



1120 N.W. Couch Street, Tenth Floor  
Portland, OR 97209-4128

PHONE: 503.727.2000

FAX: 503.727.2222

www.perkinscoie.com

Michael C. Robinson  
PHONE: (503) 727-2264  
FAX: (503) 346-2264  
EMAIL: MRobinson@perkinscoie.com

August 24, 2011

**VIA EMAIL AND HAND DELIVERY**

AUDITOR 08/24/11 PM 4:09

Mayor Sam Adams  
City of Portland City Council  
1221 SW 4th Avenue, Suite 340  
Portland, Oregon 97204

**Re: Appeal of Hearings Officer's Decision to Approve Recology Oregon Material Recovery, Inc. Applications (File No. LU 10-194818 CU AD);  
Final Open Record Period Submittal of Recology Oregon Material Recovery, Inc.**

Dear Mayor Adams and Commissioners:

This office represents Recology Oregon Material Recovery, Inc. ("Recology"), the applicant for the land use applications on appeal in this matter. This letter constitutes Recology's submittal during the final open record period ending on August 24, 2011, and provides Recology's response to evidence and argument received during the first and second evidentiary periods (closing on July 27 and August 10, 2011, respectively). I have asked Karla Moore-Love to place this letter before you and to place a copy in the official Bureau of Development Services file.

## 1. INTRODUCTION.

As the City Council concludes the public hearing in this matter and thinks about deliberating on the appeal of the Hearings Officer's approval of this application, Recology asks that the City Council keep the most important factor in mind: Has Recology demonstrated that the approval criteria are satisfied? Are there reasonable conditions of approval to implement the approval criteria? The City Council can answer "yes" to both questions as explained below.

First, this application is not about Recology the company nor about individuals who worked for Recology many years ago. It is simply about whether Recology satisfied the applicable approval criteria, as both your professional planning staff and the Hearings Officer concluded.

18388-0006/LEGAL21595605.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MADISON  
MENLO PARK · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

Second, Recology has submitted substantial evidence to the City Council to demonstrate not only that the applicable approval criteria are satisfied but also to rebut evidence submitted by opponents of the application. Among the un rebutted evidence submitted by Recology is a traffic study prepared by Kittelson & Associates that supports the conclusion of the Portland Bureau of Transportation ("PBOT") that this application will not have an adverse effect on public roads or on the Springwater Corridor Trail. Also un rebutted is Recology's noise study which demonstrates that the facility, which will not operate between 10:00 p.m. and 7:00 a.m., will have no adverse noise effects. Neither of these studies are rebutted by the opponents with credible studies of their own.

Third, Recology accepted *all* of the conditions of approval contained in the Hearings Officer's decision. Moreover, in response to questions asked by City Council and staff, Recology has agreed to additional conditions of approval to assure the City Council and, more importantly, Recology's neighbors, that the facility will operate as promised.

Fourth, many of the claims asserted by the opponents are simply untrue. There is, for example, no flooding potential for the Recology property but Recology has nonetheless agreed to a condition of approval requiring it to prepare for a flood emergency. Recology has not proposed that its trucks be able to access the road to the south of the site. Recology proposes that the operation be conducted entirely indoors. Recology has proposed reasonable improvements to the building to assure the City Council and Recology's neighbors that the building will operate as Recology has represented it will. Perhaps most importantly, the opponents have attempted to portray this application as a "garbage dump" that will be conducting composting. They surely knew before making these claims, and they surely know now, that neither of these claims is true and that Recology has never proposed a garbage dump or composting at this site.

What Recology has proposed for this site is a reasonable, well-operated facility that will help the City achieve its goals of composting reasonable amounts of food waste always combined with green waste.

Recology understands the importance of being a good neighbor and of operating its facilities as it has promised it will do. However, if the City Council chooses to affirm the Hearings Officer's decision (as it should do based on the evidence in the record), Recology will be bound to conditions of approval, which require it to do as it has said it will do.

Additionally, as the City Council now knows, Recology hosted a series of meetings with its neighbors following the first City Council hearing in July. While some neighbors remain opposed to the application, many more were persuaded that Recology will be a good neighbor, that it has proposed a sound and responsible plan for transporting food waste to off-site locations for composting and that Recology's experience in the business ensures that it knows how to operate the facility.

The City Council should also take note of certain important facts in this application regarding the nature of the site and the lack of impacts on neighboring residential areas. First, Recology's six-acre site is in the middle of a 100-acre industrial site and the Recology site is not adjacent to or near any single-family or multi-family dwellings. It is buffered from the view of homes to the south by the significant vegetation between the public road and the Recology property (which Recology has not proposed to remove nor would it have the legal right to do so). Recology's site is not visible to the single-family homes to the north along SE Foster Road. Second, the number of trucks serving the Recology site for green and compostable food waste delivery is limited by the proposed conditions of approval and will not use residential streets to reach the site. Additionally, the site is now devoted to an industrial use – there is no lost opportunity for other industrial uses.

Also, there is no "need" standard in the approval criteria as the opponents have asserted. There is a "balancing" test where any adverse impacts *that cannot be mitigated* must be outweighed by "public benefit" from the proposed facility. Here, the balancing test is not required because the conditions of approval control any potential adverse impacts. If the City Council believes there are impacts that are not fully mitigated, the City Council may certainly find that the public benefit of this proposal outweighs any minor impacts by allowing the City to implement its compostable food waste program.

Further, there is no adverse impact to the users of the Springwater Corridor Trail. The facts already in the record demonstrate, and are confirmed by PBOT, that the trail users are not impacted now by Recology's use and will not be impacted by the additional trucks primarily because the trucks will go to and from the site at a time when the trail is not at its busiest. Further, the physical characteristics of the road crossing of the Springwater Corridor Trail provide ample opportunity for automobile and truck drivers to see trail users and for trail users to see crossing automobiles and trucks. The street crossing is controlled in both directions by stop signs, thus giving pedestrians and bicyclists on the trail the right-of-way. Moreover, it is clearly not the case that 45 additional trips across this road per day would have a greater impact than the many busy streets in the area, including SE Foster Road and SE 82nd Avenue that the Springwater Corridor Trail already crosses.

Recology does not diminish the serious questions asked by its neighbors nor does it diminish those who are legitimately opposed to the facility. The land use process is not intended to run over individuals who have legitimate opposition to a project. Instead, the land use process provides an appropriate forum to answer questions and strengthen a land use approval, which has been the case here. However, the attached Willamette Week article dated August 3, 2011 ("Trash Talk in Lents") suggests that the focused opposition to Recology's application is not coming from actual neighbors, but from a "mysterious preservation group" that is likely being funded by one of Recology's business competitors. (Exhibit A).

The City Council should find that the Hearings Officer's decision should be affirmed but it should also add the condition of approval requested by Recology. If the City Council chooses to approve this application, Recology respectfully requests that it be directed to prepare findings in coordination with the City Attorney's office for adoption by the City Council.

**2. RESPONSE TO CITY STAFF REPORTS.**

**A. July 27, 2011 Staff Report Regarding Department of Environmental Quality and Metro Regulations.**

As Recology has said, both DEQ and Metro must issue permits for the operation of the Foster Road facility. Those permits include many of the same requirements on substantive areas as regulated by the City of Portland. In fact, the overlapping nature of the permits assure compliance with many of the issues (such as traffic, cleanliness, environmental concerns, traffic change trips to truck trips and leachate collection) as discussed here. The City Council can find that it is both feasible and reasonable for Recology to be able to obtain these permits and that the permits give added assurance to the City Council and Recology's neighbors that the facility will be operated as required and as promised.

**B. August 10, 2011 Staff Report.**

First, please note that the staff states on page 1 of this report that the evidence presented *does not warrant reversal of the Hearings Officer's decision*. Regarding the staff's recommended conditions of approval, Recology responds as follows:

**1. Commercial food waste.** The intent for the Foster Road facility is to receive both residential and commercial food waste in addition to the green waste that is currently received at the facility. Residential food waste consist of a combination of yard and green waste and food scrap with food scraps typically consisting of less than five percent (5%) of a residential load. The commercial waste will be food waste received from restaurants. All feed stocks, such as green waste, residential food waste and commercial food waste, will be unloaded on the same indoor, aerated tipping floor. As the materials are unloaded from the collection truck and reloaded into the transfer trucks, they become increasingly commingled resulting in a greater mix of green waste to food waste and before being loaded at the site. As stated in the nuisance mitigation plan, green waste assists in the absorption of liquid that can be generated from food waste and also acts as a biofilter that can be placed over the feed stock.

While the percentage of commercial food waste to residential and green waste may fluctuate, it is highly unlikely that incoming feed stock will be comprised solely of commercial food waste. The Foster Road facility was designed for mixed loads accounting for all three types of feed

stock. This facility design includes the size of the aerated tipping floor, biofiltration system and the leachate collection system.

In other words, while Recology always believed that its application allowed it to collect both residential and commercial food waste, staff raised the issue with Recology after the appeal period from the Hearings Officer's decision. Recology told staff that it would not pursue an appeal nor raise the issue before City Council. Nevertheless, the staff presents an alternative for the City Council's consideration. Based on the evidence already in the record and the staff recommended conditions of approval, Recology requests that the City Council accept alternative 2 on page 2 of the staff report.

2. **Truck trips.** Recology can agree with the staff recommendation on page 3 that truck trips be limited by its representations (35 inbound garbage trucks and 10 outbound transfer loads).

3. **Hours of Operation.** Recology can also agree that the Foster Road be operated between 7:00 a.m. and 5:00 p.m. Mondays through Fridays and 8:00 a.m. and 5:00 p.m. on Saturdays for the collection of green waste and food waste as shown on page 3 of the staff report.

4. **Inspections.** Recology agrees with surprise inspections as recommended on page 3 of the staff report.

5. **Flood Management.** Recology agrees with the revised flood management condition as shown on page 5 of the staff report.

6. **Good Neighbor Agreement.** Recology agrees with the revised Good Neighbor Agreement as shown on page 5 of the staff report.

7. **"Track out" condition.** Recology agrees with the "track out" condition as shown on page 4 of the staff report.

8. **Noise.** Recology *does not* agree with the additional noise conditions shown on page 4 of the staff report. Recology has agreed not to operate the facility overnight so an additional study is unnecessary. Further, the opponents have not submitted a noise study to rebut Recology's noise study. It is simply duplicative, costly and unnecessary to submit an additional noise study that covers a time period when Recology is prohibited from operating.

Additionally, the July 27, 2011 staff report contains testimony and evidence from Ms. McCandless regarding the Nature's Needs facility in Washington County. This is a composting facility and although several complaints have been received, the City Council should remember that composting is fundamentally different from a short-term transfer station where materials will be entirely inside and only at the facility for a limited time. Notwithstanding this

distinction between the Nature's Needs facility and the Foster Road facility, the evidence submitted by Ms. McCandless demonstrates that all of the complaints have been resolved.

### **3. RESPONSE TO APPELLANTS.**

#### **A. The Applications Satisfy Applicable Approval Criteria.**

The appellants continue to argue that Recology has not satisfied all of the applicable approval criteria in PPC 33.815.220 regarding mining and waste-related uses. However, Recology provided detailed responses in its July 27, 2011 letter to the City Council ("July 27 Letter"), which address each of the applicable criteria and all of the opponents' arguments regarding odors, leachate, vectors, noise, and also addressing standards regarding stormwater, groundwater, and air quality standards. The opponents have not submitted any additional evidence or argument establishing that those criteria are not met.

Regarding noise, the opponents did submit a memorandum from Dave Seluga of Shaw Environmental dated July 19, 2011, which attempts to challenge aspects of the noise study that was conducted by the acoustical engineers at Daly Standlee & Associates. However, Mr. Seluga is not an acoustical engineer, and he did not undertake his own noise survey. His points are refuted in the attached memorandum from Kerrie Standlee dated August 23, 2011. (Exhibit B).

In the July 27, 2011 Letter, Recology also submitted detailed responses regarding the opponents' incorrect assertions concerning items that they claim Recology failed to provide to the City. Recology's application materials are complete and ready for approval, as correctly concluded by planning staff and the Hearings Officer.

Recology's July 27, 2011 Letter also provides responses establishing that the applicable adjustment criteria of PCC 33.805 have been met, and explaining why the standard at issue is eligible for an adjustment because it is an access restriction, and not a "qualifying situation for a regulation." For the reasons explained in that letter, the City Council may affirm the Hearings Officer's approval of the requested adjustment to the PCC 33.254.030 requirement regarding vehicles access on Major City Traffic Streets.

#### **B. Response to Proposed Conditions of Approval.**

The opponents include a number of proposed conditions at pages 3-7 of their "Supplemental Brief" that they submitted on July 27, 2011, which opponents contend should be imposed by the City Council as part of its approval of Recology's application. As described in this section, there is no basis for the conditions suggested by opponents, and their proposed conditions should be rejected by the City Council.

**1. Odor Log and Facility Shut-Down.**

The appellants propose a condition requiring Recology to post telephone numbers for Recology and various government agencies outside the Facility for odor complaints and keep an odor log. Appellants propose that after five complaints are logged in a 30-day period, the City would shut down the facility.

The condition is unnecessary for at least three reasons. First, as stated above, Recology will maintain a log of all nuisance complaints, including those related to odor, in accordance with City staff's revisions to Condition G. Pursuant to this condition, Recology's documentation must include a description of the nature of the complaint; the date and time it was received; the party who filed the complaint; the Recology representative who logged the complaint; and actions taken to respond to the complaint. Recology must retain this complaint log for a year and provide copies to the Lents Neighborhood Association and to agencies with regulatory authority.

Second, the facility will be subject to the regulatory authority of the City, Metro, and DEQ. Each of these agencies has the authority to respond to complaints and impose penalties as needed. The appellants have not demonstrated why special standards are warranted in this instance. Third, as explained in Recology's July 27, 2011 letter to the City Council submitted during the first open record period ("July 27 Letter"), Recology will be implementing several odor control measures at the Facility, including a biofiltration system that two different experts have opined will counteract odors and additional best management practices such as mixing organics with yard debris to assist in moisture absorption and to remove all material at the facility within 48 hours after its arrival. For these reasons, the City Council should find that this condition is not necessary.

**2. Biofilter Operations and Maintenance Plan.**

Next, appellants propose that the City Council approve an operations and maintenance plan for the four biofilters that Recology proposes at the Facility and require that Recology annually certify compliance with the plan's conditions. This condition is unnecessary. Pursuant to Section 3.9.1 of the Operations Plan submitted with the July 27 Letter, Recology is required to maintain all equipment, including the biofilters, to prevent leaks and spills. Further, Recology is required to keep its maintenance records and make them available to Metro upon request. These existing requirements address the appellants' concern.

**3. Ingress/Egress Double Door Airlock System.**

The appellants further propose that Recology be required to install double doors on all points of ingress and egress to the building in order to minimize transfer of odors from the facility. The appellants provide little detail about their proposal and even less evidence—such as testimony

from an expert or a case study from another site--to support its contention that the double door system will actually prevent the transfer of odors or that it is even needed in light of the extensive other measures proposed by Recology to prevent, and as needed, address odor issues at the facility. For these reasons, the City Council should not impose this proposed condition.

**4. Odor Masking System.**

The appellants further suggest that Recology should be required to impose an odorant masking system inside the facility to control indoor air quality issues associated with odor generation. The appellants appear to misconstrue the role of the proposed biofiltration system, which is designed, in part, to serve this very purpose. As Jeff Gage of Compost Design Services noted: "In addition to managing drainage and reducing the release and formation of volatile odorous compounds, the system is designed to treat the collected air to remove these compounds \* \* \*." Exhibit M to July 27 Letter at p. 3. Therefore, the City Council should find that this condition is not necessary.

**5. Below Grade Impermeable Liner and Collection System.**

The appellants further recommend that the City Council impose a condition requiring that Recology install a back-up system directly below the leachate collection system in order to capture any leaks of leachate and pump it back to the collection tank. The City Council should find that this condition is not necessary for two reasons. First, the appellants have not offered any evidence or argument to support their contention that Recology's leachate collection system will leak. Moreover, there are adequate controls and substantial evidence to the contrary in the record. First, City staff will review the leachate collection system prior to permitting, and in the process, they can assess the quality of the materials and the likelihood of leaks. If they are concerned, they can withhold a permit or seek additional information. Second, as explained by Recology's expert Robert B. Roholt, P.E., in Exhibit L to the July 27 Letter, it is unlikely that a leak will occur because the system is made of durable materials and is tested for leaks. Moreover, according to Mr. Roholt, if a leak does occur, it will be discovered quickly because it will dramatically undermine the system's effectiveness. Therefore, the City Council should reject the appellants' proposed condition.

**6. Vehicle Washing.**

The appellants further propose a condition requiring that Recology install a vehicle wash station to minimize vehicle track-out. The City Council should find that Recology has already committed to measures that prevent vehicle track-out, as explained in the Recology Response to Shaw Environmental (Exhibit P to the July 27 Letter):

"The facility has been designed so that tracking of organics from the inside of the building to the surrounding roads outdoors will not occur. This is achieved by having designated unloading and loading areas, limiting equipment that comes in contact with the organics, good housekeeping and wash practices, and regular inspections.

"The collection trucks which delivering the organics to the facility will back into a roll up door, and unload the organics onto the aerated floor. The truck tires will not come in contact with the organics. Once they have unloaded the organics, the truck will leave through the same roll up door they entered through, thus not allowing their tires to encounter any organic materials and track it outdoors.

"The semi-trucks that will transport the organics offsite will enter a different roll up door, to the left of the aerated pad. A dedicated loader will be used to load the organics into the semi-truck, while it is parked parallel to the aerated floor. Once the truck is loaded, the truck will then continue through the building, driving out through a roll up door on the opposite side of the building from which they entered. Again, the truck tires will not encounter any organic materials.

"The only equipment that will encounter organics will be the loader used to move, bulk, and load the organics. This loader will be washed down with water as needed. The wash water will be captured by the leachate collection system, and stored within the liquid storage tank. The contents of this tank are hauled offsite for treatment and disposal at an unassociated permitted facility. At no time will leachate or wash water contaminate or even enter the stormwater system. Equipment is currently washed within the building, in compliance with the facility Operations Plan. There has never been an instance where wash water has exited the building, or contaminated stormwater runoff.

"In addition, Recology owns a vacuum sweeper truck, and uses this equipment at its facilities to sweep and collect any debris or sediment from paved areas. This best management practice is extremely effective controlling solids that might otherwise contaminate stormwater runoff. The sweeper truck is currently used onsite at least weekly, and can be used daily should the need arise.

"Recology environmental compliance staff currently conducts monthly stormwater inspections which evaluate the conditions of the catch basins within Recology's leasehold, condition of waste storage areas, conditions of spill kits onsite, and stormwater best management practices employed at the facility. These inspections are documented, and will continue throughout future operations.

"The Freeway Land Industrial Complex is currently covered by the General 1200-Z Stormwater Discharge Permit. All operational activities are communicated regularly to the landlord, so that they may include these activities within their Stormwater Pollution Control Plan. Recology's operations have not contributed to contamination of stormwater at the facility." Recology July 27 Letter, Exhibit P at pages 5-6.

Further, the procedures for washing trucks onsite are addressed in Section 3.8 of the Operations Plan, which is attached as Exhibit N. That Plan provides that washing trucks is not permitted in outdoor areas, and trucks will only be washed if necessary inside Building 4A, and wash water will be contained within the building on the floor by using berms and will be absorbed with residuals, wood chips, eco bags, booms and/or other absorbent materials. Any fluids or leachate not absorbed will be captured through the leachate collection system, put in containers and shipped off-site for treatment as waste water. Therefore, the City Council should find that Recology's proposed operations will adequately control vehicle track-out; therefore, there is no need to impose the proposed condition.

#### **7. Professional Pest Control.**

Next, the appellants recommend that the City Council impose a condition requiring that Recology contract with a reputable pest control contractor to: (1) conduct weekly inspections of habitat and sanitary conditions both inside and outside the building; (2) maintain a log of vector complaints for submittal to the City on an annual basis; and (3) take action as necessary to keep the facility free of vectors. The City Council should find that this condition is unnecessary because Recology has already committed to complying with these requirements.

First, as explained in the July 27 Letter, Recology has submitted evidence into the record that it has contracted with Paramount Pest Control, Inc. to establish a preventative vector control program for the facility to include monitoring, inspection, and treatment with rodent bait stations throughout the facility and grounds by Paramount. This plan will include weekly treatments as well as on-call service if needed. Finally, Recology will maintain a log of vector complaints as required by City staff's revised Condition G.

#### **8. Local Resident Vector Control.**

The appellants also propose a condition that Recology provide vector control, where requested and at Recology's expense, to all neighbors within 2,500 feet of the Recology property. The appellants do not support their request with any evidence whatsoever that the facility will cause vector issues at all, let alone one-half mile from the facility. The City Council should find that there is no reasonable basis to impose this condition.

**9. Sweep Streets and Keep Storm Drains Clean.**

The appellants further propose a requirement that Recology sweep access roads and local streets leading to the facility at least once per week and that Recology inspect storm drains for blockages and clogs weekly during the rainy season. In fact, Recology has already committed to even more extensive litter control measures, including keeping the site and all vehicle access roads within a quarter mile of the site free of litter, conducting daily litter patrols, and operating the vacuum sweeper truck on a regular basis as a best management practice. Also, Recology's design of the unloading area and operations procedures are specifically designed to prevent tracking of material out of the loading areas and into the outdoors. Steps that will be taken to prevent tracking of material out of the facility are addressed in detail at pages 24-25 of Recology's July 27, 2011 Letter. Thus, the City Council should deny the appellants' request.

**10. Sound Barrier Installation.**

The appellants further recommend that the City Council impose a condition requiring Recology engineer, design, and build an "acceptable" sound barrier around the facility to reduce sound levels by at least 10%. The City Council should deny this request because it lacks the authority to impose the condition. The City Council is limited to imposing conditions on land use applications by PCC 33.800.070, which requires the following:

"The City may attach conditions to the approval of all discretionary reviews. However, conditions may be applied only to ensure that the proposal will conform to the applicable approval criteria for the review or to ensure the enforcement of other City regulations."

At the appeal hearing in this matter, Recology submitted expert testimony from Kerri G. Standlee, P.E. that the facility will comply with the City's noise standards set forth in PCC 33.262.050 and PCC 33.815.220.C, D, and E as well as applicable State Department of Environmental Quality noise standards, without any required mitigation. In proposing this condition requiring additional noise mitigation, the appellants do not take issue with Mr. Standlee's findings of compliance. Further, they fail to explain how imposing the condition will ensure compliance with any other approval criteria. Therefore, the City Council should deny the appellants' request.

**11. Hours of Operation Restriction.**

The appellants request that the City Council limit the Facility's hours of operation to six (6) days a week from 8 am to 5 pm. The appellant's concern appears to be directed at noise impacts. As explained above, Recology has agreed to comply with City staff's recommended new conditions, including the following:

"Recology (or any successor in interest) will accept food waste deliveries/deposits only between the hours of 7 am to 5 pm, Monday through Friday and 8 am to 5 pm on Saturdays."

"Before Recology (or any successor in interest) may conduct the processing, sorting, grinding and cleaning operations during nighttime hours 10 pm to 7 am, they must submit to the City of Portland Noise Control Officer and the Bureau of Development Services Code Compliance Division, additional noise analysis from a licensed engineer demonstrating compliance with Title 18."

These conditions are nearly identical to the conditions proposed by the appellants. Further, compliance with these staff conditions will satisfy the appellants' concern that facility operations are limited in duration in order to prevent nighttime noise impacts. Therefore, the City Council should deny the appellants' condition and find that City staff's recommended conditions protect the appellants' interest, ensure compliance with the PCC, and provide Recology additional flexibility to operate the Facility.

## **12. Trip Limit.**

The appellants further propose that the facility be limited to 35 new incoming garbage truck trips per day and 10 new outgoing semi trucks per day. The appellants further propose that Recology be required to close the facility once the trip limits are reached in a given day. Recology has agreed to comply with City staff's recommended new condition which reads as follows:

"Recology (or any successor in interest) will limit the number of garbage hauler trucks delivering food waste to the facility, to a maximum of 35 trucks per day. To transport the materials off-site, Recology is allowed up to 10 truck trips to and from the site per day."

This condition incorporates the appellant's proposed trip limits. Recology objects to the appellants' request that the facility close once the trip limits are reached. This proposal fails to recognize that other important activities occur at the facility other than the loading and unloading of trucks. For example, employees clean the facility to prevent development of odors and vectors, they tend to remnant materials, they complete paperwork, they meet with inspectors, they return phone calls, and so forth. Therefore, it is not reasonable—and actually works against the appellants' desire of having a well-run facility—to immediately close it after the facility reaches the daily trip limits.

**13. Traffic Log.**

The appellants request that Recology maintain a log of all traffic complaints and submit the log to the City on an annual basis. Recology has agreed to comply with these requirements as part of City staff's revised Condition G. Therefore, the City Council can find that the appellants' condition is superfluous.

**14. Operations Plan.**

The appellants further request a condition requiring that Recology obtain approval of a facility operations plan and nuisance mitigation plan. Recology submitted its operations plan and nuisance mitigation plan for the facility with the July 27 Letter. The City Council can find that there is no need to impose the condition, because Recology has already complied with it.

**15. Streamlined Appeal Process.**

Finally, the appellants recommend that the City adopt a streamlined appeal process to allow complaints that adverse off-site impacts caused by the facility be heard directly by the City Council or a state court. The City Council should deny this proposed condition for two reasons. First, the City has already established a comprehensive code enforcement process, which provides notice, an opportunity to correct the alleged violation, a hearing before a specialized Hearings Officer, and possible penalties. The appellants do not explain how the current system is inadequate to handle complaints from the facility. For that matter, the appellants do not explain how the City Council has the authority in this quasi-judicial proceeding to amend the legislative provisions governing the City's code enforcement process. Second, the City Council lacks the authority to create a private judicial right of action or to otherwise expand or modify the jurisdiction of Oregon state courts. Therefore, the City Council should deny the appellants' request and not impose this condition.

**C. Public Benefits Outweigh Public Impacts that Cannot Be Mitigated.**

Opponents continue to argue that the application should be denied due to the lack of a "public benefit." However, under PCC 33.815.220.I, an analysis of the public benefit of a waste-related use is not required unless there are impacts that cannot be mitigated.

As described in Recology's application and in the July 27 Letter, including the Recology Response to the Shaw Environmental Report, the Nuisance Mitigation Plan, and the Traffic Impact Studies provided by Kittelson & Associates, there are no impacts from the proposed use that cannot be mitigated. All potential nuisance-related impacts will be adequately mitigated by the plans and mechanisms relied upon by the applicant to control odor, dust, noise, vibrations,

vectors, and stormwater. The City Council may conclude that the proposed use does not create any impacts that cannot be mitigated, and this standard is satisfied.

In the alternative, if the City Council concludes that there are impacts that cannot be mitigated, the City Council may conclude that the public benefits of the proposed use outweigh any such impacts. Allowing the transfer of food waste at the proposed facility will help implement the City of Portland's food waste composting program, the purpose of which is to divert compostable food waste from landfills. The opponents' argument that there is capacity for handling food waste at other existing facilities, even if true, does not change the benefit to the public arising out of permitting an additional and more convenient location for the transfer of such waste, which will increase the efficiencies associated with the City's food waste composting program.

#### **D. Recology's Track Record.**

The appellants contend that Recology has a record of odor and waste management problems at its facilities. The appellants overstate both the number and magnitude of issues. In fact, the issues leading to complaints and notices from regulators are minor and not of the kind that would affect neighbors. Moreover, the appellants have not identified any complaints or violations that have occurred at the Foster Road facility. *See* Exhibit Q to Recology's July 27, 2011 letter. Further, it is not unusual for an operator in the highly-regulated waste management industry to receive complaints. Of greater importance, Recology has a strong record of correcting complaints. Finally, the City Council should keep these allegations in the proper perspective. They are not directed at applicable approval criteria and, therefore, cannot serve as a basis to deny Recology's applications.

Nevertheless, in an effort to clarify the facts, Recology offers the following specific responses to appellants' allegations:

**1. North Plains:** The appellants contend that DEQ has received over 60 complaints about odors at Recology's composting facility in North Plains. The appellants further contend that the facility has a "long history of broken promises," and that the City of North Plains is opposed to allowing Recology to continue food waste composting.

**Response:** The appellants distort and, in some cases, misstate the facts. As explained in Recology's July 27, 2011 Letter, there were 69 alleged complaints filed with DEQ during the time frame, but only three of these were confirmed malodors from the facility. Moreover, the facility will not involve composting activities, so it is distinguishable from Nature's Needs. In addition, the appellants' contention mischaracterizes the City of North Plains' stance on the Nature's Needs facility. The news article cited by the appellants does not state that the City of North Plains is opposed to that facility, and no one at City of North Plains has submitted testimony into the record to that effect. Finally, the "long history of broken promises" refers to

previous owners of Nature's Needs. This facility's track record since Recology assumed operations in April, 2009 reflects Recology's diligence and commitment to compliance with applicable regulations.

**2. Suttle Road:** The appellants contend that Recology received a notice of violation from Metro, two noncompliance advisory letters and a DEQ Class I violation.

**Response:** Again, the appellants mischaracterize the facts. The notice of violation from Metro was for a minor issue (failure to visually inspect incoming loads at the time they are weighed). Recology has corrected this issue. The noncompliance advisory letters also related to minor matters that were corrected and did not progress to the level of issuance of a notice of violation. Finally, the DEQ Class I violation is only a warning letter. Recology immediately corrected the issues and it has not been repeated.

**3. Jepson Prairie (California):** The appellants contend that Recology has received notices of violations for odor problems and that Recology has not corrected these issues.

**Response:** As also discussed above, Jepson Prairie is a composting facility, and is therefore not the same type of facility that can be compared to the Foster Road facility.

**4. Gilroy (California):** The appellants also assert that Recology's composting facility in Gilroy received a Notice of Violation from Santa Clara County for the receipt and handling of food waste, resulting in a public nuisance.

**Response:** The question is irrelevant to the project at hand since the operations in question are totally different. At the time, the Gilroy facility used the "ag bag" technology, a technology which was abandoned years ago by Recology due to a number of operational issues. When this issue arose, the company worked with a consultant to the local enforcement agency, implemented the consultant's recommendations and the issue was resolved without any fines or penalties. There are no ongoing issues at the facility.

In sum, the appellants exaggerate and mischaracterize the number and magnitude of issues. The actual facts reveal that Recology has demonstrated a record of compliance and where required, of promptly responding to regulatory notices.

Mayor Sam Adams  
August 24, 2011  
Page 16

**4. CONCLUSION.**

For the reasons explained herein and on the record, the City Council should deny the appeal and affirm the decision of the Hearings Officer to approve the applications for the Recology facility. Thank you for your consideration of the points in this letter and for your time considering this appeal.

Very truly yours,



*for*/Michael C. Robinson

Enclosures

cc: Ms. Karla Moore-Love (w/encls.) (via hand delivery)  
Ms. Sheila Frugoli (w/encls.) (via email)  
Mr. David Dutra (w/encls.) (via email)  
Mr. Peter Branda (w/encls.) (via email)  
Ms. Ame LeCocq (w/encls.) (via email)  
Ms. Erin Merrill (w/encls.) (via email)  
Mr. Thomas Rask (w/encls.) (via email)



Wednesday, August 24

NEWS MUSIC MOVIES FOOD&DRINK ARTS&BOOKS FEATURES

any keyword

Finders WWW'S GUIDE TO EVERYTHING IN PORTLAND WORTH A DAMN.

S 1 M 2 T 3 W 4 T 5 F 6 - S 7

Home · Articles · News · News · Trash Talk In Lents

August 3rd, 2011 JAMES PITKIN | News

# Trash Talk In Lents

A mysterious preservation group stirs up opposition to a recycling center in Southeast Portland.



ILLUSTRATION: danadartmclean.com

57 Comments

Tags: Environment

Something stinks in Lents.

In July, glossy brochures showed up at homes in the Southeast Portland neighborhood attacking plans to collect food waste at a local facility run by Recology Inc.

The San Francisco-based company collects yard debris from local haulers at a recovery facility at Southeast 101st Avenue and Foster Road. Recology, which boasts a long track record in Portland, also wants to collect food there when Portland starts citywide food recycling this fall.

A few neighbors started grumbling about potential odors and noise—and then a mysterious opposition group popped up.

Called the Springwater Trail Preservation Society, the group aims to thwart Recology's plans. "Increased truck traffic, noise, dust, pollution,

0  
0  
Like 32  
SHARE  
PRINT  
COMMENT  
FONT SIZE  
RATE

Related content

- Eco-Celeb-Struck...
- Surfrider Foundat...

## The Protomen, Wizard Attack



Music Calendar, Music Listing [NES CORE] Fresh from a triumphant performance at Nerdapalooza, Tennessee's Protomen—a face-painted, pseudonym-happy, 10-piece prog troupe devoted to the teachings of retro Nintendo fr ...

LOLA'S ROOM AT THE CRYSTAL BALLROOM 1332 W BURNSIDE ST. PORTLAND

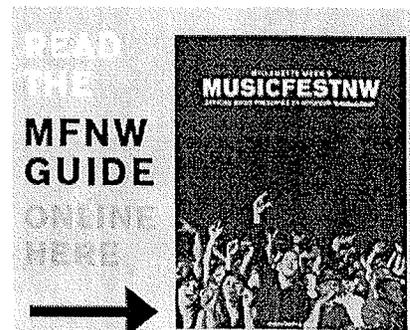
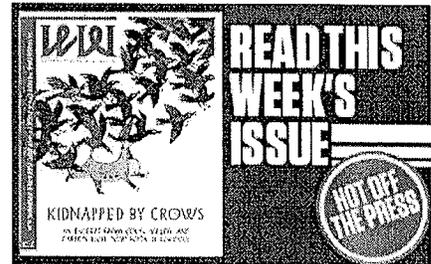
BREAKING: Tom Chamberlain, President of Oregon AFL-CIO, is Strongly Considering a Run for Mayor  
News Tom Chamberlain, a former Portland firefighter and current president of the Oregon AFL-CIO, tells WW...  
More

AUG 9, 2011 01:19 PM BY JAMES PITKIN

COMMENTS 15

MOST READ COMMENTED RECOMMENDED

- Steak Frites and Smartphones More
- BankSimple Moving to Portland to Hire "Nice and Low-Key" Customer-Service Reps More
- An Unreliable Housing Audit More



and disease-carrying vermin will take over the community,” says the group’s slick website, [thisdoesntsmellright.org](http://thisdoesntsmellright.org). Then a high-priced lawyer started showing up at neighborhood meetings to oppose Recology, and well-connected lobbyists called in favors from local politicians.

Related to:  
Environment

No one will say who’s bankrolling all of it.

“This is more money than any citizen group I’ve ever been involved in could possibly come up with,” says John Notis of the Lents Urban Renewal Advisory Committee. “It smelled like crap.”

There are millions of dollars at stake over who controls Portlanders’ trash after they leave it on the curb. Recology now hauls the yard debris it collects at 101st and Foster to a North Plains site for composting. Gary Conkling, a veteran PR consultant paid by Recology, says the food waste would stay in Lents no more than a few hours, and occasionally overnight.

Recology needs the city to change its conditional-use permit to allow it to accept food. A few residents were alarmed by the prospect when they were first informed in the spring. They say only nearby neighbors were notified.

“I wouldn’t want this in any neighborhood in Portland,” says opponent Frank Fleck. “Recology and the city tried to sneak this through in the dead of night.”

Fleck says he is the Springwater Trail Preservation Society’s president. Ask him who’s paying for the campaign and he ends the conversation. “I thought you were going to help us out, but you’re not,” he says—and then hangs up.

Another member claims he doesn’t know who is paying for the lawyers, lobbyists and pricey mail campaign. “My guess is that it’s business rivals of Recology,” says Gary Gossett, the group’s secretary.

The people who do know won’t come clean.

On April 27, hearings officer Gregory Frank ruled that the alleged nuisances caused by Recology’s plans wouldn’t pose a significant problem for neighbors and recommended the city approve the company’s request.

On May 9, lawyer Thomas Rask of Kell Alterman & Runstein registered the Springwater Trail Preservation Society with the state’s Corporation Division. Three days later, he appealed the hearings officer’s ruling. Neighbors at a July 26 meeting in Lents repeatedly asked Rask who was paying him. He refused to answer. Rask didn’t return *WW*’s phone calls.

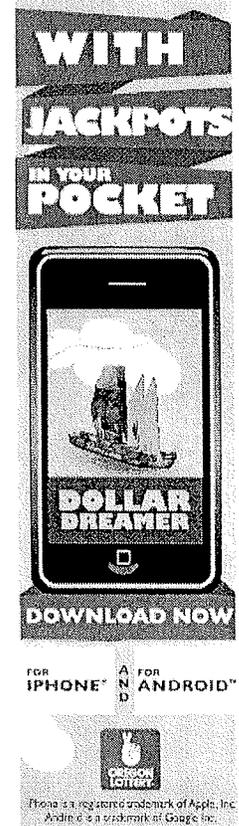
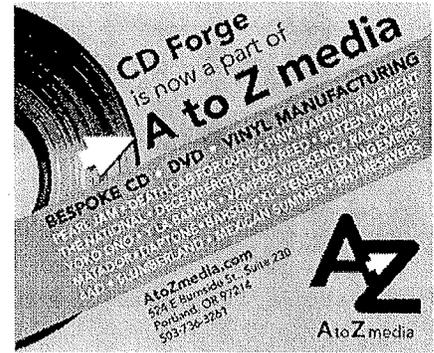
Pac/West, a lobbying firm run by former state senator Paul Phillips, also went to work opposing Recology.

Sen. Rod Monroe (D-East Portland) wrote a letter to the City Council opposing Recology’s plan. Monroe told *WW* he did so at the request of Pac/West lobbyist Josh Balloch, who ran Monroe’s 2006 Senate campaign.

“So my tendency was to be helpful when they asked for this favor,” Monroe says.

Multnomah County Commissioner Judy Shiprack, whose district includes Lents, also wrote in opposition. Her husband, Bob Shiprack, a former labor leader and lawmaker, works with Pac/West. Judy Shiprack wouldn’t reveal whom she spoke with at Pac/West, except to say it wasn’t her husband. Bob Shiprack confirms that.

“This is really not a result of a big lobby effort,” Judy Shiprack says. “I’m involved because I have constituents who are very concerned.”



# Memo



Daly • Standlee & Associates, Inc.

4900 S.W. Griffith Drive  
Suite 205  
Beaverton, Oregon 97005  
(503) 646-4420  
Fax (503) 646-3385

**Date:** August 23, 2011

**To:** Mr. Roger A. Alfred, Attorney at Law  
Perkins Coie LLP

**From:** Kerrie G. Standlee, P.E.

**Re:** Recology Bio-waste Recovery Facility Noise Study  
DSA File #: 141112

---

**Mr. Alfred:**

At your request I reviewed the comments made in Mr. Dave Seluga's July 19, 2011 letter to Ms. Martha Sharp, Esq. of Kell, Alterman & Runstein L.L.P. concerning the Recology bio-waste recovery noise study conducted by Daly-Standlee & Associates, Inc. (DSA). I am sending you this memo to respond to several of the comments made by Mr. Seluga.

First, I would like to say that it appears that Mr. Seluga is not a registered acoustical engineer and would therefore not be qualified to address the issue of the technical accuracy of the noise study. Second, it does not appear that Mr. Seluga conducted a noise study or have someone else conduct a noise study which demonstrates the results of the DSA noise study are inaccurate. The following information provides comment about specific items mentioned in Mr. Seluga's letter.

In the first paragraph of the section of Mr. Seluga's letter referenced to as, "Noise Survey", Mr. Seluga stated that it was not clear from the report if I had conducted the sound measurements at the Recology facility or if I had only reviewed the survey conducted by someone else. For the record, the short-term sound level measurements made both inside the Recology building and immediately outside the building drive-thru door were made by Ms. Valerie Smith, a graduate from the acoustical engineering program housed in the Inter-Disciplinarian Engineering Department of Purdue University. I reviewed the results of those measurements and oversaw the use of that data in predicting the noise that would radiate from the doors of the facility to the residential receivers south of the facility. Ms. Smith and I, together, made the long-term sound level measurements at the measurement point along SE Knapp Street. I personally made the observation that I-205 traffic and SE Knapp Street traffic contributed the majority of the sound that was detected during the 20-minute measurement at that location on July 11, 2011. I also observed that the sound from the



## Recology Bio-waste Recovery Facility Noise Study

---

Recology building was inaudible during all of the 20-minute period except during an approximately 20-second period of time when a truck arrived and backed into a door on the west end of the south side of the building.

In the second paragraph of the “Noise Survey” section of Mr. Seluga’s letter, he states that the, “Field methods are not adequately described enough to duplicate the sound level measurements.” Figure 1 of the report provided a visual depiction of the location of the short-term and long-term sound measurements made for the Recology noise study. As a supplement to that information, the following information is presented to more directly state the information that Mr. Seluga indicates that he needs to make his assessment of the accuracy of the noise study:

The short-term measurements inside the building were made within the “reverberant sound field” of the building so the distance between the sources and the sound level meter were inconsequential. The short-term measurements made outside the drive-thru door of the building were made approximately 25 foot from the doorway; one on-axis of the center of the doorway and the other, approximately 30 degrees off-axis of the center of the doorway. The measurements outside the building were made to get an indication of the amount of sound that radiated from the open doorway while equipment was operating inside the building. Each short-term measurement lasted approximately 30 to 45 seconds; long enough to obtain a representative spectrum of the sound generated inside and radiating outside the building. All of the measurements were made with the sound level meter set to measure using a “fast” meter response and the microphone was positioned approximately 5 foot above the ground.

As stated on page 4 of the noise report, the long-term sound measurement was made approximately 500 feet southeast of the eastern-most door of the space leased by Recology. As stated in the report, the measurement lasted 20 minutes and was made with sound level meter that had the ability to monitor, store and determine the sound level exceeded different percentages of the time. The meter was programmed to determine the sound level exceeded 1%, 10%, 50% and 90% of the time and it was programmed to use a “fast” meter response in monitoring the sound. The microphone was positioned approximately 5 feet above the ground.

In the fourth paragraph of the “Noise Survey” section of Mr. Seluga’s letter he states that no data was presented that showed the current actual noise levels associated with the existing operations. Figure 2 of the report provided the one-second average A-weighted sound levels detected by the Larson Davis Model 720 sound level meter used in making the long-term sound level measurements. As shown and denoted within the figure, the sound level measured at the time a truck arrived and began backing into the Recology facility was approximately 57 dBA. That recorded sound level was the summation of the sound reaching the sound level meter from the truck at the Recology facility and the sound reaching the sound level meter from traffic on I-205. That data was used as a conformation of the sound levels predicted to radiate from the building.



## Recology Bio-waste Recovery Facility Noise Study

The sound levels measured inside the building near the doorways of the building were generally in the range of 78 to 80 dBA. The sound levels measured approximately 25 foot from the open doorway was generally in the range of 69 to 71 dBA.

The fifth and final paragraph in the "Noise Survey" section of Mr. Seluga's letter basically states that the DSA report noted that the noise levels measured at the residential monitoring site exceeded the DEQ hourly L<sub>10</sub> and L<sub>50</sub> noise level criteria and it appears to state that the report needs to address the contribution of the Recology noise to the exceedance of the criteria. If my interpretation of what Mr. Seluga is saying is correct, then I believe the report does exactly what he is suggesting. It states that the noise from the Recology operations contributes absolutely nothing to the sound levels found to exceed the DEQ noise regulation limits.



EXPIRES: 6/30/12

KELL, ALTERMAN & RUNSTEIN, L.L.P.

SUSAN T. ALTERMAN, \*\*,\*  
JOHN P. ASHWORTH, \*\*  
EMILY C. AUERBACH  
JAMES S. BRUCE  
DOUGLAS S. CHIAPUZIO, CPA\*\*  
GARY P. COMPA†  
WILLIAM DICKAS  
MATTHEW C. ELLIS  
DENISE N. GORRELL\*\*  
ROBERT E. KABACY\*\*  
LEE DAVIS KELL, CPA++\*,\*\*  
TAMMI M. KIPP\*\*,\*  
ROBERT B. LOWRY\*\*  
WAYNE D. PALMER  
PAUL A. RANEY\*\*\*  
THOMAS R. RASK, III\*\*  
ROBIN M. RUNSTEIN  
TED E. RUNSTEIN  
MARTHA SHARP\*  
ERIC SOGGE  
DENNIS STEINMAN

ATTORNEYS AT LAW  
SUITE 600  
520 S.W. YAMHILL  
PORTLAND, OREGON 97204-1329  
TELEPHONE (503) 222-3531  
FACSIMILE (503) 227-2980  
E-MAIL: trask@kelrun.com

RAYMOND M. KELL  
(1911-1991)  
CLIFFORD B. ALTERMAN  
(1925-1995)  
ALSO ADMITTED IN  
\*CALIFORNIA  
\*\*WASHINGTON  
\*\*\*GEORGIA  
\*\*\*\*NEW MEXICO  
\*\*\*\*\*MASSACHUSETTS  
\*\*\*\*\*COLORADO  
LL.M. IN  
‡TAXATION  
+ESTATE PLANNING  
++OF COUNSEL  
+++ INACTIVE

AUDITOR 08/24/11 PM 3:23

August 24, 2011

VIA HAND DELIVERY

Mayor Sam Adams  
City of Portland  
c/o Warren Jimenez  
1221 SW 4<sup>th</sup> Ave., Rm. 340  
Portland, OR 97204

Nick Fish  
City of Portland  
c/o Sonia Schmanski  
1221 SW 4<sup>th</sup> Ave., Rm. 240  
Portland, OR 97204

Commissioner Amanda Fritz  
City of Portland  
c/o Tom Bizeau  
1221 SW 4<sup>th</sup> Ave., Rm. 220  
Portland, OR 97204

Commissioner Randy Leonard  
City of Portland  
c/o Ty Kovatch  
1221 SW 4<sup>th</sup> Ave., Rm. 210  
Portland, OR 97204

Commissioner Dan Saltzman  
City of Portland  
c/o Matt Grumm  
1221 SW 4<sup>th</sup> Ave., Rm. 230  
Portland, OR 97204

Re: **Appeal of Cottonwood Capital Property Management LLC, Frank Fleck and Gary Gossett/Recology at SE 101<sup>st</sup> Ave., Portland, Oregon**  
**File No.: LU 10-194818 CU AD (HO 4110004)**  
**Our File No.: 20233/003**

KELL, ALTERMAN & RUNSTEIN, L.L.P.

Mayor Sam Adams  
Commissioner Nick Fish  
Commissioner Amanda Fritz  
Commissioner Randy Leonard  
Commissioner Dan Saltzman  
August 24, 2011  
Page 2

Dear Mayor and Commissioners:

I have enclosed a copy of Appellants' Rebuttal Brief with regard to the above-referenced matter. By copy of this letter, we are delivering the original brief to Karla Moore-Love for filing.

Very truly yours,



Lee Davis Kell

ka  
Enc.

cc: Karla Moore-Love (w/enc., Via Hand Delivery) ✓  
Michael C. Robinson (w/enc., Via Email)

BEFORE THE CITY OF PORTLAND

CITY COUNCIL

In the Matter of:

An Appeal of an Application  
by Recology Oregon Material Recovery,  
Inc. ("Recology") for a Conditional Use  
Permit ("CUP")

File No. LU 10-194818 CU AD  
(HO4110004)

**APPELLANT'S REBUTTAL BRIEF**

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>THERE IS NO NEED FOR APPLICANT’S PROPOSED PUTRESCIBLE WASTE TRANSFER STATION .....</b>	<b>1</b>
<b>III.</b>	<b>APPLICANT FAILS TO MEET THE STANDARDS FOR THE PROJECT CONDITIONAL USE PERMIT .....</b>	<b>3</b>
A.	NO COMMERCIAL FOOD WASTE EVALUATION .....	3
B.	APPLICANT FAILS TO SHOW THAT THE DESIGN OF THE PROPOSED AERATION AND BIOFILTER SYSTEM IS ADEQUATE	3
C.	MONITORING .....	4
D.	STORMWATER.....	5
E.	THE NUISANCE MITIGATION PLAN IS INADEQUATE .....	5
F.	NO OPERATIONS AND MAINTENANCE PLAN .....	5
G.	PROJECT ASSUMPTIONS .....	6
H.	FACILITY PAD CONFIGURATION .....	6
<b>IV.</b>	<b>CONCLUSION.....</b>	<b>8</b>

## **I. INTRODUCTION**

Springwater Corridor Preservation Society (“Appellant”) hereby submits its rebuttal brief addressing the additional documents and information provided by Applicant and the City Bureau of Development Services (“BDS”) dated August 10, 2011 (“City Report”) related to Applicant’s proposal to expand the Foster Road Material Recovery Facility (“MRF”) to accept putrescible waste (“Project”). The Project Conditional Use Permit (“CUP”) should be denied, as Applicant has failed to demonstrate that the Project meets the relevant criteria. Additionally, the Project is not needed to implement the City’s food waste composting program, as existing transfer stations have the capacity and the capability to accommodate the City’s program. Less than one-half of the capacity of transfer stations now operating in the metro urban area is being used to reload solid waste for transport to a disposal site. None of these transfer stations are located in a residential area.

## **II. THERE IS NO NEED FOR APPLICANT’S PROPOSED PUTRESCIBLE WASTE TRANSFER STATION**

Portland is surrounded by waste transfer stations with capacity and capability to accept and transfer all yard debris and food scrap waste generated by the City. These transfer stations are authorized and regulated by Metro under a comprehensive waste management program that ensures all waste is transported outside of the metro urban area. Applicant’s proposed expansion to the Foster Road MRF circumvents Metro’s waste management program by diverting putrescible waste back into the Lents neighborhood of the City.

As acknowledged by both Metro and the City, the City’s food scrap composting program will begin this fall without Applicant’s facility and will

continue without Applicant's facility. A successful food waste composting program will never need Applicant's transfer station.

Solid waste facilities operating in the metro urban area that can handle the City's food waste recycling program include Metro Central (presently run by Applicant) and Metro South. The private transfer stations include Waste Management Troutdale, Allied Waste in Wilsonville and Pride Disposal in Sherwood, all regulated by Metro. The volume of solid waste received by these Metro authorized facilities has dropped 21.2% during the period from 2007 to 2011 and Metro estimates the increase in the volume of solid waste from 2011 to 2017 will be only 6.7%. Therefore, there is enough existing capacity and capability to handle all of the food waste/yard debris in the Metro region for the foreseeable future.

While the Lents Neighborhood Association ("LNA") supports the City's food scrap composting program, the LNA does not believe that a solid waste facility in the Lents neighborhood is needed in order to implement the program. The LNA advised the City that the Project is both unnecessary and undesirable. While a draft "Good Neighbor Agreement" was placed in the record, it is a preliminary draft only and mirrors the language in the St. John's GNA. The Lents GNA committee has not yet met.

There is no need nor is there a public benefit from having a major MRF in the Lents neighborhood. As Applicants have demonstrated, a Lents MRF requires major engineering and retrofitting of a large old building to protect the environment, with the risk of never meeting the environmental standards. Because Applicant has clearly indicated it wants to expand the facility beyond the initial 35 garbage trucks per day, these concerns are magnified.

### **III. APPLICANT FAILS TO MEET THE STANDARDS FOR THE PROJECT CONDITIONAL USE PERMIT**

The Applicant's supplemental information and the City Report evidence that Applicant's proposed Project does not meet the standards for a CUP and thus Applicant's CUP should be denied. (Exh. X, Shaw Environmental letter report ("Shaw"), August 18, 2011). The major flaws with the Project include the following:

#### *A. No Commercial Food Waste Evaluation*

BDS did not evaluate Applicant's proposed use of the facility as a transfer station for commercial putrescible food waste. (Exh. Y, City Report, July 27, 2011). Thus, all Project factors were not considered by the hearings officer or the city staff in determining whether the CUP should be granted. There is no evaluation of the environmental concerns (odors, leachate, stormwater, or vectors) related to the Project site for delivery of large amounts of food waste, such as garbage collection trucks filled with only food from numerous commercial businesses. Because Applicant testified that Applicant may expand its operations, this concern is magnified.

The City's admission that it did not consider this element of the proposed Project supports Appellant's position that the application for the CUP is not adequate and that the CUP is improper and should be denied.

#### *B. Applicant fails to show that the Design of the proposed Aeration and Biofilter System is Adequate*

Applicant does not show that the design of its proposed Aeration and Biofilter system ("AB System") is adequate to insure odorous compounds will not exceed the detection threshold for odorous compounds associated with food

decomposition (hydrogen sulfide, methyl mercaptans, and amines) (Exh. X, Shaw, p. 2). Applicant fails to include any scheduled AB System odor assessments consistent with ASTM E679 or E544 (or similar methods) with appropriate witnessing. (*Id.*). There is no indication that the proposed design of the AB System is large enough to accommodate mixed yard debris and food waste originating from 35 garbage trucks.

Applicant fails to show that the AB System design will prevent accumulation and build up of putrescible waste within the collection piping and sumps. (Exh. X, Shaw, p. 2). There is no requirement for periodic flushing and cleaning of the internal drain for the AB System and/or for the leachate collection. (*Id.*).

Applicant fails to include a process or procedure to accumulate the flush water and leachate. There is no method for leachate testing and/or disposal that complies with conditions requiring testing, monitoring and permitting in accordance with Bureau of Environmental Standards industrial pre-treatment requirements for disposal to the city sanitary sewer system.

Applicant further fails to provide an operations and maintenance plan for the AB System and/or the Leachate System. (*See* Section “F,” below)(Exh. X, Shaw, p. 3).

### *C. Monitoring*

There is no mechanism or procedure to ensure that Project complaints are addressed and/or corrected. Applicant proposes a nuisance log only. As evidenced by Applicant’s North Plains facility, a nuisance log alone is ineffective at getting

complaints resolved. There is no enforceable action plan with stipulated penalties and/or a method for a private right of action.

*D. Stormwater*

City staff assumptions for storm water and track out of pollution and/or wastes are too simplistic for serious consideration. (Exh. X, Shaw, p. 2). These assumptions provide that Applicant will not take mobile equipment outside, that garbage delivery trucks don't leak putrescible liquids and that loads will be dumped perfectly every time. (*Id.*)

*E. The Nuisance Mitigation Plan is inadequate*

Applicant fails to provide a sufficient Nuisance Mitigation Plan ("NMP") (Exh. X, Shaw, pp. 2-3). The NMP is not adequate because it (1) fails to prevent trucks from forming queues on public roadways; (2) allows the facility to operate 12 hours a day; (3) does not address when or where or how dust control with water will take place in accordance with established EPA methods; (4) does not provide any environmental controls or procedures to manage flies, rodents and birds; (5) does not include a procedure for controlling odors and leachate after food waste is loaded onto the semi-trailer (which is located outside of the AB System); and (6) there is no indication of how noise will be kept inside of the building. (*Id.*)

Failure to address these issues renders the NMP ineffective.

*F. No Operations and Maintenance Plan*

Applicant fails to provide an Operations and Maintenance Plan for the AB System and/or the leachate collection system (Exh. X, Shaw, p. 3). Food waste and the resulting leachate will be a major source of odor and vector complaints.

The proposed design assumes that the AB System and/or the leachate collection system will only require minimal or no oversight.

*G. Project Assumptions*

The various Project assumptions used by Applicant are unclear and confusing. (Exh. X, Shaw, pp. 3-4). Assumptions for load out trucks per day range from 3-6 to 10. (*Id.*). Another assumption includes leaving 200 yards of material per day on the aerated floor which amounts to almost 2 truck loads while Applicant states elsewhere that only one half truck load will be left per day. (*Id.*). Nothing should be left on the pad each day. (*Id.*).

*H. Facility Pad Configuration*

Applicant's design and facility specifications for the Project pad configuration fail to provide adequate assumptions or contingencies. (Exh. X, Shaw, pp. 4-5).

The airflow recommendations to keep a 6-foot pile of mixed food and yard waste below 104 degrees Fahrenheit are not substantiated. (*Id.*) No material density assumptions or thermal load assumptions are included to validate the minimum amount of airflow for the airflow parameters. (*Id.*)

Applicant fails to show that leachate will not leak and impact the shallow groundwater beneath the Project site. (*Id.*). Drawings submitted by Applicant evidence that the leachate collection system will be installed nearly two feet below ground surface, but do not show any protection or containment measures to protect the shallow groundwater against any release as a result of a break in the line or leak in the system. (*Id.*).

There is no provision for capturing odors resulting from the water tank venting system, which vents odors resulting from the separation of air from the solids. (Exh. X, Shaw, p. 4). Applicant's drawings evidence that these odors are improperly vented back into the building, rather than being captured and contained. Also, there are no measures to capture other industrial pre-treatment contaminants that are processed through this system. (*Id.*).

There are no plans for operation of the biofilter addressing management of pH, prevention of paths of least resistance ("channeling") or nutrients. (Exh. X, Shaw, p. 4). The proposed moisture control system is merely a water sprinkler on the top of the media bed and storm water that hits the floor. (*Id.*).

Likewise, there is no plan to insure the proper operation of the biofilter as a biological system. Adequate food, water and pH balance must be maintained for the biofilter to function at peak efficiency. Successful bacteria populations need water and nutrients to thrive and must be protected from pH swings. The oxidation products of odor contaminants are acids strong enough to cause swings in pH suppressing the bacteria colonies to the point of ineffectiveness. (*Id.*).

Wood based media tends to compact overtime, particularly if the moisture control strategy is to water the top of the bed. Compaction leads to channeling for the air flow through the media bed. Channeling leads to reduced efficiency of contaminant removal, thereby frustrating odor control to an unacceptable level. Applicant has not provided any plan to insure proper operation of the biofilter system with regard to the biological system.

**IV. CONCLUSION**

For the reasons set forth herein and in Appellant's prior submissions, Applicant's CUP should be denied.

Dated: Aug. 24, 2011

KELL, ALTERMAN & RUNSTEIN, L.L.P.



---

Lee Davis Kell  
Thomas R. Rask, III  
Martha Sharp  
Attorneys for Appellant

X

X



August 18, 2011

Springwater Corridor Preservation Society  
c/o Martha Sharp, Esq.

**Kell, Alterman & Runstein, L.L.P**  
520 SW Yamhill Street, Suite 600  
Portland, Oregon 97204

**Subject: *Review Comments for Staff Response to Additional Testimony and Information Submitted into the Appeal Record dated August 10, 2011 and Exhibits H, K, L, M.***

Dear Ms. Sharp:

Shaw Environmental, Inc. (Shaw) provides these review comments to the additional information submitted to the Appeal record for the LU 10-194818 CU – Recology Expansion (Project). Shaw has found the technical information submitted by Recology somewhat addresses our original concerns over preliminary design parameters and specifications. Though not complete by any means, the information does answer some of our questions. The paragraphs below include a review of key pieces of the information provided.

**Staff Response to Additional Testimony and Information Submitted into the Appeal Record dated August 10, 2011**

**General**

Shaw disagrees with the statement that “no new information should warrant a reversal of the Hearings Officer decision of approval...”. Bureau of Development Services (BDS) staff indicates to the City Council that they had all the information they needed in the original submittal and that the information would require some conditions. Recology submitted a large volume of documents, plans, and drawings that were previously unavailable in the original submittal. Furthermore, BDS staff contradicts themselves in paragraph 2 under *1. Residential and Commercial Source Food Waste* when they say “Staff and Hearings Officer did not evaluate potentially large amounts of food, such as garbage collection trucks filled with food from numerous commercial businesses...”.

The submittal of all the new information by Recology and the admission by BDS staff that all factors were not considered supports the claim that the original application for Conditional Use was inadequate and that the Hearings Officer decision was flawed. The Springwater Corridor Preservation Society should consult with Kell, Alterman and Runstein (KAR) about additional legal avenues to pursue concerning these errors.

**Revised Decision Alternative 2- Comments**

BDS staff is recommending to the City Council in Alternative 2 to impose two conditions to address the additional volume of commercial food waste that was originally not considered in the Hearing’s Officer’s decision. The first condition requires an aeration and biofilter system that is designed by a professional engineer

large enough to accommodate 35 garbage trucks. Shaw would like to see that condition amended to include the following language "The system would be designed to insure odorous compounds would not trigger the detection threshold for odorous compounds (hydrogen sulfide, methyl mercaptans, and amines) associated with food decomposition. An annual odor assessment would be conducted by Recology consistent with ASTM E679 or E544 or similar method and witnessed by a member of the Lents Neighborhood Association representative".

The second condition references the internal drain system and leachate collection system. BDS staff wants a condition to insure that the system is adequately sized to include equipment and truck washing. Shaw would like to include the following language to the condition "The system would be required to be flushed/cleaned weekly to prevent accumulation and build up of putrescible waste within the collection piping and sumps. The flush water and leachate accumulation tank would be pumped at least once/week. Disposal of the leachate/flush /wash water would be allowed provided that the water be tested, monitored and permitted in accordance with BES industrial pre-treatment requirements for disposal to the City sanitary sewer system."

### 3. Ongoing Monitoring /Unannounced Inspections: Recommended Revision to Condition G

BDS staff wants Condition G revised to include preparing a nuisance log for review by several regulatory agencies annually. Given Recology's history at Nature's Need, this condition has proven ineffective at getting complaints resolved for the long term. This condition needs to include development of an approved, enforceable action plan with stipulated penalties for recurrences to be of any consequence.

### 5. Stormwater Management and Tire "Track Out" Concerns

BDS staff response to the stormwater and track out issue is somewhat simplistic. Their revision suggests that Recology would not take mobile equipment outside, that garbage delivery trucks don't leak putrescible liquids and that loads are dumped perfectly every time. Shaw disagrees with the recommendation by BDS staff. Shaw recommends that BES review this process carefully in conjunction with what is being proposed in the Nuisance Mitigation Plan.

## Exhibit H – Recology Nuisance Mitigation Plan

### General

Shaw noted the April 2011 revision date.

### 2.2 Facility Layouts – Site Access and Egress

"Trucks will be advised not to queue on public roadways' The language is weak. If Recology is committed to listening to the Springwater Corridor Preservation Group, the language would be more directive such as: "garbage haulers will be directed not to form queues on public roadways. Repeat offenders will not be allowed to make deliveries at the site."

### 3.1 Hours of Operations

*Commercial and public vehicles will be accepted at the facility between 7 am and 5 pm on weekdays and between 8 am and 5 pm on Saturdays. The facility may operate more than 12 hours to accommodate incoming waste. The hours of operation defined above are 10 hours and 9 hours, respectively. The 12 hour day needs to be stricken from the Plan.*

#### 4.2 Dust and Mud Control

*Fugitive dust emission will be controlled by using water to mist loads as necessary -Where will this take place?*

*A water truck will be used to control dust around the exterior stockpiles, scales and access road as needed. - How will "as needed" be determined? EPA Method 22 or Method 9 readings? Recommend documented EPA Method 22 readings.*

#### 4.3 Vector Prevention and Control

*Vectors, such as flies, rodents and birds will be minimized by implementing good housekeeping procedures...- Define what "good housekeeping procedures are for Material Recovery Facilities.*

*...Organics can be covered by ground clean yard debris or loaded into the semi-trailer used for transporting material offsite - How will the odors and leachate be managed once loaded into the semi-trailer? The Plan says the semi-trailer is outside of the aerated floor and leachate collection system.*

#### 4.4.1 Noise Control

*The organics operations are conducted within the building, and, therefore, do not significantly increase noises generated in the area. - How does Recology intend to keep the noise inside the building? Will all access points (doors, windows, man doors) be kept closed when not in use?*

#### 4.4.3 Odor Control and Complaint Response

*Odor complaints will be investigated immediately by ROMR staff to attempt to determine the source... - What does "immediately" mean in this Plan? Right now? One hour? One day?*

*The person filing the complaint is contacted if possible and informed how the complaint has been addressed. - How soon after resolution will the person be contacted? How many attempts will be made to make contact? Will records be kept on the attempts?*

### **Exhibit K - Foster Road Aeration Pad System Configuration**

#### General

The submittal was prepared by Jeff Gage of Compost Design Services.

The leachate collection system and the biofilter will need operations and maintenance plans since they have the potential of becoming a source of odor and vector complaints. The impression given by Recology and their preliminary design team is that the system is foolproof and once installed will require minimal to no oversight.

#### Assumptions

This section is confusing. One assumption talks about 10 load out trucks/day. Another assumption talks about 3-6 truck load outs/day.

Another assumption includes leaving 200 cu yds of material on the aerated floor. This volume translates into 1.8 truckloads of material using assumptive numbers (110 cu yds/truck) provided. Yet, the narrative

says Recology plans to leave a ½ truck load on the pad every night. Why does Recology intend on leaving anything on the pad?

Recology claims in their Nuisance Control Plan that vector control and odors will be mitigated “by implementing good housekeeping procedures”. In Exhibit K (Foster Road System Design), one of the assumptions clearly states ‘Only 200 cu yds of material will be left overnight on air.’ How does the aeration pad /system housekeeping and cleanliness get taken care of when there is always material on the pad itself?

#### Facility Pad Configuration

7. Recology’s aerated pad preliminary design parameters are within reason. The basis of the airflow recommendation of 3 cfm/ft<sup>2</sup> as the minimum amount of airflow required to keep a 6 foot pile of mixed food and yard waste below 104 deg F (40 deg C) is not substantiated. No material density assumption or thermal load assumptions were found for the basis of this parameter. However, for the purpose of the biofilter loading, 3 cfm/ft<sup>2</sup> is in the range for odor control.

8. This paragraph attempts to discount any problems the leachate system might generate by focusing on the air flow issues. Upon reviewing the provided drawing by Recology, the leachate collection will be installed underground approximately 18 inches. The piping and materials used to convey the leachate are appropriate. Shaw would insist that the shallow groundwater table be protected by a liner under the piping to insure against any release as a result of a break in the line or leak in the system.

9. Recology’s system separates air and water from the solids. The air flows to the biofilter and water to a 3000 gallon storage and treatment tank. This tank also contains an aeration system to prevent the system from becoming anaerobic. From the drawing provided, the tank venting system from the 3000 gallon tank is not shown as going to the biofilter and therefore is assumed to be venting directly into the building. How does Recology plan to capture the odors from the tank vent? How much airflow is moving through the tank? BOD is only one contaminant in the industrial pre-treatment list. What about treatment of the other contaminants?

10. Recology’s preliminary design parameters for the biofilter footprint are reasonable for the treatment of odors. The media type and depth are at the minimum for odor control systems. Residence time (removal efficiency) would be optimized if the media depth was increased to 6 ft.

However, airflow is only one aspect of the biofilter operation. Recology has presented no plans for the management of pH, prevention of “channeling” (path of least resistance), or nutrients for the system. The proposed moisture control system is a water sprinkler on top of the media bed and any stormwater that also hits the bed.

The biofilter is an air control device that relies on biological activity to control pollutants released to the environment. Since this is a biological system, adequate food, water and pH balance must be maintained for the biofilter to function at peak efficiency. Successful bacteria populations need water and nutrients to thrive and must be protected from pH swings. The oxidation products of odor contaminants are acids. These acids are strong enough to cause swings in pH that would suppress the bacteria colonies to the point of ineffectiveness. Recology has not provided any plan to insure proper operation of this device with regard to the biological system.

In addition, wood based media tends to compact overtime, particularly if the moisture control strategy is to water the top of the bed. This compaction leads to "channeling" or path of least resistance for the air flow through the media bed. Channeling leads to reduced efficiency of contaminant removal (aka "slip). Since Recology is using the biofilter for odor control, any amount of slip is unacceptable to the Springwater Corridor Preservation Society.

**Exhibit L – Engineering Review of Foster Road Organics Receiving System Design**

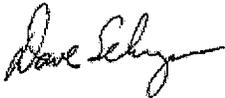
General

This document is an "engineering review " prepared by Holtech LLC of the information provided to Recology by Compost Design Services.

The document provided is not an engineering review but does provide technical opinions that mirror the document provided by Compost Design Services. Holtech LLC provides no computational analyses, formulaic references or mass balance flow schematics to either refute or support any of the proposed parameters provided by Compost Design Services. My comments about this technical opinion would be similar to those provided for the Compost Design report.

Holtech LLC does make one recommendation outside of the Compost Design report that involves the use of HDPE instead of PVC.

Overall, some of the technical information provided by Recology was useful in determining the technical aspects of controlling odors and managing leachate collected from the waste. There are still gaps and the Springwater Corridor Preservation Society will need to review the ultimate final design documents to ensure all commitments are met.



Dave Seluga  
Client Program Manager  
Shaw Environmental, Inc.

Please Reply To: Dave Seluga  
Phone: 503-603-1075 Fax 503-60-1001  
E-Mail Address: [Dave.Seluga@shawgrp.com](mailto:Dave.Seluga@shawgrp.com)

Y

Y



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

July 27, 2011

**Memorandum**

TO: Portland City Council

FROM: Sheila Frugoli, Senior Planner, BDS Land Use Services

RE: LU 11-194818 CU AD (Recology): Commercial Source-Separated Food Waste

During the appeal hearing before City Council on July 13, 2011, the Recology representative, Mr. Dave Dutra stated that the facility will accept food waste from small commercial uses such as restaurants. Staff has had previous discussions with Metro regarding commercial source food waste. For the other Recology facility, approved at N. Suttle Road, Metro staff asked if the Hearings Officer's approval was only for residential food waste mixed with yard debris at that site. If the City Council upholds the Hearings Officer's decision, Council should be aware that BDS staff and the Hearings Officer determined that the proposal, as described in the application, does not include the acceptance of commercial source-separated food waste.

If Council determines that the Conditional Use approval should allow commercial source separate food waste to be accepted at the SE 101<sup>st</sup> Avenue facility, their decision should clearly state so, and findings will need to be revised.

As background, the Metro "Solid Waste Regulatory Guidance Bulletin: Solid Waste Reloading and Processing Facilities Accepting Food Waste from the Metro Region" describes commercial source separated food waste as:

*"Commercial food waste": refers to source-separated, pre-and post-consumer food waste, including meat and dairy products and waxed cardboard packaging that are typically generated in restaurants, cafeterias, grocery stores, produce warehouses, and food processing or packaging plants.*

In contrast, Metro describes the other as:

*"Residential food waste mixed with yard debris": refers to source-separated, post consumer food waste, including vegetative food waste and meat and dairy products that are generated by residences and mixed with residential yard debris in roll-cart containers. The region is starting to see residential recycling programs that promote the co-collection of food waste with yard debris in the same container. For example, the City of Portland is currently implementing a phased approach to rolling out such a program city-wide. However, once residential yard debris is mixed with food waste it is regarded by Metro to be food waste and not yard debris.*

For the N. Suttle Rd facility, staff reviewed the case file (LU 10-203967 CU AD) and met with Hearings Officer Gregory Frank. In BDS's review of the file, staff found no reference to commercial source-separated food waste. The application and memos from the applicant specifically referred to the material as "food waste mixed with green (yard) waste". There was no mention of potentially large amounts of separated food being hauled from uses such as

FROM CONCEPT TO CONSTRUCTION

**EXHIBIT Y PAGE 1 OF 2**

restaurants, grocery stores and food processing plants being delivered to the facility. Subsequently the decision did not evaluate any possible impacts.

Mr. Frank reviewed his notes from the hearing and found no notation that the applicants described a plan to accept source-separated commercial food waste. Mr. Frank explained to staff that his decision to approve the use and particularly the Adjustment allowing the facility to be open (not fully enclosed) was based upon the applicant's oral and written testimony that 95 percent of the mixed material would be yard debris and 5 percent would be food. For these reasons, BDS informed Metro that the Suttle Road facility was only allowed to accept the residential food waste-yard debris blend.

Staff is submitting this information while the record is open so that we may provide, in the next two weeks, additional comments to City Council. We will submit additional analysis and potential recommendations that respond to anticipated impacts and nuisance controls needed for a facility that accepts both Commercial and Residential sources of food waste.