

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM
Meeting Date: December 16, 2009**

Request for Final Resolution to Issue Refunding Revenue Bonds

Prepared by: *Doreen Smith*

Applicant: Marborg Industries and/or its Affiliates	Amount Requested: \$11,755,000
Project	Application Nos.: 00700, 00765
Location: Santa Barbara County	Resolution No.: 00497
	Prior Actions: See Bond Listing Below

Summary. Marborg Industries and/or its Affiliates (the “Company”) requests approval of a Final Resolution to issue refunding revenue bonds for an amount not to exceed \$11,755,000. The Company proposes the refunding and conversion of \$11,755,000 in previously issued bonds (Marborg Industries, Series 2004A and Series 2006A) to non-Alternative Minimum Tax (non-AMT) status.

Borrower. MarBorg Industries and/or its Affiliates is a family owned and operated business that incorporated in California on April 26, 1974. The Company provides residential and commercial refuse collection, recycling and disposal services to the Cities of Santa Barbara and Goleta, the County of Santa Barbara, University of California Santa Barbara, and a number of local state parks.

The principal stockholders of the Company are as follows:

Mario Borgatello, Sr.	10%
Mario Borgatello	45%
David Borgatello	<u>45%</u>
Total:	<u>100%</u>

Legal Questionnaire. The Staff has reviewed the Company’s responses to the questions contained in the Legal Status portion of the Application. No information was disclosed that raises questions concerning the financial viability or legal integrity of this applicant.

TEFRA. The TEFRA hearing was held on December 15, 2009. There were no comments received in support of or in opposition to the project.

Prior Actions and Financings. Prior financings are listed below.

Description	Date of Bond Issue	Original Amount	Amount Outstanding as of 12/16/09
MarBorg Industries Series 2000A	06/22/2000	\$5,425,000	\$2,720,000
MarBorg Industries Series 2002A	10/23/2002	5,215,000	3,400,000
MarBorg Industries Series 2004A	05/26/2004	7,415,000	5,955,000
MarBorg Industries Series 2006A	03/07/2006	<u>6,700,000</u>	<u>5,800,000</u>
TOTALS:		<u>\$24,755,000</u>	<u>\$17,875,000</u>

Background. CPCFA issued Tax-Exempt Solid Waste Disposal Revenue Bonds Series 2004A and 2006A on behalf of MarBorg Industries (the “Prior Bonds”). The Prior Bonds were issued to finance the construction of a Materials Recovery Facility; acquisition of rolling stock, equipment and residential waste containers; land acquisition and construction and retrofit of solid waste handling and processing and parts storage facilities; and the construction and renovation of buildings used for solid waste collection and processing, associated offices and related equipment and facilities as well as the acquisition of solid waste collection and recycling equipment, including sorting lines and scales. The projects are located at various Company owned sites in Santa Barbara County.

Current Request. The Company currently requests approval of a Final Resolution to refund and convert the \$11,755,000 of tax-exempt bonds (Marborg Industries, Series 2004A and 2006A) to non-AMT status, and to replace the Letter of Credit Banks with Union Bank. These bonds will refund the Prior Bonds.

The purpose of the refunding is to make use of recent changes to the federal tax law. The alternative minimum tax (AMT) was originally enacted to make sure those individuals with high incomes and substantial tax deductions or credits did not escape income tax liability. Interest on private activity bonds is generally exempt from federal income tax, but the exemption does not apply for purposes of the AMT. Tax-exempt interest on such bonds is a tax preference item that increases an individual’s taxable income in calculating AMT income.

On February 17, 2009, as part of a comprehensive economic stimulus plan, President Barack H. Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA). Approximately one-third of the stimulus money is allocated to tax cuts. The ARRA provides that interest on private activity bonds issued in 2009 or 2010 will not be taken into account for AMT purposes. In other words, tax-exempt interest on such bonds is not a tax preference item for AMT purposes. Also, interest on refunding bonds is not a tax preference item for AMT purposes if the original private activity bond was issued after December 31, 2003 and before January 1, 2009, and refunded during 2009 or 2010. The exemption of tax-exempt bonds from the AMT will lower interest costs for all issuers. Private activity bonds previously subject to the AMT will now have access to a larger market of potential purchasers.

Permitting and Environmental Approvals. The Company has provided the Authority with copies of all required discretionary permits.

Financing Details. The Company anticipates issuance of negotiated tax-exempt, weekly reset, variable rate bonds 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 issued by Union Bank that is rated at least “A-” by Fitch Rating Agency or equivalent. The target date for financing is December 23, 2009.

Financing Team.

Underwriter: Westhoff, Cone & Holmstedt
Bond Counsel: Orrick, Herington & Sutcliffe
Financial Advisor: Andrew S. Rose
Issuer's Counsel: Office of the Attorney General

Staff Recommendation. Staff recommends approval of Final Resolution Number 00497 for Marborg Industries and/or its Affiliates for an amount not to exceed \$11,755,000.

FINAL BOND RESOLUTION OF THE
CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
RELATING TO REFINANCING OF SOLID WASTE DISPOSAL FACILITIES
FOR MARBORG INDUSTRIES, AND/OR ITS AFFILIATES

December 16, 2009

WHEREAS, the California Pollution Control Financing Authority (the “Authority”) has heretofore approved the application of MarBorg Industries, a California corporation (the “Borrower”), for financial assistance to finance the acquisition of land, [rolling stock, equipment and containers, the construction and equipping of a materials recovery facility used to sort recyclable materials.](#) the construction and retrofit of solid waste handling and processing and parts storage facilities, the acquisition and installation of solid waste collection and recycling equipment, including vehicles, carts and bins, sorting lines and scales, and the construction and renovation of buildings used for solid waste collection and processing, associated offices and related equipment and facilities, all located in Santa Barbara County, California, all as more particularly described in the Term Sheet attached hereto as Exhibit A and incorporated herein (the “Term Sheet”) (collectively, the “Project”); and

WHEREAS, the Authority has previously issued revenue bonds to assist in the financing of certain costs of the Project as set forth below:

1. \$7,415,000 California Pollution Control Financing Authority Variable Rate Demand Solid Waste Disposal Revenue Bonds (MarBorg Industries Project) Series 2004A (the “Series 2004A Bonds”), of which \$5,955,000 remains outstanding; and

2. \$6,700,000 California Pollution Control Financing Authority Variable Rate Demand Solid Waste Disposal Revenue Bonds (MarBorg Industries Project) Series 2006A (the “Series 2006A Bonds” and, together with the Series 2004A Bonds, the “Prior Bonds”), of which \$5,800,000 remains outstanding; and

WHEREAS, in order to effectuate a change in credit enhancement and a savings in interest rates, the Borrower has requested that the Authority issue refunding bonds in order to refund the Prior Bonds; and

WHEREAS, the proceeds of such revenue bonds will be loaned to the Borrower under a loan agreement with the Authority; and

WHEREAS, final approval of the terms of such revenue bonds and certain documents relating to such revenue bonds is now sought; and

WHEREAS, in order to enhance the marketability of the bonds, the Borrower has arranged for a financial institution, as named in the Term Sheet, to secure the bonds through the issuance of its direct-pay irrevocable letter of credit, thereby guaranteeing their repayment;

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

Section 1. The Project constitutes a “project” and the Borrower is a “participating party” within the meaning of the California Pollution Control Financing Authority Act (the “Act”).

Section 2. Pursuant to the Act, revenue obligations of the Authority, designated as the “California Pollution Control Financing Authority Variable Rate Demand Solid Waste Disposal Refunding Revenue Bonds (MarBorg Industries Project), Series 2009A” (the “Bonds”) in an aggregate principal amount not to exceed \$11,755,000, are hereby authorized to be issued. The Bonds may be issued at one time, or from time to time, in one or more series separately or differently identified, and may be issued in a tax-exempt or taxable mode, all in accordance with the Indenture (as hereinafter defined) as finally executed. The proceeds of the Bonds shall be used to finance and/or refinance the Project and to pay costs of issuance of the Bonds.

Section 3. The Treasurer of the State of California (the “Treasurer”) is hereby authorized to sell the Bonds, at one time or from time to time before March 31, 2010, by negotiated sale, at such price, at such interest rate or rates and in such mode (taxable or tax-exempt) as he may determine.

Section 4. The proposed form of Loan Agreement relating to the Bonds (the “Loan Agreement”), between the Authority and the Borrower, as filed with the Authority prior to this meeting, is hereby approved in substantially such form, with such insertions, deletions or changes therein (including, without limitation, insertions, deletions or changes therein appropriate to reflect the form of credit enhancement for the Bonds) as the signatory executing the same may require or approve, and with particular information inserted therein in substantial conformance with the Term Sheet, such approval to be conclusively evidenced by execution and delivery thereof. The Authority understands and agrees that pursuant to the terms of the Loan Agreement, the obligations of the Borrower may, under some circumstances, be carried out or assumed by a successor or assignee entity, or by an Affiliate of the Borrower. For purposes of this Resolution, an “Affiliate” of the Borrower means any person or entity which meets the definition of “Participating Party” in the Act and controls, is controlled by, or is under common control with, the Borrower, 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.

Section 5. The proposed form of Indenture relating to the Bonds (the “Indenture”), between the Authority and a trustee named in the Term Sheet (the “Trustee”), as filed with the Authority prior to this meeting, is hereby approved in substantially such form, with such insertions, deletions or changes therein (including, without limitation, insertions, deletions or changes therein appropriate to reflect the form of credit enhancement for the Bonds) as the signatory executing the same may require or approve, and with particular information inserted therein in substantial conformance with the Term Sheet, such approval to be conclusively evidenced by the execution and delivery thereof. The dates, maturity dates, interest rate or rates,

interest payment dates, denominations, forms, registration privileges, place or places of payment, terms of redemption and other terms of the Bonds shall be as provided in the Indenture, as finally executed.

Section 6. The proposed form of Bond Purchase Contract (the “Purchase Contract”) among the underwriter or underwriters named in the Term Sheet (the “Underwriters”), the Treasurer and the Authority and approved by the Borrower, as filed with the Authority prior to this meeting, is hereby approved in substantially such form, with such insertions, deletions or changes therein as the signatory executing the same, may require or approve, and with particular information inserted therein in substantial conformance with the Term Sheet, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. The proposed form of a preliminary official statement relating to the Bonds as filed with the Authority prior to this meeting is hereby approved in substantially such form, with such changes and insertions therein as the Executive Director may require or approve. The Underwriters are hereby authorized to distribute the preliminary official statement to persons who may be interested in the purchase of the Bonds. The Authority hereby approves a final official statement for the Bonds authorized herein, in substantially the form of said preliminary official statement, with such insertions and changes therein as the signatory executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof. The Underwriters are hereby directed to deliver a copy of said final official statement (as finally executed, the “Official Statement”) to all actual purchasers of the Bonds.

Section 8. The Bonds shall be executed by the manual or facsimile signature of the Chairman or any Deputy to the Chairman and the seal of the Authority shall be affixed thereon (or a facsimile reproduced thereon) in the form set forth in and otherwise in accordance with the Indenture. The Bonds, when so executed, shall be delivered to the Trustee under the Indenture for authentication by the Trustee. The Trustee is hereby requested and directed to authenticate the Bonds by executing the Trustee’s certificate of authentication appearing thereon. The Trustee is hereby requested and directed to deliver the Bonds, when duly executed and authenticated, to The Depository Trust Company, New York, New York, on behalf of the Underwriters in accordance with written instructions executed on behalf of the Authority, which instructions are hereby approved. Such instructions shall provide for the delivery of the Bonds to The Depository Trust Company, on behalf of the Underwriters thereof, upon payment of the purchase price thereof.

Section 9. Each officer of the Authority, acting alone, is hereby authorized and directed to do any and all ministerial acts to effectuate the purposes of this Resolution, the Indenture, the Loan Agreement, the Purchase Contract and the Official Statement. The Authority hereby approves any and all documents and certificates to be delivered in furtherance of the foregoing purposes, including without limitation, a tax certificate.

Section 10. Except as set forth in Section 8, documents approved in this Resolution may be executed and delivered in accordance with the resolution of the Authority entitled “Resolution of the California Pollution Control Financing Authority Delegating Certain Powers Related to Bond Financings to the Executive Director and Deputy Executive Director”

Agenda Item – 4.D.1.

adopted on January 28, 2009, the provisions of which are incorporated herein by reference. The Chairman or any Deputy to the Chairman are also hereby authorized to execute and deliver any such document.

Section 11. This resolution shall take effect immediately upon its passage. The adoption by the Authority of this final resolution for the Borrower shall not be referred to in any application before any government agency as evidence of the feasibility, practicality or suitability of the Project or in any application for any required permission or authority to construct or operate the Project.

EXHIBIT A

TERM SHEET

Name of Issue:	California Pollution Control Financing Authority Variable Rate Demand Solid Waste Disposal Refunding Revenue Bonds (MarBorg Industries Project), Series 2009A (the “Bonds”)
Maximum Amount of Issue:	\$11,755,000 (tax-exempt)
Issuer:	California Pollution Control Financing Authority (the “Authority”), Sacramento, CA
Borrower:	MarBorg Industries, a California corporation
Affiliates (to initially own or operate elements of the Project)	ASTI Holding Co. LLC or DM Ortega Hill Partnership
Trustee:	The Bank of New York Mellon Trust Company, N.A.
Senior Underwriter or Placement Agent:	Westhoff, Cone & Holmstedt
Bond Counsel:	Orrick, Herrington & Sutcliffe LLP, San Francisco, CA
Remarketing Agent:	Westhoff, Cone & Holmstedt
Project:	See Exhibit B
Maximum Bond Term:	Not to exceed 30 years
Type of Sale:	Negotiated sale

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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:	Union Bank, N.A.
Other Credit Enhancement:	Not applicable
Anticipated Bond Rating:	Minimum “A-”
Type of Financing:	Solid waste disposal refunding revenue bonds
Prepared by:	Robert Martz, (925) 472-8746

EXHIBIT B

A portion of the Prior Bonds were used to finance, and a portion of the unspent bond proceeds of the Series 2006A Bonds will be used to finance, the following facilities in Santa Barbara County, California:

- (a) the constructing and equipping of a new materials recovery facility used to sort recyclable materials from construction and demolition and greenwaste, located at 131 and 136 North Quarantina Street, Santa Barbara, California.
- (b) the cost of (1) acquisition of rolling stock, equipment and residential waste containers used for solid waste collection and recycling services throughout the service area of MarBorg Industries, ASTI Holding Co. LLC or DM Ortega Hill Partnership located within the Santa Barbara County, California; and (2) acquisition, construction, improvement, equipping, expansion and/or renovation of solid waste transfer and materials recovery facilities, a maintenance facility site, and a corporation yard located at 131 and 136 N. Quarantina Street and 130 Nopalitos Way, each in Santa Barbara, California. The rolling stock is housed at one or more of the above-listed addresses and the residential waste containers are located at some or all of the residences of customers in the above-described service area.
- (c) ~~(a)~~ land acquisition and the construction and retrofit of solid waste handling and processing and parts storage facilities as well as the acquisition and installation of solid waste collection and recycling equipment, including vehicles, carts and bins, all of which is located at some or all of the following locations: 131 and 136 North Quarantina Street, 130 Nopalitos Street, and 25 North Quarantina Street, each in Santa Barbara, California.
- (d) ~~(b)~~ the construction and renovation of buildings used for solid waste collection and processing, associated offices and related equipment and facilities as well as the acquisition and installation of solid waste collection and recycling equipment, including sorting lines and scales, all of which are located at some or all of the following locations: (1) 620 Quinientos Street, Santa Barbara, California (which includes 24, 36, 104 and 106 S. Quarantina Street and 3, 71-79 Calle Cesar Chavez) (2) 725 Cacique Street, Santa Barbara, California (which includes 132 Nopalitos Way), and (3) 136 North Quarantina Street, Santa Barbara, California (which includes 709, 715, 719 and 721 Union Street and 716, 720 and 728 E. Yanonali Street).

The facilities described above have already been acquired and/or constructed, and are owned and/or operated by MarBorg Industries, ASTI Holding Co. LLC or DM Ortega Hill Partnership, and/or an affiliate thereof (the “Corporation”). Vehicles and containers are used to serve the Corporation’s customers throughout the Corporation’s service territory in San Barbara County, California, and the containers are located at the addresses of the Corporation’s customers.