

MINUTES

**California Pollution Control Financing Authority
915 Capitol Mall, Room 587
Sacramento, California
July 24, 2007**

1. CALL TO ORDER & ROLL CALL

Bettina Redway, Chairperson, called the California Pollution Control Financing Authority (CPCFA) meeting to order at 10:58 a.m.

Members Present: Bettina Redway for Bill Lockyer, State Treasurer
Cindy Aronberg via teleconference for John Chiang, State Controller
Vince Brown for Michael C. Genest, Director, Department of Finance

Staff Present: Michael Paparian, Executive Director
Eileen Marxen, Deputy Executive Director

Quorum: The Chairperson declared a quorum

2. MINUTES

Ms. Redway asked if there were any questions or comments concerning the June 19, 2007 meeting minutes. There were none.

Vince Brown moved to approve the minutes of the June 19, 2007 meeting. Upon a second, the minutes passed with the following vote: Vince Brown: Aye; Cindy Aronberg: Aye; Bettina Redway: Aye.

3. EXECUTIVE DIRECTOR'S REPORT (INFORMATION ITEM)

Michael Paparian introduced Gayla Linteau, a retired annuitant who is helping with contract administration, and Rachel Franzoia, a student assistant from UCLA who is helping with the Sustainable Communities Grant and Loan Program.

Mr. Paparian reported on the Sustainable Communities Grant and Loan Program noting that CPCFA had received 68 applications totaling approximately \$22 million in requests for grants and loans. He stated that CPCFA has six review committees that will assist with the scoring as part of the process leading to \$2.5 million in awards. Staff expects to present the recommended recipients to the Board Members this fall.

Mr. Paparian then reported on the CALReUSE Brownfields Program stating that the Program is mentioned in one of the budget trailer bills currently on the Senate floor. The bill, SB 86, would allocate \$60 million from Proposition 1C funds to CPCFA to expand its program to include grants and loans for cleanup. Mr. Paparian stated that staff is presently working on developing and implementing the Program should the funds be authorized.

Mr. Paparian also reported concerning Pacific Community Ventures, a small business advising company for CPCFA's small business advising program, that staff is in the process of obtaining a contractor to conduct an analysis of this program. Mr. Paparian noted that a new deadline has been set for selecting consultants from the state MSA list and that staff hopes to have bids to review by July 25, 2007.

Mr. Paparian reported updates to the bond program. He stated that staff is working on changes to the Initial Resolution and the Final Resolution processes. Mr. Paparian stated that staff is still reviewing procedures for whether, or when, to collect additional fees for amendments to an Initial Resolution and when it makes sense to require a new Initial Resolution. Staff anticipates having a proposal to discuss in September or October.

Mr. Paparian noted that allocation is expected to be tight this year. Currently there is approximately \$290 million allocated or pending allocation. Bonds issued or anticipated are about \$225 million, with more applications expected. This is more than \$500 million against a total exempt facility allocation from CDLAC of \$440 million. While not all projects will move forward, allocation continues to be tight.

4. BUSINESS ITEMS

A. REQUEST TO APPROVE REINSTATEMENT, EXTENSION AND AMENDMENT OF INITIAL RESOLUTION AUTHORIZING THE ISSUANCE OF REVENUE BONDS

- 1) Industrial Waste & Debris Box Rentals, Inc. and/or its Affiliates** requested approval of Reinstatement, Extension and Amendment of Initial Resolution No. 04-09 for an amount not to exceed \$4,625,000. The Company collects and processes source separated recyclables and hauls construction and demolition (C&D) debris.

The Company's original Initial Resolution No. 04-09 in the amount of \$4,200,000 to finance the acquisition of land with an existing building in Santa Rosa was approved on June 29, 2004. In August 2006, the Company requested to amend the original Initial Resolution by increasing the bond amount to \$4,625,000 to cover an increase in the cost of the land. The Initial Resolution expired June 29, 2007. The current request states that the project description and the Company information remain as stated in the original and amended CPCFA applications with the exception that the identified site to be purchased is no longer available; therefore, a new site is being sought. This request also includes an amendment to the Initial Resolution adding the definition of Affiliate. Staff report presented by Michael Smith.

Ms. Redway asked about the waste stream diversion and how close it is to 50 percent.

Tony Cone of Westhoff, Cone & Sutcliffe responded that he did not know at this time but would estimate the percentage before the Final Resolution stage.

Ms. Redway asked if there were any questions from the Board.

Mr. Brown asked how long it would take to identify a new site, since the original site is no longer available. Mr. Cone responded that the Company has identified two sites and plans to buy one site and that he would find out more information on the sites.

Mr. Brown stated that he was concerned about the length of time for Initial Resolutions, since time has passed on this issue. Mr. Cone responded that progress is needed but that the real estate market is tough.

Ms. Redway asked if there were any questions or comments from the public.

Mr. Brown moved to approve the item, noting that he was concerned about the length of time it is taking to move forward on this item. Upon a second, the item passed unanimously with the following vote: Vince Brown: Aye; Cindy Aronberg: Aye; Bettina Redway: Aye.

B. REQUEST TO APPROVE FINAL RESOLUTIONS AUTHORIZING THE ISSUANCE OF REVENUE BONDS AND CORRESPONDING RESOLUTIONS AUTHORIZING SMALL BUSINESS ASSISTANCE FUND (SBAF) COSTS OF ISSUANCE ASSISTANCE IN AN AMOUNT NOT TO EXCEED \$250,000

1) ~~Mottra Corporation and/or its Affiliates~~ ~~_____~~ ~~WITHDRAWN~~

2) ~~Solid Waste of Willits, Inc. and/or its Affiliates~~ ~~_____~~ ~~WITHDRAWN~~

3) **Sunset Waste Paper, Inc. and/or its Affiliates** requested approval of Final Resolution No. 472 for an amount not to exceed \$11,650,000 to finance the construction and improvements of buildings and the acquisition of trucks and equipment in the Counties of Fresno, Kern, Kings, Merced, and Tulare. The Company also requested approval of a SBAF resolution in an amount not to exceed \$250,000.

The Company's Initial Resolution No. 04-18 was approved on December 14, 2004 in the amount of \$10,560,000. A Final Resolution, No. 440, was approved on June 28, 2005 in the amount of \$7,605,000 and amended on September 1, 2005 to increase the amount to \$9,510,000. Bonds were issued on November 1, 2005 in the amount of \$9,510,000 and the Initial Resolution was amended and restated on June 27, 2006 in the amount of \$8,900,000.

The Company currently requests financing approval for its existing materials recovery facility (MRF) in Fresno to add a 60,000 square-foot building which serves as a transfer station for municipal solid waste. The Project included the construction of the building and the purchase of various equipment including loaders, electric carts, a pickup truck, and a sweeper. In Visalia, the Company anticipates paving and adding a scale to the existing MRF site. The Company also plans to acquire collection vehicles, carts, and bins for use throughout its service area. Staff report presented by Doreen Carle.

Ms. Redway asked if there were any questions from the Board.

Ms. Redway asked what percentage is anticipated for waste diversion. Mr. Cone responded that the percentage involves a number of city and county areas and that the amounts being recycled vary tremendously for various areas.

Ms. Redway asked for any questions from the public.

Mr. Brown moved to approve the item. Upon a second, the item passed unanimously with the following vote: Vince Brown: Aye; Cindy Aronberg: Aye; Bettina Redway: Aye.

C. REQUEST TO APPROVE AMENDMENT OF FINAL RESOLUTION AUTHORIZING THE ISSUANCE OF REVENUE BONDS

Ms. Aronberg stated that the State Controller has a conflict with Item 4.C.1. because it involves Wells Fargo Institutional Securities LLC in the financing for CalAg, LLC and that she would not be participating in this item.

Ms. Redway asked if there was anyone from the public who was present at the remote location. Ms. Aronberg responded that there was no one else there.

1) CalAg, LLC, CalPlant I, LP and/or their Affiliates requested approval of amendment and restatement of Final Resolution No. 464 in an amount not to exceed \$175,000,000. CalAg is a development stage company whose primary business will be to utilize waste rice straw to manufacture medium density fiberboard (MDF).

The Company had received approval of Final Resolution No. 464 on March 20, 2007 in the amount of \$175,000,000 and SBAF resolution approval not to exceed \$250,000. At the time of approval, the Company had anticipated a negotiated, tax-exempt and taxable variable rate bond issue backed by an irrevocable direct pay Letter of Credit from Union Bank of California, N.A. Since approval of the Final Resolution, the proposed financing structure changed from one in which credit enhanced variable rate demand bonds would be sold in a public offering to one in which a note will be privately placed with a Qualified Institutional Buyer (QIB), namely Deutsche Bank Securities Inc.

In addition, the Company requested that CPCFA change its provision regarding the sale of participatory shares of the bonds in a trust for this transaction. Currently, the guidelines restrict the sale of any participatory shares of a trust which may hold the bonds to QIBs.

The Company requested that CPCFA change this provision as follows (see the underlined text):

Agenda Item – 2.

Participatory shares of Bonds in trusts which include any of the Bonds may be sold only to QIBs, and such trust shares must be sold only in increments equal to the Bond's minimum denomination unless (i) the participatory shares are credit enhanced to an "A-" level or higher and purchasers of such shares are not exposed to credit risk of the borrower, or (ii) participatory shares are not directly made in the bonds, but are part of a diversified portfolio in a regulated investment company, where the bonds constitute not more than 5% of the total portfolio.

CPCFA staff and its counsel reviewed the request. Based upon that review, staff recommended approval of the change to CPCFA's private placement guidelines for the CalAg transaction with the understanding that this approval is not a decision by the Authority to make a permanent change to its guidelines. CPCFA staff will conduct a more general review and analysis of issuance guidelines for private placement of bonds, and it anticipates that it will present draft guidelines to the Board for approval by the end of 2007. In the meantime, any future requests for variations from the guidelines will be considered on a case-by-case basis. Staff report presented by Michael Smith.

Ms. Redway asked if there were any questions from the Board.

Mr. Brown commented that several discussions have taken place with attorneys and CPCFA staff relating to the definition of small business in light of the fact that Morgan Stanley is a limited partner in this transaction. Mr. Brown requested that CPCFA counsel go on record concerning the Company's qualification as a small business.

Issuer's counsel, Kevin Civale of Stradling Yocca Carlson & Rauth, stated that the Authority has exercised due diligence in seeking the opinion of a trusted, respected law firm (Quateman LLC) to draw the small business conclusion, and that the correct statutes were cited and the conclusions and logic in the Quateman opinion seem reasonable. Mr. Civale stated that whether the business meets the small business requirements is a close call, and that the issue therefore becomes the appropriate level of due diligence in making that determination.

Ms. Redway asked if it is reasonable for the Board to rely on that opinion. Mr. Civale responded that it is reasonable, and that CPCFA staff has performed an appropriate level of due diligence on this point.

Mr. Brown asked if the actual covenants in the bond documents will address the small business determination and whether such covenants are standard boiler plate language for bond documents.

Eileen Marxen responded affirmatively, and she added that in the standard CPCFA bond documents there is a representation that the borrower makes that it is a small business and that the borrower's counsel will include this representation in its opinion, which will also become a part of the bond transcript.

Agenda Item – 2.

Mr. Brown asked if there is any entity or individual who could potentially challenge the issuance of these bonds since this is a close call. Mr. Civale responded that generally the citizens of the State have a right to challenge actions of the entities of the State if they believe they are not in compliance with laws.

Ms. Redway asked whether the matter of the small business qualification relates only to the assessment of SBAF fees and if the small business determination would have any other bearing on the bond transaction.

Ms. Marxen responded that, for CPCFA's purposes, the impact of the small business determination is on fees. Ms. Marxen also commented that CPCFA held a TEFRA hearing on this transaction and did not receive any comments and that no issues were raised at the TEFRA hearing.

Ms. Redway moved to approve the item. Mr. Brown seconded the motion, noting that this is a good project but the small business qualification is a very close call.

Ms. Redway agreed it is a close call, adding that CPCFA staff has exercised due diligence on this matter.

Ms. Redway asked for a roll call. The item passed with the following vote: Vince Brown: Aye; Cindy Aronberg: Abstain; Bettina Redway: Aye.

5. PUBLIC COMMENT

Ms. Redway asked if there were any public comments. Hearing none, she moved for adjournment.

6. ADJOURNMENT

There being no further business, public comments, or concerns, the meeting was adjourned at 11:27 a.m.

Respectfully submitted,

Eileen Marxen
Deputy Executive Director