

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM
Meeting Date: June 19, 2007
Executive Summary
Request for Amendment of Initial Resolution

Prepared by: *Doreen Carle*

Applicant:	California Waste Solutions, Inc. and/or its Affiliates	Amount Requested:	\$34,595,000
Project	City of San Jose (County of Santa Clara) and City of Oakland (Alameda County)	Application No.:	788 (SB)
Location:		Initial Resolution No.:	06-10

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. At that time, the Company requested approval to finance the acquisition of land, trucks, carts, bins, containers, sort line equipment and to finance site preparation and improvements, as well as materials recovery facility (MRF) expansion.
- Final Resolution Number 462 was approved on March 20, 2007 and anticipated the purchase of land at 1655 Berryessa and/or 1901 Junction Avenue in San Jose. These sites are no longer being considered for purchase by the Company.

Discussion/Request: The Company has recently been awarded a new contract with the City of San Jose to collect, sort, and process residential recyclables (a contract currently held by Norcal Waste Systems, Inc.), and the requested financing was to meet the obligations of this contract. After receiving FR approval, the Company decided it would be in the Company’s best interest to fulfill the contract from the current Norcal site and as such entered into a lease agreement with Norcal Waste Systems, Inc. California Waste Solutions will sublease a site at 1120 and/or 1158 Berryessa from Norcal, which Norcal leases from an unaffiliated third party, and lease the site improvements directly from Norcal.

The current request incorporates the actions needed to facilitate the City of San Jose contract and consists of: 1) increasing the Initial Resolution from \$25,905,000 to \$34,595,000 due to an increase in the cost of land; 2) adding to the Project description the improvement at a MRF site and the acquisition of drop boxes, bins, carts and containers to be located with customers in the City of San Jose and various other incorporated and unincorporated portions of Santa Clara County; and 3) adding the new site. The remaining project components will continue as outlined on Initial Resolution Request 06-10 (Attachment A) that was approved at the October 24, 2006 board meeting. In addition to the Initial Resolution, the Legal Analysis that was prepared for the Final Resolution at the March 20, 2007 meeting is also attached (Attachment B).

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

Permits: The Company will provide the Authority with copies of all required discretionary permits prior to requesting approval for Final Resolution.

Financing Details: The Company anticipates a public offering of a negotiated variable rate bond issue with a term not to exceed 30 years for the qualifying portions of the overall project. The Company plans to secure the bonds with an irrevocable, direct pay Letter of Credit that is rated “A-” or better by Fitch Ratings or equivalent. 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

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

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 to get an update. U.S. EPA staff 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. After the facilities come into compliance with the orders issued by U.S. EPA, then 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 an Amendment to Initial Resolution Number 06-10 for California Waste Solutions and/or its Affiliates for an amount not to exceed \$34,595,000.

Note: An Initial Resolution approval is not a commitment that the Board will approve a Final Resolution and bond financing of the proposed Project.

Initial Resolution No. 06-10
Application No. 788 (SB)

**AMENDMENT OF INITIAL RESOLUTION TO ISSUE BONDS
TO FINANCE SOLID WASTE DISPOSAL FACILITIES FOR
CALIFORNIA WASTE SOLUTIONS, INC. AND/OR ITS AFFILIATES**

June 19, 2007

WHEREAS, the California Pollution Control Financing Authority (“Authority”) by its Resolution No. 06-10 (“Initial Resolution”) has heretofore approved the application of California Waste Solutions, Inc., a California corporation, and/or its Affiliates (as defined therein) (collectively, “Company”), for financial assistance in defraying the costs of financing facilities for the disposal of solid and liquid waste products, including resource recovery and energy conversion facilities, 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 Initial Resolution authorized the issuance of such revenue bonds for the financing of solid waste disposal/recycling facilities and equipment to be owned and operated by the Company, which was expected to be comprised of the acquisition of land and the acquisition of solid waste and recycling related vehicles and equipment and rolling stock (the “Initial Facilities”), to be located at the sites described in Exhibit A thereto (the “Initial Exhibit A”); and

WHEREAS, the Company now desires, and has requested the Authority, to amend the Initial Resolution in order to (i) increase the maximum principal amount of such revenue bonds from \$25,905,000 to \$34,595,000; (ii) add to the definition of the Initial Facilities the improvement of materials recovery facilities and 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 (collectively, the “Facilities”); and (iii) add additional sites at which certain of the Facilities will be located to the addresses listed in the Initial Exhibit A, as set forth in Exhibit A hereto; 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 (i) approves the increase in the maximum principal amount of such revenue bonds to \$34,595,000, and any references in the Initial Resolution to “\$25,905,000” shall be changed to “\$34,595,000”; (ii) approves the amendment of the definition of Facilities in the Initial Resolution as set forth above and any references in the Initial Resolution to “Facilities” shall refer to “Facilities” as defined in this Amendment of Initial Resolution; and (iii) approves Exhibit A hereto and any references in the Initial Resolution to

Agenda Item – 4.B.1.

“Exhibit A” thereto shall refer to “Exhibit A” as set forth in this Amendment of Initial Resolution.

Section 2. The Initial Resolution, as amended by this Amendment of Initial Resolution, shall take effect immediately upon its passage and remain in full force and effect thereafter; provided that, it shall cease to be effective on June 19, 2010 unless prior thereto the Authority specifically adopts a further resolution extending the effective date of the Initial Resolution, as amended by this Amendment of Initial Resolution, which it will do only after receiving a specific request for such action from the Company, accompanied by an explanation of the reason why the project has not proceeded prior to the date of the letter.

Section 3. Except as amended by Sections 1 and 2 hereof, all provisions and conditions of the Initial Resolution shall remain unchanged and in full force and effect.

Section 4. 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 Initial Resolution to the Company and otherwise to effectuate the purposes of this Amendment of Initial Resolution.

EXHIBIT A

NUMBER: 06-10

LOCATIONS:

- (1) 1005 Timothy Drive, San Jose, CA 95113
- (2) 1120 and/or 1158 Berryessa Road, San Jose, CA 95133
- (3) 1819 and/or 1820 Tenth Street, Oakland, CA 94607
- (4) 3300 Wood Street, Oakland, CA 94608

TYPE: Solid Waste Disposal/Resource Recovery

AMOUNT: Up to \$34,595,000

ATTACHMENT A

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM

Meeting: October 24, 2006

Executive Summary

Request for Initial Resolution Approval

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)	Initial Resolution No: 06-10

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

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 project includes the acquisition of new trucks, bins, containers and carts. To further support the project, the Company plans to add new sort line equipment at its Timothy Street, San Jose MRF site. In addition, the Company is currently contemplating the need to add new sort line equipment at two of its Oakland MRF sites and possible acquisition of land to serve as a truck storage and maintenance site. The site, not yet identified, also may be used for additional material processing.

Public Benefits:

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

Pollution Control:

The Company represents the Project will generate the following pollution control benefits:

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.

Permits: The Company will provide copies of all necessary permits prior to seeking Final Resolution approval.

Financing Details: The Company anticipates a public offering of a negotiated variable rate bond issue with a term not to exceed 30 years for the qualifying portions of the overall project. The Company plans to secure the bonds with an irrevocable, direct pay Letter of Credit that is rated “AAA/F1+” or better by Fitch Ratings or equivalent.

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Financing Team:

Bond Counsel: Law Offices of Leslie M. Lava

Underwriter: Westhoff, Cone & Holmstedt

Financial Advisor: Andrew S. Rose

Legal Questionnaire: The Company disclosed solid waste permit, air quality permit and OSHA issues in its legal questionnaire. As staff discussed in the attached legal analysis (Attachment I), these issues raise serious concerns that should be reviewed prior to consideration of a final resolution.

Staff 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 CalOSHA 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 indication of the likelihood of the Board ultimately approving a final resolution if the Company returns to the Authority. Staff recommends approval of Initial Resolution No. 06-10 for an amount not to exceed \$25,905,000 for California Waste Solutions, Inc. and/or its Affiliates.

Note: An initial resolution approval is not a commitment that the Board will approve a final resolution and bond financing for the proposed Project.

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CALIFORNIA WASTE SOLUTIONS, INC. AND/OR ITS AFFILIATES
Bond Amount: \$25,905,000
 County of Santa Clara
 Application No. 788 (SB)
 October 24, 2006

STAFF SUMMARY – CPCFA

Prepared by: Doreen Carle

ISSUE:

California Waste Solutions, Inc. and/or its Affiliates (the “Company”) requests approval of Initial Resolution No. 06-10 for an amount not to exceed \$25,905,000 to finance equipment purchases and possible land purchase.

CDLAC Allocation: The Company plans to apply for CDLAC allocation in December 2006.

BORROWER:

Currently, the Company processes recycling material in the City of San Jose in Santa Clara County. Under its new contract, the Company will be responsible for both collection and processing of residential recyclables.

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. The Company disclosed solid waste permit, air quality permit and OSHA issues in its legal questionnaire. As staff discussed in the attached legal analysis (Attachment I), these issues raise serious concerns that should be reviewed prior to consideration of a final resolution.

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	\$10,705,000
California Waste Solutions, Inc.	08/05/04	<u>8,350,000</u>	<u>8,350,000</u>
	Total	\$19,625,000	\$19,055,000

ATTACHMENT A

PROJECT INFORMATION:

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 project includes the acquisition of new trucks, bins, containers and carts. To further support the project, the Company plans to add new sort line equipment at its Timothy Street, San Jose MRF site. In addition, the Company is currently contemplating the need to add new sort line equipment at two of its Oakland MRF sites and possible acquisition of land to serve as a truck storage and maintenance site. The site, not yet identified, also may be used for additional material processing.

Costs associated with the Project include:

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

PUBLIC BENEFITS:

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

POLLUTION CONTROL:

The Company represents the Project will generate the following pollution control benefits:

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.

PERMITTING & ENVIRONMENTAL APPROVALS:

The Company will provide copies of all necessary permits prior to seeking Final Resolution approval.

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ANTICIPATED TIMELINE:

The Company anticipates beginning equipment purchases in October 2006 with a 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 negotiated variable rate bond issue with a term not to exceed 30 years for the qualifying portions of the overall project. The Company plans to secure the bonds with an irrevocable, direct pay Letter of Credit that is rated “AAA/F1+“ or better by Fitch Ratings or equivalent.

FINANCING TEAM:

Bond Counsel: Law Offices of Leslie M. Lava
Underwriter: Westhoff, Cone & Holmstedt
Financial Advisor: Andrew S. Rose

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 CalOSHA 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 indication of the likelihood of the Board ultimately approving a final resolution if the Company returns to the Authority. Staff recommends approval of Initial Resolution No. 06-10 for an amount not to exceed \$25,905,000 for California Waste Solutions, Inc. and/or its Affiliates.

ATTACHMENT A

Attachment I

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-

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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 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 than 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, 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

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

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

ATTACHMENT B

discharge in the stormwater from this facility eventually makes its way into the San Francisco 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

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contains, among other things, the following representation to the Authority and Underwriter:

(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.