



**2010-2011
Madera County Grand Jury
Final Report
Solid Waste Management and Recycling**

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Introduction:

The Madera County Grand Jury finds that the operation of an integrated waste management system for residents of the county is a necessary function of government. Further, such a system, because of the changing nature of environmental laws and practices, can be a complex undertaking involving millions of dollars. Pursuant to California Penal Code section 925, the Madera County Grand Jury authorized an investigation of the solid waste management and recycling in Madera County.

Findings:

1. After extensive review of Madera County's solid waste management contracts and related materials, numerous interviews and analysis, the Grand Jury found the arrangements pursued by the County over the past thirty or more years have not been consistent with sound government practices, especially in the areas of contracting, oversight, and fiduciary responsibility.
2. Madera County's Division of Solid Waste Management has two employees, a Manager and his assistant. The Solid Waste Manager reports to the County Engineer and through him to the Director, Resource Management Agency (RMA). The RMA Director coordinates with the County Administrative Officer (CAO) and reports directly to the Board of Supervisors (BoS). The duties of the Division of Solid Waste Management are outlined in a Memorandum from the County Engineer to the CAO dated September 5, 2007.
3. Solid waste management in Madera County involves multimillions of dollars a year and requires adequate oversight. Trash collection is mandatory within the cities of Madera and Chowchilla. Collection is by subscription (residents elect to have trash collection and pay a monthly fee for that service) in the rest of the county.
4. The cities have mandatory curbside recycling. The unincorporated areas of Madera County do not.
5. Madera County contracts with several entities including two private contractors (A and B) to manage solid waste in the county. The cities of Madera and Chowchilla also contract for waste disposal. The County contracts with contractor A for the operation of the Fairmead Landfill (landfill) and the Materials Recovery Facility (MRF). The cities contract with the County for the use of the landfill. The contracts with the private contractors are for services required by the County and could be awarded to a bidder based on a request for proposal and/or competitive bidding process. The County operated the landfill in the early 1970's; after that, contractor B

operated the landfill for a brief period. Contractor A, as an independent local company, operated the landfill under contract (Contract No. 3293-C-81) from 1981. In 1997, contractor A was purchased and is now a wholly-owned subsidiary of a multi-state corporation. The current contract (Contract No. 5363A-C-98) now extends to the year 2017.

- a. The Grand Jury examined the contract and found it was written without adequate specific requirements, such as, expected tonnage of trash to be handled, or a target tonnage as the basis of calculating contractor reimbursement. The contract does not address actual costs nor a negotiated reasonable profit for contractor A.
- b. The contract is deficient of contractor performance criteria and is without specific enforcement provisions to protect the interests of the County. The contract entitles the contractor to multiple renewals at the contractor's discretion.
- c. The contractor has initiated and benefited from all renewals. The renewals and extensions have been related to rate adjustments and expansions of facilities.
- d. The Grand Jury finds a serious lack of fiduciary responsibility and due diligence by elected and appointed County officials in initiating and managing such a series of contractual activities over the past thirty or more years. The Grand Jury finds, at best, an appearance of impropriety in the granting and management of the contract.

6. Contractor A received a no-bid contract (Contract No. 3293-C-81) from the BoS in 1981 to operate the landfill as a bale-fill landfill. In such a landfill, the contractor is required to compact and bale trash before it is placed in the landfill. The contract has been renewed and extended (Contract Nos. 5363-C-94, 5363A-C-98) several times without bid until the year 2017—resulting in a no-bid, contractual relationship in excess of thirty-six (36) years. BoS Resolution No. 94-237 justified a single consolidated provider of services as being in the best interest of Madera County and used that argument to grant contractor A a no-bid contract. The Grand Jury could find no objective evidence which would have supported such a sweeping finding that contractor A was the only or best company to accomplish such a service. Clearly many other companies could service consolidated operations. The argument that contractor A is a local company is no longer valid after their purchase by a multi-state corporation in 1997. The contractor clearly benefited from such a finding, not only by expected revenues but also by making the company more attractive for acquisition.

- a. The Grand Jury finds this history highly suggestive of unacceptable “expediency”, at best, and of cronyism and a lack of due diligence in contracting for the management of the landfill.
- b. The Grand Jury finds the existing contracts continue the appearance of impropriety.

- c. The Grand Jury finds that utilization of the competitive bidding process will likely result in lower costs of operations which can be passed on to county residents.
- d. The Grand Jury finds that the landfill fees are significantly higher than those of surrounding counties.
- e. The Grand Jury finds that the landfill is not being operated as a bale-fill landfill. Trash is dumped directly into the landfill and compacted there without baling because it saves the contractor time and money. The contractor stated that baling in the MRF did not compact the trash as well as compacting the trash at the landfill face. The Grand Jury finds that the contractor appears to disregard contract intent and provisions by adopting procedures that reduce the contractor's costs to a minimum thereby maximizing its profits with impunity.

7. The cities of Madera and Chowchilla contract separately with the County for the use of the landfill and the MRF. The cities renegotiated lower tipping fees effective in 2008. Tipping fees are the price per ton for waste disposed at the landfill. The cities currently pay no tipping fees on recyclable material at the landfill. Trash is charged at \$39.13/ton. The unincorporated areas of the County saw tipping fees increased to \$55.13/ton. Recently, the City of Madera gave the County notice that it will solicit bids for a landfill contract after 2012 claiming overcharges for landfill use. This would reduce MRF recycling and trash tonnage in the landfill significantly.

8. Contractor A was granted a no-bid contract (Contract No. 5266-C-93) to build and operate the MRF at the landfill. Contractor A contracted to construct the MRF at a cost of \$2,500,000 to be offset by an additional tipping fee of \$1.00/ton from January to July of 1994 and \$3.05/ton from July 1994 until the cost of constructing the facility was amortized. The County estimated the debt could be retired in 10 years. To retire the debt by 2004 would require an average of 20,253 tons per month. The debt was retired early. The early retirement of the debt suggests that the tonnage estimates were far too conservative; conversely, the fee to retire the debt may have been set at too high a level. The Grand Jury finds that the \$3.05/ton fee is still being collected by contractor A.

9. Contractor A collects a set fee for every ton of trash that crosses the scale at the landfill to pay for processing the trash through the MRF, except for the recyclable loads from the cities since the contract with the cities was renegotiated in 2007 to become effective in 2008. The MRF fee was originally negotiated at \$8.00/ton, was raised to \$8.81/ton for several years, and was reduced in 2008 to \$8.20/ ton. Expenses estimated in 1994 to operate the MRF were \$57,235 (at \$8.00 per ton that translates to 7,154 tons per month). Contractor A collected \$8.00/ton on over 20,253 tons per month from 1994 until 2004, a minimum of \$162,024 per month, or \$104,789 per month in profit from the \$8.00 plus tipping fee. The annual profit for the contractor to operate the MRF based on these figures is a minimum of \$1,000,000. Revenues in 2007, as reported by the contractor, from material recycling processing were \$1,397,980 with expenses of \$60,993 for a

profit of \$1,336,885. Revenues in 2008 in a depressed economy, as reported by the contractor were \$1,133,818.

The Grand Jury finds these overly excessive profits were not intended in the contract, and are not in the best interests of Madera County.

10. The MRF was designed and granted a state permit to recycle dirty trash, i.e., trash collected from the curb that has not been separated. Currently, the contractor operates the MRF between 8:00 a.m. and 5:00 p.m. and processes all recyclable loads from the cities and other recycling, then separates and bales the different types of recovered materials separately. The contractor representative stated that the MRF is now operated as a clean MRF. He also stated that most dirty trash is no longer baled, but is compacted more efficiently at the landfill face. The Grand Jury found that nearly all of the trash from the unincorporated areas is routed directly to the landfill bypassing the MRF. The contractor justifies this practice by saying the MRF will not handle the volume.

- a. The Grand Jury finds that the intent of the contract is that all dirty trash is to be processed through the MRF.
- b. The Grand Jury also finds that it is the intent of the contract that the contractor process the trash at a speed to effectively divert recyclable materials and to expand the facility as needed to process the volume of trash received.
- c. The Grand Jury learned that no additional MRF workers have been added and that, in fact, the work force has been reduced. No physical improvements or additions to the MRF have been made since it was originally constructed, other than the baler has been relined. The Grand Jury also finds that no additional shifts have been added. The Grand Jury finds that the contractor is in violation of the intent of the contract to operate the MRF and, as a result, has amassed excessive profits.

11. The Grand Jury finds that the County should not have allowed as profit the tipping fee dedicated to the operation of the MRF above 20,253 tons per month. While some adjustment to operational costs may be justified by wage increases, insurance, and other benefit packages, the Grand Jury finds that the County has been overcharged for the operation of the MRF by millions of dollars over a period of several years.

12. The language of the contract states that the County is to receive credit for 100% of the revenues derived from the sale of recyclables (less 10% profit for the contractor). In 2007, the contractor received \$679,606 from the sale of recyclables. Contractor A's representative stated that the County is "credited." Attempts to clarify what was meant by "credited" were not successful. Income reports provided by the County Auditor/Controller detailing income for several years from the contractor were requested and reviewed. The Grand Jury found no

evidence that the County has received payments or credits for the sale of recyclables, in 2007 or any other year, in direct violation of the terms of the contract.

- a. The Grand Jury finds the contractor in violation of the provision of the contract requiring the County to receive 100% from the sale of recyclables (less 10% profit for the contractor).
- b. The Grand Jury finds the County RMA lax in enforcing contract obligations.

13. Until 2007 the State requirement for recycling was 50% of total county trash to be recycled. From 2004 to 2007, the County recycled in excess of 50% and as high as 78%, exceeding State standards for recycling. The County appears to be on target to meet State requirements under current law which is based on per capita population. However, this goal is met by calculating total recycling throughout the county, not just from the MRF, and, as noted above, very little if any trash from the unincorporated portions of the county is recycled. There appears to be little clarity in the county's goal for recyclables. If the BoS is serious about the extent of such an effort, especially in the unincorporated areas of the county, a clear policy would permit the staff to develop options and a timetable to achieve such a goal.

14. For several years contractor A has retained a significant amount of revenue due to a dispute regarding the distribution of the 2007 adjustment in tipping fees. County officials have apparently made only limited attempts over the years to resolve this issue and recover monies owed the County.

The contractor has effective control of such funds, might well use the funds for purposes other than contractual obligations, and the County not only is unable to account for such monies but has failed to resolve the matter in a timely fashion.

15. The County entered into contracts with contractors A and B (Contract No. 5364A-C-2001 and Contract No. 6601(A)-C-2001) for collecting solid waste in the unincorporated areas of the county and hauling waste to the landfill. These contracts provide for contractors' service fees to increase automatically when contractors' requests for fee increases are not acted upon by the BoS. The requested fee increases are calculated using changes in the Southern California Consumer Price Index (CPI). Contractors' actual operating costs are not required to be considered in the calculations. The Grand Jury finds no reasonable correlation between changes in the Southern California CPI and the increases in services fees charged to residents in the unincorporated areas of Madera County.

16. The County entered into a no-bid contract for the construction and operation of a Household Hazardous Waste Facility (BOS File No. 0614). The Grand Jury did not investigate this portion of the solid waste management system. However, the Grand Jury did find improperly labeled, handled, and stored hazardous waste on September 27, 2010, when visiting the landfill.

17. The County in a no-bid process granted contractor A a contract (Contract No. 5365-C-94) for the operation of the North Fork Transfer Station as long as the landfill contract is valid. The contractor listed revenue for 2007 at \$569,440 and \$538,244 for 2006. The Grand Jury did not investigate the contractor operations at the North Fork Transfer Station.

18. The Grand Jury found the storage of numerous commercial portable toilets on County property. The Grand Jury asked to see a contract which authorizes contractor A to conduct other commercial activities on County property. Contractor A's representative provided the Solid Waste Manager of Madera County a contract (Contract No. 3297-C-81) that purported to allow businesses supported by contracts (Contract No. 1790-C-72, Contract No. 2944-C-79, and Contract No. 3293-C-81). That contract only allows for the storage of equipment from related business activities, and specifically does not include portable toilet storage.

- a. The Grand Jury finds that the contractor is taking improper advantage of its contract with the County by storing portable toilets on County property.
- b. The Grand Jury finds that the contractor is taking improper advantage of their contract with the County by operating businesses authorized for equipment storage only.
- c. The Grand Jury finds that county officials were aware that the contractor was storing equipment from a portable toilet business on County property at the landfill for some time. The Grand Jury finds the CAO, the RMA Director, and subordinate officials negligent for failure to take proper action in pursuing matters consistent with looking after County interests.

19. The Grand Jury observed staff at the landfill office fielding telephone calls relating to landfill operations, contract hauler operations, and portable toilet operations. Business cards of the staff listed all these businesses on the same card. Licenses and permits for such non-related businesses were posted in the landfill office.

The Grand Jury finds that there is an appearance of co-mingling of staff, resources, and facilities among the various businesses conducted by the contractor at the landfill. The contractor stated that a percentage of each employee's time is allocated to each business.

20. The Grand Jury observed improper labeling, handling, and storage of hazardous waste at the landfill. The Grand Jury found that the County Department of Environmental Health has issued no formal citations for violations concerning any operation at the landfill. While a portion of the fees collected is designated for the department's use, inspections are done only on a monthly basis; with limited staffing, such inspections may be cursory at best. Infractions, when found, were generally handled informally, with little documentation, and the contractor was given significant time to correct the problem. Moreover, tracking of recurring problems, i.e., trending, was apparently not done.

The Grand Jury finds that the Department of Environmental Health is lax in protecting the health and safety of the residents of Madera County regarding the various operations at the landfill for which they have responsibility. The Grand Jury finds the relationship between County inspectors and the contractor to be too informal for effective regulation.

21. The Grand Jury finds that the Division of Solid Waste Management, the Engineering Department, the RMA Director, and the CAO have not satisfactorily monitored or enforced the contract to operate the landfill, the MRF, or the Household Hazardous Waste Facility and, therefore, have not protected the interests of the residents of Madera County. Independent audits have not been routinely conducted; while an audit is now underway, the County historically has had no independent means to verify claimed expenses or revenues.

The Grand Jury finds the relationship between County overseers and the contractor is too informal for effective regulation.

Conclusions:

1. The Grand Jury concludes that it is essential that Madera County provide proper and adequate oversight of the solid waste management and recycling program, particularly because solid waste management involves multimillions of dollars each year.
2. The Grand Jury further concludes that the BoS, the RMA Director, County CAO, County Counsel, and the Department of Environment Health are not providing proper and adequate oversight of the solid waste contracts and management.
3. The Grand Jury concludes that the contractor for the landfill and the MRF is not in compliance with these contracts. Contracts for operation of the landfill and MRF require renegotiation. Contracts should be awarded by competitive bids. The Grand Jury further concludes that the contract language greatly benefits the contractor, resulting in exorbitant profits to the contractor and losses to the County of millions of dollars.
4. The Grand Jury concludes that the contractor is operating a clean MRF in violation of the contract and state permit, and is not recycling all tonnage as intended.
5. The Grand Jury concludes that money is owed to Madera County due to tipping fee overcharges by the landfill and MRF contractor. The Grand Jury further concludes that additional money is owed to the County from the sale of recyclable materials.
6. The Grand Jury concludes that hazardous waste is not being properly handled by the landfill contractor, and that the monitoring and enforcement of health and safety regulations by the Department of Environmental Health is lax, inadequate, and ineffective.
7. The Grand Jury concludes that the landfill contractor is operating other businesses on County property without authorization or appropriate compensation to the County.

Recommendations:

1. The Grand Jury recommends that the County should avoid the appearance of impropriety in the granting and management of contracts in the area of solid waste management as millions of dollars are involved.
2. The Grand Jury recommends that the RMA, subject to appropriate BoS guidance, give thirty days (30) notice to contractor A for contract non-compliance.
3. The Grand Jury recommends that the County renegotiate the contracts for the operation of the landfill and the MRF to better represent the interests of the residents of Madera County.
4. The Grand Jury recommends that, in the future, contracts for solid waste management should be awarded on the basis of competitive bid.
5. The Grand Jury recommends that the landfill revert to a County operation resulting in increased control, cost savings, and opportunities for substantial revenue from recycling.
6. If the BoS determines that it is in the best interests of county residents to continue contracting for solid waste management services, the Grand Jury agrees that, on the basis of BoS Resolution 94-237, the request for proposal should include hauling, managing the landfill and MRF, and managing the North Fork Transfer Station.
7. The Grand Jury recommends that the BoS take the necessary steps to amend the agreements with contractors A and B in regard to the process used to determine appropriate increases in service fees for collection of solid waste in the unincorporated areas of the county. The calculations of fee increases should be based upon legitimate changes in operating costs, e.g., fuel costs, and not upon changes in the Southern California CPI.
8. Until a new contract is negotiated, the Grand Jury recommends that the MRF should be operated as a dirty MRF as required by the contract and state permit.
9. The Grand Jury recommends that the County fund a method for separating recyclable materials in the unincorporated areas of the county to increase recycling.
10. In accordance with Penal Code section 932, the Grand Jury orders the District Attorney to recover funds and reasonable interest for the over-charges collected by the contractor for that portion of the tipping fee designated for operation of the MRF.
11. In accordance with Penal Code section 932, the Grand Jury orders the District Attorney to recover monies generated from the sale of recyclable materials as called for in the contract.
12. The Grand Jury recommends special attention be paid to insure that the contractor is not co-mingling expenses from the various businesses that it operates out of the landfill.

13. The Grand Jury recommends that the County complete a comprehensive, independent audit of the landfill and MRF operations every three years.

14. The Grand Jury recommends that the audit currently underway should be reviewed in detail by the BoS and a copy provided promptly to the Grand Jury. Deficiencies noted should result in a thirty (30) day notice of contract non-compliance and steps needed for the contractor to come into compliance.

15. The Grand Jury recommends that the BoS require that enforcement of the contract receive active and direct attention by the CAO, the RMA Director, County Counsel, and the Division of Solid Waste Management. The BoS should receive frequent, scheduled reports as to such activities from County agencies.

16. The Grand Jury recommends that the Department of Environmental Health develop stricter inspection and documentation procedures to insure that the proper handling and storage of household hazardous wastes is in compliance with health and safety regulations.

17. The Grand Jury recommends that the BoS pursue corrective action to insure that the contractor ceases and desists from operating unrelated businesses on County property, until such time as a negotiated agreement for the contractor to pay fair market value to do so is in effect.

18. The Grand Jury recommends that subsequent Grand Juries continue to monitor County solid waste management operations.

Respondents: Written response required pursuant to PC933(c)

Madera County Board of Supervisors
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Respondents: (Response optional)

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