



COUNCIL AGENDA: 8-15-06
ITEM: 7.1

Memorandum

**TO: The Honorable Mayor and
City Council**

FROM: Les White

SUBJECT: Recycle Plus Performance Reviews

DATE: August 10, 2006

Attached are performance reviews completed as part of the Recycle Plus procurement process that focus on: collection experience and resources; processing performance; contract/permit compliance; and, labor issues.

Completion of performance reviews is not a requirement of the procurement process, but was conducted to supplement information regarding Norcal and CWS.


LES WHITE
City Manager

NORCAL PERFORMANCE REVIEW

August 7, 2006

INTRODUCTION

Based on Norcal's past collection performance with the City of San Jose and its performance with other cities, and on their proposal for future Recycle Plus services, staff believes Norcal has the ability to perform as the City's contractor for Recycle Plus Services in Districts A and C. The evaluation is detailed in the following major categories:

- **Collection Experience and Resources**
- **Processing Performance**
- **Contract / Permit Compliance**
- **Labor Issues**

The following report details examples of past practices in each of the categories referenced above, and also points out issues in Norcal's proposal that were considered in the evaluation.

PERFORMANCE REVIEW

Collection Experience and Resources

As part of the Recycle Plus proposal evaluation process, the Technical Evaluation Committee (TEC) and the Technical Advisory Committee (TAC) identified strengths and issues of concern in the Norcal proposal. The Recycle Plus contracts are among the largest solid waste contracts in the country. With such a large collection area (156,000 homes) and comprehensive program, proposers must demonstrate significant collection experience and outside resources to draw upon if necessary. As noted in the following paragraphs, there is sufficient evidence that demonstrates Norcal is capable of performing as the City's contractor for garbage and recycling services.

Proposed Operations – Strengths and issues of concern in Norcal's operation plan include: Norcal has been providing garbage and recycling collection for San Jose since 2002 and proposes to continue serving Districts A and C with 156,000 single-family households. Norcal services 600,000 residential and 50,000 commercial customers throughout the state, making it one of the largest providers of solid waste collection in California.

- Norcal proposed no changes to their existing collection routes. As a result, drivers will service familiar routes and residents should not experience dramatic changes in the time of day their collection is performed (e.g., afternoon instead of morning collection). This should minimize transition issues for combined garbage and recycling collection, an important benefit. Labor will remain constant, thereby assuring labor peace.
- Norcal's corporate support structure enables it to provide collection vehicles, drivers, and support staff in response to any problems that might arise with normal operating conditions or emergency situations. During the 2002 transition, for example, Norcal experienced considerable collection issues resulting from problems with routing, the initial number of collection vehicles, and labor. As a result, some complete collection days, whole routes, and large portions of routes were left uncollected. During the critical first few weeks of transition, Norcal's reinforcements included 60 collection vehicles (doubling the size of its

San Jose fleet), 75 drivers, and 15 operations and customer service support personnel. Assistance from Norcal's local subsidiaries continued to be provided as needed over a period of several months.

- Norcal would provide processing and marketing of recyclables using the former Waste Management facility at 1675 Rogers Avenue in San Jose, which it has purchased. It has plans to retrofit the site to accommodate the City's single-stream commodities. Operating a materials recovery facility (MRF) at Pier 96 in San Francisco and other facilities, Norcal's Northern California operation currently provides processing/recycling services to approximately 219,800 residential and commercial customers in San Francisco, San Bruno, and Vallejo.
- The collection equipment and maintenance facility at the San Jose MRF are operational, the rest of the facility needs upgrading. Norcal has demonstrated its ability to provide an alternate MRF without impacting service to residents. On August 4, 2003, Norcal's subcontractor (CWS) notified the City and Norcal that it would stop accepting recyclables collected under the Agreement at noon on August 5, 2003, leaving Norcal without a processing facility. Norcal demonstrated its depth of resources by arranging for alternate MRFs on less than one day's notice. Residents were never affected by this sudden change.
- Norcal's customer service center is established, and, Norcal has implemented the City's Consolidated Utility Billing System (C-UBS). Norcal has been a partner with the City in the design and implementation of C-UBS over the past several years. By July 2007, Norcal will have one year of experience working with the City's C-UBS system. This is another critical element the TEC considered during the evaluation because there is a myriad of potential problems a new contractor will likely encounter during the incorporation of its operating system with that of C-UBS.
- Despite Norcal's ability to arrange for an alternative MRF in August 2003, one concern relates to Norcal's contingency plan for an alternate MRF in the event its San Jose MRF is not ready for operation by start-up. In May 2002, Norcal had to be reminded in writing to provide contingency plans for its subcontractor's MRF as well as for the facility that was to house customer service and maintenance operations, both of which were experiencing delays that threatened to extend past start-up. After being reminded again in June 2002, Norcal responded that it would use its San Francisco facility and then changed its plan to use its subcontractor's facility in Oakland. Later that month, staff sent an email reminding Norcal that they needed a plan to transition processing operations back to San Jose from Oakland. The San Jose MRF required testing with limited volumes to ensure proper operation with gradual increases in volume until all materials were being processed at the San Jose location.

Collection and Processing Experience – Norcal has a demonstrated history of collection and processing experience with multiple types of programs and services:

- Norcal provides solid waste management services (including garbage collection and recycling collection and processing) to approximately 600,000 residential and 50,000 commercial customers throughout California through 24 operating subsidiaries in 39 municipalities. Norcal has approximately 2,100 employees.

- In addition to hauling operations, Norcal operates 6 transfer stations, 6 MRFs, and 17 landfills. Norcal currently provides services to 43 California communities. Summarized below are the services Norcal provides for its residential and commercial programs located in the Bay Area:

List of Services

- a. Collection
- b. Transfer
- c. Landfill
- d. Processing/Recycling
- e. Composting
- f. Household Hazardous Waste
- g. Street Sweeping

| City Name | # of HH Serviced | Program Type | Service Types |
|---|------------------|---------------------------|---------------------|
| San Jose | 156,000 | Residential Commercial | a, e, g |
| San Francisco | 175,000 | Residential Commercial | a, b, c, d, e, f, g |
| Cupertino/Los Altos/Los Altos Hills | 55,000 | Residential Commercial | a |
| Gilroy/Morgan Hill | 7,300 | Residential Commercial | a, b, c, e, g |
| Mountain View | 14,800 | Residential Commercial | a |
| San Bruno | 11,400 | Residential Commercial | a, b, d, f |
| Vallejo | 33,400 | Residential Commercial | a, d, f |
| Number of Bay Area HH Serviced (Excluding San Jose) | 296,900 | | |
| Total Number of Bay Area HH Serviced | 452,900 | | |

Reference Checks – Reference checks were conducted for Norcal as part of the RFP evaluation process. The references were positive in nature and consistent with one another. There were no red flags that prompted follow-up action by staff.

Transition Plan – Norcal’s ability to draw upon its corporate resources as needed during transition or in the future is a pivotal advantage when compared to the other proposers. Norcal has had time to improve its curbside collection operations over the past couple of years and has addressed most of its performance issues related to this area. Norcal should have no routing issues, as existing routes would be maintained. Although Norcal’s MRF has not completely been retrofitted, Norcal has demonstrated that it has the ability to secure one or more alternate MRF’s and a transfer location within a short time frame.

During the 2002 transition, Norcal and its subcontractor had approximately 18 months to prepare, during which time they each constructed facilities and Norcal had to acquire a fleet and route the service districts. Norcal came within a few days of start-up before it had all its systems ready. Norcal's subcontractor failed to have its MRF operational by start-up and needed three additional months before its San Jose MRF could accept all the material. Even with an 18-month preparation period, this experienced contractor had problems at start-up, although these were not as severe as the start-up experiences faced by Western Waste in San Jose in 1993. Norcal had significant routing problems that created severe service issues. A considerable number of routes were either missed entirely or were only partially collected. Collection continued throughout the first several weekends, and yet many residents' set-outs were left uncollected. These problems continued for a number of months as Norcal attempted to correct routing errors and make other operational adjustments. Norcal reported an average of 13,790 customer calls related to service issues per month during the first three months of transition, and reported an average of 10,700 customer service issues per month over the first six months of the contract.

Processing Performance

Norcal's subcontractor has been processing San Jose recyclables under a subcontract with Norcal Waste Systems since July 1, 2002. However, it was Norcal that entered into the contract with the City to provide garbage and recycling services, and the responsibility to meet the provisions of the contract resides solely with Norcal as stated in Sections 24.07 and 24.11 of the Recycle Plus Agreement between the City of San Jose and Norcal:

- 24.07 Independent Contractor – In the performance of services pursuant to this Agreement, Contractor shall be an independent contractor and not an officer, agent, servant, or employee of the City. Contractor shall have exclusive control of the details of the services and work performed and over all persons performing such services and work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.
- 24.11 Subcontractors – The use of a subcontractor to perform services under this Agreement shall not constitute a delegation of contractor's duties...Contractor shall be responsible for directing the work of contractor's subcontractors..."

As noted below, staff has assessed several administrative charges resulting from various processing related activities.

- On June 26, 2006, staff sent a letter to Norcal in response to information received regarding unauthorized processing activities at its subcontractor's MRF. The sections of the contract impacted included:
 - 12.01.1 Processing of Recyclable Materials. CONTRACTOR shall ensure there is sufficient capacity at the Materials Recycling Facility to process, and store until marketed, all Recyclable Materials collected by CONTRACTOR pursuant to this Agreement during any one-week collection period. CONTRACTOR shall maintain procedures, records and internal controls to preclude the commingling of Recyclable Materials collected pursuant to this Agreement with any and all other materials delivered

to the Materials Recycling Facility and to ensure complete, accurate and timely recording and reporting of Recyclable Materials processing. At a minimum, CONTRACTOR shall perform or shall caused to be performed, all of the following:

- 12.03 Alternate Processing Facility. CONTRACTOR shall secure processing capacity at an alternative facility, approved by the City Representative, for use in the event the Materials Recycling Facility is closed on a Work Day because of the order of a regulatory agency having jurisdiction over the Materials Recycling Facility or the Materials Recycling Facility is unable to process Recyclable Materials in accordance with the requirements of this Agreement. In the event the Materials Recycling Facility is unable to store the amount of material required by Section 12.01.1, CONTRACTOR, at CONTRACTOR's sole cost and expense, may arrange for alternate storage capacity at a facility approved in advance by the City Representative, provided that all material collected pursuant to this Agreement shall be kept segregated from all other material at the alternate facility and provided that the materials shall be transported to the Materials Recycling Facility for processing unless another arrangement is approved in advance by the City Representative.

- Norcal and its subcontractor have failed to meet the contractual minimum diversion requirements for the first three years of the contract (2006 data is not yet complete). In contrast, GreenTeam of San Jose, the City's other garbage and recycling contractor, has exceeded its annual diversion requirements. The minimum diversion requirement for all service districts is 35%. Table 1 provides a summary of each contractor's diversion performance:

Table 1 – Annual Diversion Performance

| Norcal/CWS | 2003 | | 2004 | | 2005 | |
|-------------------|-------------|----------------|-------------|--------------|-------------|--------------|
| District A | 24.7% | (13,101) Tons | 28.3% | (8,385) Tons | 29.3% | (7,233) Tons |
| District C | 27.3% | (7,183) Tons | 32.3% | (2,411) Tons | 32.7% | (2,825) Tons |
| GreenTeam | 2003 | | 2004 | | 2005 | |
| District B | 40.8% | + 3,265 Tons | 41.9% | + 3,932 Tons | 41.2% | + 3,502 Tons |

For the month of June 2006, Norcal initiated a recovery effort whereby Norcal redirected a portion of the bales that were designated as residue by its subcontractor and slated for landfill disposal. Norcal transferred the bales of residue to their new recycling facility for processing. Norcal averaged a 57.79% recovery rate from the transferred residue bales and sold the recovered products to market. Products included plastic, textiles, fibers, metals, and e-waste. Norcal's subcontractor reported an average residue rate of 20% during the month of June 2006.

Norcal has been collecting and disposing of its subcontractor's residue for a majority of the contract term and was in a position to perform this recovery effort using an alternate MRF. Norcal failed to implement solutions that would have positively affected the City's residential diversion rate. However, these belated actions taken in June 2006 demonstrate Norcal is taking steps to address past processing deficiencies and to provide staff with some level of confidence that Norcal will improve diversion in Service Districts A and C under a new agreement.

Contract / Permit Compliance

Contract Compliance - During the last four years, Norcal has been assessed a significant number of administrative charges, primarily due to MRF operations as noted below. Although the problems are of considerable importance, Norcal's proposal to bring processing operations under its own control should improve performance in this area.

- Norcal failed to achieve the minimum diversion requirements for curbside collection as outlined in the Agreement for 2003, 2004, and 2005. This has resulted in Norcal receiving \$100,000 in administrative charges with another \$50,000 pending.
- In November 2002, Norcal received a Notice of Assessment in the amount of \$2,500 for failure to maintain or timely submit to the City all documents and reports as required under the contract.
- On January 15, 2003, Norcal received a Notice of Assessment in the amount of \$500 for unauthorized disposal of recyclable materials stored at Newby Island Landfill.
- ESD conducted numerous site visits to Norcal's subcontractor's MRF over a 10-month period whereby staff noted multiple permit and contract compliance issues. From December 2003 through August 2004, staff issued 12 Notices of Assessments with administrative charges totaling \$20,000 to Norcal for its subcontractor's failure to provide adequate primary and alternate capacity to accept and process recyclable materials. ESD staff documented several instances where Norcal's subcontractor had material overflowing well past the permitted storage areas, often obstructing traffic lanes critical to emergency personnel access. Staff conducted random regular site visits and provided correspondence and photos to Norcal, yet Norcal failed to get its subcontractor to correct the issues and concerns.

Recent Indictment – On June 22, 2006, Norcal Waste Systems was indicted on charges of conspiracy to cheat and defraud, bribery, conspiracy to misappropriate public moneys, and misappropriation of public moneys. It is anticipated that the trial will begin in May 2007. It is not known whether a guilty verdict would affect Norcal's ability to continue services.

Labor Practices

- As mentioned above, Norcal proposed no changes to their existing collection routes. As a result, drivers will service familiar routes and residents should not experience dramatic changes in the time of day their collection is performed (e.g., afternoon instead of morning collection). This should minimize transition issues for combined garbage and recycling collection, an important benefit. Labor will remain constant, thereby assuring labor peace.
- Norcal also has negotiated a new agreement with Teamsters Local 350, further assuring labor peace.

CWS PERFORMANCE REVIEW

August 7, 2006

INTRODUCTION

Based on CWS's past processing performance with the City of San Jose and its performance with other cities, and on their proposal for future Recycle Plus services, staff has identified issues in connection with CWS's ability to perform Recycle Plus services under a new contract. The evaluation and a discussion of these issues are divided into the following major categories:

- **Collection Experience**
- **Transition Plan and Business Resources**
- **Processing Performance**
- **Labor Issues**

PERFORMANCE REVIEW

Collection Experience

As part of the Recycle Plus proposal evaluation process, the Technical Evaluation Committee (TEC) and Technical Advisory Committee (TAC) identified strengths and issues of concern in the CWS proposal. The Recycle Plus contracts are among the largest solid waste contracts in the country. With such a large collection area (156,000 homes) and comprehensive program, proposers must demonstrate significant collection experience and access to additional resources to draw upon if necessary.

Proposed Operations – Strengths and issues in CWS's operation plan include:

- CWS owns and operates a material recovery facility (MRF) located in San Jose. CWS has provided recycling processing services as Norcal's subcontractor to the City of San Jose since July 2002. It has not been involved in collections of San Jose material. CWS owns and operates two other MRFs in Northern California, both in Oakland.
- CWS collects and processes single stream recyclables from approximately 39,000 single-family units in the City of Oakland using individual carts and 31,000 multi-family units using a significantly smaller number of shared carts. CWS currently employs approximately 230 people.

The table on the next page summarizes their experience in Northern California:

List of Services

- a. Recyclables Processing
- b. Recyclables Collection and Processing
- c. Garbage Collection

| City Name | Single-Family Households | Program Type | Service Types |
|-----------|--------------------------|--------------|---------------|
| San Jose | 156,000 | Residential | a |
| Oakland | 39,000* | Residential | b |
| Clayton | 4,500 | Residential | b |

* Also collects from 31,000 multi-family units that use shared carts.

The following significant issues were identified by the TEC/TAC regarding the limited collection experience of CWS:

- CWS’s collection experience is limited to recyclable materials in two jurisdictions: Oakland (39,000 single-family homes and a smaller number of shared carts used by multi-family units) and Clayton (4,500 single-family homes). By comparison, San Jose’s contract is for 156,000 single-family homes and involves collecting significantly larger volumes since both garbage and recyclables are included.
- CWS has no residential garbage collection experience. This is significant, in that garbage service requires a higher threshold of reliability, because it more directly affects public health and safety (putrescible materials).
- As part of reference checks, interviews were conducted with staff from the City of Clayton (Contra Costa County), which rated CWS as an unsatisfactory service provider in every category surveyed (data reporting, collections, customer service, outreach, environmental stewardship). Clayton officials reported that they withheld payments due to customer service issues. CWS voluntarily assigned their contract to Allied Waste 18 months before the contract was up. See Attachment A for additional details.
- Reference checks also were conducted with staff from the City of Oakland. Oakland’s solid waste staff was hesitant about providing this information and first had to obtain authorization from their City Attorney’s Office to ensure that any potential legal issues were addressed. Oakland rated CWS’ performance as satisfactory overall, but did comment that CWS did not provide adequate customer service or supervisor resources for their 2005 transition, had difficulty adhering to their implementation plan, and had difficulties with routing. On August 4, 2006, however, Oakland’s Director of Public Works provided a letter to the San Jose Mayor and Council commenting very positively on CWS’s accomplishments over the past several years.
- Reference information from these municipalities is attached.

Transition Plan and Corporate Resources

The TEC/TAC identified several issues in the transition plan submitted by CWS, including CWS's potential inability to draw upon outside resources if needed. Inadequate transition preparation proved to be a significant business risk to the City in both the 1993 and 2002 RP transitions:

- In 1993, Western Waste had to draw on its nationwide fleet in an extremely short timeframe to bring in 30 additional temporary vehicles. Its 12-month mobilization period had been too short to test its new trucks and other equipment in advance of start-up.
- In 2002, there was an 18-month mobilization period, but Norcal still needed to pool significant resources from its operations around the Bay Area to augment its fleet of trucks and drivers. Because an insufficient number of routes had been planned, 60 extra vehicles and 75 extra drivers were needed to finish weekly collections. The additional drivers were needed to complete routes when regular drivers refused to work after their workweek exceeded 45 hours (45-Hour Rule in Teamsters Agreement). During transition, the drivers typically reached 45 hours by Wednesday each week, leaving two full collection days with open routes. The extra drivers performed these services, and worked on Saturday and Sunday as needed. CWS does not possess the depth of resources necessary to respond quickly to collection issues that may arise from transition, labor, or other challenges.
- Additional risks about using the proposed Burke Street site as a corporation yard have been expressed by the TEC and TAC. The Burke Street location is not a permitted truck yard; however, the CWS proposal is to locate 65 trucks on the site at that location. There are serious reservations about this site getting permitted and necessary upgrades being implemented by July 1, 2007. In preparation of the 2002 transition, CWS miscalculated the site requirements when selecting a location for its MRF. CWS had to identify a suitable replacement location for the original site proposed for processing San Jose materials; this resulted in a delay lasting three months after the start-up date for completion of the San Jose MRF. CWS intends to lease a second property at 1850 South 10th Street for parking an additional 30 trucks and has noted that they are looking for a single large site with the appropriate zoning so the two proposed sites could be consolidated.
- Outside resources also have been a critical element of contingency planning for GreenTeam, in the event of a labor action. When GreenTeam's union contracts were up for renewal in 2005, they brought in a work force of 90 drivers from other operations of their parent company, Waste Connections. GreenTeam services 46,000 SFD units and 3,200 MFD complexes (as compared to the 156,000 service units for which Norcal provides service), yet still required substantial backup resources.
- Given the 10-month mobilization period remaining, since the RFP procurement process underwent several delays, the TEC and TAC expressed serious concerns about CWS' ability to handle a large-scale transition. In the 2002 transition, CWS was unable to set up processing operations within the 18-month timeline provided. CWS did not complete the

necessary modifications to its processing facility, including failing to install and make operational its processing equipment. As a result, CWS missed the start-up deadline by 3 months. At a minimum, CWS will need to perform the following functions:

- o Acquire, build out and install equipment, and obtain permits for two separate corporation yards
- o Order, receive, and retrofit collection and service vehicles
- o Route and test service districts
- o Negotiate labor agreements
- o Set up a customer service center
- o Integrate its IT system with the City’s utility billing system
- o Maintain on-going processing operations for the current contract

Although CWS may not be a viable service provider for the Recycle Plus program, there are opportunities for smaller businesses with limited experience to obtain City solid waste contracts. Those include:

- Civic Garbage and Recycling Collection – An RFP for these services is going out at the end of August 2006.
- Commercial Franchises – Any entrepreneur can apply for a commercial franchise. In fact, CWS already has a San Jose franchise which they can make use of if they do not receive an award for Recycle Plus services.

Processing Performance

Recycling – CWS has been processing San Jose recyclables under a subcontract with Norcal Waste Systems since July 1, 2002.

- CWS, as a subcontractor for Norcal, did not meet the contractual minimum diversion requirements for the first three years of the contract (2006 data is not yet complete). In contrast, the City’s other garbage and recycling contractor has exceeded its annual diversion requirements. The current minimum diversion requirement for all service districts is 35%. Table 1 provides a summary of each contractor’s diversion performance:

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| GreenTeam | 2003 | | 2004 | | 2005 | |
| District B | 40.8% | + 3,265 Tons | 41.9% | + 3,932 Tons | 41.2% | + 3,502 Tons |

- In an email dated May 27, 2004, CWS’s General Manager wrote to ESD staff the following, “CWS requests that ESD take strong affirmative action to resolve the problem of excessive contamination including increased and improved public education.”

- Since 2001, the City has spent considerable resources (in excess of \$3 million) on public education. The City has received nine awards since the 2002 transition for its public relations, education, and outreach efforts. As shown above, the City's other contractor has exceeded its diversion requirements.
- Nonetheless, during the fall of 2004, ESD performed a grassroots outreach campaign targeting collection routes in District A that were identified by drivers as problem areas. In a period of three weeks, ESD staff visited 1,843 homes and talked with 994 residents (54% of homes visited). All homes visited received outreach packets, which included trilingual program materials. (These had previously been delivered to the residents with the new recycling carts in 2002, along with regular bill inserts since that time.) As a result of this direct contact, staff concluded that residents were familiar with program outreach materials, had a good understanding of the recycling program, and demonstrated a strong desire to follow the program guidelines. These findings were consistent with the periodic customer surveys conducted by ESD.

Processing Performance - CWS' residue rate (20% in 2005) has consistently been much higher than that of the City's other processor, GreenTeam (8.8% in 2005). Much of the residue being landfilled by CWS could be recycled, as discussed in the third bullet point below. San Jose residents place items in their recycling carts, expecting them to be recycled. Examples of processing issues include:

- On April 3, 2003, Norcal conducted a test sort of 35 tons (approximately 10% of an average day's collection) at GreenTeam's processing facility. The processing of Norcal's materials by GreenTeam resulted in a residue rate of 11.18%. In contrast, CWS reported an average residue rate of 39.97% for the month of April 2003.
- On August 4, 2003, CWS notified the City and Norcal it would stop accepting recyclables collected under the Agreement at noon August 5, 2003, effectively shutting down their processing operations. Their self-imposed closure lasted two weeks. The alternate processing facilities utilized during this period reported the following residue rates for materials collected during this two week period:
 1. GreenTeam = 10.33%
 2. Waste Management = 7.56%
 3. A&S Metals = 13.24%

Upon reopening, CWS reported a residue rate of 25.76% for the balance of the month.

- For June 2006, Norcal initiated a recovery effort whereby Norcal redirected a portion of the bales that were designated as residue by CWS and slated for landfill disposal. Norcal transferred the bales of residue to their new recycling facility for processing. Norcal operated the processing belt at a slower speed than CWS. Norcal averaged a 57.79% recovery rate from the transferred residue bales and sold the recovered products to market. Products included plastic, textiles, fibers, metals, and e-waste. CWS reported an average residue rate of 20% during the month of June 2006.

- On March 3, 2006, San Jose received letters from the California Department of Conservation (DOC) stating Norcal received payment in the amount of \$15,039 from the DOC for beverage containers collected in 2004. In comparison, GreenTeam received a payment of \$226,867.60 from the DOC for containers collected in 2004. Staff emailed Norcal on March 27, 2006, requesting confirmation of the payment and an explanation regarding the materials presumably not reported to the DOC under the City's program. Norcal responded that it relies on CWS to report to the DOC the amount of beverage containers collected under the City's program. The DOC provides annual payments to "operators" of residential curbside programs.

On June 30, 2006, staff received an email from CWS stating in part the following; "...I [CWS] took a look at our reporting practices and it looks like we were, in the past before October 05 reporting [to DOC] using our Oakland number with DOC. We were told that the reports to the DOC would not have an impact on the diversion numbers reported to the City. The money from CRV belongs to CWS under the subcontract with Norcal. In late 05, we got approval from DOC and changed reporting so that all of the CRV for San Jose is reported on Norcal's number now."

- Staff contacted the DOC regarding the 2004 DOC payments. The DOC reported that it is currently performing an audit regarding CWS's reporting practices related to their processing operations for Sacramento County, scheduled to be complete by mid-September. In following up with Sacramento County, the County reported that it was in a contract payment dispute with CWS. In response, CWS has filed an official claim against Sacramento County, typically the first step in a lawsuit. CWS no longer provides services for Sacramento County. Due to possible pending litigation, the County was unwilling to provide additional details.
- The explanation provided by CWS leaves the following issues unresolved:
 - Why did CWS use both its Oakland number and Norcal's number for DOC reporting in 2004?
 - What motivated CWS to change its DOC number from Oakland to San Jose in October 2005?
 - Did CWS seek to reclaim the DOC payment in its arbitration with Norcal?
 - Could the reduced DOC payments to Norcal impact the City in future RFPs if prospective companies research historic DOC payments to estimate the income from DOC payments?

Labor Practices

Labor peace issues include:

- From July 2002 through June 2006, CWS has shipped approximately 5,000 tons of unprocessed materials collected under the City's Recycle Plus contract out of San Jose.

- On June 2 and June 7, 2006, the City received copies of two grievance letters from Teamsters Local 350 to CWS regarding the shipments of unprocessed materials.
- On July 6, 2006, Teamsters Local 350 filed charges against CWS with the National Labor Relations Board citing: "Within the past six months, CWS has failed and refused to respond to a grievance filed by the Union pursuant to the collective bargaining agreement between the parties." This action stems from the Teamsters' June 2 and June 7 grievances against CWS for "...removing unprocessed material from your facility, using non-bargaining unit personnel to transfer the material, to where it is being processed with non-bargaining unit personnel."
- The Norcal Second Amendment for \$11 million is being paid to CWS to cover the labor costs for its recycling workers in San José while some of the work (at least 5,000 tons to date) is being shipped out of San Jose.

ATTACHMENT CWS Reference Checks

In their proposal, CWS cited that they have collection experience in two jurisdictions:

- Clayton, CA – Recycling collection and processing services for 4,500 single-family households
- Oakland, CA – Recycling collection and processing services for 39,000 single –family households

Reference checks were conducted with both of these cities, and are summarized in the Performance Review. Additional detail on one of the cities, Clayton, is provided below.

Clayton, CA

Clayton staff reported that CWS's performance in Clayton (1997 – 2002) was unsatisfactory. In 2002, CWS voluntarily assigned its contract to Allied Waste, 18 months before the contract was up. Performance failures included the following:

Reporting: Although Clayton required monthly, quarterly and annual reporting, much like San Jose, Clayton had difficulty getting any reports at all from CWS. The reports they did get were characterized as inadequate. Also, because CWS commingled Clayton's material with Oakland's material, CWS was not able to provide the actual tonnage numbers that Clayton required for State reporting. Clayton staff further stated that although the numbers provided by CWS showed they had a 25% recycling rate, the State found discrepancies in their reporting and determined Clayton to be at only 17%, significantly below State requirements.

Collections: Clayton reported that CWS did not have the resources available to complete collections on time. CWS had only one backup truck, which they prioritized for the City of Oakland's needs first. The result was that, if the Clayton collection vehicle broke down, which it frequently did, the backup truck often was not able to get to Clayton until 5:00 or 6:00 at night, if at all. Because of equipment failures, Clayton sometimes experienced a week or more with no collection. Residents were irate, and generated many calls to the City Council. In the middle of their contract, CWS requested a rate increase so they could buy an additional truck. The Council denied their request. Clayton withheld payment from CWS because there were so many missed pickups not resolved within contract parameters. Clayton reported that CWS informed them it would take legal action against the City for the withheld payments, but has not done so to date.

Customer Service: CWS was not able to provide adequate customer service to Clayton residents. Clayton reported that CWS did not have professional CSRs for their customer service operation, but only an automated answering machine, and perhaps a temporary employee picking up messages. Clayton withheld payments as a result of CWS's failure to provide sufficient customer service.

Outreach: Clayton reported that the outreach materials produced by CWS were extremely poor. The City of Clayton had to assist CWS in meeting its direct mail requirements.

Environmental Stewardship: Clayton reported that CWS never recommended program improvements, and in fact, did not want to collect Plastics 5 (aerosol caps), 6 (polystyrene) and 7 (food containers). Clayton reported that it was a push to get CWS to collect and recycle the more difficult or lower-valued commodities.