

2012 COMPLIANCE EVALUATION AND FINANCIAL REVIEW OF SOLID WASTE SERVICES

HAULER AUDIT SUMMARY

December 3, 2013

Submitted to: City of El Monte
11333 Valley Blvd.
El Monte, CA 91731

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With the assistance of Huls Environmental Management, LLC.

The Environmental Services Division recently performed a compliance audit of each of the City's waste haulers. Per your request, provided below is a summary of our findings as well as our recommendations.

Disposal and Diversion Integrity and Compliance

Diversion

- A) According to the American Reclamation and Waste Management Franchise Agreements, each hauler is required to increase the rate of diversion each year by 30% of the total waste generated in their sector. We have requested the City's interpretation of this clause as it seems subject to interpretation. If we apply this paragraph as 30% over the previous year, both haulers are in compliance as shown below:

<u>Hauler</u>	<u>2011 Diversion %</u>	<u>2012 Diversion %</u>	<u>Increase</u>
WM	6.4%	8.7%	36%
AR	7.4%	9.8%	32%

However, if the City Attorney deems the 30% diversion requirement as more closely reflecting the clause in 7.1 B of the Commercial and Multi-Family Agreements, which requires 30% new diversion over the Agreement term, both haulers have not yet met the required diversion goal and have not put forth a "good faith effort". Although the haulers have until the end of their Agreement term, March 31, 2016, to achieve 30% new diversion, they are not on track to reach that goal and will fall short given the current trend. As indicated above, a 6-10% diversion rate of all solid waste collected shows very little "good faith effort" on the part of these franchised haulers in implementing the Integrated Waste Management Plan and Agreement program requirements, which are also embodied in the City's Municipal Code.

In addition, American Reclamation currently services approximately 50% of the multi-family sector and cannot offer the types of services required by the multi-family community in order for them to cost effectively comply with AB 341. Although it is not the responsibility of American Reclamation nor the City to comply with AB 341, the haulers should be able to provide feasible recycling opportunities for all commercial and multi-family customers in El Monte. For American Reclamation, due to their limited processing capabilities, this does not appear to be the case for either the commercial nor multi-family sector.

Recommendation:

- 1) Obtain a legal interpretation of Section 7.1B of the franchise agreements from the City Attorney's office for a final interpretation of compliance.
- 2) Require that American Reclamation and Waste Management begin an aggressive campaign of Commingled Recycling Services or Mixed Waste Processing Services provided to all commercial and multi-family customers so there is an opportunity for

compliance with AB 341. Also require these haulers to make a “good faith effort” as required by the City’s Municipal Code.

- B) Valley Vista’s Franchise Agreement requires good faith in assisting the City in maintaining a 55% diversion rate throughout the City. Their diversion is as follows:

<u>Hauler</u>	<u>2011 Diversion %</u>	<u>2012 Diversion %</u>	<u>Increase</u>
VVS	22.9%	27.4%	20%

The City is currently maintaining an overall diversion rate of greater than 55% as required. Diversion is as high as 67% in the commercial sector and 65% in the residential sector according to the following table from CalRecycle and the differences in the Resident Disposal Rate Target and the Employee Disposal Rate Target presented therein:

Per Resident Disposal Rate Target (PPD): 6.8 Per Employee Disposal Rate Target (PPD): 29.5							
<u>REPORT YEAR</u>	<u>REVIEW YEARS</u>	<u>JURISDICTION REVIEW STATUS</u>	<u>COMPLIANCE STATUS</u>	<u># OF PROGRAMS IMPLEMENTED</u>	<u>ANNUAL REPORT REVIEW STATUS</u>	<u>ANNUAL PER CAPITA DISPOSAL RATE (PPD) PER RESIDENT</u>	<u>ANNUAL PER CAPITA DISPOSAL RATE (PPD) PER EMPLOYEE</u>
2007	07/11	Approved		35	Staff Reviewed	6.0	25.3
2008	07/11	Approved		35	Staff Reviewed	5.1	21.2
2009	07/11	Approved		35	Staff Reviewed	4.4	19.8
2010	07/11	Approved		35	Staff Reviewed	5.1	23.8
2011	07/11	Approved		35	Staff Reviewed	4.3	19.6
2012				36	Staff Reviewed	4.4	19.7
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Since Valley Vista holds the majority share of the City’s waste stream, they are the biggest contributor to maintaining roughly 66% city-wide diversion, as compared to the other two haulers. Valley Vista is in compliance with their diversion requirement based on the calculations and according to Section 4.6C of their Agreement.

Valley Vista has recently upgraded their Recycling and Transfer Station to increase their processing capabilities, and therefore their diversion rate for the City. The upgrade has allowed Valley Vista to provide mixed waste processing, which may be the only way many commercial and multi-family customers can achieve compliance with AB341’s Mandatory Commercial Recycling requirement.

Recommendation: Review and potentially open negotiations with Valley Vista on their proposal to perform mixed waste processing for all of El Monte’s waste streams, which could close the gaps on existing haulers that are not providing this service and potentially increase diversion towards the 75% overall diversion goal from CalRecycle.

Construction and Demolition Debris

There are two Temporary Services Franchise Agreements (Temporary Services) in the City of El Monte, held by Valley Vista and Waste Management. The Temporary Services franchise territories are divided above and below the 10 State Freeway confined to the jurisdictional boundaries of El Monte. Waste Management maintains the Temporary Services franchise below the 10 State Freeway, and Valley Vista to the north.

Waste Management is required, per Section 7.1.B of their Agreement, to achieve a diversion goal of 50% new diversion, over the term of the Agreement, of all construction and demolition (C&D) debris. The municipal code requires a 50% diversion of all construction and demolition debris for all C&D projects. According to the audited hauler reports the following has been found:

Table 3: Disposal and Diversion Compliance for Temporary Services

Temporary Services Hauler	Temp Svcs Disposal 2011	Temp Svcs Diversion 2011	Diversion Estimate 2011	Temp Svcs Disposal 2012	Temp Svcs Diversion 2012	Diversion Estimate 2012
Valley Vista Services	1,212.98	3,054.82	71.6%	1,078.58	4,770.22	81.6%
Waste Management	1,619.76	310.35	16.1%	816.24	619.56	43.2%
Cumulative Totals	2,832.74	3,365.17	54.3%	1,894.82	5,389.78	74.0%

Please note that Waste Management hauler reports do not identify construction and demolition tonnage separately, and therefore the data presented above has been extrapolated. The extrapolation for arriving at Waste Management’s Temporary Services diversion rate is attached in Exhibit II. Based on the extrapolated data, Waste Management has not yet met their 50% diversion requirement, but is on track to do so by the end of the Agreement term (March 31, 2016). However, based on the Municipal Code, they are required to divert 50% of all debris generated by a project during the term of their Franchise Agreement. Based on the extrapolated data, Waste Management seems deficient in diversion requirement goals.

At this time, only Valley Vista and not Waste Management is in compliance with C&D debris diversion requirements set forth in the Municipal Code.

Recommendation:

- 1) Begin the process of notifying Waste Management by sending a letter from the City Manager with a pre-determined time to cure diversion goal requirements set forth in the Municipal Code or present findings that explain the diversion deficiency.

Financial Fulfillment and Reconciliation

Franchise Compliance Fee Reconciliation

All haulers seem to be in compliance with their contractually required timeline reporting, disposal requirements, franchise and AB 939 fees and payments to the City for administrative costs, HHW costs and other fees due the City.

Comparison of Gross Receipts vs Tons Collected

- A) As shown below, there is a great difference in gross receipts per ton for waste collected by the three franchised haulers. In particular it seems the revenue received per ton collected for American Reclamation and Waste Management far exceeds that of Valley Vista. Valley Vista's lower revenue per ton could simply be the benefit of the economy of scale, since VVS services the large majority of the City. Or perhaps the haulers are inaccurately reporting solid waste disposal and diversion.

Name of Franchised Hauler	Disposal Quantity 2012	Diversion Quantity 2012	Total Gross Receipts 2012	Gross Receipts Per Ton for Service 2012
American Reclamation	12,935.72	1,399.92	\$2,326,645.8	\$162.30
Valley Vista Services	49,733.34	18,725.97	\$7,584,022.9	\$110.78
Waste Management	7,068.03	672.40	\$1,378,005.5	\$178.03
Totals	69,737.09	20,798.29	\$11,288,674.2	\$124.69

Recommendation: Further review of this particular item to ensure the reporting of all required items are accurate to the highest degree.

Special Waste Districts

- A) The **Klingerman/Bonwood** district is serviced by Valley Vista. Valley Vista is compliant in all areas of diversion, reporting and fee payments pursuant to the Klingerman/Bonwood Agreement.
- B) The **Valley Mall** is serviced by American Reclamation. A Franchise Agreement for this special waste district has been in place since 2002, and specific flaws have existed in the Agreement since inception. For example, the number of bins serviced by American Reclamation has been reduced by 40% since 2002, however payments to the hauler have not been reduced at all. This can result in potential overcharges to Valley Mall merchants. Also, under the current Agreement, vacant units are not required to pay for trash services, however the City is obligated to pay the hauler on behalf of the vacancies.

Recommendation:

- 1) Open discussion on renegotiating the contract rate to accurately reflect the fluctuating service levels, and potentially correct the billing mechanism.
- 2) Commence demand of overcharges repaid to the City.

Vehicle Requirements

- A) Waste Management operates one CNG and one gasoline truck in the City. All BIT reports and the AQMD Rule 1193 has been satisfied.
- B) Valley Vista is operating 16 CNG vehicles and two diesel vehicles. They are in compliance with AQMD Rule1193 requirements and all BIT reports have been satisfied.
- C) American Reclamation operates five trucks in the City, four are diesel and one is a CNG vehicle. All BIT reports and the AQMD Rule 1193 has been satisfied at this point.

Concern: As American Reclamation is a smaller, family owned hauler, when their Agreement expires on March 31, 2016, if the City exercises the two year extension period, the hauler will be subject to Rule 1193. At the point of Agreement renewal, American Reclamation will be required to purchase all CNG vehicles for the automatic two year extension(s) provided in the Agreement. The City, however, has the right to terminate the Agreement after the initial 8 (eight) years ending on March 31, 2016 leaving American Reclamation without a guarantee for additional years to amortize the newly purchased vehicles.

Public Education Requirement

All three of the haulers have made a good faith effort to implement public education efforts, but have not met all of the requirements so far as indicated in the following table:

Public Education Requirement		AR	VVS	WM	Status
Billing Inserts	To be included in any regular billing, upon City request.	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/>	Accomplished Not-accomplished
How-to-Brochure	To be distributed to all new customers when they start service.	<input type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/> <input checked="" type="checkbox"/>	Accomplished Not-accomplished
Container Labels	To be affixed/imprinted on all containers.	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/>	Accomplished Not-accomplished
Annual Notice	To be mailed once each rate year, may be included with billings.	<input checked="" type="checkbox"/> , 2012 <input checked="" type="checkbox"/> , 2011	NA	<input type="checkbox"/> <input checked="" type="checkbox"/>	Accomplished Not-accomplished
Corrective Action Notice	To be affixed to containers which are contaminated with inappropriate materials.	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/>	Accomplished Not-accomplished
Community Events	Participation in community events, upon City request.	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/>	Accomplished Not-accomplished
Notification of Recycling Services	To be mailed annually, notifying customers of available recycling services.	<input checked="" type="checkbox"/> , 2012 <input checked="" type="checkbox"/> , 2011	NA	<input checked="" type="checkbox"/> , 2011 <input checked="" type="checkbox"/> , 2012	Accomplished Not-accomplished
Initial Mailing	To be mailed within 10 days of contract start.	NA	<input checked="" type="checkbox"/> , resi <input checked="" type="checkbox"/> , comm/MF	NA	Accomplished Not-accomplished
Quarterly Notice	To be mailed at least four times per rate year.	NA	<input type="checkbox"/> <input checked="" type="checkbox"/>	NA	Accomplished Not-accomplished
Workshops	Participation in community workshops, upon City request.	NA	<input checked="" type="checkbox"/> <input type="checkbox"/>	NA	Accomplished Not-accomplished

Recommendation: To work with the haulers to enhance and increase public education to the community. If the haulers were to continue to fail to meet the public education requirement, the franchise agreements allow for a fine of \$500 for the 1st day and \$1000 for every day thereafter.

Corrective Actions and Customer Service

All haulers were found to be in compliance with the issuance of corrective action notices and maintenance of customer service logs.

Government Agency Legal Documentation

- A) Waste Management has stated that it has no bankruptcy, pending or threatened litigation or violation/enforcement action.
- B) American Reclamation has either abated, appealed or all actions were dismissed or withdrawn with respect to the NLRB and CALOSHA vehicle violations
- C) Valley Vista stated that all litigation related to their case has been settled and the settlement was transferred to their insurance company

Customer Account Lists

Waste Management

In reviewing the 2011 and 2012 customer account lists, it was found that the customers are being charged correctly for the basic service, AB939 and Franchise Fees, and other charges. The commercial receipts amount charged by Waste Management closely corresponds with the gross receipts being reported on Waste Management's quarterly reports to the City. However, their temporary services are not being charged according to the approved rate calculation methodology, as outlined in their Franchise Agreement.

American Reclamation

In reviewing the 2011 and 2012 commercial and multi-family customer account lists, it was found that the customers are being charged correctly for all charges. The commercial receipts amount charged by American Reclamation closely corresponds with the gross receipts being reported on American Reclamation's quarterly reports to the City.

Valley Vista

Valley Vista's 2011 and 2012 commercial, multi-family and residential customer account lists closely corresponds with the gross receipts reported to the City and reflects that customers are being charged correctly for all services with the following exception:

- A) Commercial scout, locking lid and push out service charges are slightly higher than the amount allowed by the franchise agreement.
- B) Temporary services are not being charged according to the rate calculation methodology outlined in their franchise agreement.

Recommendation: Further investigate and immediately correct the method by which Waste Management and Valley Vista assess service charges. Ensure that each hauler follows the City approved rate schedule. Assess any overcharges and consider their potential repayment to customers.

Recycling Accounts and Contacts

All haulers were found to be in compliance with the AB341 requirement to educate customers about available recycling opportunities, and report recycling accounts.

Safety Training and Compliance

All haulers were found to be in compliance with the safety training of their employees and drivers.

Conclusion:

In conclusion, we recommend notifying each hauler on the results of this audit as it pertains to them, to put them on notice of any compliance deficiencies and require their compliance within a specified time period. If compliance within the specified time period is not adhered to, there are more punitive remedies allowed within their Franchise Agreements. We also recommend that the City Attorney review the diversion clause in Section 7.1B of all agreements to determine the appropriate interpretation.