



- *Accountability*
- *Transparency*
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Operational Review

Montgomery-Otsego-Schoharie Solid Waste Management Authority

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Executive Summary

**Purpose and
Authority:**

The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. This includes rendering conclusions and opinions regarding the performance of public authorities and assisting these authorities improve management practices and the procedures by which their activities and financial practices are disclosed to the public. Our operational review of the Montgomery-Otsego-Schoharie Solid Waste Management Authority was performed in May and June of 2010 and was conducted in accordance with our statutory authority and compliance review protocols which are based on generally accepted professional standards. The purpose of our review was to provide an objective determination of the effectiveness of the Authority, its ability to meet its statutory mission and public purpose, and make any necessary recommendations to improve business practices.

**Background
Information:**

The Montgomery-Otsego-Schoharie Solid Waste Management Authority (Authority) was established in 1987 as a public benefit corporation pursuant to Title 13-AA of Public Authorities Law to manage the disposal of solid waste for the counties of Montgomery, Otsego and Schoharie (Counties). The Authority is governed by an eight member Board and its daily operations are managed by the Authority's Executive Director. Its primary source of revenue comes from waste disposal fees charged to private haulers, and from county subsidies. For the fiscal year ending December 31, 2009, the Authority generated approximately \$9.28 million in revenue from user fees, while expenses totaled approximately \$10.66 million. Pursuant to a written agreement with the Authority, the Counties are responsible for ensuring that all solid waste generated within the Counties is delivered to the Authority. As an incentive to haulers, the Counties subsidize a portion of the tipping fee charged by the Authority. For 2009, the total amount of subsidies paid by the Counties was \$1.6 million, which enabled the Authority to meet its operating costs. In December 2009, the Authority defeased its bonds and as of 2010 has no bonds outstanding.

Results:

This review found that the Authority has not achieved the purposes for which it was created. It did not implement and execute a comprehensive solid waste management plan that is cost effective and efficient. The Board has continuously fallen short of its fiduciary duty to exercise the proper diligence, care and skill that is expected of a public authority board. The Authority's implementation of its business model, its rate structure and its disregard for the service agreement it has with the Counties has led to operating costs and rates that are unsustainable given the volume of solid waste being generated in the Counties and delivered to the Authority's facilities. Given these findings and conclusions, we recommend that the Counties review the purpose and operations of the Authority and determine if the Authority continues to provide a public benefit to the service area. Since the Authority no longer has outstanding debt, its service agreement with the Counties expires in 2014, and it has an agreement with the Counties to place the long-term maintenance and monitoring obligations of the landfills under the control of the Counties, the dissolution of the Authority may be a viable option.

The Authority was created to plan and operate solid waste management services for the Counties that are comprehensive and integrated, cost effective, safe and environmentally sound, and guided by State and federal policy to reduce, reuse and recycle solid waste. We found that the Authority did develop a Solid Waste Management Plan that promoted waste reduction, reuse and recycling, and called for the operation of a recycling facility and construction of a regional solid waste landfill to accommodate the disposal of solid waste. At the same time, the Authority has failed to execute this Plan and has abdicated responsibility for many of the activities it was charged with performing. We also believe that the Authority's current policies and actions and the persistent dysfunction of the Board significantly increase the costs of the waste management services in these Counties.

Accordingly, it is our conclusion that the Authority is failing to achieve its intended purpose and that the Board's actions are frequently inconsistent with the best interests of the Authority. The Board concurs with our understanding, as Board members indicated that they do not believe that the Authority has fully met its mission. They cannot agree how or whether it should meet that mission in its entirety. We also found certain actions of the Board to be counterproductive. The Authority establishes Guaranteed Annual Tonnage (GAT) estimates for the Counties that are less than what was indicated in the original service agreement, and are not based on objective measures. The

Board revised this estimate downward during 2009 although not authorized to do so under the service agreement. These revised GAT estimates drive higher and less competitive rates to haulers, resulting in the need for subsidies from the Counties. We also found that the Board has no written employment contract with its Executive Director and failed to address certain health and safety issues at the Authority's transfer stations that were identified by the Department of Labor.

Authority officials responded that it is appropriate for the Counties to evaluate the future of the Authority as a matter of due diligence, and that any consideration given to dissolving the Authority must also weigh the benefits of having a regional approach to solid waste disposal and the costs to the Counties of providing solid waste management services individually. Authority officials further state that they believe the Authority has made operating improvements since 2009 through the defeasance of its bonds, increasing services at certain transfer stations and reducing costs, and that they are concerned that this report does not adequately address the changes that have occurred since new management has been put in place. We disagree. We acknowledge that fees have been reduced as a result of defeasing bonds. However, the Authority's data does not support that increased services at certain transfer stations has resulted in operating improvements.

Moreover, we do not believe that the appointing Counties and the appointed board members are likely to place the Authority's interests above the interests of the individual counties. Authority Board members indicate that some board members do not share this belief, and that current board members should not be held accountable for the decisions made by prior board members.

Introduction and Background of the Authority

The Montgomery-Otsego-Schoharie Solid Waste Management Authority (Authority) was established in 1987 pursuant to Title 13-AA of Public Authorities Law to plan and operate regional solid waste management services in Montgomery, Otsego and Schoharie counties (Counties). The Authority was authorized to collect, process, transport, and recycle solid waste and to develop, purchase and construct resource recovery facilities.

To accomplish this, the Authority developed a Solid Waste Management Plan (Plan) that describes several activities the Authority is to perform as part of its mission. In accordance with the Plan, the Authority issued approximately \$40.3 million in bonds to acquire two landfills in Montgomery County, as well as two transfer stations, a recycling facility and a construction and demolition debris landfill in Otsego County. The bond proceeds were also used to construct three new transfer stations in Montgomery and Schoharie counties, purchase required capital equipment and rehabilitate administrative offices. The Authority also conducted a site selection study for a new regional landfill. However, the Authority decided not to carry out several provisions outlined in the Plan, such as the construction of the regional landfill and operation of a recycling facility and programs. Currently, Authority services consist primarily of operating five transfer stations that receive, consolidate and accumulate residential and commercial waste before it is transported to landfills by a private hauler. Further, the Authority has returned recycling activities to the Counties and private enterprises.

Due to regulations on municipal landfills issued by the Department of Environmental Conservation in the early 1990s, the Authority assumed the responsibility for the closure, monitoring and maintenance of the three landfills that it acquired. In December 2009, the Authority and the Counties established a post-closure and maintenance agreement that places the long-term obligation for monitoring and maintaining the closed landfills with the Counties. This enabled the Authority to access certain financial reserves which it utilized to defease its outstanding debt of \$11.15 million. As of 2010 the Authority has no outstanding debt.

The Authority has a service agreement with the Counties in effect until 2014 that defines the roles and responsibilities of each party and provides assurance that any debt obligations and operating expenses of the Authority are met. The agreement also requires that all solid waste generated in the Counties be delivered to the Authority's transfer stations and requires the Counties to annually deliver a guaranteed amount of waste called the Guaranteed Annual Tonnage (GAT). If a county falls short of the estimated GAT in a given year it is obligated to pay a shortfall surcharge. As an incentive to meet these GAT

obligations, the Counties pay a portion of the fees charged to private haulers to encourage haulers to deliver solid waste to the Authority's facilities.

The Authority operates on a January 1 fiscal year and its primary source of revenue consists of tipping fees charged to haulers when waste is delivered to its facilities. These revenues totaled \$9.28 million for 2009. The Authority's total operating costs in 2009 were \$10.66 million. The Counties' \$1.6 million subsidy payments allowed the Authority to meet this gap and net \$200,000 in operating income.

As of April 2010 the Authority had 23 full-time employees and 9 part-time employees, with total personnel service costs of \$1.73 million. Staff of the Authority are responsible for operating and managing the transfer facilities, including operating the weigh scale, transporting certain material, monitoring and maintaining closed landfills, providing building and grounds maintenance and performing financial management and administrative services.

The Authority is governed by an eight member Board of Directors. Three Board members are appointed by the Montgomery County Board of Supervisors, three are appointed by the Otsego County Board of Representatives, and two are appointed by the Schoharie County Board of Supervisors. Members serve four year terms.

Compliance Review Objectives

The Authorities Budget Office (ABO) is authorized by Title 2 of Public Authorities Law to conduct reviews and analyses of the operations, practices, and reports of public authorities to assess compliance with New York State laws. Our operational review was conducted to determine the effectiveness of the Authority's Board and if the Authority's operations support its mission and public purpose.

Compliance Review Scope and Methodology

Our compliance review was conducted in May and June of 2010, and covered selected Authority operations for the period January 1, 2005 through August 2010. Our review focused on the effectiveness of the governing Board and Authority management and the operations of the Authority. Specifically, we reviewed:

- The statutory purpose of the Authority and its mission statement
- Effectiveness of the Authority's Board and its operations
- Board duties, committee involvement, and independence
- Board and committee meeting minutes
- Organizational structure of the Authority
- Revenues, expenditures and outstanding bond obligations
- Internal control structure of the Agency
- Policies and procedures required under the Act, Public Authorities Law, Public Officers Law, and State Finance Law
- Policies and procedures indicative of good governance practices
- Procurement, cash and investments practices
- Independent financial audits and other reports

In addition to reviewing documents and records, we interviewed Authority management, staff, and Board members; attended committee meetings and a Board meeting; and performed other testing we considered necessary to achieve our objectives. Our report contains recommendations to improve the effectiveness of the operations of the Authority. The results and recommendations of our review were discussed with Authority management and Board members, and their comments have been considered and are reflected in this report where appropriate.

Review Results

The Authority is failing to fully meet its statutory public purpose and mission. The Authority was established to collect and dispose of solid waste generated in the Counties (or service area). The Authority's mission is to plan and operate solid waste management services that are comprehensive, integrated, cost effective, safe and environmentally sound, and guided by State and federal policy to reduce, reuse and recycle solid waste. However, our review found that, while the services provided by the Authority do address portions of its mission, the Authority is not fulfilling its purpose and is not meeting its mission in its entirety.

We found that the Authority did develop a Solid Waste Management Plan (Plan) in 1991. The Plan contains several specific activities that the Authority was to undertake. These activities are to facilitate waste reduction, reuse and recycling; operate a material recovery facility and a sludge composting facility; and construct and operate a regional solid waste landfill. Of the total debt of \$43 million issued by the Authority, almost \$19 million was used to initiate these activities. The remainder was for acquisition and improvement of the properties from the Counties.

Since adopting the Plan, which remains in effect at this time, the Authority has not carried out the activities it had planned to perform. For example, the Plan states the Authority is to support waste reduction, reuse and recycling. In the early 1990s, the Authority developed brochures to promote these programs and distributed this information throughout the Counties. However, the Authority subsequently discontinued this practice and no longer has an education or outreach program in place to support waste reduction, reuse and recycling in the service area. Instead, the Authority has relinquished this responsibility, and relies on the municipalities within the Counties to independently develop and manage these programs.

The Plan also states that the Authority was to operate a recycling facility to market recyclable materials collected from the Counties. In the early 1990s the Authority did acquire a recycling facility. While the Plan envisioned that the Authority would coordinate and manage a recycling program for the three Counties, this has never been the case. Only two counties opted to utilize the recycling facility and no comprehensive program was ever established. Today, the Authority no longer operates a facility, and each county is responsible for establishing and managing its own recycling programs.

The Plan states that the Authority should construct and operate a regional solid waste landfill to accommodate the disposal of solid waste. The Authority used some of its bond proceeds to conduct site studies to identify the most appropriate location for the landfill, to develop designs for the landfill and to obtain the

necessary permits for its operations. However, the Authority has made the decision to abandon this effort and never constructed the regional landfill. There is currently no active solid waste landfill within the Counties, and all solid waste generated must be disposed of in other landfills throughout the State.

The Plan also states that the Authority should operate a sludge composting facility. However the Authority has never implemented this provision. Board members stated that this provision was not implemented because the City of Amsterdam had made plans to operate a sludge composting facility. However, the City of Amsterdam did not construct such a facility and the Authority did not revisit its decision.

Waste management is the collection, transportation, processing, recycling or disposal, and monitoring of waste material. This is generally accomplished by private companies or municipal workers (haulers) collecting residential and commercial solid waste at the source, consolidating it at transfer stations and transporting it to a disposal facility, such as a landfill. However the Authority's current role consists primarily of operating five transfer stations. The Authority contracts with one company to collect and dispose of the waste delivered to these stations. Source collection, processing and recycling services are performed by other private haulers without any involvement of the Authority. The extent of the Authority's services is limited to accumulating, storing and consolidating the solid waste until it is transported to a landfill. Although the Authority allows for the recycling of tires, appliances, metal and wood at its transfer stations, there are no additional comprehensive services provided by the Authority throughout the service area that add value to the current waste management services plan.

The Authority's implementation of its business model is ineffective and counterproductive. To ensure that solid waste disposal is managed appropriately and that the Authority receives adequate revenue to meet its debt service and operating costs, the Authority entered into a service agreement with the Counties. The service agreement requires the Counties to ensure that 95 percent of all solid waste generated is delivered to the Authority (the Guaranteed Annual Tonnage (GAT)), and requires the Authority to inform the Counties how much solid waste it expects to receive. This GAT target is to be based on the Authority's operating history or other reliable data, such as demographic studies. The service agreement also specifies that the Counties must pay a shortfall surcharge should they fail to meet these GAT targets. The Authority's Solid Waste Management Plan estimated the total amount of waste generated in the service area, based on historical data, to be approximately 120,000 tons annually. Pursuant to the service agreement, the Counties combined GAT would be approximately 114,000 tons annually. The Authority uses the GAT and its projected operating costs to calculate the fee to be charged to haulers. This fee should be set at a rate sufficient to meet its operating costs.

Authority officials responded that this estimate of solid waste generated was established twenty years ago, and that changes have occurred in the interim that have affected the amount of solid waste generated in the service area, such as loss of industry and reduced population. However, we found that the Authority does not consider these factors when setting the GAT, and instead sets the GAT based primarily on the amount of solid waste that was received in prior years. Basing the GAT on prior years' deliveries could result in reducing the Counties' incentive to ensure that all waste generated is delivered, since any diverted waste results in a reduction of the GAT in subsequent years, which results in potentially lower surcharges. Objective measurements have been developed which could be used to estimate the amount of solid waste generated based on population, which Authority officials indicate is one criterion that should be used to establish the GAT. However, the Authority does not use these measurements to estimate the amount of solid waste the Counties are expected to generate and the Authority is expected to manage, which also drives its fee schedules.

The Board uses a three year rolling average of solid waste delivered to the transfer stations, adjusted for anomalies, to establish the GAT. This methodology does not consider how much solid waste the Counties could be reasonably expected to generate. This has resulted in annual GAT estimates that are routinely below the 114,000 tons calculated from the amount identified in the solid waste management plan: for 2008 the Board established the GAT at 107,665 tons; for 2009 the Board established the GAT at 102,283 tons; and for 2010 the Board established the GAT at 97,169 tons. During the same period, the Authority's operating costs, excluding debt service payments, increased by 7 percent. Setting a GAT target below the amount identified by the service agreement at the same time operating costs have been increasing has resulted in artificially higher rates for haulers that are not competitive with other rates outside the service area. This approach produced a fee of \$104 per ton in 2008, and \$106 per ton in 2009. The Authority was able to reduce the 2010 fee to \$86 a ton due to defeasing its bonds and eliminating debt service payments. Despite this reduction, the 2010 rate is still above that charged by other landfills and disposal sites in upstate New York. Board members stated that they believe that this methodology is more accurate than the use of objective measures, since they believe that any measures available are simply based on estimates.

Authority officials responded that they have taken steps to reduce operating costs, such as making adjustments in staffing, reducing its insurance costs, and re-opening one of the transfer stations. Authority officials also anticipate that a new contract in 2011 for transporting and disposing of solid waste may enable the Authority to further reduce its rate. However, we reviewed data provided by management and found that these claims may not be accurate. While the cost of insurance does appear to have been reduced, the expansion of one of the transfer stations appears to have reduced operating efficiency. In 2009, this transfer station received \$3.45 for every dollar spent operating it, the most efficient of all the Authority's transfer stations. However, for the first seven

months of 2010, after increasing its hours of operations, the Authority has received only \$1.33 for every dollar spent on operating this transfer station, a 61 percent reduction. This compares to an overall reduction of 17 percent among all transfer stations: for 2009, the Authority received \$1.48 for every dollar spent operating all the transfer stations, but for the first seven months of 2010, the Authority has received only \$1.22 for every dollar spent operating all the transfer stations.

We found that the Board also re-adjusted the GAT amount downward during 2009 in recognition of the fact that the Counties would not meet the initial GAT targets. Despite this adjustment, shortfalls in the solid waste delivered to the Authority resulted in the Counties paying surcharges totaling \$1.5 million for 2008 and 2009. Although obligated to pay a surcharge, re-adjusting the GAT downward allowed the Counties to save money at the expense of revenue otherwise owed to the Authority under terms of the service agreement. Again, Authority officials attributed this reduction in the 2009 GAT to the loss in industry, therefore a decline in commercial waste, and reduction in population. However, although the Board indicated that they discussed these issues in reducing the GAT, the methodology used by the Authority to adjust the GAT figure did not use any objective measures of reduced industry or population. Moreover, the service agreement stipulates that the GAT be established each calendar year, and does not have provisions for changing the GAT mid-year. Authority officials indicate that while the service agreement does not have provisions for changing the GAT mid-year, it is not prohibited by the service agreement.

Further, the Board recently decided to change how shortfall surcharge payments are calculated, which will result in lower payments from the Counties, and providing further disincentive to meeting the GAT thresholds. We believe these actions circumvent the intention of the service agreement, which is to provide sufficient revenues to meet the Authority's obligations. This methodology presents a conundrum to the Board that has undermined the Authority's business model. Lower GAT thresholds can result in lower shortfall surcharges to the Counties, but result in lower operating revenues to the Authority, higher rates to haulers, and increased subsidies paid by the Counties. Authority officials stated that this change will still cover operating costs and that it is incorrect to say that these actions circumvent the service agreement. However, we believe the intent of the original service agreement was not just to cover costs but to provide incentive to the Counties to ensure that all waste generated is delivered to the Authority. This is accomplished by maximizing the penalty for not meeting the GAT; the service agreement stipulates that the surcharge will be based on the highest tipping fee established for the year. We believe that the Board's decision to revise how shortfall surcharges are calculated is an example of the Board failing in its fiduciary duty to the Authority, and instead being more concerned with representing the financial interests of the member Counties.

While the fees charged to haulers need to be set at a level sufficient to cover the Authority's costs, they also need to be competitive with other disposal facilities to discourage haulers from diverting waste collected in the Counties to other locations where fees are lower. The Authority has not set its fees to meet this simple business principle. We compared the Authority's fee to the fee charged by neighboring counties or solid waste management organizations and found that nearby facilities generally have lower fees. These fees ranged from \$40 per ton to \$72 per ton. Therefore, as an incentive for the haulers to deliver waste to the Authority, each of the Counties has agreed to subsidize a portion of the fee charged to private haulers. For 2008 and 2009, the Counties paid a total of \$3.5 million in subsidies. This subsidy may discourage the Counties from ensuring that all waste is delivered to the Authority, since the more waste that is delivered the higher the Counties' subsidy payments.

We found that the Counties are allowing haulers to dispose of solid waste outside the service area. While potentially saving the Counties money, this practice reduces revenue to the Authority. The Authority is aware of this but has not taken any action to hold the Counties accountable. For example, the Authority's 2010 GAT Report estimates that 12,000 tons of solid waste (12 percent of the total waste) will be diverted from the service area during the year. In effect, the Authority's implementation of its business model penalizes the Counties if they fail to meet GAT targets, and penalizes them if they exceed the terms of the service agreement and direct all of their solid waste to the Authority. Authority officials responded that its new management team is working with a different business model, which is intended to provide competitive rates and meet the needs of the rural community. However, we observed current management practices in place, reviewed current and prior board meeting minutes, and reviewed current and past methodologies for calculating the GAT, and did not see any evidence of a new business model approved by the Board put into practice. While the change in management may have resulted in a change in management style, we do not believe that this equates to a new business model.

We found that the Authority's existence significantly increases the cost of waste management services in the Counties. For example, if the Authority was not in place, waste would be collected by haulers, consolidated at municipal or private transfer stations and then disposed in landfills throughout the State. Haulers would pay the landfill owner a set fee to dispose of the waste. However, with the Authority, waste is collected by haulers and transported to the Authority's transfer stations. The haulers pay the Authority to accept and hold the waste. The Authority then contracts with a hauler to transport the waste from the transfer stations to private landfills throughout the State. This hauler must pay the landfill owner to accept the waste, and recovers this cost in the rate it charges the Authority, which was \$62 per ton in 2009. Based on the amount of waste provided by the Counties in 2009, if the Counties paid \$62 per ton to directly dispose of the waste, the total costs of solid waste management would be less than \$6 million (\$4 million less than current costs of solid waste management).

This is also supported by an independent consultant study that was recently completed at the request of the Counties. This study found that if the Counties provided the same level of services being provided by the Authority, the total cost of the subsidy expenses incurred by the Counties would be about \$500,000, or significantly less than the current amount of the subsidies they provide. Authority officials indicated that there could be additional costs borne by the Counties, other than simply transportation and disposal costs.

The Board is ineffective and has not demonstrated an ability to correct its management deficiencies, or act in concert in the best interest of the Authority. We interviewed each Board member to discuss the Authority's mission and operations. All Board members generally agreed that the stated mission of the Authority was appropriate, and that they have not fully met that mission. Although Board members agree that the Authority is not meeting its mission, they have not taken any actions to correct this lack of direction. We found that Board members cannot agree on how they should achieve the mission or whether that mission should be achieved in its entirety. This demonstrates that the Board is incapable of setting a strategic vision for the Authority, effectively overseeing management, or establishing the performance and policy objectives that executive management is expected to meet. Authority officials responded that the diverse background of individual board members provides the opportunity for thorough dissection of issues and perspectives, and that they are striving to move the Authority forward. We agree that board diversity might be considered a benefit; however the Board has consistently demonstrated that it is unable to use its diversity to reach a consensus and take effective action.

We found that actions taken by the Board are often counterproductive and serve to undermine the business model that is established by the service agreement. We believe that this is due, in part, to Board members acting as representatives of the respective appointing counties rather than fulfilling their fiduciary duties as independent Board members. As a result, the Board has demonstrated that it is unable to act in the best interest of the Authority. This conflict is further compounded when Board members hold public positions in the Counties which they represent, as is the case with four of the eight Board members at the time of our review. We believe that holding a public position, especially an elected office, and serving on the Board of an Authority that serves multiple political jurisdictions can compromise the objectivity and independence that is required of Board members. We further believe that the failure of the Board members to act with duty, loyalty and care for the Authority is due, to some extent, to a lack of understanding of this fiduciary duty by the appointing authorities. Historical information on the Authority provides numerous examples where County officials state their belief that Board members are expected to act solely in the interest of the respective municipality which appointed the member.

We identified several examples where the Board failed to fulfill its fiduciary duty to the Authority. The Authority was notified in 2007 by its insurance company

and the State Department of Labor that it needed to improve safety conditions at two of its transfer stations. The Authority subsequently solicited proposals and spent \$50,000 for engineering services to design and prepare specifications and bidding documents to address these safety concerns. However, a corrective action plan has not been implemented. Although Authority officials indicated that the risk factors have been reduced, and that more cost-effective solutions are still being explored, a Board member stated that the safety issue still exists almost three years later.

As another example, in 2006 the Board voted to emphasize recycling programs and work toward goals established by State and federal agencies to reduce, reuse and recycle. While the Board added these components to its mission statement it never took steps to implement the initiatives.

We also found that the Authority incurs excessive costs, and the Board has failed to take appropriate actions to monitor and control costs. The Board has not established a written employment contract with its Executive Director. An employment contract or agreement outlines the scope of duties to be performed by executive management as well as other provisions for employment, such as salary increases and performance evaluations. It also provides the Board with a basis for exercising appropriate oversight and criteria by which to measure the performance of the employee. Although the Authority's independent audit firm reported in 2006 and 2008 that the Executive Director had been working without a contract and warned the Board that it could lead to potential litigation, the Board took no action. In the absence of a contract, the prior Executive Director's salary was frozen between 2003 and 2006. In 2006, the Board voted to provide the Executive Director with retroactive raises of four percent a year back to 2003, although not required to do so by any employment agreement. The Board also decided to establish a management contract with the Executive Director in 2007; however this was not done. In 2008, the Personnel Committee of the Board discussed the Authority's lack of a salary and compensation structure for management staff, but again did nothing to address the issue. As a result, the Executive Director's salary was again unchanged between 2007 and August 2009. At that time, the Board approved retroactive salary increases and payments that equated to a 57 percent increase in salary. Immediately after receiving this significant pay increase, the Executive Director retired. We determined that the total salary paid to the Executive Director from 2005 to 2009 was \$83,000 more than it would have been if the Board had consistently provided four percent annual increases over the period, similar to the increases provided to Authority staff represented by collective bargaining agreements. Although a new Executive Director has been hired, the Board has again failed to establish an employment contract.

Authority officials indicate that they have established a job description and a statement of duties for the Executive Director, which they feel is adequate. In addition, the Board reviews the Executive Director's activities at each Board

meeting. However, the statement of duties provided to us states that the Executive Director shall serve at the pleasure of the Board under the terms and conditions identified contractually between the Executive Director and the Board. Other than the resolution of the Board naming the Executive Director and salary, no other contractual documents were provided to us.

In addition, we are concerned that the retroactive salary increases provided to the prior Executive Director appear to be a violation of the State Constitution. According to an OSC opinion (89-7), payment of additional compensation to a public officer beyond the amount fixed when the services were performed would constitute a gift, which is prohibited by Article VIII of the State Constitution. The Board believes that it acted appropriately based on recommendations from its legal counsel, and that the OSC opinion may not apply because there was no active contract in place at the time of the retroactive salary increases.

The Board has also acted to expand Authority operations and increase operating costs even though its facilities are operating significantly below capacity and without assurance that any additional revenue will be generated. The Authority's five transfer stations have permitted capacity to handle up to 1,959 tons of solid waste per day. However, based on the solid waste received in 2009, the transfer stations are receiving an average of 333 tons per day, which is less than 20 percent of their permitted capacity. Further, two transfer stations are operating at less than 10 percent of their permitted capacity. Although the Authority appears to have excess capacity within its system, it incurs excessive costs by operating extended hours at most of its facilities: four of the Authority's five transfer stations are open six days a week. Authority officials indicate that each of its transfer stations has been designed to accommodate only one trash transfer trailer, and that the permitted operating capacity is driven by this design. However, this does not explain how the permitted capacity of the five transfer stations range from 59 tons per day to 600 tons per day. Further, the amount of waste being delivered to the Authority does not justify the operating hours established at each of the transfer stations.

Prior to 2010, the fifth transfer station was open two days a week for residential customers only. The Authority received a request from the county to allow the transfer station to handle private haulers as well, beginning in 2010. Although the Authority determined that this would result in increased operating costs without any expected increase in the overall amount of waste being delivered to the Authority during the course of a week, the Board not only approved opening the transfer station to private haulers, but also expanded the operating hours to five days a week. Authority officials indicate that the expansion of service at this transfer station has since resulted in 300 tons of additional solid waste being delivered per month -- waste that had previously been diverted to other disposal locations. However, as previously indicated, the additional cost of operating this transfer station does not appear to justify this increase in the amount of waste delivered. As the Authority's data shows, this transfer station was the most

efficient of all the transfer stations while operating with reduced hours. However, by expanding the operating hours, the Authority has significantly decreased its efficiency.

Based on these findings and conclusions, as well as the fact that the Authority has defeased its bond obligations and established an agreement with the Counties to assume the long-term maintenance and monitoring obligations of the existing landfills, we recommend that consideration be given to dissolving the Authority. The Counties and the Authority's Board should review the purpose and operations of the Authority and determine whether it meets the public purpose for which it was created. If the Authority is not meeting this purpose, the Counties should decide whether the responsible action to take on behalf of taxpayers and customers is to terminate the existing service agreement prior to its 2014 expiration date, and develop a plan to dissolve the Authority and transfer its assets to the Counties.

Authority officials countered that the Counties and the Authority should review the benefits and drawbacks of all options, and prior to the development of a new solid waste management plan work in unison to identify the goals of the region and how best to work towards a common goal. As this review found, however, we believe there is nothing to suggest that the appointing Counties and the appointed Board members are likely to abandon their historically ingrained belief that the Board's loyalty and duty are to the Counties and not to the interests of the Authority and its customers. Authority board members stated that they strongly disagree, and feel that they place the needs of the Authority above the needs of the Counties.

Recommendations

To County Boards of Supervisors and Representatives:

1. Review the purpose and operations of the Authority to determine whether it continues to serve a cost effective public benefit, and take the actions necessary to dissolve the Authority and transfer its assets, if deemed appropriate.

Until the dissolution of the Authority is complete, or if the Counties determine that dissolution of the Authority is not in the public interest, the following actions should be taken to improve the operations of the Authority:

To the Authority:

1. Utilize objective measurements to determine the amount of solid waste generated within the Counties, and use this result to establish the GAT, as required by the service agreement.
2. Take appropriate steps to work with the Counties to ensure that all solid waste generated within the Counties is delivered to the Authority.
3. Board members need to adhere to their fiduciary duty, and act in the best overall interest of the Authority, regardless of their appointing entity, public office, or residence.
4. Take steps to minimize operating costs whenever possible, so that fees charged for receiving waste are reasonable and competitive. This would include reviewing transfer station operations, with consideration given to consolidating, closing, or reducing the operating hours of transfer stations.
5. Establish an employment contract with the Executive Director.

To County Boards of Supervisors and Representatives:

1. Consider appointing individuals to the Board who are not public officials to help ensure that the Board is independent and that fiduciary duties will be met.
2. Understand that Authority Board members have a fiduciary duty to act in the best overall interest of the Authority, and do not have a duty to simply represent their appointing entity.