



**OFFICE OF THE
CITY AUDITOR**

**A REVIEW OF THE
CITY OF SAN JOSE'S
LANDFILL FEES AND TAXES**

- THE CITY NEEDS TO IMPROVE ITS ADMINISTRATIVE OVERSIGHT OVER THE \$20 MILLION PER YEAR THAT LANDFILL OPERATORS PAY TO THE CITY

**A REPORT TO THE
SAN JOSE
CITY COUNCIL**

SEPTEMBER 1997

97-04



CITY OF SAN JOSÉ, CALIFORNIA

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City Auditor

September 5, 1997

Honorable Mayor and Members
of the City Council
801 North First Street, Room 600
San Jose, CA 95110

Transmitted herewith is a report on *A Review Of The City Of San Jose's Landfill Fees And Taxes*. This report is in accordance with City Charter Section 805.

An Executive Summary is presented on the blue pages in the front of this report. The City Administration's response is shown on the yellow pages.

I will present this report to the Finance Committee at its September 10, 1997, meeting. If you need additional information in the interim, please let me know. The City Auditor's staff members who participated in the preparation of this report are Sharon Erickson and Eduardo Luna.

Respectfully submitted,

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TABLE OF CONTENTS

	PAGE
EXECUTIVE SUMMARY	i
<i>RECOMMENDATIONS</i>	<i>iii.</i>
INTRODUCTION	1
BACKGROUND	2
SCOPE AND METHODOLOGY	3
FINDING 1	
THE CITY NEEDS TO IMPROVE ITS ADMINISTRATIVE OVERSIGHT	
OVER THE \$20 MILLION PER YEAR	
THAT LANDFILL OPERATORS PAY TO THE CITY	5
<i>Solid Waste Facilities In San Jose</i>	<i>6</i>
• Guadalupe Landfill	8
• Kirby Canyon Recycling And Disposal Facility	8
• Newby Island Landfill	9
• Zanker Road Landfill	9
<i>Solid Waste Disposal Fees And Taxes</i>	<i>10</i>
• Disposal Facility Tax	10
• Solid Waste Enforcement Fee	11
• Countywide AB 939 Implementation Fee and Countywide Solid Waste Planning Fee	11
<i>Revenue From Solid Waste Disposal Fees And Taxes</i>	<i>12</i>
<i>From 1991-92 Through 1995-96, The Administration Did Not Investigate</i>	
<i>Or Audit \$35.9 Million In Foregone General Fund Revenues Resulting</i>	
<i>From Landfill Operators Self-Reported Material Diversion</i>	
<i>At Solid Waste Disposal Facilities</i>	<i>13</i>
• Various Reasons For Increase In Diverted Tonnage	15
<i>The City Reviews Disposal Facility Tax Payments</i>	
<i>From Landfill Operators For Mathematical Correctness Only</i>	<i>16</i>

<i>Local Enforcement Agency Reviews Are Restricted To Nonfinancial Matters</i>	18
<i>Numerous Opportunities Exist For Landfill Operators To Underreport Taxes And Fees Due To The City</i>	18
• Landfill Procedures	19
• Potential Threats To Proper Reporting	20
• Threat 1. The Landfill Operator Could Categorize Rubbish Or Trash Material As Non-Taxable Material (Such As, Inert Construction Material) And Then Landfill The Material	21
• Threat 2. The Landfill Operator Could Prematurely Deduct Recyclables From Disposal Facility Monthly Reports	22
• Threat 3. Weight Scales Could Be Out Of Tolerance	23
• Threat 4. Unweighed Loads Could Be Improperly Measured Or Inspected	23
• Threat 5. Pre-stored Hauler Information In Weight Scale Software Program Could Be Inaccurate	24
• Threat 6. The Landfill Operator Could Store Inert Construction Material Or Cover Material For A Prolonged Period Of Time And Never Use It	25
• Threat 7. Haulers Could Bypass Scale House Upon Entering The Facility ..	26
• Threat 8. The Landfill Operator Could Weigh Or Record Fictitious Outbound Loads	27
• Threat 9. The Landfill Operator Could Incorrectly Or Inaccurately Transcribe Transaction Information From The Weight Scale Computer System To Disposal Facility Monthly Report Form	28
<i>The Last Audit Of Landfill Operators In 1990-91 Identified An Underpayment Of \$1.6 Million</i>	28
<i>The City Has Not Recently Audited Landfill Operators</i>	29
<i>In Lieu Of Audits, The ESD Is Relying On Aerial Topographical Analysis</i>	31
<i>The City Is Precluded From Obtaining The Results Of California State Board Of Equalization Audits Of San Jose Landfill Operators</i>	32
<i>In 1996, The City Did Not Properly Assess Up To \$170,856 In Late Fees And Interest Against Landfill Operators</i>	33
<i>ESD Has Not Documented Its Procedures For Claiming Over \$800,000 Per Year From The County In Countywide AB 939 Implementation Fees</i>	37
<i>CONCLUSION</i>	38

<i>RECOMMENDATIONS</i>	39
ADMINISTRATION'S RESPONSE	42
APPENDIX A	
DEFINITIONS OF PRIORITY 1, 2, AND 3	
AUDIT RECOMMENDATIONS	A-1

LIST OF MAP, TABLES, AND PICTURES

PAGE

MAP 1

Location Of Landfill Disposal Facilities In San Jose, CA 7

TABLE 1

*City Revenue From Various Solid Waste Disposal
Fees And Taxes, From 1992-93 Through 1995-96* 12

CHART 1

Revenue From Solid Waste Disposal Fees And Taxes, 1995-96 13

TABLE 2

*Summary Of Incoming, Landfilled, And Diverted Tons Processed
At San Jose Disposal Facilities And Related Percentages
And General Fund Revenue Implications For 1991-92 Through 1995-96* 14

PICTURE 1

Scale House Attendant Preparing Computerized Weight Tag 20

PICTURE 2

Scale House Attendant Inspecting Load 22

PICTURE 3

Scale House Attendant Measuring Load 24

PICTURE 4

Example Of Concrete Stored On Disposal Facility Premises 26

PICTURE 5

Additional Lane That Bypasses Scale House 27

TABLE 3

*Treasury Assessed Penalties And Interest
In February 1997 Against Landfill Operators* 34

EXECUTIVE SUMMARY

In accordance with the City Auditor's 1996-97 Audit Workplan, we are auditing the Integrated Waste Management Division (IWM) services the Environmental Services Department (ESD) provides. Our audit includes a review of the solid waste fees and taxes landfill operators pay. Included in our review was the Treasury Division (Treasury) of the Finance Department processing of these remittances and the Local Enforcement Agency (LEA) of the Planning, Building, and Code Enforcement Department monitoring of landfill facilities. We conducted this review in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

THE CITY NEEDS TO IMPROVE ITS ADMINISTRATIVE OVERSIGHT OVER THE \$20 MILLION PER YEAR THAT LANDFILL OPERATORS PAY TO THE CITY

There are four solid waste disposal facilities located in San Jose. These solid waste disposal facilities paid the City of San Jose (City) \$20 million in 1995-96 in taxes and fees. Our review of the City's administrative oversight revealed the following:

- From 1991-92 through 1995-96, the Administration did not investigate or audit \$35.9 million in foregone General Fund revenues resulting from landfill operators self-reported material diversion at solid waste disposal facilities;
- The City only reviews landfill operator remittances for mathematical correctness;
- LEA reviews are restricted to nonfinancial matters;
- Numerous opportunities exist for landfill operators to underreport taxes and fees due to the City;
- The last City audit of landfill operators in 1990-91 identified an underpayment of \$1.6 million;

- The City is precluded from obtaining the results of California State Board of Equalization (SBE) audits of San Jose landfill operators;
- In 1996, the City did not properly assess up to \$170,856 in late fees and interest against landfill operators; and
- The ESD has not documented its procedures for claiming over \$800,000 per year from the County of Santa Clara (County) in Countywide AB 939 Implementation Fees.

In our opinion, the Administration should improve its documentation for mathematical correctness reviews of solid waste disposal facility taxes and fees, and develop written procedures for claiming Countywide AB 939 Implementation Fees and processing solid waste disposal taxes and fees. In addition, the City Attorney's Office should review Treasury's practice of assessing penalties and interest on late Solid Waste Enforcement Fee payments and determine if special Municipal Code provisions are required. Further, the Finance Department should develop guidelines and written procedures for processing Disposal Facility Tax and Solid Waste Enforcement Fee payments. Additionally, the ESD should incorporate late payment information on the Disposal Facility Monthly Report form. Finally, either the ESD, the Administration, or the City Auditor's Office should conduct regular audits of landfill operators, and establish a reciprocal agreement with the County and/or the SBE regarding audit activities. By so doing the City will have added assurance that it is receiving all of the solid waste disposal facility taxes and fees to which it is entitled.

RECOMMENDATIONS

We recommend that the Finance Department:

Recommendation #1:

Document that it verifies the mathematical correctness of all Disposal Facility Monthly Reports to ensure the Disposal Facility Tax and Solid Waste Enforcement Fees are correctly calculated. (Priority 2)

In addition, we recommend that the ESD and the Finance Department:

Recommendation #2:

Eliminate duplicative mathematical steps when processing Disposal Facility Tax and Solid Waste Enforcement Fee payments. We also recommend that the ESD and the Finance Department revise the Finance Administrative Manual to include updated procedures for processing the Disposal Facility Tax and Solid Waste Enforcement Fee. (Priority 2)

Also, we recommend that either the ESD, the Administration, or the City Auditor's Office:

Recommendation #3:

Regularly audit local landfill operators to ensure proper landfill tax receipts and appropriate reporting of tonnages. (Priority 2)

Recommendation #4:

Approach the County of Santa Clara Integrated Waste Management Program about the possibility of sharing audit costs for reviewing landfill disposal taxes and fees. (Priority 2)

Recommendation #5:

Approach the State Board of Equalization about the possibility of developing a reciprocal agreement to share landfill audit results. (Priority 2)

Further, we recommend that the City Attorney's Office:

Recommendation #6:

Review Treasury's practice of assessing penalties and interest on late Solid Waste Enforcement Fee payments and determine if special Municipal Code provisions are required. (Priority 2)

Also, we recommend that the Finance Department:

Recommendation #7:

Develop guidelines and written procedures that assign responsibilities for processing Disposal Facility Tax and Solid Waste Enforcement Fee payments, and include the process for determining timeliness and assessing appropriate penalties and interest. (Priority 2)

Finally, we recommend that the ESD:

Recommendation #8:

Include the payment due date and an explanation of late payment penalties on the Disposal Facility Monthly Report form and consult with landfill operators prior to making any changes to the form. (Priority 3)

Recommendation #9:

Document its procedures for preparing Countywide AB 939 claims. (Priority 3)

INTRODUCTION

In accordance with the City Auditor's 1996-97 Audit Workplan, we are auditing the Integrated Waste Management Division (IWM) services the Environmental Services Department provides. Our audit includes a review of the solid waste fees and taxes landfill operators pay. Included in our review was the Treasury Division (Treasury) of the Finance Department processing of these remittances and the Local Enforcement Agency (LEA) of the Planning, Building, and Code Enforcement Department monitoring of landfill facilities. We conducted this review in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

The City Auditor's Office thanks the Treasury, LEA, and IWM staff for their time, information, insight and cooperation during the audit.

BACKGROUND

There are four privately operated landfill facilities in San Jose that are open to the public¹. The disposal facilities include Guadalupe Landfill, Kirby Canyon Recycling and Disposal Facility, Newby Island Landfill, and Zanker Road Landfill. These landfill operators pay various solid waste taxes and fees to the City based on the amount of solid waste received and landfilled at their facilities. The Integrated Waste Management Division (IWM) coordinates the Recycle Plus program, commercial solid waste services, and civic services. IWM also manages the City's contract with International Disposal Corporation for disposal capacity at Newby Island Landfill. Civic services staff also review for planning and budgeting purposes solid waste tax payment information landfill operators submit.

The Treasury Division (Treasury) of the Finance Department administers the collection of various taxes, franchise fees, and solid waste disposal fees.

The Local Enforcement Agency (LEA) is a part of the Planning, Building, and Code Enforcement Department which monitors compliance with Federal, State, and Local solid waste regulations at local sanitary landfill sites. The LEA is funded through the Solid Waste Enforcement Fee.

¹ A fifth landfill – Owens Corning Landfill, is a private landfill operated to dispose company waste.

SCOPE AND METHODOLOGY

The objective of our review of the landfill fees and taxes was to verify compliance with the Municipal Code regarding the payment and billing of (1) Solid Waste Enforcement Fees, (2) Disposal Facility Tax, and (3) Countywide AB 939 Implementation Fee (AB 939).

We met with Integrated Waste Management Division (IWM) and Administrative Services Division (ASD) of the Environmental Services Department, Treasury Division (Treasury) of the Finance Department, and Local Enforcement Agency (LEA) of the Planning, Building, and Code Enforcement Department staff to determine the scope of their responsibilities for processing, collecting and monitoring landfill operator payments of various landfill disposal fees and taxes. When available, we reviewed written procedures to see if they were complete and up-to-date.

We reviewed Solid Waste Enforcement Fee, Disposal Facility Tax, and Countywide AB 939 Fee collections for the past four years. We analyzed this information to determine the amount of incoming, landfilled, and diverted tonnage processed at disposal facilities and calculated related percentages. We also performed limited testing to determine timeliness and reliability of Disposal Facility Monthly Reports landfill operators submitted.

We met with IWM staff to determine the scope of their responsibilities for preparing and processing quarterly claims for AB 939 fee revenue. We also met with those Santa Clara County Integrated Waste Management Program staff who are responsible for processing AB 939 claims.

We also met with officials from Guadalupe Landfill, Kirby Canyon Recycling and Disposal Facility, Newby Island Landfill, and Zanker Road Landfill. We interviewed staff, toured their facilities, and reviewed their processes for preparing Disposal Facility Monthly Reports. We did not review or meet with officials from Owens Corning Landfill, a private landfill operated to dispose of company waste. The amount of waste disposed at this facility is less than 900 tons per year.

We interviewed officials from the State Board of Equalization to determine the extent of their audits of local disposal facilities and the feasibility of exchanging audit results.

We performed limited testing to determine the accuracy and reliability of information in the various computer reports we used during our audit. We did not review the general and specific application controls for the computer systems used in compiling the various computer reports we reviewed.

FINDING I

THE CITY NEEDS TO IMPROVE ITS ADMINISTRATIVE OVERSIGHT OVER THE \$20 MILLION PER YEAR THAT LANDFILL OPERATORS PAY TO THE CITY

There are four solid waste disposal facilities located in San Jose. These solid waste disposal facilities paid the City of San Jose (City) \$20 million in 1995-96 in taxes and fees.

Our review of the City's administrative oversight revealed the following:

- From 1991-92 through 1995-96, the Administration did not investigate or audit \$35.9 million in foregone General Fund revenues resulting from landfill operators self-reported material diversion at solid waste disposal facilities;
- The City only reviews landfill operator remittances for mathematical correctness;
- Local Enforcement Agency (LEA) reviews are restricted to nonfinancial matters;
- Numerous opportunities exist for landfill operators to underreport taxes and fees due to the City;
- The last City audit of landfill operators in 1990-91 identified an underpayment of \$1.6 million;
- The City is precluded from obtaining the results of California State Board of Equalization (SBE) audits of San Jose landfill operators;
- In 1996, the City did not properly assess up to \$170,856 in late fees and interest against landfill operators; and
- The Environmental Services Department (ESD) has not documented its procedures for claiming over \$800,000 per year from the County of Santa Clara (County) in Countywide AB 939 Implementation Fees.

In our opinion, the Administration should improve its documentation for mathematical correctness reviews of solid waste disposal facility taxes and fees, and develop written procedures for claiming Countywide AB 939 Implementation Fees and processing solid waste disposal taxes and fees. In addition, the City Attorney's Office should review Treasury's practice of assessing

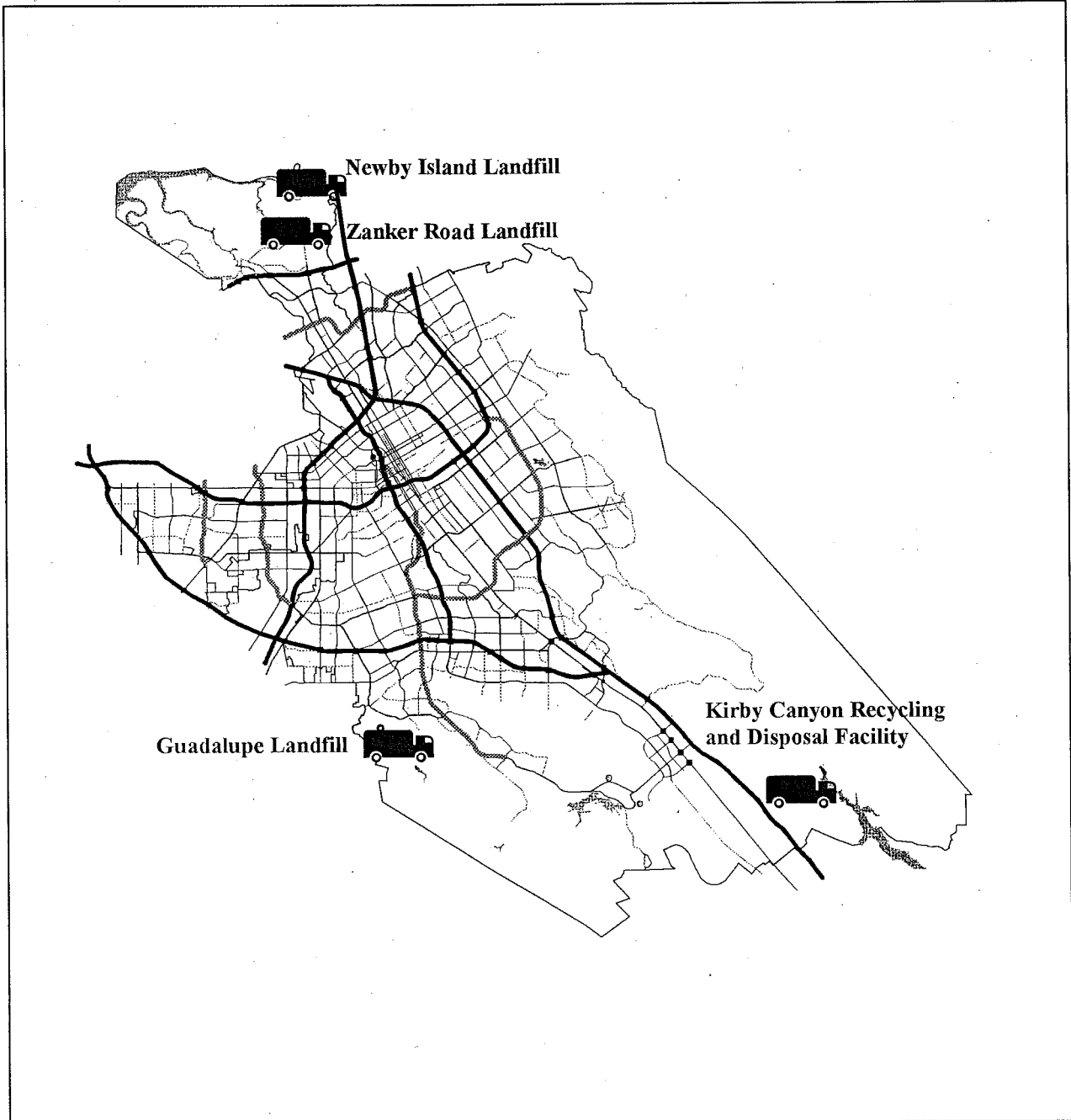
penalties and interest on late Solid Waste Enforcement Fee payments and determine if special Municipal Code provisions are required. Further, the Finance Department should develop guidelines and written procedures for processing Disposal Facility Tax and Solid Waste Enforcement Fee payments. Additionally, the ESD should incorporate late payment information on the Disposal Facility Monthly Report form. Finally, either the ESD, the Administration, or the City Auditor's Office should conduct regular audits of landfill operators, and establish a reciprocal agreement with the County and/or the SBE regarding audit activities. By so doing the City will have added assurance that it is receiving all of the solid waste disposal facility taxes and fees to which it is entitled.

Solid Waste Facilities In San Jose

There are four solid waste disposal facilities located in San Jose, they include Guadalupe Landfill, Kirby Canyon Recycling and Disposal Facility, Newby Island Landfill, and Zanker Road Landfill. The locations of these facilities are shown on Map 1.

MAP 1

LOCATION OF LANDFILL DISPOSAL FACILITIES IN SAN JOSE, CA



Source: City of San Jose Planning Department.

Guadalupe Landfill

This landfill facility is located in southwestern San Jose on Guadalupe Mines Road, in a canyon north of Guadalupe Mines. There are three related companies at this location, which operate four distinct businesses. These businesses include Guadalupe Rubbish Disposal Company which operates the landfill business and the yard waste processing business; Valley's Pride Material Yard which operates a material yard which sells mixed soils, sod, and various landscape materials; and New World Furniture, which recently closed, but which was building and selling recycled wood furniture.

Jurisdictions using the landfill facility include the cities of San Jose, Campbell, Monte Sereno, Saratoga, the Town of Los Gatos, and unincorporated areas of the County. The facility is permitted to accept non-hazardous solid waste up to 3,510 tons per day. In 1995-96, a total of 355,432 tons of material passed through the gates, of which, the landfill operator diverted 186,701 tons and landfilled 168,731 tons.

Kirby Canyon Recycling And Disposal Facility

Waste Management of California, Inc. operates this facility on land leased from Castle & Cooke Development Corporation. The facility is located on a hill-face in south San Jose, east of U.S. Highway 101 and the Scheller Avenue interchange. Jurisdictions using the landfill facility include the cities of Mountain View, Palo Alto, Santa Clara, and Sunnyvale. The landfill is permitted to accept municipal solid waste (class III wastes) up to 2,600 tons per day. In 1995-96, the landfill operator received 466,008 tons of material, of which, the operator diverted 62,088 tons and landfilled 403,920 tons.

Newby Island Landfill

International Disposal Corporation of California, Inc. (IDC), a subsidiary of Browning Ferris Industries (BFI) owns and operates this facility. Newby Island Landfill is located on Dixon Landing Road in north San Jose, just west of Highway 880 and the City of Milpitas. The facility currently serves the counties of Santa Clara, Alameda, and Contra Costa. Santa Clara County jurisdictions using the landfill are the cities of San Jose, Cupertino, Los Altos, Milpitas, Santa Clara, the Town of Los Altos Hills, and unincorporated areas of the County. In 1985, the City of San Jose entered into an agreement with IDC, amended at a later date, for residential waste disposal from March 1, 1986, to December 31, 2020.

The landfill is permitted to accept up to 4,000 tons per day of non-hazardous solid waste. In 1995-96, Newby Island Landfill received almost 1.2 million tons of materials, of which 354,421 tons were diverted and 796,229 tons were actually landfilled. According to a BFI official, in terms of total volume, about 80 percent of the landfill's volume comes from disposal contractors, 17 percent comes from sludge which is used for daily cover, and 3 percent comes from small load customers.

On adjacent landfill property, BFI operates The Recyclery. This facility processes recyclables material from the cities of San Jose, Cupertino, Gilroy, Los Altos, Milpitas, Morgan Hill, unincorporated areas of the County, and the Town of Los Altos Hills. This facility also has a buy back center for recyclable materials such as aluminum cans, glass, plastic, used motor oil, cardboard, paper, newspaper and tin cans. In addition, this facility also does the processing, screening, and composting of yard waste.

Zanker Road Landfill

Zanker Road Resource Management, Ltd. operates this facility located on Los Esteros Road, off Highway 237, in north San Jose, near the southeastern end of the San Francisco Bay. It serves all of Santa Clara County. Zanker Road Landfill is permitted to accept all non-

hazardous and non-liquid solid wastes, except wet garbage. There are five separate recycling operations that take place at the facility: (1) sorting, splitting, chipping, screening, composting, stockpiling and reselling of wood waste; (2) separating, crushing, stockpiling and reselling of concrete waste; (3) separating recyclable materials from the incoming waste stream; (4) remediation of contaminated soils to reduce contamination to acceptable levels so soils can be used for on-site construction or daily cover; and (5) processing, screening, composting, and reselling yard waste compost products. In 1995-96, a total of 307,846 tons of material passed through the gates at Zanker Road Landfill, of which all but 4,413 tons were diverted.

Solid Waste Disposal Fees And Taxes

These local solid waste disposal facilities are required to pay the City various solid waste disposal fees and taxes. These fees include a monthly Disposal Facility Tax, monthly Solid Waste Enforcement Fee, and a quarterly Countywide AB 939 Implementation Fee.

Disposal Facility Tax

The Disposal Facility Tax is \$13 for each ton of solid waste accepted at each disposal facility site during the month regardless of the jurisdictional origin of the material. The revenue from this tax is deposited in the City's General Fund. When calculating the tax, landfill operators subtract from the solid waste tonnage: (1) tons of material recycled, reused, composted, and/or processed for transformation; (2) salvaged material that is shipped off-site; (3) cover material; and (4) inert construction material. In other words, the more material a landfill operator diverts or recycles, the less money the operator pays to the City. Landfill operators are required to weigh exempt materials upon delivery to the facility and maintain weight receipts for the materials. Landfill operators report the Disposal Facility Tax on a Disposal Facility Monthly Report, which summarizes the solid waste tonnage received and also calculates the Solid Waste Enforcement Fee.

Solid Waste Enforcement Fee

The Solid Waste Enforcement Fee is \$.58 for each ton of solid waste received at each facility. This fee is applicable at any solid waste disposal facility, composting facility, or location required to obtain a permit under Division 30 of the California Public Resources Code. This fee is based on all tonnage that is received at the disposal facility regardless of the origin or nature of the material. The tonnage used to calculate the enforcement fee probably best represents the total tonnage of solid waste a landfill receives because there are no exemptions to this fee. Landfill operators pay the Solid Waste Enforcement Fee simultaneously with the Disposal Facility Tax. Solid Waste Enforcement Fee revenue is used to reimburse the City for the cost of the solid waste enforcement program authorized under Division 30 of the California Public Resources Code. In other words, this fee funds the activities of the LEA and solid waste enforcement in the Planning, Building, and Code Enforcement Department.

Countywide AB 939 Implementation Fee and Countywide Solid Waste Planning Fee

On a quarterly basis, landfill operators remit to the County, a Countywide AB 939 Implementation Fee (AB 939) and Countywide Solid Waste Planning Fee. These fees are \$1.30 per ton and \$.42 per ton of solid waste landfilled, respectively. Landfill operators submit to the County a *County of Santa Clara Landfill Facility Quarterly Reporting and Fee Remittance Form*. The County collects the AB 939 fee on behalf of local jurisdictions and distributes the revenue to them for the purpose of funding jurisdiction-specific programs for meeting AB 939 requirements.

The AB 939 City/County agreement specifies that within 60 days of the end of each quarter, each participating jurisdiction shall submit a completed claim form to the County Integrated Waste Management Program for its share of AB 939 revenues that originated from that jurisdiction. Accordingly, every quarter, the City submits a claim to the County for payment

of the AB 939 fee of \$1.30 per ton of landfilled solid waste that originated in San Jose. Landfill operators use the AB 939 landfilled tonnage numbers to also calculate the Countywide Solid Waste Planning Fee, Disposal Facility Tax, and State Integrated Waste Management Fee.

Revenue From Solid Waste Disposal Fees And Taxes

Table 1 shows that between 1992-93 and 1995-96, the City received over \$75 million in revenue from Disposal Facility Taxes, Solid Waste Enforcement Fees, and AB 939 fees. The City has not audited a single dollar of this amount. Landfill operators paid these fees based on self-reported tons of total solid waste received, diverted, and landfilled.

TABLE 1

CITY REVENUE FROM VARIOUS SOLID WASTE DISPOSAL FEES AND TAXES, FROM 1992-93 THROUGH 1995-96

Fee Or Tax	1992-93	1993-94	1994-95	1995-96	Total
Disposal Facility Tax	\$16,013,414	\$16,474,191	\$17,582,204	\$17,867,099	\$67,936,908
Tax/ton	\$13.00	\$13.00	\$13.00	\$13.00	
Solid Waste Enforcement Fee	\$698,374	\$1,076,715	\$1,157,217	\$1,323,001	\$4,255,307
Fee/ton	\$.40	\$.58	\$.58	\$.58	
Countywide AB 939 Fee	\$765,566	\$689,271	\$795,147	\$830,889	\$3,080,873
Fee/ton	\$1.00	\$1.00	\$1.15	\$1.15	
Total	\$17,477,354	\$18,240,177	\$19,534,568	\$20,020,989	\$75,273,088

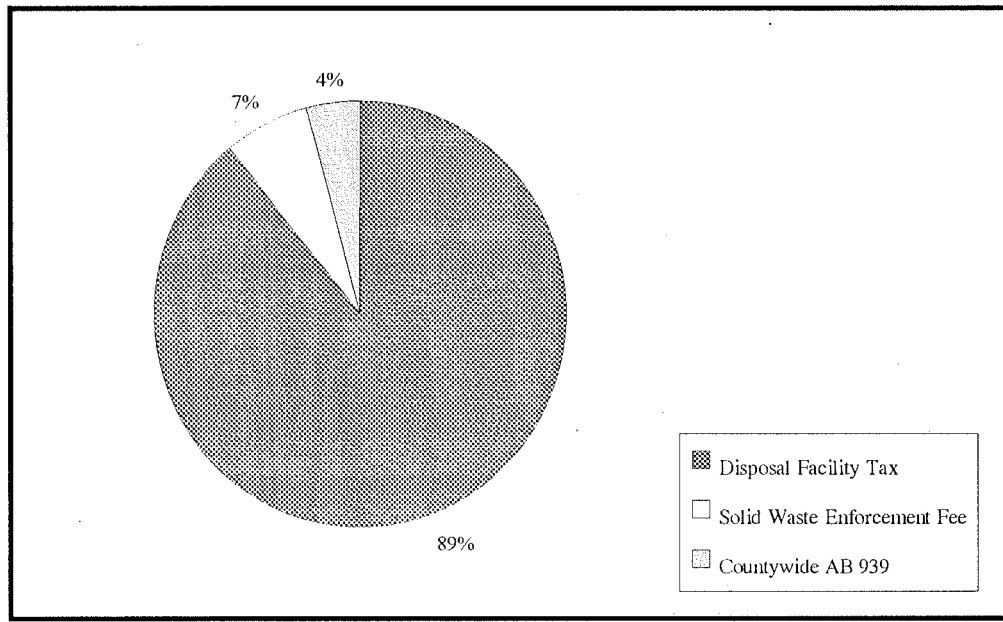
Source: Auditor analysis of ESD data.

In 1995-96, the City received a little more than \$20 million in solid waste fees and taxes from local landfill operators. Specifically, the General Fund received \$17,867,099 in Disposal Facility Tax revenue--89 percent of the total solid waste revenue; and \$1,323,001 in

Solid Waste Enforcement Fee revenue. The IWM Fund received \$830,889 in AB 939 revenue.² Chart 1 shows a breakdown of these fees.

CHART 1

REVENUE FROM SOLID WASTE DISPOSAL FEES AND TAXES, 1995-96



Source: Auditor analysis of ESD data.

From 1991-92 Through 1995-96, The Administration Did Not Investigate Or Audit \$35.9 Million In Foregone General Fund Revenues Resulting From Landfill Operators Self-Reported Material Diversion At Solid Waste Disposal Facilities

Diverted material is material that landfill operators reuse, recycle, salvage, use as cover material, or convert to compost. These materials that landfill operators divert are not

² The County collects these fees on behalf of the City.

landfilled and therefore, save landfill space. In 1995-96, local landfill operators diverted almost 907,000 tons of solid waste material from landfills, an increase of 262,000 tons or 41 percent from the previous year. The two prior years, 1993-94 and 1994-95, landfill operators increased the tons of diverted solid waste material by about 54,000 tons and 40,000 tons, respectively. Diversion in and of itself is a positive outcome for the City and the citizens of San Jose. However, because diverted materials are not subject to the Disposal Facility Tax there is a cost to the General Fund associated with diversion. For example, we estimated that landfill operator self-reported diverted tons from 1991-1992 through 1995-96 cost the General Fund \$35.9 million in the form of foregone revenues. Table 2 shows a breakdown of tons of materials processed, landfilled, and diverted at San Jose disposal facilities.

TABLE 2
SUMMARY OF INCOMING, LANDFILLED,
AND DIVERTED TONS PROCESSED AT SAN JOSE DISPOSAL FACILITIES
AND RELATED PERCENTAGES AND GENERAL FUND REVENUE
IMPLICATIONS FOR 1991-92 THROUGH 1995-96

Landfill Activities	1991-92	1992-93	1993-94	1994-95	1995-96	Totals
Tons Received	1,512,187	1,782,347	1,872,038	1,995,430	2,280,798	9,442,800
Tons Landfilled	1,288,201	1,231,284	1,267,379	1,350,719	1,311,738	6,449,321
Tons Diverted	223,986	551,063	604,659	644,711	906,643	2,931,062
Increase In Diverted Tons Over Prior Fiscal Year	--	327,077	53,596	40,052	261,932	
Percentage Increase In Diverted Tons Over Prior Fiscal Year	--	146%	10%	7%	41%	
Percent of Diverted Tons To Total Tons	15%	31%	32%	32%	40%	31%
Foregone General Fund Revenues Due To Diverted Tons	\$671,958	\$7,163,819	\$7,860,567	\$8,381,243	\$11,786,359	\$35,863,946

Note: In 1991-92, the Disposal Facility Tax was \$3.00 per ton and in 1992-93, the tax was increased to \$13.00 per ton.

Source: Auditor analysis of ESD data.

Given the significant increase in landfill operator self-reported diversion and attendant fiscal consequences shown in Table 2, the City of San Jose should have a program in place to

ensure that all of the reported diversion is legitimate. When we brought the above information to the attention of the ESD staff, they were unaware of the magnitude of the increased diversion at disposal facilities as shown in Table 2 between 1994-95 and 1995-96. Furthermore, they were unable to explain the significant increase in diverted tons. The ESD staff thought that a possible reason for the increased diversion was that other communities had instituted full-scale yard waste collection programs or that landfills had diverted increased amounts of soil imported for alternative daily cover. The ESD staff had not (1) monitored the overall increase in diverted tons, (2) determined the reason(s) for the increase, (3) determined if landfill operators had intentionally diverted materials to avoid disposal taxes, nor (4) documented reasons for the increase in diverted tonnage.

Various Reasons For Increase In Diverted Tonnage

We met with the landfill operators to determine the cause of the increase in the diverted tonnage. We found that the increase in diverted tonnage may have resulted from changes in landfill operational practices. For example, between 1994-95 and 1995-96, the landfill operator at Kirby Canyon Recycling and Disposal Facility increased the tons of diverted material from 3,800 tons to 62,088. According to a Kirby Canyon Recycling and Disposal Facility official, from 1994-95 to 1995-96, a disposal contract increased daily tonnage by about 400 tons. At the same time the landfill began accepting additional soil, concrete, and asphalt which the operator diverted for construction of winter unloading platforms and roads leading to the disposal area. Consequently, while incoming tonnage increased 35 percent from 1994-95 through 1995-96, total tons landfilled increased by only 19 percent. The official also stated that the decision to construct the winter platforms and roads was an operational issue and not related to any outside factor.

At the Zanker Road Landfill, while total incoming tons of material increased 51 percent from 1994-95 through 1995-96, landfilled tons declined 55 percent because the tons of diverted

material increased 56 percent. According to a Zanker Road Landfill official, the reasons for the increase in diverted tonnage and decline in landfill tonnage were an increase in recyclable processing (including demolition and debris) and Zanker Road Landfill shipping out of the San Jose area materials that needed to be landfilled due to limited landfill space.

At the Newby Island Landfill, an official attributed the 27 percent increase in diversion tonnage from 1994-95 through 1995-96 to the increased use of sewage sludge as alternative daily cover.

Finally, at the Guadalupe Landfill, an official reported that their 11 percent increase in diversion tonnage from 1994-95 through 1995-96 was the result of increased yard waste processing.

**The City Reviews Disposal Facility Tax Payments
From Landfill Operators For Mathematical Correctness Only**

On a monthly basis, landfill operators remit the Disposal Facility Tax and Solid Waste Enforcement Fee payments directly to the Finance Department on a single Disposal Facility Monthly Report form. According to Treasury staff, they perform only a limited mathematical review of these payments. When a solid waste payment is received, a Treasury account clerk reviews the payment amount to ensure that the Disposal Facility Tax and Solid Waste Enforcement Fee paid are correctly calculated and match the payment amount listed on the Disposal Facility Monthly Report form. However, we could not find evidence to support Treasury's assertion that they reviewed every disposal report landfill operators submit. In fact, we determined that of the 68 Disposal Facility Monthly Reports filed in 1995-96, only 50 reports showed evidence of being reviewed. According to Treasury staff, they perform no further analysis of Disposal Facility Tax payments or Solid Waste Enforcement Fee payments.

#1 We recommend that the Finance Department document that it verifies the mathematical correctness of all Disposal Facility Monthly Reports to ensure the Disposal Facility Tax and Solid Waste Enforcement Fees are correctly calculated. (Priority 2)

After Treasury reviews the landfill operator payments, it sends copies of the Disposal Facility Monthly Report forms to ESD for further processing. An ESD Administrative Services Division (ASD) staff person also reviews the Disposal Facility Monthly Report form for mathematical correctness. According to this staff person, the ASD contacts the landfill operators if small calculation errors are noted but contacts a Treasury Division Investigator if a large error is noted. The ASD staff person uses the data from the Disposal Facility Monthly Reports to prepare summary reports on total landfill tonnages. The ESD staff use these reports for forecasting and budgetary purposes. The ESD staff does not perform any additional analysis of landfill operator payments.

Since two divisions in different departments perform similar roles in processing Disposal Facility Tax and Solid Waste Enforcement Fee payments, some of the mathematical reviews performed are duplicative. There are no guidelines or memorandums of understanding on the roles of the ESD and Treasury in processing these fees. In addition, the Finance Administrative Manual (FAM) does not include procedures for collecting any of the disposal fees or taxes. The FAM does include an obsolete procedure on the collection of a defunct business tax on solid waste facilities. The ESD does not have any procedures for processing and reviewing these disposal tax or fee payments.

#2 We recommend that the ESD and the Finance Department eliminate duplicative mathematical steps when processing Disposal Facility Tax and Solid Waste Enforcement Fee payments. We also recommend that the ESD and the Finance Department revise the Finance Administrative Manual to include updated procedures for processing the Disposal Facility Tax and Solid Waste Enforcement Fee. (Priority 2)

Local Enforcement Agency Reviews Are Restricted To Nonfinancial Matters

The LEA is an agent of the California Integrated Waste Management Board (CIWMB) that operates within the Department of Planning, Building, and Code Enforcement. The LEA is responsible for enforcing "state minimum standards" as required under California Code of Regulations, Title 14, and for enforcing provisions of local codes and ordinances relating to the improper disposal, transportation, handling, and processing of solid waste. Additionally, the LEA enforces solid waste facility permit and operational standards regarding the disposal and handling of solid waste. Under Title 14, the LEA is required to inspect landfills once a month. According to a local LEA official, the CIWMB precludes the LEA from inspecting and monitoring the recordkeeping related to franchise agreements, and Disposal Facility Tax reporting and collection requirements, and from participating in the franchise agreement and Disposal Facility Tax processes.

Numerous Opportunities Exist For Landfill Operators To Underreport Taxes And Fees Due To The City

As reported earlier, in 1995-96, the City received over \$20 million in solid waste disposal fees and taxes from landfill operators. Landfill operators pay \$16.64 in City, County, and State fees for each ton of material that is landfilled, including a \$0.58 per ton Solid Waste Enforcement

Fee which is assessed on all tonnage received. These fees can represent up to 34 percent of a landfill's rates. The more disposal material a landfill operator diverts and does not landfill, the less money the landfill operator pays in disposal taxes and fees to the City, County, and State.

Landfill Procedures

Local landfill operators essentially follow identical procedures to process landfill materials. Upon entering the facility site, customers are directed to a scale house. At this junction, a scale house attendant prepares a computerized weight tag ticket with the appropriate rate charge, as shown in Picture 1. At the scale house the attendant determines the weight of the vehicle if it is larger than eight cubic yards. If the vehicle's capacity is less than eight cubic yards, the attendant measures the vehicle's payload; inspects and identifies the material being brought in; and determines the jurisdictional origin of the material, the method of payment, and the type of vehicle delivering the material. After the attendant enters this information onto the computerized weight tag form, the disposal rate is automatically computed and a weight tag ticket is printed out and handed to the driver. Once the payment exchange is completed, the driver is directed to the designated disposal area. If a hauler has material other than solid waste (such as inert construction material that is used in the operation of the landfill or yard waste that is processed and composted), landfill staff direct the hauler to a separate area for unloading. At the end of the month, the landfill operator summarizes the computerized weight tag information from daily reports. Landfill operators use the latter information to prepare the City's Disposal Facility Monthly Reports.

PICTURE 1

SCALE HOUSE ATTENDANT PREPARING COMPUTERIZED WEIGHT TAG



Source: Auditor's Office.

Potential Threats To Proper Reporting

Based on our interviews with landfill operators and observations of landfill operations, we developed a list of potential threats that can affect the amount of Disposal Facility Taxes landfill operators pay to the General Fund. Theoretically, the more material a landfill operator diverts or recycles, the less money the operator pays to the City. While we did not identify that any of the following threats actually occurred, any of these threats could occur or may have occurred in the past.

*Threat 1. The Landfill Operator Could Categorize
Rubbish Or Trash Material As Non-Taxable Material
(Such As, Inert Construction Material)
And Then Landfill The Material*

Of the steps in processing landfill materials, one of the most critical involves the landfill operator properly identifying the waste material. This step facilitates the landfill operator charging its customer the correct disposal rate and remitting the proper taxes and fees to the City, County, and State. At the four disposal facilities we visited, scale house attendants visually inspected loads to determine the type of material being disposed, as shown in Picture 2. After the attendant completed his/her visual inspection, the attendant entered a material code for that particular load. If trash material was categorized as non-taxable material, such as soil or concrete, the landfill operator would not have to pay \$13.00 per ton in Disposal Facility Taxes. Possible errors that could occur at this point include misidentifying material (such as, contaminated soil classified as clean soil), or putting the incorrect material type on the weight tag ticket.

PICTURE 2

SCALE HOUSE ATTENDANT INSPECTING LOAD



Source: Auditor's Office.

Threat 2. The Landfill Operator Could Prematurely Deduct Recyclables from Disposal Facility Monthly Reports

Often times customers bring both trash and recyclables to landfills for disposal. Landfill operators told us that in this situation the scale house attendant would classify the entire load at the higher taxable rate. The landfill operators would not deduct the recyclable tonnage from their Disposal Facility Monthly Report until they actually shipped the material off-site for processing. The threat here is that the landfill operator could deduct recyclables from its Disposal Facility Monthly Report before the recyclable material is actually shipped out.

Threat 3. Weight Scales Could Be Out Of Tolerance

Landfill operators are required to weigh all incoming wastes at a scale that the Santa Clara County Agricultural Commissioner certifies annually. Landfill operators told us that they have periodic maintenance done on the scales between certifications. The threat here is that between certifications, the scales become out of tolerance and would not record the proper weight of the waste material.

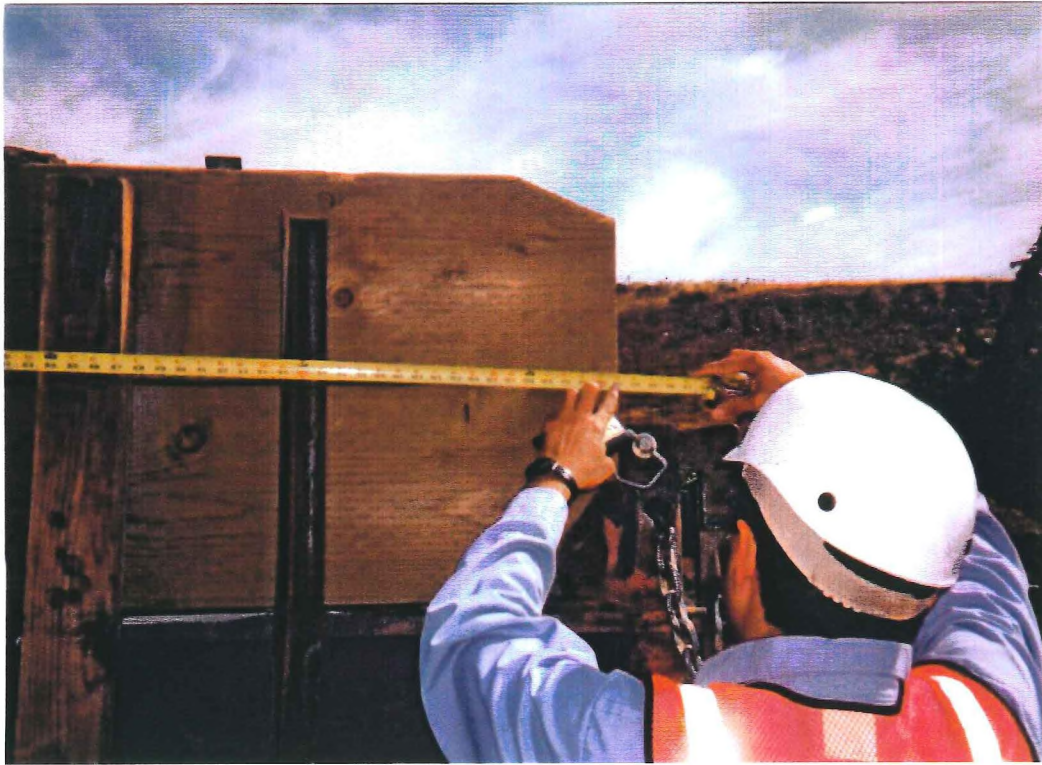
Threat 4. Unweighed Loads Could Be Improperly Measured Or Inspected

The City allows landfill operators to measure any loads that are less than eight cubic yards. Such loads typically consist of self-haul loads. Scale house attendants either used a measuring stick or measuring tape and calculator or computer to calculate the cubic volume of small loads, as shown in Picture 3. As a percentage of incoming waste volume, unweighed loads represented around 8 percent. The threat here is that scale house attendants could enter the wrong measurements on the weight tag or incorrectly measure the loads.

PICTURE 3

SCALE HOUSE ATTENDANT MEASURING LOAD

Source: Auditor's Office.



Threat 5. Pre-stored Hauler Information In Weight Scale Software Program Could Be Inaccurate

All of the landfill operators have customer information stored on their weight scale computer system for repeat customers. Such information can include type of material, origin of material, customer name and address, vehicle type, and empty weight of the vehicle. The latter information is important in that it expedites the processing of materials at the scale house. For example, if the weighed vehicle's empty weight is known, the net weight of the load is determined by subtracting the vehicle's empty weight from the vehicle's scale weight. This process would mostly apply to contract haulers or frequent landfill customers. The threat here is that the stored information in the computer could be outdated or inaccurate.

Specifically, a hauler may make certain operational changes (such as, add a new trailer or begin hauling material from a new jurisdiction), without informing the landfill operator. Any of these changes could affect the accuracy of the information stored in the landfill operator's computer system, and could affect the disposal tonnage reported to the City.

Threat 6. The Landfill Operator Could Store Inert Construction Material Or Cover Material For A Prolonged Period Of Time And Never Use It

Landfill operators can exclude inert construction or cover material from Disposal Facility Tax calculations. These materials include concrete and soil, which operators can use in the operation of their landfill. For instance, landfill operators told us they used concrete to construct temporary roads and disposal platforms. They also use materials such as soil to cover the trash on a nightly basis. All of the disposal facilities we visited use or store concrete on-site for later use. The threat here is that after the landfill operator uses concrete in the construction of temporary landfill platforms and roads, (see Picture 4) the concrete could become contaminated and the landfill operator could leave the concrete landfilled without paying a Disposal Facility Tax on the concrete.

PICTURE 4

EXAMPLE OF CONCRETE STORED ON DISPOSAL FACILITY PREMISES



Source: Auditor's Office.

Threat 7. Haulers Could Bypass Scale House Upon Entering The Facility

All of the landfills we visited had additional lanes that bypassed the scale house and allowed access to the disposal area. The threat here is that a vehicle could use one of these lanes and not get noticed or flagged by the scale house attendant. At one of the landfills we visited, the operator had reached an agreement with a certain hauler to bypass the scale house upon entering the facility, see Picture 5. In this particular case, the hauler would stop at the scale house on the way out and drop off its own weight ticket which the hauler received from the transfer station where the load was collected.

PICTURE 5

ADDITIONAL LANE THAT BYPASSES SCALE HOUSE



Source: Auditor's Office.

Threat 8. The Landfill Operator Could Weigh Or Record Fictitious Outbound Loads

The City allows landfill operators to subtract from the Disposal Facility Tax, the quantity of salvaged recyclable materials that are removed from the landfill and shipped off-site. The more salvageable material that is shipped off-site, the bigger the tax break for the landfill operators. The threat here is that operators could overstate the tonnage of recyclable materials shipped off-site.

*Threat 9. The Landfill Operator Could Incorrectly
Or Inaccurately Transcribe Transaction Information
From The Weight Scale Computer System
To Disposal Facility Monthly Report Form*

As reported above, landfill operators process the information from their computerized weight scale programs to prepare the Disposal Facility Monthly Reports and calculate the Disposal Facility Tax owed. Landfill operators process this information on a daily and monthly basis. Some of the landfill computer systems require that the operators manually transcribe the information when summarizing the monthly transaction totals. The threat here is that the landfill operators could make errors when transcribing the information.

**The Last Audit Of Landfill Operators In 1990-91
Identified An Underpayment Of \$1.6 Million**

In 1990-91, the City added a Staff Analyst II position in IWM to perform expanded oversight of fiscal processes, including verifying proper payments and financial reports from landfills. According to former and current ESD staff, preliminary reviews were done on the four local landfills. These reviews entailed examining landfill financial records regarding payment of business taxes, Solid Waste Enforcement Fees, and Source Reduction and Recycling Fees. As a result of these audits, the City found that two landfills had apparently underpaid \$1.6 million in landfill taxes and fees, plus applicable interest and penalties.

Specifically, in June 1992, the City notified a former operator of Zanker Road Landfill of an apparent underpayment of \$840,000 in landfill fees and taxes, plus \$563,000 in penalties and interest, for the period of July 1989 through February 1992. In August 1997, this claim was settled for \$177,000. In June 1993, the City informed Guadalupe Rubbish Disposal Company, Inc., of an apparent underpayment of \$791,000 in landfill fees and taxes, plus \$433,000 in penalties and interest, for the period of July 1990 through June 1992. This matter is still pending.

The City Has Not Recently Audited Landfill Operators

As reported earlier, the ESD and Treasury review Disposal Facility Tax and Solid Waste Enforcement Fee remittance reports for mathematical correctness only. The City has not verified any of the reported amounts of waste accepted or diverted at the four local disposal facilities since June 1992. We could not find any evidence that the City audited or reviewed any solid waste disposal fee or tax payments for periods after June 1992. Municipal Code Section 4.78.470 requires that landfill operators keep and maintain records for no "*less than three years from the date such wastes were received or disposed of.*" As of September 1997, landfill operators may not have retained disposal tax records prior to September 1994; hence, the City may be unable to audit tax submittals made prior to that date.

The City's minimal monitoring of landfill operator payments has exposed the City to a potential loss of income because no one has audited the solid waste payments. Further, given the lack of landfill audits since 1992, record retention requirements have elapsed for disposal payments made prior to September 1994. In addition, the City's current oversight does not provide sufficient assurance that landfill operator payments are correct. Since no recent audits have been conducted, the ESD has no assurance that Disposal Facility Monthly Reports reconcile to actual landfill weight tickets.

The ESD staff who monitor landfills have acknowledged that the potential for error or fraud is large regarding the Disposal Facility Monthly Reports. Given the volume of solid waste landfilled and the amount of dollars involved, there is a potential and an incentive for landfill operators to underreport solid waste tonnages and underpay Disposal Facility Taxes. Even though the ESD expects solid waste revenues to decline by 5 percent by the year 2000, General Fund revenue from this tax would still be significant, at about \$17 million. In addition, the amount of solid waste landfilled has continued to increase, partly due to the growth in the local economy and population. Between 1992-93 and 1995-96, the amount of solid waste landfilled increased about 12 percent. Further, landfill operators told us that they

would welcome any audits from the City, in order to have assurance that everything was being appropriately reported. At a minimum, the information reported on Disposal Facility Monthly Reports should be traced to actual supporting documentation. Landfill audits are needed to determine if landfill operators have controls in place to capture disposal tonnages and properly and accurately identify materials that are exempt from the Disposal Facility Tax.

The ESD has an audit function in ASD, but the staff has not recently audited landfill tax receipts. On June 25, 1997, the Finance Committee directed the City Auditor's Office to conduct on-going revenue audits of transient occupancy taxes, franchise fees, parking fines and revenues, and other City revenues. Either ESD audit staff or the City Auditor's Office should regularly audit landfill tax receipts.

#3 We recommend that either the ESD, the Administration, or the City Auditor's Office regularly audit local landfill operators to ensure proper landfill tax receipts and appropriate reporting of tonnages. (Priority 2)

As reported earlier, the County collects the Countywide AB 939 Implementation Fee from landfill operators on behalf of jurisdictions located in Santa Clara County. The AB 939 fee is based on the amount of solid waste landfilled, as is the Disposal Facility Tax, Countywide Solid Waste Planning Fee, and State Integrated Waste Management Fee. According to a County Integrated Waste Management Program official, the County does not audit landfill operators for the payment of any solid waste disposal fees. The City should consider working with the County on sharing costs for auditing landfill operators.

#4 We recommend that either the ESD, the Administration, or the City Auditor's Office approach the County of Santa Clara Integrated Waste Management Program about the possibility of sharing audit costs for reviewing landfill disposal taxes and fees. (Priority 2)

In Lieu Of Audits, The ESD Is Relying On Aerial Topographical Analysis

The ESD staff told us that they have not audited landfill operators because they are awaiting the results of a consultant's study on disposal tax reconciliation. In June 1995, the City hired Camp Dresser & McKee, Inc. (CDM), an international engineering and consulting firm, to perform a Disposal Facility Tax reconciliation and a review of regulatory rate costs. According to the ESD staff, since 1989, the City had hired CDM to perform several annual business tax reconciliations using aerial photogrammetry, with the last analysis done in 1993. The original contract paid CDM \$49,000 to complete both the tax reconciliation and regulatory review by June 1997. On May 20, 1997, the City Council approved a \$50,000 amendment to the contract in order to continue the Disposal Facility Tax reconciliation and perform additional work. ESD staff have estimated that the Disposal Facility Tax reconciliation will cost about \$37,000.

According to the ESD staff, CDM will review aerial topography data from Newby Island Landfill, Kirby Canyon Recycling and Disposal Facility, Guadalupe Landfill, and Zanker Road Landfill to reconcile Disposal Facility Monthly Report data. The ESD staff told us that the results of CDM analysis will allow the City to determine if the payment data landfill operators report is reasonable. According to the CDM Project Manager, CDM analyzes topographical maps of the four landfills. The maps that CDM uses are based upon digitized aerial photographs that are taken one year apart and show the contours of the landfill. Using specialized software, the topographical information is converted to volumetric data which is converted to tonnage data. Next, the tonnage data, which is derived from the topographical maps, is compared to the Disposal Facility Monthly Report data for the same time period that landfill operators submit to the City. The project manager told us that this analysis does not cover individual transactions, internal controls, or reporting systems. CDM will evaluate 1994-95 landfill data. As of August 1, 1997, CDM delivered preliminary results to ESD for three of the landfills.

We spoke with various solid waste experts who told us that the results of aerial topographic analysis are not a precise measure of what was actually landfilled or necessarily an exact match of the reported tonnage. This type of analysis is a *ballpark* estimate of the volume of solid waste landfilled. All of the landfill operators that we met with expressed concern about the reliability of the results of this type of analysis.

According to the CDM project manager, differences between the CDM estimate of landfill tonnages and the disposal quantities the landfill operators report can be attributed to (1) landfill settlement of the base surface over the one year period analyzed results in underestimating the quantity of waste disposed, (2) overestimating the quantity of volume consumed by site roadways and material stockpiles, and (3) underestimating the density of waste fill. As a result, the City should not substitute aerial topographic analysis for audits of Disposal Facility Tax payments.

The City Is Precluded From Obtaining The Results Of California State Board Of Equalization Audits Of San Jose Landfill Operators

The State Board of Equalization (SBE) audits landfill operators for payment of the State Integrated Waste Management Fee, which is \$1.34 per ton of solid waste landfilled. According to an SBE auditor, landfills are audited to verify that all tonnage is reported. The auditor examines a sample of 2 or 3 percent of the transactions to determine if all the appropriate information is reported and reviews each line of the Integrated Waste Management Fee Return form. According to the auditor, the SBE has an annual screening process for identifying landfills to review. The SBE auditor did not indicate if any of the local landfills had been recently audited.

Kirby Canyon and Newby Island officials informed us that the SBE had recently audited their landfills in October 1996 and November 1996, respectively. A Kirby Canyon official informed us that an SBE auditor had examined a four-year period of transactions through 1996 and indicated that everything appeared in order. Similarly, a BFI official informed us that the

SBE audits Newby Island every three years and that an audit had recently been completed for transactions from September 1993 to September 1996. The BFI official told us that the SBE auditor had negligible findings regarding Newby Island.

We contacted SBE to see if we could obtain copies of the audit reports noted above. The SBE informed us that State law prohibited them from sharing audit results with us because such information was confidential. Specifically, SBE cited Revenue and Taxation Code section 45982:

Neither the California Integrated Waste Management Board, nor any person having any administrative duty under Part 9 (commencing with Section 15600) of Division 3 of Title 2 of the Government Code shall disclose the business affairs, operations, or any other proprietary information pertaining to a fee payer, except a fee payer which is a public agency, which was submitted to the board in a report or return required by this part, or permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not expressly authorized by Section 45981 or this section.

Nevertheless, the SBE informed us that they have entered into reciprocal agreements with revenue agencies of other states to share certain confidential taxpayer information. However, no such agreements currently exist with local jurisdictions.

#5 We recommend that either the ESD, the Administration, or the City Auditor's Office approach the State Board of Equalization about the possibility of developing a reciprocal agreement to share landfill audit results. (Priority 2)

In 1996, The City Did Not Properly Assess Up To \$170,856 In Late Fees And Interest Against Landfill Operators

The four landfill operators are required to submit to the City a Disposal Facility Monthly Report and pay a monthly Disposal Facility Tax and Solid Waste Enforcement Fee. Our review found that between July 1995 and October 1996, the Treasury Division failed to assess landfill operators up to \$171,000 in applicable penalties and interest for submitting late Disposal Facility Tax and Solid Waste Enforcement Fee payments. Kirby Canyon Landfill

made two late payments of \$467,000 each for January 1996 and March 1996. Zanker Road Landfill made the third late payment of \$25,600 for August 1996. Treasury did not notice the three late payments until we informed them of the delinquencies in December 1996. Treasury assessed penalties and interest against the landfill operators in February 1997. Subsequently, the landfill operators paid the penalties and interest in March 1997. Table 3 summarizes the penalties and interest that the landfill operators paid.

TABLE 3
TREASURY ASSESSED PENALTIES AND INTEREST
IN FEBRUARY 1997 AGAINST LANDFILL OPERATORS

Landfill Operator	Payment Month Of 1996	Days Late	Payment Amount	Penalty Rate	Penalty Amount	Interest Rate	Interest Due	Total Amount Due
Waste Management of California, Inc.	January	1	\$467,483	0.10	\$46,748	0.00*	0	\$46,748
Waste Management of California, Inc.	March	3	467,964	0.25	116,991	0.18	\$692	117,683
Zanker Road Resource Management, Ltd.	August	2	25,600	0.25	6,400	0.18	25	6,425
Total			\$961,047		\$170,139		\$717	\$170,856

* Municipal Code Section 4.78.260.A provides that if the payment is one day late, interest is not charged.

Source: Treasury Division.

Disposal Facility Tax penalty amounts are based on the number days the payment is late. If the payment is received within one business day of the due date, the penalty amount is 10 percent of the delinquent tax payment. If the Disposal Facility Tax is more than one day late, the penalty amount is 25 percent of the unpaid tax. In addition to the penalty, the landfill operator must pay interest calculated from the due date of the tax at a rate the City Council

establishes by resolution. According to the City Attorney's Office, the interest for late payments is one and one half percent or 18 percent per annum.

The San Jose Municipal Code Section 4.78.230 established the following payment requirements for owners of solid waste disposal facilities (i.e., landfill operators):

The operator of the solid waste disposal facility shall pay the disposal facility tax monthly to the director of finance. . . . The disposal facility tax shall be due on the last day of the month immediately following the month in which the solid waste is accepted at the disposal facility. . . . Any tax which is not paid on or before the due date shall be deemed delinquent.

Treasury considers Disposal Facility Tax and Solid Waste Enforcement Fees to be timely paid if the payment envelope is postmarked by the payment due date--the last day of the following month (unless the payment falls during a weekend day or holiday). The Municipal Code states that a payment is considered late if it is not postmarked by the due date and interest accrues until the Director of Finance receives it. Section 4.78.240 also established that *"the tax shall be deemed timely paid if . . . the envelope in which the tax is mailed bears a postage stamp showing cancellation on the due date."*

Section 4.78.260 specified the penalty for delinquent Disposal Facility Taxes as follows:

If the solid waste disposal facility operator fails to pay the disposal facility tax on or before the due date, the operator shall pay, in addition to the tax, a penalty in the amount of ten percent of the amount of the delinquent tax if payment is received by the director of finance within one business day of the due date. . . . If the disposal facility tax remains delinquent for more than one business day, the solid waste disposal facility operator shall pay, in addition to the tax, a penalty in an amount equal to twenty-five percent of the amount of the unpaid tax plus interest calculated from the due date of the tax at a rate established by resolution of the city council.

However, the Municipal Code does not appear to specify a penalty structure for the Solid Waste Enforcement Fee. Treasury has in practice applied the Disposal Facility Tax penalty structure to the Solid Waste Enforcement Fee. For example, as shown in Table 3 Treasury assessed \$171,000 for three late payments. The total delinquent amount of \$961,047

included \$77,151 in Solid Waste Enforcement Fees. The penalty and interest Treasury imposed on that amount was \$16,288.

#6 We recommend that the City Attorney's Office review Treasury's practice of assessing penalties and interest on late Solid Waste Enforcement Fee payments and determine if special Municipal Code provisions are required. (Priority 2)

According to Treasury staff, the account clerk who processes the payment is supposed to verify timeliness by checking the U.S. postmark date on the payment envelope, which is saved and placed in the vendor's file. If the Treasury Account Clerk determines a payment's postmark date is past the due date, the account clerk is supposed to inform a Treasury Investigator that a late penalty should be assessed. The Treasury Investigator then follows up with the landfill operator regarding the penalty.

However, our review revealed that these informal procedures were not being followed. As a result, Treasury was not aware that late penalties needed to be assessed against Zanker Road Landfill and Kirby Canyon Recycling and Disposal Facility.

#7 We recommend that the Finance Department develop guidelines and written procedures that assign responsibilities for processing Disposal Facility Tax and Solid Waste Enforcement Fee payments, and include the process for determining timeliness and assessing appropriate penalties and interest. (Priority 2)

A contributing factor to why the landfill operators were late in submitting payments may be the absence of a due date and penalty fee reminder on the monthly report form. The Disposal Facility Monthly Report form, unlike the County of Santa Clara Landfill Facility Quarterly Reporting and Fee Remittance Form, does not include the payment due date and an explanation of late payment penalty fee amounts. Since some of the landfill operators have their computer

systems setup to print out the Disposal Facility Monthly Report forms, the City should consult with the landfill operators prior to making any changes to the forms.

#8 We recommend that the ESD include the payment due date and an explanation of late payment penalties on the Disposal Facility Monthly Report form and consult with landfill operators prior to making any changes to the form. (Priority 3)

**ESD Has Not Documented Its Procedures
For Claiming Over \$800,000 Per Year From The County
In Countywide AB 939 Implementation Fees**

In 1995-96, the City received from the County over \$830,000 in AB 939 revenue. According to the ESD staff, there are no set guidelines or procedures that document the process for preparing and submitting AB 939 claims to the County. The AB 939 fee is collected on behalf of jurisdictions in the County and distributed to them for the purposes of funding jurisdiction-specific program requirements for meeting AB 939 requirements. The AB 939 City/County agreement specifies that within 60 days of the end of each quarter, each participating jurisdiction shall submit a completed claim form to the County Integrated Waste Management Program for its share of AB 939 revenue that originated from that city. That is, the City claims an AB 939 fee of \$1.30 per ton of solid waste landfilled that originated in San Jose. The County is required to distribute the fee within 45 days of the due date of a jurisdiction's claim to the County.

According to the ESD staff, IWM submits quarterly claims to the County for reimbursement of the portion of AB 939 fees attributed to the City. The ESD staff uses data from Disposal Facility Monthly Reports, which landfills use to pay their landfill taxes to the City, to prepare the County claim forms. The ESD staff person, who submits the claim to the County, told us that the final amount of the claim is unknown because the County distributes additional

tonnage from unknown sources. Only one person at the ESD has the responsibility for preparing AB 939 claims.

We documented that the ESD has procedures for processing incoming checks in the mail, which include the AB 939 payments from the County. According to the ESD Senior Account Clerk, these procedures are followed for processing AB 939 checks received quarterly from the County. The ESD should also have procedures that document the process for preparing, submitting, and reconciling County AB 939 fees. If the staff person who prepares the claims is unavailable, another ESD staff person should, by following these procedures, be able to prepare the Countywide AB 939 claims.

#9 We recommend that the ESD document its procedures for preparing Countywide AB 939 claims. (Priority 3)

CONCLUSION

In 1995-96, the City received over \$20 million per year in Disposal Facility Tax, Solid Waste Enforcement Fee, and AB 939 revenue from landfill operators. Our review revealed that various opportunities exist for landfill operators to underreport taxes and fees due to the City, and that the City only reviews these tax payments for mathematical correctness. We also found that the City has not audited these payments since June 1992, and is precluded from obtaining SBE landfill audit results. In addition, we found that the City did not properly assess up to \$170,000 in late fees and penalties against landfill operators, and that Finance needed to document its procedures for processing solid waste disposal taxes. In our opinion, the Administration should improve its documentation for mathematical correctness reviews of solid waste disposal facility taxes and fees, and develop written procedures for claiming Countywide AB 939 Implementation Fees and processing solid waste disposal taxes and fees. In addition, the City Attorney's Office should review Treasury's practice of assessing penalties and

interest on late Solid Waste Enforcement Fee payments and determine if special Municipal Code provisions are required. Further, the Finance Department should develop guidelines and written procedures for processing Disposal Facility Tax and Solid Waste Enforcement Fee payments. Additionally, the ESD should incorporate late payment information on the Disposal Facility Monthly Report form. Finally, either the ESD, the Administration, or the City Auditor's Office should conduct regular audits of landfill operators, and establish a reciprocal agreement with the County and/or the SBE regarding audit activities. By so doing the City will have added assurance that it is receiving all of the solid waste disposal facility taxes and fees to which it is entitled and improve its control over \$20 million in annual revenues.

RECOMMENDATIONS

We recommend that the Finance Department:

Recommendation #1:

Document that it verifies the mathematical correctness of all Disposal Facility Monthly Reports to ensure the Disposal Facility Tax and Solid Waste Enforcement Fees are correctly calculated. (Priority 2)

In addition, we recommend that the ESD and the Finance Department:

Recommendation #2:

Eliminate duplicative mathematical steps when processing Disposal Facility Tax and Solid Waste Enforcement Fee payments. We also recommend that the ESD and the Finance Department revise the Finance Administrative Manual to include updated procedures for processing the Disposal Facility Tax and Solid Waste Enforcement Fee. (Priority 2)

Also, we recommend that either the ESD, the Administration, or the City Auditor's Office:

Recommendation #3:

Regularly audit local landfill operators to ensure proper landfill tax receipts and appropriate reporting of tonnages. (Priority 2)

Recommendation #4:

Approach the County of Santa Clara Integrated Waste Management Program about the possibility of sharing audit costs for reviewing landfill disposal taxes and fees. (Priority 2)

Recommendation #5:

Approach the State Board of Equalization about the possibility of developing a reciprocal agreement to share landfill audit results. (Priority 2)

Further, we recommend that the City Attorney's Office:

Recommendation #6:

Review Treasury's practice of assessing penalties and interest on late Solid Waste Enforcement Fee payments and determine if special Municipal Code provisions are required. (Priority 2)

Also, we recommend that the Finance Department:

Recommendation #7:

Develop guidelines and written procedures that assign responsibilities for processing Disposal Facility Tax and Solid Waste Enforcement Fee payments, and include the process for determining timeliness and assessing appropriate penalties and interest. (Priority 2)

Finally, we recommend that the ESD:

Recommendation #8:

Include the payment due date and an explanation of late payment penalties on the Disposal Facility Monthly Report form and consult with landfill operators prior to making any changes to the form. (Priority 3)

Recommendation #9:

Document its procedures for preparing Countywide AB 939 claims. (Priority 3)

CITY OF SAN JOSÉ - MEMORANDUM

TO: Gerald A. Silva
City Auditor

FROM: Darrell Dearborn
Senior Deputy City Manager

SUBJECT: SEE BELOW

DATE: September 4, 1997

RECEIVED

SEP 03 1997

APPROVED:

DATE:

CITY AUDITOR

SUBJECT: RESPONSE TO REVIEW OF THE CITY OF SAN JOSE'S LANDFILL FEES
AND TAXES

The Administration has reviewed the City Auditor's report entitled "*A Review of the City of San Jose's Landfill Fees and Taxes,*" and concurs with all of the substantive recommendations in it.

Our response to specific recommendations follows:

Recommendation #1

The Finance Department document that it verifies the mathematical correctness of all Disposal Facility Monthly Reports to ensure the Disposal Facility Tax and Solid Waste Enforcement Fees are correctly calculated. (Priority 2)

The Administration concurs with this recommendation. The revised reporting form developed by the Finance and ESD staff provides for the verification of the mathematical calculations.

Recommendation #2

That ESD and the Finance Department eliminate duplicative mathematical steps when processing Disposal Facility Tax and Solid Waste Enforcement Fee payments. We also recommend that ESD and the Finance Department revise the Finance Administrative Manual to include updated procedures for processing the Disposal Facility Tax and Solid Waste Enforcement Fee. (Priority 2)

The Administration concurs with this recommendation. The Finance Department is currently updating the procedures regarding the processing of the Disposal Facility Tax and the Solid Waste Enforcement Fees.

Recommendation #3

That ESD, the Administration, or the City Auditor's Office regularly audit local landfill operators to ensure proper landfill tax receipts and appropriate reporting of tonnages.

The Administration concurs with the need for regularly auditing local landfill operators to ensure proper tax receipts and appropriate reporting. The City Charter provides, in part, that the responsibility of the Finance Director is to, "verify cash receipts." Accordingly, Mr. Guthrie has been directed to prepare a work plan and time frame for implementing this recommendation. The Administration will advise the Finance Committee at its meeting of October 8, 1997, as to how that work plan will be implemented and whether additional resources may be needed.

Recommendation #4

That ESD, the Administration, or the City Auditor's Office approach the County of Santa Clara Integrated Waste Management Program about the possibility of sharing audit costs for reviewing landfill disposal taxes and fees. (Priority 2)

The Administration concurs with the recommendation. The Administration will pursue cost sharing with the County.

Recommendation #5

That ESD, the Administration or the City Auditor's Office approach the State Board of Equalization about the possibility of developing a reciprocal agreement to share landfill audit results. (Priority 2)

The Administration concurs with the recommendation. The Administration recommends that the City Attorney's Office approach the State Board of Equalization regarding a reciprocal agreement.

Recommendation #6

That the City Attorney's Office review Treasury's practice of assessing penalties and interest on late Solid Waste Enforcement Fee payments and determine if special Municipal Code provisions are required. (Priority 2)

The Administration concurs with the recommendation.

Recommendation #7

That the Finance Department develop guidelines and written procedures that assign responsibilities for processing Disposal Facility Tax and Solid Waste Enforcement Fee payments, and include the process for determining timeliness and assessing appropriate penalties and interest. (Priority 2)

The Administration concurs with the recommendation. The Finance Department is currently in the process of documenting these procedures.

Recommendation #8

That ESD include the payment due date and an explanation of late payment penalties on the Disposal Facility Monthly Report form and consult with landfill operators prior to making any changes to the form. (Priority 3)

The Administration concurs with the recommendation. The revision of the Disposal Facility Monthly Report form is being accomplished, by the Finance Department, ESD and Planning, Building and Code Enforcement. The Finance Department will maintain the responsibility for administering and determining the timeliness, accuracy and assessment of appropriate fees for Disposal Facility Tax and the Solid Waste Enforcement Fees. ESD will maintain the responsibility for the DFT tonnage reporting and the Planning, Building and Code Enforcement Department will maintain the responsibility for the Solid Waste Enforcement Fee reporting.

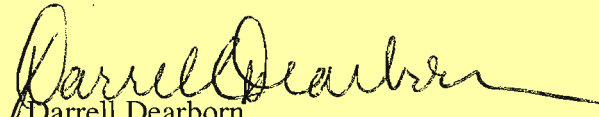
Recommendation #9

That ESD document its procedures for preparing Countywide AB939 claims. (Priority 3)

The Administration concurs with this recommendation. ESD has completed the documentation of these procedures.

As a final comment on the Review, it should be noted that report characterizes Disposal Facility Tax revenue not received by the City, because of recycling and other material diversions, as "forgone" to the General Fund. To be clear, this revenue is, by policy, not paid to the City as an incentive to reduce landfilled material, whether by recycling, diversion or composting. It is no more "forgone" than water system revenue not received do to ultra low flow toilets or other water conservation measures. We certainly agree, however, that eligibility for exemption from the Tax should be verified.

The Administration would like to thank the City Auditor's office for the work performed on this audit.


Darrell Dearborn
Senior Deputy City Manager

APPENDIX A

**DEFINITIONS OF PRIORITY 1, 2, AND 3
AUDIT RECOMMENDATIONS**

The City of San Jose's City Administration Manual (CAM) defines the classification scheme applicable to audit recommendations and the appropriate corrective actions as follows:

Priority Class¹	Description	Implementation Category	Implementation Action³
1	Fraud or serious violations are being committed, significant fiscal or equivalent non-fiscal losses are occurring. ²	Priority	Immediate
2	A potential for incurring significant fiscal or equivalent fiscal or equivalent non-fiscal losses exists. ²	Priority	Within 60 days
3	Operation or administrative process will be improved.	General	60 days to one year

¹ The City Auditor is responsible for assigning audit recommendation priority class numbers. A recommendation which clearly fits the description for more than one priority class shall be assigned the higher number. (CAM 196.4)

² For an audit recommendation to be considered related to a significant fiscal loss, it will usually be necessary for an actual loss of \$25,000 or more to be involved or for a potential loss (including unrealized revenue increases) of \$50,000 to be involved. Equivalent non-fiscal losses would include, but not be limited to, omission or commission of acts by or on behalf of the City which would be likely to expose the City to adverse criticism in the eyes of its citizens. (CAM 196.4)

³ The implementation time frame indicated for each priority class is intended as a guideline for establishing implementation target dates. While prioritizing recommendations is the responsibility of the City Auditor, determining implementation dates is the responsibility of the City Administration. (CAM 196.4)