS (Oakland facility) to comply with its Clean Water Act permit. According to the USEPA press release, CWS’ Oakland facility was inspected by USEPA investigators on September 18, 2006 and was found to have inadequate stormwater pollution controls and pollution prevention plans, which are violations of its stormwater discharge permit and the Clean Water Act. The pollution discharge in the stormwater from this facility eventually makes its way into the San Francisco

ATTACHMENT B

Bay. CPCFA staff also found that, on February 8, 2007, the USEPA issued a similar order based upon similar violations for CWS' San Jose facility.

Staff contacted representatives from the USEPA, Region 9. In summary, the USEPA representatives said that CWS is making an effort to comply with both the December 2006 and February 2007 orders. They said that the investigations still are open, and penalties may be assessed in the future. The USEPA's concern does not involve a particular incident but rather involves CWS' overall practices. At the time the orders were issued, it was found that the Company did not properly train its staff on general "housekeeping" and controls over its outside activities, and it is its outside activities which led to improper discharges into the stormwater systems at both facilities. The USEPA representatives do not anticipate that the Company will have difficulty complying with the order at its San Jose facility.

Staff asked CWS' finance team to provide information concerning these undisclosed USEPA orders. The response was as follows:

“As to the EPA action, it revolved around the washing of a piece of equipment where the used water could flow down a storm drain. The EPA naturally publicizes such things in order to make citizens and businesses more aware of what is becoming an ever more serious problem. However, the scope of this particular incident was quite narrow and did not amount to willful dumping of contaminants or the like...once they inspected Oakland, they went to San Jose and the things that need to be fixed are pretty much the same...some pictures of various storm drains taken by the Company a day or two after...[show] both that the Company listened to the inspector and second, that no MRF or transfer station facility, especially one that handles waste paper, is going to be without litter for very long--- but as is stated and is the fact, it is required to be and is swept daily. Again, this is not about purposeful dumping of contaminants into the Bay. It is a notice to put new or different kinds of covers on storm drains (note that the inspector approved on one method the company was already using) and clean up their paperwork in order to be in full compliance.”

ONGOING FINANCIAL VIABILITY OF CALIFORNIA WASTE SOLUTIONS

When asked if the CalOSHA matter and/or the criminal matter, with any of the possible outcomes (including losing the appeal of the CalOSHA matter and being prosecuted for the criminal matter by Alameda County), will have a negative impact on CWS' ongoing financial viability, CWS' counsel responded as follows:

“The Borrower does not expect that the final results of the action will have a material adverse effect on its financial viability. Moreover, the bank is aware of the issue and as you know, has committed to issuing the letter of credit which will secure the bondholders. Formally, the Borrower will execute the Bond Purchase Agreement at closing which contains, among other things, the following representation to the Authority and Underwriter:

ATTACHMENT B

(g) Except as disclosed in the Official Statement, there is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other government authority pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or the assets, properties or operations of the Borrower which, if determined adversely to the Borrower or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Purchase Contract, the Loan Agreement, the Official Statement, the Reimbursement Agreement, the Remarketing Agreement, or the financial condition, assets, properties or operations of the Borrower.

Since it does not believe the OSHA matter will have a material adverse effect, the Borrower will not be disclosing the OSHA matter in the Official Statement.

The Borrower will also make the following representation to the Bank in the Reimbursement Agreement:

1.1. Pending Litigation or Other Proceedings. There is no pending or, to the knowledge of the Borrower, threatened action, proceeding or investigation before any court, governmental agency or arbitrator against or affecting the Borrower, the Property, the Bonds, either Guarantor, DFI or any of the Borrower's other assets which, if decided adversely to the any of them, would materially and adversely affect the financial condition of the Borrower, the Property, the Bonds, either Guarantor, DFI or any of the Borrower's other assets, or would materially and adversely affect the present or future ability of the Borrower, the Guarantors or DFI to perform their obligations under the Credit Documents to which they are parties.

In addition, I will be providing my opinion on behalf of the Borrower consistent with the above representations to both you and the bank at closing.”

RECOMMENDATION

Given (1) that the Company represents that the outcome of the CalOSHA appeal and the criminal investigation will not have an adverse effect on the Company's ongoing financial viability, (2) the Company's efforts to address the safety and permit issues at its facilities, and (3) the apparent ongoing attention and oversight the Company's facilities and activities are receiving from legal and regulatory authorities, there is no indication that these issues threaten the ongoing financial liability of the Company. Therefore, staff recommends approval of the Final Resolution and the SBAF Resolution.

ATTACHMENT C

Legal Analysis for Initial Resolution

APPLICANT

California Waste Solutions, Inc. (or “Company”) has recently been awarded a new contract with the City of San Jose to provide collection, sorting and processing of residential recyclables. The Company may also collect and process commercial recyclable material in San Jose.

REQUEST

The Company requests approval of an initial resolution not to exceed \$22,445,000 to finance the acquisition of new trucks, bins, containers and carts; sort line equipment for three of the Company’s existing MRFs; and land for a truck storage and maintenance facility.

LEGAL STATUS QUESTIONNAIRE

The Company submitted a legal status questionnaire in which it responded affirmatively to questions 5 and 6 regarding civil and criminal proceedings and investigations currently pending or occurring within the past ten years. The Company disclosed three significant matters.

1. The Company disclosed a June 2003 cease and desist order from the local enforcement authority that resulted in a civil suit against the Company alleging that the Company was operating a solid waste facility without a permit. The Company responded that its permit failure was a result of too much non-recyclable material coming from Norcal, the primary franchisee for the City of San Jose. This civil suit against the Company was resolved by a stipulated judgment and the Company’s payment of a \$150,000 fine. The Company obtained its Solid Waste Facilities Permit in March 2005, and there have been no violations since that time. Ultimately, the Company sued Norcal for breaching its subcontract with the Company. Through an arbitration process, the Company recovered the \$150,000 fine and over \$5.2million in damages from Norcal for breaching its subcontract.

2. The Company disclosed a 2001 enforcement action against the Company by the Bay Area Air Quality Management District (BAAQMD) for failing to obtain air emission permits. The Company resolved the enforcement action informally by obtaining the requisite permits to operate and no further action has been taken by BAAQMD against the Company.

3. The Company disclosed a CalOSHA citation resulting from the February 2005 death of an employee who died after clearing a jam in the baler he was operating. CalOSHA issued the Company multiple citations, six general, one serious and two for a “Willful and Accident Related” violation. These two “Willful and Accident Related” violations were issued for failing to provide adequate employee training in the “lock out and tag-out” procedure. These two fines resulted in a total of \$140,000 (\$70K each). Prior to the incident, the Company had been required to hire a Safety Consultant by their insurance carrier. The Safety Consultant had recommended specific safety procedures and training for employees. CalOSHA found that the

ATTACHMENT C

Company did not inform employees of the procedures and did not implement the training advised by their consultant. According to the CalOSHA Compliance Investigator interviewed by CPCFA staff, “Willful and Accident Related” citations are issued when a company knew or with reasonable diligence should have known the safety procedures which prevent accidents. In this situation the person responsible for running the facility was aware of the safety procedures but chose not to provide adequate training until after the incident which caused death.

The Company is appealing the CalOSHA finding. This appeal is likely to remain unresolved until the resolution of the criminal investigation by the Alameda County District Attorney’s office.

While the County DA would not comment on the case because the investigation is underway, the CalOSHA Compliance Investigator indicated that he believes that a court could impose criminal fines of up to \$1.5 million and penalties could be more that 170% of this amount.

The Company responds that it believes that a fine of this magnitude is extremely unlikely; they anticipate that they will prevail in their appeal of the civil findings and that the criminal investigation will be dropped. If however, if in the worst case the fine and penalties were imposed, the Company represents that it would not impact the Company’s financial viability or their ability to repay these bonds.

Staff discussed its concerns about the reported violations with City of San Jose officials who recently awarded the Company its franchise agreement. The Acting Deputy Director of the City’s Integrated Waste Management Division reported that she was aware of these legal issues at the time the City considered the Company’s bid. The Company had strong support for its contract bid from the San Jose community. The contract was awarded by a unanimous vote of the San Jose City Council.

Staff has also received a strong letter of support from City Council member, Chuck Reed urging CDLAC to award tax-exempt bond allocation to this Project.

RECOMMENDATION

Staff is satisfied that the Company has adequately responded to the Solid Waste Permit and Air District Permit issues. The death of an employee is however a very serious matter and the Cal OSHA finding that the Company acted willfully in failing to ensure proper safety procedures and training discourages a CPCFA finding that this is a Company that provides such significant benefits to the community that it should be awarded tax exempt bond financing. However the strong City and community support for this Project argues for moving forward with this IR. While the criminal investigation and the civil appeal are outstanding, we recommend that the Board approve an initial resolution solely for the purpose of preserving the look back for tax purposes. At the time the Company returns for a final resolution, staff recommends that the Authority take a fresh and critical look at the resolution of the outstanding legal issues. This IR approval should not be taken in any way as an approval of this Company and its practices or an

ATTACHMENT C

indication of the likelihood of the Board ultimately approving a final resolution if the Company returns to the Authority.