

RESPONSE TO GRAND JURY REPORT FORM

Report Title: Garbology in Marin: Wasted Energy

Report Date: May 14, 2013

Response by: Marin County Board of Supervisors

FINDINGS

- We agree with the findings numbered: **F1, F2, F3, F4, F7**
- We disagree wholly or *partially* with the findings numbered: **F5, F6**

RECOMMENDATIONS

- Recommendation number **R1** has been implemented.
- Recommendations numbered **R2** have not yet been implemented, but will be implemented in the future.
- Recommendation number requires further analysis
- Recommendations numbered **R3, R4, and R5** will not be implemented because they are not warranted.

Date: July 30, 2013 Signed: _____

Marin County Board of Supervisors
Response to Findings and Recommendations from Grand Jury Report
“Garbology in Marin: Wasted Energy”
Including requested responses from the Department of Public Works, Environmental
Health Services and County Counsel.

FINDINGS

- F1. Redwood Landfill’s 2008 EIR is being challenged in court, thereby jeopardizing its 2008 Solid Waste Facility Permit, which has delayed the construction of the methane gas-to-energy plant and the Construction and Demolition sort line.**

Response: Agree.

- F2. Redwood Landfill, as currently permitted, has a finite life and therefore, alternate methods of waste diversion need to be explored.**

Response: Agree.

Although the County of Marin generally agrees with this finding, additional strategies such as alternative methods of waste *disposal* and “upstream” waste minimization strategies also need to be explored.

- F3. Waste-to-Energy Plants can be a solution to limited landfill space.**

Response: Agree.

- F4. A portion of Marin County MSW is being sent to out-of-county landfills, increasing our carbon footprint and making our waste another county’s problem.**

Response: Agree.

- F5. Marin County waste disposal has diminished by over 27% since 1995 due to the passage of AB 939 in 1989 and public awareness.**

Response: Partially disagree.

While it is true that waste disposal rates have decreased in Marin since 1995, it is important to recognize that multiple factors have contributed to this change beyond the adoption of AB 939, including the economic downturn that began in 2008, as well as other broader changes in market conditions.

- F6. Redwood Landfill has seen a waste reduction of 24% during the same time period as a result of less out-of-county disposal in the Marin landfill and the effects of diversion awareness.**

Response: Partially Disagree.

As the Redwood Landfill is a separate and distinct entity from the County of Marin, this information is best confirmed with that organization.

- F7. CalRecycle statistics prove that waste diversion in Marin County is much higher than the national average due to concerted efforts by the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) and local waste haulers to educate the public.**

Response: Agree.

RECOMMENDATIONS

The 2012-2013 Marin County Civil Grand Jury recommends that:

- R1. The Grand Jury recommends that the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) and Local Enforcement Agency (LEA) meet with Redwood Landfill as soon as feasibly possible to gain assurances that the landfill methane gas-to-energy plant will become a reality.**

Response: This recommendation has been implemented.

The Marin County Environmental Health Services staff in their capacity as the Local Enforcement Agency (LEA) has received confirmation from Redwood Landfill that construction on the gas-to-energy facility (LFG) will begin in 2014.

- R2. The Grand Jury recommends that the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) and Local Enforcement Agency (LEA) ensure that Redwood Landfill completes the Construction and Demolition sort line.**

Response: This recommendation has not yet been implemented, but will be implemented in the future.

In their capacity as the Local Enforcement Agency (LEA) for solid waste, Marin County Environmental Health Services staff is working towards the issuance of a solid waste facility permit for a Materials Recovery Facility (MRF) for construction and demolition waste at Redwood Landfill. It is anticipated that a compost facility utilizing the covered aerated static pile method (CASP) will be permitted and operational by the end of 2013. The MRF will be permitted, constructed and operational in 2014. The establishment of the MRF is mandated by Condition 16U of the Redwood Landfill 2008 Solid Waste Facility Permit (SWFP).

- R3. The Grand Jury recommends that the Marin County Public Works Department, Local Enforcement Agency (LEA) and Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) work with Redwood Landfill to ensure the building of an anaerobic digester for food waste, the energy from which can be added to the methane gas-to-energy plant.**

Response: This recommendation will not be implemented.

While Department of Public Works, LEA, and JPA staff are readily available to participate in a meeting with Redwood Landfill regarding this or any other proposal to further waste reduction in Marin County, it is important to recognize that the jurisdictional authority of these agency staff is constrained by state law. As such, while staff has the authority to ensure that landfills are in compliance with State solid waste laws, and may impose requirements to minimize risks to public health and safety, they cannot require that the Redwood Landfill utilize one methodology or form of equipment over another.

- R4. The Grand Jury recommends that the Marin County Public Works Department, Local Enforcement Agency (LEA) and Marin County Hazardous and Solid Waste Management Joint Powers Authority**

(JPA) work with Redwood Landfill to explore all options for minimizing future disposal through some cost effective, least polluting form of waste gasification, such as Microwave Plasma Gasification.

Response: This recommendation will not be implemented.

Similar to the County's response to Recommendation 3 above, while Department of Public Works, LEA, and JPA staff are readily willing to work with Redwood Landfill to explore all options to minimize waste reduction in Marin County, it is important to recognize that the jurisdictional authority of these agency staff is constrained by state law. As such, while staff has the authority to ensure that landfills are in compliance with State solid waste laws, and may impose requirements to minimize risks to public health and safety, they cannot require that the Redwood Landfill utilize one specific disposal methodology or form of equipment over another.

R5. The Grand Jury recommends that Local Jurisdictions holding MSW franchise agreements mandate, through revisions to the agreements, that haulers dispose of all MSW generated in Marin County in Marin County.

Response: This recommendation will not be implemented.

Recommendation 5 raises a number of substantive policy considerations. Directing all MSW to in-County, Marin landfill(s) can entail environmental, economic, or legal complexities that cannot be oversimplified. For example, bringing additional waste to Redwood Landfill could result in the Landfill reaching its maximum capacity sooner. Additionally, nearby out-of-county transfer stations or landfills have the potential to offer higher environmental benefits "in-total" when balanced with other factors. From an economic perspective, there also are many factors that go into waste disposal pricing, and imposing a requirement for in-County disposal could potentially negate other environmentally beneficial services that are presently offered to the public.

Solid waste "flow control" also is a very contentious legal issue that has not yet been fully resolved by State and Federal courts. While a local government may be able to negotiate an arrangement in which a local hauler agrees to only deliver MSW to an in-County landfill, it may not be possible for a local government to unilaterally impose such a requirement. Indeed, the above recommendation may be in conflict with the United States Supreme Court's 1994 C&A *Carbone, Inc. v. Clarkstown* decision,

which struck down an ordinance requiring all waste within the town to be directed to a privately-operated transfer facility. The Supreme Court invalidated the ordinance, finding it to be in conflict with the Commerce Clause of the U.S. Constitution.