

## Contra Costa Environmental Health

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Date: July 17, 2015

To: Contra Costa County Board of Supervisors  
Internal Operations Committee (IOC)

From: Marilyn C. Underwood, PhD, REHS, Director of Environmental Health

Subject: Update on Proposed Refuse Hauler Ordinance  
Contra Costa County Ordinance 418-2

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### **A. Introduction**

There are two County Code Chapters that regulate aspects of waste collection within the unincorporated area. County Code Chapter 418-7 requires that entities enter into an agreement with the County (e.g. Franchise Agreement) prior to collecting or authorizing service providers to collect waste generated in the unincorporated County area. In addition to collection from the unincorporated area, Chapter 418-2 also regulates the hauling of waste (regardless of area of origin) on unincorporated roads. Therefore, anyone collecting waste from within the unincorporated area without a County Franchise or Hauler Permit is technically doing so in violation of two separate ordinances.

The proposed revisions developed by staff are meant to significantly improve the effectiveness of Chapter 418-2 as it relates to three important goals: (1) combat illegal dumping in unincorporated areas, (2) combat illegal haulers, and (3) combat illegal transfer stations. However, a local ordinance alone is not the entire solution, but instead one of multiple elements needed to address these chronic problems.

To protect public health, safety, and the environment it is critical that solid waste and recyclable materials are safely transported to an approved solid waste disposal or recycling facility. Illegal dumping on both public and private property is a significant problem in Contra Costa County. The County will never be able to stop illegal dumping completely, however it can be minimized if adequate resources are consistently dedicated to pursuing prevention and enforcement strategies. There are a wide range of prevention and enforcement strategies including camera surveillance options, periodic stake-outs by law enforcement in chronic dumping "hot spots", rigorous prosecution of illegal dumping cases, publicize local illegal dumping convictions using media and any other possible methods, and maximize the County's ability to impose meaningful penalties for illegal dumping convictions. Revisions to Chapter 418-2 (hauler permits) and Chapter 418-6 (mandatory subscription) have been identified as two means of strengthening the effectiveness of the County's illegal dumping prevention and enforcement efforts.

Solid waste taken to illegal solid waste facilities, including illegal transfer stations, is also a serious problem. Unregulated non-franchise waste haulers are implicated in both illegal dumping and illegal solid waste facilities. For these reasons, Contra Costa Environmental Health (CCEH) previously brought to the Internal Operations Committee (IOC) a recommendation that the County's current refuse hauler ordinance be updated to provide a permit system and other protections which are feasible to implement and more effective overall.

As part of the effort to modify the current refuse hauler ordinance (County Ordinance Chapter 418-2), CCEH scheduled a series of workshops and individual meetings with stakeholders. The stakeholders were provided a copy of a conceptual draft ordinance prior to the workshops. The discussions were productive and staff received helpful feedback and suggestions. Some of the suggestions were incorporated into the latest conceptual draft proposal dated June 15, 2015 (attached). Other suggestions and ideas warrant consideration by the IOC and are contained in Section C of this report; staff is seeking direction regarding these items prior to preparing a revised draft ordinance to submit for legal review.

## **B. Summary of workshop and meeting discussions**

- (1) As discussed at previous IOC meetings, the franchised haulers do not want non-franchised waste haulers conducting business in a manner that conflicts with franchise agreements. This includes non-franchised haulers who might obtain a health permit pursuant to a revised ordinance.

Efforts were made to identify types of hauler operations that do not ***conflict with franchise agreements***. Many non-franchise waste haulers provide a labor component that is not provided by franchised haulers. For example, haulers that clean up and remove junk, debris, or other items from a property for transport and disposal, but the property owner, business, or tenant is not themselves involved in loading the truck or refuse container; such non-franchised operations were a primary target of the original proposal to revise the current ordinance. This distinction has been added to Section 418-2.003(c) of the attached draft. See Section C(5) below for related policymaker considerations.

If a non-franchised hauler does not provide this labor component and instead drops off a container that is filled by his or her client, this could conflict with a franchise agreement, depending on the location and/or type of waste. It is recognized that educating the non-franchise haulers about restrictions to their business in franchised areas will be an important component of a waste hauler regulatory program. Additionally, haulers should be informed to check with any city in which they operate, since a city business license and/or other approval(s) may also be required.

- (2) Requiring the ***marking of all debris boxes***, even if self-hauled, will aid regulatory agencies in ensuring the lawful use of these boxes. This recommendation was incorporated into the revised draft proposal in Section 418-2.008(g).
- (3) Construction and Demolition (C&D) waste is a significant component of the waste stream. Franchise haulers suggested that the County Franchise Agreements be modified as needed to

clearly specify that Franchisees are granted with exclusive right to collect C&D waste. Currently, this is only provided for in one of the County's four Franchises which governs services provided by Richmond Sanitary Service (RSS) in West County. Stakeholders felt that exclusively **franchising collection of C&D waste** would simplify enforcement. See Section C(6) below for related policymaker considerations..

(4) It was suggested that **building permit process** could be altered to address C&D waste management practices, since construction projects can generate large quantities of waste materials. Building permit process falls under the purview of DCD. County Code requirements associated with the building permit process specific to C&D waste are contained in Chapter 418-14 (less stringent than and therefore in effect superseded by CalGreen). CalGreen (statewide code) requires that certain information be documented and submitted to demonstrate planned (building permit applications) and actual (final inspection) methods used for recycling and disposing of C&D waste. See Section C(4) below for related policymaker considerations..

(5) There was extensive discussion about **contractors and landscapers** self-hauling their waste materials, a practice that was initially proposed for exemption from the permit requirement. Franchise Agreements do not prohibit contractors and landscapers from hauling waste they generate at client worksites. It is recognized that contractors and landscapers collect and transport large quantities of waste material, some of which may be illegally dumped or destined for illegal solid waste facilities. It is important that this waste be safely transported to an acceptable disposal or recycling facility.

It is also important to accurately account for the amounts and types of waste collected, as well as the point of origin and ultimate destination, for both diversion rate reporting and the payment of fees (e.g., mitigation funds, LEA fees, CalRecycle fees, etc.). Therefore, the IOC may wish to consider some degree of regulatory oversight regarding waste transport and disposal for these businesses. See Section C(3) below for related policymaker considerations..

(6) Reporting of waste collected and ultimate disposal is an important component of the proposal. But the proposal restricts **reporting requirements** to those haulers operating under a health permit. It would be useful to get this information from others, such as landscapers and contractors, but this would significantly expand the scope and complexity of regulatory oversight. For those businesses required to maintain waste transport records, it was suggested that these be submitted to CCEH on a regular basis, and this idea has been incorporated into the revised draft in Section 418-2.008(e). Additionally, as noted above, CalGreen requires that contractors submit certain report documentation to DCD regarding the ultimate facilities/services providers used to dispose of and recycle C&D waste from building projects.

(7) Another item discussed was requiring all solid waste material transported by permitted haulers be disposed or recycled at solid waste or recycling **facilities located within Contra Costa County**. See Section C(10) below for related policymaker considerations..

(8) The franchised haulers expressed concern about illegal haulers **who poach or scavenge recyclable materials** to which the franchisee is entitled under the franchise agreement. The

scavenging of these materials has a financial impact on the franchise haulers as well as the ratepayers. Franchisee stakeholders expressed concerns that non-franchised haulers who might obtain a health permit pursuant to a revised ordinance may start poaching Franchisees recyclables. Franchise Agreements regulate the collection of recyclables, unless such collection is provided free of charge. See Section C(7) below for related policymaker considerations.

- (9) An improved definition of **“industrial waste”** is desirable, since these wastes are exempt from the permit requirement. Franchise Agreements do not regulate the collection of industrial waste. See Section C(9) below for related policymaker considerations.
- (10) Enforcement of the ordinance, including assistance from the **Sheriff’s Office**. It is recognized that consistent enforcement with meaningful penalties for noncompliance is critical for the ordinance to be effective. Current County Ordinance contains provisions for civil, criminal, and **administrative penalties**. CCEH has experience using civil and criminal penalties for its cases, but not administrative penalties. The possible use of administrative penalties contained in County Ordinance Chapter 14-12 when dealing with violations of a waste transport ordinance would require further research as part of a legal review.
- (11) Require non-franchise haulers seeking a permit to **disclose their service area** (where their hauling business will be collecting waste from) and the location(s) where solid waste or recyclable materials will be taken on the applications for a hauler permit. This suggestion was incorporated into Section 418-2.003(c).
- (12) Issues associated with requiring hauler permits for waste loads which originate within incorporated areas or outside Contra Costa County were also discussed. Anecdotal evidence collected in the past suggest that roughly half of the illegal dumping found in one West County community originated from within that community. Therefore, if legally feasible it would be desirable to include language that would allow the County to **require permits solely for transporting waste loads** through the unincorporated area. Staff believes this is critical to effectively addressing illegal dumping resulting from waste hauling originating in other jurisdictions.
- (13) The “level playing field” concept was discussed. The franchise haulers incur **numerous operating costs** not borne by some non-franchise haulers. For example, they must comply with other regulations (e.g., California Air Resources Board), carry liability insurance, pay union wages, etc. These issues are beyond the scope of the proposal and not within the purview of CCEH, but staff want the IOC to be aware that these are important issues for the franchise haulers.

### **C. Key Items for Policymaker Consideration:**

Based on input received at the stakeholder meetings, staff has identified the policymaker considerations and policy options identified below for consideration by the IOC. These key items pertain to policy matters involving the potential scope, requirements or enforcement of the ordinance.

**(1) ORDINANCE ENFORCEMENT – Potential Role of the Sheriff’s Office**

The Sheriff's Office has in the past provided useful assistance related to illegal haulers. It would be helpful if they have the authority to enforce certain provisions of the proposed ordinance; specifically, those standards that are observable in the field (e.g., presence or absence of a permit sticker, proper containment of waste while driving on county roads). Staff recognizes that the Sheriff's Office has many competing needs for its resources, and where and when they could assist is subject to balancing these resources with the myriad requests for services and other obligations. The IOC may wish to formally ask Sheriff Livingston if this is acceptable or direct staff to make this inquiry on its behalf.

Option

The following language could be considered for addition to the end of Section 418-2.003(a): *In addition to Contra Costa Environmental Health, the Contra Costa County Sheriff’s Office may also enforce Sections 418-2.003(a), 418-2.003(b), 418-2.005, and 418-2.008 of this chapter.*

**(2) ORDINANCE REQUIREMENT - Performance Bond**

The current ordinance requires that refuse haulers post a bond with the Board of Supervisors. The proposal lists four options for the IOC to consider. See Section 418-2.006 in attached draft.

Option 1

Keep the amount the same but have the bond posted with the health officer (i.e., CCEH).

Option 2

Raise the bond amount and have it posted with CCEH.

Option 3

Require liability insurance in lieu of a bond.

Option 4

Delete this section entirely.

Based on the questionable utility of these bonds, *staff recommends Option 4.*

**(3) ORDINANCE SCOPE - Building Contractors and Landscapers Self-Haul**

Landscapers and building contractors generate a significant component of the solid waste stream. The proposed ordinance exempts these contractors from the waste hauler permit requirement if they are transporting waste from their own jobsites directly to an approved solid waste or recycling facility. Similar exception applies to the County’s Franchise Agreements, therefore landscapers and contractors can haul waste they generate at client jobsites without having a County Franchise or Hauler Permit. Under the current proposal, they are still subject to certain operational standards (e.g., containment of waste during transport). The IOC may wish to consider to what further extent the waste hauler

ordinance applies to these building contractors and landscapers. The following are options to consider:

Option 1

Full compliance, including a permit requirement. There are hundreds of landscapers and building contractors operating in the County, so to require them to have a waste transport permit would significantly expand the scope of the proposed revised ordinance. Staff does not believe the resources necessary to implement such a large-scale program exists at this time or in the foreseeable future.

Option 2

Not require a permit, but add additional requirements not previously proposed. For example, reporting requirements (418-2.008(e)) and drop box marking (418-2008(g)). At a minimum staff recommend all debris boxes or waste containers, including those used by landscapers or building contractors to self-haul, be marked with the owner's information (see Option 3).

Option 3

Exempt landscapers and building contractors from the permit and reporting requirements as per the attached proposal. Require marking of refuse containers. *Staff believes that Option 3 is a practical option to implement at this time.*

Option 4

Require a permit system for individual debris boxes. This would require additional administrative resources for questionable benefit. Staff believes regulatory efforts, at least initially, should focus on permitting the transport vehicles and businesses rather than individual containers.

**(4) ORDINANCE ENFORCEMENT – Role of the Building Permit & Inspection Process**

A suggestion discussed at the workshops and individual meetings was the role that the building permit process could play to help monitor and aid enforcement of the revised ordinance. If the revised ordinance regulates hauling of C&D waste, stakeholders expressed interest in including documentation requirements associated with building permit applications. Additionally, there was interest in exploring what enforcement assistance DCD Building Inspectors might be able to provide when out in the field.

State law (CalGreen) requires certain reporting documentation be submitted to demonstrate planned (building permit applications) and actual (final inspection) methods used for recycling and disposing of C&D waste. CalGreen has in effect superseded similar, less stringent, requirements in Chapter 418-14 of County Code. If the IOC decides that it would be desirable to incorporate new requirements related to the management of C&D waste generated as a result of building permit issuance in County Code, such requirements should be instituted in Chapter 418-14 and not the hauler permit system established in Chapter 418-2

Considering that any building permit process changes would only impact one component of the overall waste stream (C&D waste), staff recommends that new compliance monitoring and verification requirements not be imposed or at least kept to a minimum (e.g. Option 4). Any building permit or inspection requirements are ultimately the responsibility of the property

owner and not the contractor who is often in charge of arranging for the removal and disposal of C&D waste from the jobsite. Implementing changes to the building permit and/or inspection process would likely necessitate that DCD's applicable fees be increased to cover the added costs. If building permit applications required the applicant to list the waste hauler (franchise company, self-haul, other lawful waste transporter), that information would be available to assist in monitoring waste transports, disposal, or recycling. It would also serve as a source of information that could prove helpful to County departments or Franchise haulers when investigating suspected/alleged violations of County Code or franchises.

Option 1

Building inspection process would require verification of the hauling company being used based on the debris box placed at the jobsite. Staff does not believe this is a feasible means of verification because of the variables involved. There is no certainty that the inspector will observe the debris box at the jobsite because inspections only occur at certain phases of each project's construction which varies by project type.

Option 2

Building permit would not be finalized or a certificate of occupancy issued until the contractor demonstrates the C&D waste was lawfully transported to an approved location.

Option 3

Require a bond tied to waste disposal from C&D projects. Staff is uncertain if this is allowable under state law. More importantly, staff believes this option would be burdensome to implement and likely would result in little if any substantive benefit.

Option 4

Revise existing Debris Recovery reporting forms submitted when applying for building permits to satisfy requirements in State law (CalGreen) so that applicants must also identify who will haul away the C&D waste generated at the jobsite (self-haul by contractor or name of hauling company). State law (CalGreen) requires certain reporting documentation be submitted to demonstrate planned (building permit applications) and actual (final inspection) methods used for recycling and disposing of C&D waste. *Staff believes that Option 4 is the most practical option to implement at this time.*

**(5) ORDINANCE SCOPE - Conflicts with Existing Franchise Agreements**

County Code Chapter 418-7 require that entities providing or regulating the provision of collection services for waste generated in the unincorporated County area enter into a Franchise or alternative type of agreement with the County. Depending upon the nature of the Chapter 418-2 revisions ultimately deemed to be desired, changes may also need to be made to Chapter 418-7 accordingly to avoid conflicting and/or overlapping County Code requirements.

The County only has authority over the provision of waste collection services for a portion of the unincorporated County area. Waste and recycling services in the unincorporated areas that fall within the County's regulatory authority are governed under four separate Franchise Agreements (Franchises) with the following hauling companies:

- (1) Richmond Sanitary Service (Republic Services),
- (2) Crockett Garbage Service (Republic Services),
- (3) Allied Waste (Republic Services), and
- (4) Garaventa Enterprises.

Other portions of the unincorporated County area remain under the control of these other public agencies:

- Byron Sanitary District (portion of Byron),
- RecycleSmart/Central Contra Costa Solid Waste Authority (Alamo, Contra Costa Centre/Pleasant Hill Bart Diablo, and unincorporated Walnut Creek),
- Kensington Community Services District (Kensington),
- Mt. View Sanitary District (portion of unincorporated Martinez), and
- Rodeo Sanitary District (Rodeo).

Parameters which dictate the scope of the County's Franchises: geographic service area, generator/waste type, and whether or not there is a charge for collection. Specific agreement provisions that dictate what is and is not governed by the County's Franchises:

- DEFINITIONS - Commercial Solid Waste, Industrial Waste, Residential Solid Waste, Solid Waste, and where applicable, Recyclable Material
- FRANCHISE AREA MAP
- INTENT TO REGULATE COLLECTION, RECYCLING AND DISPOSAL
- EXCLUSIVE PRIVILEGE AND DUTY
- EXCEPTIONS TO EXCLUSIVE PRIVILEGE

What if any Franchise Agreement changes may be desired by the County depends upon a number of policy options and elements of the proposed ordinance revisions. Upon receiving policy direction that provides adequate certainty about the ordinance's scope and requirements, DCD staff would request any pertinent legal review/opinion and initiate negotiations with applicable Franchisees.

#### Option 1

Limit authority granted under hauler permits to waste collection services which are not governed under the County's existing Franchise Agreements (e.g. industrial waste, waste self-hauled by contractors and landscapers, free waste collection services).

#### Option 2

Limit hauler permit authority to recycling collection services which are not offered by the County's Franchisees.

#### Option 3

Work with Franchisees and County Counsel's office to develop consistent mutually agreeable revisions to all four County Franchises to eliminate actual or perceived conflicts for any specific waste collection services intended to be authorized through hauler permits (e.g. on-property



clean-up and removal services) and not exclusively governed under the County's Franchise Agreements.

**(6) Franchise C&D Waste**

Debris boxes (aka drop boxes) are large containers used for the collection and transport of solid waste. They are typically seen at construction sites and filled with C&D waste materials. Discussion with stakeholders focused on C&D waste, but these boxes can be used for other waste materials, including landscaping waste. These boxes are used by both franchised and illegal haulers. Illegal haulers have been found transporting or using these containers at illegal transfer stations.

A franchise agreement for C&D waste would not be part of this ordinance; instead, it would be more appropriately placed in Chapter 418-7, which is under the purview of the Contra Costa County Department of Conservation and Development (DCD).

Franchise haulers have a proven record of making sure the materials collected in debris boxes are taken to approved facilities for recycling or disposal. As noted in Section B of this report, the County's Franchise Agreement governing services in most of West County provides the Franchisee the exclusive right to collect C&D waste. C&D represents a significant waste stream, and one with ample opportunities for diversion. This also simplifies monitoring and enforcement.

What if any Franchise Agreement changes may be desired by the County depends upon a number of policy options and elements of the proposed ordinance revisions. Upon receiving policy direction that provides adequate certainty about the ordinance's scope and requirements, DCD staff would request any pertinent legal review/opinion and initiate negotiations with applicable Franchisees.

The IOC may wish to consider directing staff to explore potentially mutually agreeable amendment provisions associated with expanding Franchise exclusivity to include C & D waste as part of Option 3 in Section C(5) above.

**(7) ORDINANCE SCOPE - Source-separated Recyclables/Poaching Issue**

Originally, CCEH proposed exempting from the permit requirement those persons transporting source-separated recyclable materials. Instead, the IOC may wish to consider exempting from the permit requirement only those businesses who are transporting lawfully obtained source-separated recyclable materials. While this is not the definitive answer to the poaching issue, it is a tool that can be used in certain situations (e.g., a large-scale poaching operation). Materials that are not source-separated must go to an approved transfer station, so it is recommended that transporters of those materials fall under greater regulatory scrutiny, including the requirement for a waste hauler permit.

Option 1

Retain proposed exemption for source-separated recyclable materials as currently reflected in the proposal.

Option 2

Include as an exemption: 418-2.004(8): *Person transporting lawfully obtained source-separated materials that can be accepted by a recycling facility per the California Code of Regulations Section, Title 14, 17402.5(d) or any successor standard.*

A person handling unlawfully obtained materials would be subject to penalties under the proposed ordinance.

**(8) ORDINANCE SCOPE - Further outreach**

Depending on the scope of the ordinance, additional outreach may be warranted. For example, if contractors or landscapers were subject to a permit or reporting requirement, outreach directed toward those groups is recommended.

**(9) ORDINANCE SCOPE - Industrial Waste**

The City of Los Angeles Municipal Code contains a definition of industrial entity that might be helpful in defining industrial waste (Section 20.72.181):

*“Industrial entity” means any site for mechanized manufacturing activities including factories, food processing, mineral extraction, power generation, refineries, fuel storage facilities and publically operated treatment works.*

For clarification it is recommended that the word *wholesale* be placed before food processing. The legal review of the draft ordinance would, of course, entail a careful crafting of the definition.

This is one of multiple aspects of a revised ordinance which require consideration of related County’s Franchise Agreement provisions, in order to identify and if necessary to address potential conflicts or loopholes. The County’s Franchises do not define “industrial entity”, however they do contain definitions of “industrial waste”. This definition is an important one because the County’s Franchises do not provide the Franchisees exclusive privilege and duty to collect industrial waste. Industrial waste is not defined in the same way in all four of the County’s Franchises, however the majority specify the following definition:

*“Industrial Waste. Industrial Waste includes all types of Solid Waste which result from industrial processes and manufacturing operations and/or which originates from such facilities.”*

**(10) ORDINANCE REQUIREMENT - In-County versus Out-of-County Disposal/Recycling**

A suggestion from the meetings was that solid waste and recyclable materials go to facilities located within Contra Costa County. Staff is okay with these materials going to either an in-county or out-of-county facility if the facility is able to lawfully accept the material(s).

Option 1

Require all solid waste material collected in Contra Costa County to go to a disposal or recycling facility located in Contra Costa County. If the IOC wishes to recommend to the Board that it consider this option, the legality of such a requirement would need to be determined.

Option 2

Do not make such a restriction. The draft contains the requirement that solid waste and recyclable materials go to legitimate solid waste or recycling facilities, but does not specify any geographical restrictions. *Staff recommends Option 2 (see Section 418-2.008(f)).*

Encl. Draft Ordinance (Dated June 15, 2015)