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July 27, 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

Commissioner 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 July 27, 2011 Page 2

Dear Mayor and Commissioners:

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

Very truly yours, Thomas R. Rask, III

dll Enc.

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

## 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)

**APPELLANTS' SUPPLEMENTAL BRIEF** 

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## I. <u>Recology Continues to Fail to Meet its Burden in Showing that the CUP</u> <u>Criteria are met and thus the CUP should be denied.</u>

Recology's additional submissions fail to cure the defects set forth in Appellant's brief to City Council dated July 11, 2011. Specifically, Applicant does not meet the approval criteria for a conditional use permit for Mining and Related Waste uses (33.815.220) and fails to meet the adjustment criteria (33.085.040). Applicant's CUP should thus be denied.

## A. Mining and Related Waste Criteria (33.815.200).

Applicant's additional submissions continue to lack technical evidence that the project design will control odors and leachate, will prevent and manage vectors, will contain stormwater, will meet the City's and DEQ's noise standards, will protect groundwater and Johnson Creek and will meet the City's and DEQ's ambient air quality standards. (Exh. M, Shaw Environmental, Inc. City Council Meeting Documents review, July 19, 2001 ("Shaw"), p. 1-2). Additionally, Applicant fails to show that it has an adequate operating plan and mitigation plan in place to address these issues (33.254.060)(Id.). Attached hereto as Exhibit N is a matrix detailing the deficiencies in Applicant's project, and the corresponding criteria and state statutes, discussed in detail in Appellants' Brief to the City Council dated July 11, 2011 ("Appellants' Brief").

## B. Adjustment Criteria (33.254.030).

Applicant has not submitted any new information or evidence as to the proposed adjustment criteria. Thus, as set forth in more detail on pages 25-27 of Appellant's Brief, Applicant's proposed adjustment is both prohibited and unlawful. The proposed adjustment is prohibited because the Project site does not have access to a major City Traffic Street as mandated by the CUP criteria (33.805.030B) and the adjustment is unlawful because it does not equally or better meet the purpose of the requirement that vehicles serving the Project (trucks) be routed only over Major City Traffic Streets (33.805.040A). Applicant thus fails to meet this criteria.

## II. <u>Applicant Must Demonstrate Solutions for Odors, Leachate and</u> <u>Groundwater, Vectors, Traffic, Litter and Hazardous Materials.</u>

Prior to granting Applicant's CUP, the City must require detailed engineering documents evidencing that Applicant has resolved the detrimental impacts associated with the Project. These impacts, which are set forth in more detail in Appellants' Brief, include odors, leachate, litter, vectors, noise and traffic. These concerns are real, as evidenced by Recology's operations in North Plains, Oregon and in California and its history of noncompliance, as discussed below.

Additionally, in order to approve the CUP the City must impose the following conditions on Recology, which are in addition to the conditions set forth in the Hearing's Officer's Findings dated April 27, 2011:

## A. <u>Odors.</u>

(1) Odor Log and Facility Shut-Down. Recology will post a Recology, DEQ and City of Portland, Office of the Mayor, telephone number outside of its facility for odor complaints and shall keep an odor log in the standard DEQ form and format. Once five (5) complaints are logged in a 30-day period, the City shall require mandatory shut-down of the facility and written notification to DEQ, the City and Appellants of such shut-down.

(2) *Biofilter Operations and Maintenance Plan.* This condition requires development and prior approval by the City Council of an operations and maintenance plan for the four biofilters that Recology proposes, including parameters, frequencies and ranges for the successful operation of the biofilters.

(Exh. O, Shaw Environmental, Inc., Conditions for Approval, July 20, 2011, pp. 1-3). This condition also requires an annual submittal of compliance certification with the Plan's conditions as well as the submittal of the odor complaint log discussed above.

(3) Ingress/Egress Double Door Airlock System. Recology is required to double door all ingress/egress to the building to minimize transfer of odors from the operation's ambient conditions by creating an airlock between the operation and the ambient conditions. (Exh. O, Shaw, p. 1). Vehicle ingress/egress is limited to one vehicle at a time. The double-door air-lock system shall be designed by a Professional Engineer registered in Oregon and approved by City Council. The general concept of this double-door system is that the outer door opens, allowing a truck or other vehicle to drive in, the outer door would then close, allowing the inner door to open and the vehicle would then proceed into the facility (this process is reversed when a vehicles leaves the facility). This type of double-door system would create an "air-lock" and prevent migration of odors from the facility. A further condition is that this double-door vehicle ingress/egress system could not be bypassed and that both doors could not be open at the same time.

(4) Odor Masking System. Installation of an odorant masking system inside the facility building to control indoor air quality issues associated with odor generation. The City has the right to review the effectiveness of the system based upon employee or neighbor complaints and issue appropriate directions or notices related to the effectiveness of the system.

B. Leachate.

(1) Below grade impermeable Liner and Collection System. Recology shall install an impermeable liner and sump collection system directly beneath the entire leachate collection system, including, but not limited to piping and tanks, and above the shallow groundwater table. (Exh. O, Shaw, p. 2). This system captures any leaks of leachate and pumps the captured leachate back into the collection tank. This system shall be designed, reviewed and approved by a Professional Engineer registered in Oregon and approved by City Council.

(2) *Vehicle Washing*. In an effort to minimize vehicle track-out, Recology shall install a vehicle wash station inside the building to clean vehicles prior to leaving the facility. This system will wash and rinse the body of the vehicle and apply an odor masking agent to the tires. The vehicle wash station needs to meet DEQ standards and requirements and requires a DEQ 1700-A or B permit. (Exh. O, Shaw, p. 2). Wash water that must be discharged to the City sewer needs to meet the City's pre-treatment standards and DEQ discharge standards. (Id.).

C. Litter and Vectors.

(1) *Professional Pest Control.* Recology will contract with a reputable pest control contractor to conduct weekly inspections of habitat and sanitary conditions inside and outside of the building. The pest contractor shall log the conditions at the facility and submit the log to the City annually. Additionally, the pest contractor is authorized to take action as necessary to keep the facility free of vectors.

(2) Local Resident Vector Control. Recology shall provide vector control, where requested, to all neighbors within 2,500 feet of the Recology property. This service, the availability of which will be posted outside of the Recology facility along with a Recology telephone number for further information, is provided at no cost to the neighbors as long as food waste is handled at the facility.

(3) Sweep Streets and Keep Storm Drains Clean. Recology shall sweep access roads and local streets leading to the facility in the immediate neighborhood vicinity at least once per week and provide a litter site contingency plan. Storm drains are inspected for blockages and clogs and during the rainy season at least once per week. The weekly sweeping and stormwater inspections are logged by Recology and submitted to the City annually.

D. <u>Noise</u>.

(1) Sound Barrier Installation. Recology shall engineer, design and build an acceptable sound dampening or barrier system around the outside of the operations in order to reduce the L50 sound level by at least 10%. (Exh. O, Shaw, p. 2). This system requires design, review and approval by a Professional Engineer registered in Oregon and approval by City Council. The system's effectiveness shall be verified annually by an environmental noise survey conducted by a reputable noise survey firm, and reported to the City.

(2) Hours of Operations Restriction. Recology shall restrict the hours of operations of its facility to six (6) days a week during normal business hours (8:00 a.m. - 5:00 p.m.). Recology is not allowed to add additional hours of operation or shifts without submitting a plan for night time noise abatement to the City and obtaining prior written authorization from the City. This plan shall be prepared by a Professional Engineer registered in Oregon and approved by City Council.

E. <u>Traffic.</u>

(1) *Trip Limit*. Recology shall be limited to 35 incoming loaded putrescible waste/yard debris garbage trucks trips per day, plus no more than 10 outgoing semi truck loads per day. Recology shall log the incoming loaded garbage trucks entering the facility and once 35 loaded trucks have entered,

Recology shall close the facility. The log shall be provided to the City on request, but no less than on an annual basis.

(2) *Traffic Log*. Recology shall post a Recology and City telephone number outside of its facility for traffic complaints. Recology shall keep a log of all traffic complaints and shall submit the log to the City on an annual basis.

## F. Operations Plan.

Prior to granting Applicant's CUP, Recology must prepare and obtain City Council approval of an Operations Plan that meets the City's Criteria (33.254). Specifically, the Plan shall specify how incoming loads will be inspected and a protocol for rejecting unacceptable waste, such as hazardous waste. Additionally, the Plan shall show how Recology's operations satisfy the requirements for on-site truck queuing, processing of food waste products and liquid waste pretreatment. Lastly the Operations Plan shall include a detailed nuisance mitigation plan that addresses off-site impacts (litter, vectors, odors,) (*see* Appellants' Brief, pp. 15-29).

## G. <u>Streamlined Appeal Process.</u>

The City shall provide a streamlined appeal process, for complaints arising out of odors, leachate seepage or leaks, noise, vector problem, littler and traffic issues. This process will allow either direct appeal to the City Council within 30 days of filing a complaint, or a private right of action in state court, including the right to attorneys' fees and costs for enforcement of the CUP conditions/violations.

## III. The Public Benefit of this Project Does not Outweigh the Impacts.

Public Benefits of the Project do not outweigh the Project impacts. The record does not support Applicant's contention that "all potential impacts are

mitigated." Rather, as set forth in Appellants' Brief, there are potential detrimental Project impacts which Applicant fails to show are addressed and/or mitigated related to odors, vectors, noise, litter, stormwater and/or leachate pollution, hazardous waste management and operational controls

The City acknowledged that in order to obtain a conditional use permit, Applicant must show that the public benefits of the proposed use outweigh any impacts which cannot be mitigated. (33.254.100).

In addition, ORS 227.173(3) provides:

Approval or denial of a permit application or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

In an effort to comply with ORS 227.173, the hearings officer dedicated two paragraphs to the benefits of establishing transfer stations – somewhere – and to the benefits of composting. While no one questions that the employment of regional transfer stations reduces the number of trips to landfills or composting facilities and that composting food waste reduces the volume of material sent to landfills, the hearings officer, nevertheless, failed to comply with ORS 227.173. Specifically, he failed to address why <u>another</u> transfer station at <u>this</u> site (or at any other site for that matter), provides any additional public benefit at all, when several other regional stations have more than adequate existing capacity to accommodate all of Portland's food scrap collection program.

The hearings officer also erred in his finding that the nuisance risk attendant to this site is "relatively low." The finding is based upon no evidence at all other than Applicant's assurance that its not-yet-designed odor suppression machinery will eliminate all odors, and that its not-yet-written nuisance mitigation plan will guarantee that no rats will be attracted to the one hundred plus tons of food waste which Applicant proposes to gather at this site every day.

## A. <u>No Public Benefit.</u>

There is no public benefit for this conditional use. The proposed Project is not needed to accomplish Portland's recycling and recovery objectives for solid waste. As discussed in Appellants' Brief, City and Metro officials have stated the residential food waste/yard debris project in Portland can start on October 1, 2011 as planned without the Lent's facility. Additionally, the existing Metro Material Recovery Facilities ("MRFs") serving Portland have the capacity and ability to receive, reload and transfer food wastes mixed with yard debris. While food waste recycling is beneficial for the City and for the community at large, there are existing MRF sites that have the present ability and capacity to accept residential and commercial food waste for recycling and composting. Thus, contrary to Applicant's statement and as acknowledged by Metro, the Project is simply not necessary.

## B. <u>Waste Volume is decreasing.</u>

The volume of solid waste received by Metro authorized facilities has dropped 21.2% during the period of 2007 to 2011. Furthermore, Metro estimates the increase in the volume of solid waste from 2011 to 2017 will be only 6.7%. (Exh. P, Metro 2007-2010 Actual and estimated tonnage, March 21, 2011). As such, there is enough existing capacity to handle all of the food waste/yard debris in the Metro region for the foreseeable future.

## C. <u>A Lents MRF is not needed.</u>

All solid waste in the Metro region currently goes to a regulated facility. A MRF located in the Lents neighborhood will only divert solid waste material from existing regulated facilities with adequate capacity and capabilities. As set forth herein, a Lents MRF requires major engineering and retrofitting to protect the environment, with the risk of not being able to meet 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. There is no public benefit from having a major MRF in the Lents neighborhood.

Significantly, the community does not believe that this Project is necessary in order to implement the City's food waste composting project. As set forth in more detail in Appellants' Brief, the Lents Neighborhood Association advised the City that the Project is both unnecessary and undesirable. Multnomah County Commissioner Judy Shiprack stated that the Project site is not the appropriate place to achieve the City's food scrap recycling goal, and that there are negative impacts that must be considered and that the Project should not be approved.

Senator Monroe concurs that the Project is not needed and states that during his eight-year tenure as a Metro Councilor that "we would have never approved a food mulching site inside the limits of the City." (Exh. Q, Monroe letter, July 7, 2011). For fifty years, the Portland metropolitan area has managed its solid waste stream by transporting it outside of the City. Allowing Recology to amend its permit for an unneeded facility in the Lents neighborhood and thereby processing waste within Portland's City limits would be a step backwards.

# IV.Recology has a Track Record of Odor and Waste Management Problems in<br/>Oregon, California and Nevada.

During oral testimony, David Dutra, the representative for Recology stated that "it is important to look at our track record" and that in Oregon "no notices of violations have issued." (Exh. R, Transcript of July 13, 2011 hearing, p. 17; *see also* DVD of July 13, 2011 City Council hearing at 2:26:43). Dutra also said that odors are not an issue at other facilities. (Id.) Additionally, Recology's counsel stated that there are not problems with Recology's facilities. (Id., pp. 17-18). However, as set forth more fully below, Recology has problems with its facilities in Oregon, as well as its facilities in California and Nevada. In Oregon, Recology has received numerous notices of violations, letters of noncompliance and warning letters from DEQ and Metro. Significant to the issues herein, DEQ has received over sixty complaints about foul odors emanating from Recology's North Plains facility, where food scraps are collected for composting.

## A. North Plains, Oregon.

Recology assumed the operations of Nature's Needs, located in North Plains, Oregon, in or around 2009 (Exh. S, Nature's Needs, retrieved 7/14/2011 from <u>http://www.naturesneeds.com/</u>). This facility is used to collect and compost food waste collected in the City's Kitchen Scrap Pilot Program. (Exh. T, Portland to Test Food Waste Pickup, Associated Press, Feb. 4, 2010). Food waste from 2,000 homes in the City is picked up and brought to the North Plains facility for separation and compositing. (Id.).

The North Plains facility has a long history of odor complaints and a long history of broken promises about controlling odors. (Id.). The City Manager for North Plains reports that "we've had people complain that they can't open their windows in the summer." (Id.). Based upon these odor concerns, the City of

North Plains is opposed to allowing Recology to continue its food waste composting after the pilot program is complete. (Id.)

DEQ records confirm that Recology's North Plains facility has significant odor problems. During the period from June of 2009 through July 11, 2011, DEQ received over sixty (60) complaints about odors emitted from the North Plains facility. (Exhibit U, DEQ Odor Log for Recology North Plains facility). Odors are described by complainants as very strong, as if something died, putrid, pungent, rotten, like dirty diapers, foul, nasty, fishy, hideous, like throw up, and unacceptable. Many describe these odors as ongoing. (Id.)

B. <u>Suttle Road and Oregon City.</u>

Recology has problems with its other Oregon facilities too. Specifically, Recology has received various notices of violations ("NOV") and/or of noncompliance for these facilities from DEQ and Metro. (Exh. V).

Suttle Road. Suttle Road received a NOV from Metro (June 10–12, 2010), two (2) noncompliance advisory letters (April 22, 2010 and June 30, 2010) and a DEQ Class I violation for hazardous waste (asbestos containing materials).

(2) Oregon City. Recology's Oregon City facility received three
(3) NOVs from Metro (February 17, 2011, June 17, 2010–June 21, 2010; June 25–July 14, 2010). Related to the Project, the February 17, 2011 NOV notes that while Recology represented that it would remove yard debris from the facility within 72 hours, Metro identified that yard debris had not been removed for nearly 30 days (January 24, 2010 was the last time that yard debris had been removed).

C. <u>California.</u>

Recology, formally NorCal Waste Systems, has a record of noncompliance in California. Specifically, between 2005–2009, Recology has been the subject of

no less than 27 litigated cases, 16 enforcement actions and 15 Cal/OSHA inspections. (Exh. W, pp. 11-16, HF&E Consultants, Inc., Feb 3, 2010 Litigation Summary). The subject of the cases includes creation of public nuisance through odors and vector problems, unlawful reclassification of waste collection and delivery of a greater percentage of nonrecyclable material than allowed by contract, failure to comply with waste collection agreements, failure to pay franchise fees, and violations of collective bargaining agreements. (Id.)

Significant to this Project, Recology has received NOVs for odor problems at Jepson Prairie Organics where organics are composted. (Exh. W, NOV issued by Solano County dated March 4, 2008, March 17, 2006, and March 14, 2004.) Odors are described as "strong rotten odors" by residents that live three (3) miles from the facility. (Id.) As of 2009, Recology failed to correct the odor issues. (Id.)

Additionally, Recology unlawfully discharged leachate to surface water at its Ostrom Road facility in Yuba County. (Exh. W, Calif. Regional Water Control Board NOV, February 26, 2004). Leachate was observed leaking from "numerous locations" at the facility. Recology also caused leachate leaks and seeps into waters of the state at its Gilroy facility. (Exh. W, pp. 28-36, Calif. Regional Water Quality Control Board NOV, February 28, 2005; March 22, 2006).

Moreover, Recology operates a composting facility in Gilroy where the county of Santa Clara issued an NOV for the receipt and handling of food waste, resulting in a public nuisance. (Exh. W, pp. 53-55, NOV, County of Santa Clara, April 20, 2006). Specifically, Recology's food waste practices caused the presence of flies, odors, dust and contaminated run-off water for more than seven (7) months. (Id.) Staff inspecting the site noted that they "had never seen this density of black fly populations" in a food waste or composting facility. (Id.)

Like the Project at hand, Recology proposed to co-mingle yard debris with food scraps at the Gilroy facility. (Id.) However, the county found that "some loads are entirely putrescible" food scraps. (Id.) Recology's lack of mixing ratios, lack of moisture and oxygen controls, lack of proper particle size and the lack of sufficient time of bagged composting were found to be the contributing factors to the nuisance of odors, vectors, excessive waste water and significant black fly problems. (Id.)

Recology's noncompliance in handling and processing putrescible waste is of concern to Applicants. Because Recology has a long history of complaints and creating nuisance conditions at its California facilities, Applicants are concerned the same will occur at the Project site.

V. <u>Conclusion.</u>

For the reasons set forth herein and in Applicants' Brief dated July 11, 2011, Recology's CUP should be denied.

Dated: July 27, 2011

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

Lee Davis Kell, OSB #670634 Thomas R. Rask, III, OSB #934031 Martha Sharp, OSB #065079

Attorneys for Appellants





July 19, 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: City of Portland Project LU 10-194818 CU - Recology Expansion – City Council Meeting Documents

Dear Ms. Sharp:

Shaw Environmental, Inc. (Shaw) attended the Portland City Council meeting on July 13, 2011 concerning the appeal of the City of Portland Project LU 10-194818 CU – Recology Expansion (Project). Shaw presented technical testimony in review of project documents submitted to the City prior to the Council meeting. During the City Council meeting, Recology introduced another group of documents and drawings for the City council to include as part of the record. Copies of these documents were presented to me for my review as to the technical adequacy of the information.

#### **Drawings**

Recology introduced the following drawings to the City Council:

- A3.01 Elevations 10/20/10
- C1.1 Erosion Control Plan 10/20/10
- P1.12 Piping Partial Plan Process Area 10/20/10
- P4.02 Piping Section View Process Area 10/20/10
- M4.02 Mechanical Section View Process Area 10/20/10
- M1.12 Mechanical Partial Plan process Area 10/20/10

#### General Comments

- 1. The drawings were produced on the same day 10/20/10
- 2. The drawings are part of sequenced set. We do not have a complete set.
- 3. None of the drawings provide volumetric data or mass throughput rates to determine efficiency of capture or removal.

10300 SW NIMBUS AVENUE, SUITE B, PORTLAND, OR 97223-4345 503.603 1000 • FAX 503.603.1001 • SHAW ENVIRONMENTAL, INC. The drawings are very similar to those submitted to City by Recology as part of the original application. All the drawings appear to be produced in AutoCad. Based on the information provided, the technical adequacy of the systems proposed cannot be determined as the information, again, is insufficient.

#### Noise Survey

The documents received at the City Council meeting also included a noise study conducted by Daly Standlee and Associates located in Beaverton, OR. Mr. Kerrie Standlee is indicated as the Engineer of Record for this survey. It is not clear whether Mr. Standlee conducted the survey or reviewed the results.

The survey was conducted on July 11, 2011. The report includes a map of approximate locations where sound level readings were taken that are included in the report. Field methods are not adequately described enough to duplicate the sound level measurements.

The instrumentation used to collect the data is typical for environmental noise surveys. Short-term sound level measurements taken inside and outside the building were made with a Larson Davis Model 831, Type 1 sound level meter (the newest sound level meter available from the company). Readings made with such an ANSI S1.4 Type 1 meter are understood to be accurate within ±1 dBA. Long-term sound level measurements taken along SE Knapp Street were made with a Larson Davis Model 720, Type 2 sound level meter. According to the manufacturer, the Model 720 meets the IEC and ANSI standards for Type 2 meters (Type 2 sound level meters are generally accurate within ±2 dBA.

The City Code for Noise Control (Title 18) sets a maximum limit of 65 dBA for noise radiating from an industrial zone to an adjacent residential zone. The report indicates that the <u>predicted</u> maximum noise generated from the site will be between 56 and 60 dBA for existing and proposed operations. No data was presented that showed the current **actual** noise levels from existing operations.

The report notes an exceedance of ODEQ standards for the L10 and L50 levels at the off site residential receptor. This exceedance was attributed to traffic on the residential street as well as I-205. The reports <u>predicts</u> that the existing and proposed Recology operations will be at 50 dBA and 52 dBA (L50 and L10, respectively) which is below current background. The project will need to review and address their contribution to this exceedance.

Dave Schry-

Dave Seluga Client Program Manager Shaw Environmental, Inc.

Please Reply To: Dave Seluga Phone: 503-603-1075 Fax 503-60-1001 E-Mail Address: <u>Dave.Seluga@shawgrp.com</u>



	City Council Meeting - Recology Project		_ <u>_</u>
		Reference	Còdes
Issue		Neterence	
General	Application Incomplete	Exhibit A pg 8	33.254.040
	No complete proposed/revised Operating Scenario		33.234.040
		Brief pp. 14-17	33.254.060
	No complete nuisance mitigation plan (litter, vectors, dust, noise)	Exhibit A pg 18	OAR340-096-00
		Brief pp. 18-22	
			(Litter)
	No studies for noise impacts caused by proposed operations and facility changes.	Exhibit A pg 15	33.262.050
·		Breif pp.7-8; 20-21	OAR340-035-00
	No engineering specifications, design calculations, frequencies for systems or methods used to	Exhibit A pg 7, 9, 11, 13, 18, 19	33.815.220G
	control nuisance issues	Brief pp. 5-9; 11, 13, 15-17-22	33.252.060
			33.262.040
	No groundwater study for potential direct pathway impacts to the shallow groundwater table and	Exhibit A , pg 6	33.815.220 D
	Johnson Creek by the below ground leachate collection system.	Brief pp. 10-11	
Nuisance - Odor	Application includes the use of biofilters to mitigate odors. Includes general dimesions of the biofilter. No engineering specifications, calculations or design parameters were provided as to the systems adequacy to meet the City's narrative standard for odor control for the waste area or the	Exhibit A pg 13	33.262.070
	building.	Brief pp. 5-7, 8, 11, 18-20	OAR340-210-0
			OAR340-090-00
	· · · · · · · · · · · · · · · · · · ·		
Nuisance - Leachate	Application includes the use of a leachate collection system, storage tank, spraying system and	Exhibit A, pg 10	33.254.040
· .	potential off site disposal. No engineering specifications, calculations or design parameters were provided as to the systems adequacy to collect, store or dispose of the leachate. No indications of		
	application rate was given for respraying leachate on incoming deliveries and the potential impact on odor control. No method for "off site disposal" was defined.		
		Brief pp. 6-7, 11, 16-17	1
	No method or system was proposed to prevent "track out" of food waste liquids outside of the	Exhibit A, pg 10	33.254.040
-	building where it would co-mingle with stormwater.	Brief pp. 9-10, 13-14, 15-16	

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Nuisance - Vectors	Application says that sanitary conditions will be maintained inside of MRF. Since there is no nuisance mitigation plan, no detailed systems or methods were described as to how sanitary conditions were	Exhibit A pg 19	33.254.040
	to be maintained	Brief pp. 15-17	
Shallow groundwater, Johnson Creek	Application says the leachate collection will be below ground. The depth to groundwater can be nearby monitoring wells and geotech borings indicates that shallow groundwater can be encountered at 5 ft. No information is presented on how leaks in the collection system will be prevented so that biological pathogens do not have a direct pathway to the shallow groundwater	Exhibit A pg 4	33.815.220 D
	table or Johnson Creek	Brief pp. 10-11, 15-16	

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July 20, 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: City of Portland Project LU 10-194818 CU - Recology Expansion – City Council Meeting Conditions for Approval

#### Dear Ms. Sharp:

Shaw Environmental, Inc. (Shaw) attended the Portland City Council meeting on July 13, 2011 concerning the appeal of the City of Portland Project LU 10-194818 CU – Recology Expansion (Project). Shaw presented technical testimony in review of project documents submitted to the City prior to the Council meeting. During the City Council meeting, Commissioner Fritz asked for a list of conditions to be prepared that would address citizen concerns. Here's a short list of conditions:

#### <u>Odor</u>

#### Condition 1 – Biofilter Operations and Maintenance Plan

The City would require Recology to devlop an operations and maintenance plan for the four biofiloters. This plan would include parameters, frequencies and ranges for the successful operation of the biofilters. The Plan would  $\_'$  require an annual submittal of compliance certification with the Plan's conditions as well as the submittal of the complaint log.

#### Condition 2 - Ingress/Egress Double Door Airlock System

The City would require Recology to double door all ingress/egress to the building to minimize transfer of odors from the operations to the ambient conditions. This condition would create an airlock between the operation and ambient conditions. Vehicle ingress/egress would be limited to the size of one vehicle. The outer door would open and allow the truck to drive in. When the outer door closed, the inner door would open and allow the truck to proceed to the operation. The situation would reverse itself for egress. The condition would also state that the system could not be bypassed or that that both doors could be open at the same time when food waste was present. The system would have to be reviewed and approved by a Professional Engineer registered in Oregon.

#### Condition 3 - Odorant Masking System

The City would require Recology to buy or design/build an odorant masking system inside the building to control any indoor air quality issues associated with odor generation. The City would reserve the right to review effectiveness of the system based on employee or neighbor complaints.

#### Leachate

Condition 1 – Below grade Impermeable Liner and Collection System

The City would require Recology to install an impermeable liner and sump collection system directly underneath the leachate collection system and above the shallow groundwater table. Any leaks in the leachate collection system would be captured and pumped back to the leachate collection tank. This system would require review and approval by a Professional Engineer registered in Oregon.

Condition 2 – Vehicle Washing to minimize track-out and oddrs

The City would require Recology to build a vehicle wash station inside the building to clean trucks every time prior to returning to the public highways. This system would rinse/wash the truck body as well as truck tire system with odor masking agents to avoid unwanted track out of food wastes or odors. The vehicle wash station would have to meet the requirements of the ODEQ 1700-A or B permit. Wash water would have to be discharged to the City sewer and would need to also meet the requirements.

#### Litter and Vector

Condition 1 – Retain Professional Pest Control Subcontractor

The City would require Recology to contract with a reputable pest control subcontractor to weekly inspect habitat and sanitary conditions inside and outside the building. The pest control subcontractor would be authorized to take action dependent on the conditions found. A log of conditions found and actions taken will be compiled and submitted annually to the City.

Condition 2 Local Resident Vector Control

The City will require Recology to provide vector control, if requested, to all neighbors immediately adjacent to the Recology property. This service would be renewed annually at no cost to the neighbors as long as food waste was being handled at the facility.

Condition 3 – Sweep Streetsland Keep Storm Drains Clear

The City would require access roads and streets to the facility in the immediate neighborhood vicinity to be swept at least once /wk by Recology. Litter management would be consistent with the site contingency plan. Recology would inspect stormwater collection drains for blockages and clogs during the rainy season at least once/wk. These inspections and sweeping would be documented and submitted annually to the City.

#### **EXHIBIT O PAGE 2 OF 3**

#### <u>Noise</u>

#### Condition 1 – Sound Barrier Installation

The City would require Recology to engineer, design/build an acceptable sound dampening/barrier system around the outside of the operation in order to reduce the L50 sound level by 10 %. This system would require review and approval by a Professional Engineer registered in Oregon. The system effectiveness would be verified annually by an environmental noise survey conducted by a reputable noise survey firm.

#### Condition 2 – Hours of Operation Restrictions

The City would require Recology to restrict hours of operation to 6 days/wk during normal business hours. Recology would not be allowed to add additional hours or shifts without Further noise reductions during the night time hours. A plan for further abatement would be required to be submitted to the City and approved before allowance. The plan would be also required to be prepared by a professional Engineer registered in Oregon.

Dave Seling

Dave Seluga Client Program Manager Shaw Environmental, Inc.

Please Reply To: Dave Seluga



Calendar	Tota	I Wet	Tota	al Dry	Gran	d Total	Total	1
Year	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Tonnage	
2007	400,430	403,615	210,423	404,210	610,853	807,825	1,418,678	Largest tonnage year between
2008	393,277	397,029	199,673	351,384	592,950	748,413	1,341,363	1994 (actual) and 2017 (est.)
2009	354,264	382,557	160,446	285,308	514,710	667,865	1,182,574	
2010	342,913	387,842	140,559	242,371	483,472	630,213	1,113,684	
2011	326,988	399,510	138,680	252,102	465,669	651,612	1,117,280	21.2% tonnage drop between
					23.8	19.3		2007 (actual) and 2011 (est).
2012	332,747	401,794	139,494	244,999	472,241	646,793	1,119,034	Metro solid waste staff reported tonnage at its two transfer
2013	336,709	406,578	140,634	247,002	477,343	653,580	1,130,923	stations declined 8.3% and declined 6.5% at all privately
2014	341,942	412,897	142,801	250,807	484,743	663,704	1,148,447	owned transfer stations as compared to the same time
2015	347,973	420,179	145,722	255,938	493,695	676,117	1,169,811	period in FY 2009-10. This decline covers nine-months
2016	353,919	427,359	148,658	261,094	402,577	688,453	1,191,029	ending March 31, 2011. Nearly the same tons as in 1997
2017	355,747	429,566	149,642	262,822	505,389	692,388	1,197,776	6.7% tonnage increase between
	-				. 7.8	5.9		2011 (est.) and 2017 (est.)

#### 2007 - 2010 Actual and 2011-2017 Estimated March 21, 2011

Source: Metro Regional Government. Metro defines core tonnage as municipal solid waste (MSW) plus construction and demolition debris (C&D) generated within Clackamas, Multhomah and Washington Counties and delivered to a solid waste facility authorized by Metro to accept this waste. In summary, this waste represents route and drop box waste collected by licensed and franchised haulers, plus commercial and public self haul. Core tonnage excludes special waste, industrial process wastes, environmental clean-up materials, source-separated recyclables, and any material used for beneficial purposes (such as alternate daily cover) at a landfill. RAP: March 2011

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#### OREGON STATE SENATE 900 COURT ST NE SALEM, OR 97301

July 7, 2011

Portland City Council 1221 SW-4th Ave. Portland, OR 97204

Mayor Adams and Members of the Council,

As the State Senator representing the citizens in the Lents community, I am writing to you today in regards to Recology's request for a Conditional Use Permit to process food waste at its facility on SE 101st. I am in support of providing citizens and businesses with the opportunity to recycle food waste and commend you for your efforts in making curbside pickup of compostable materials a reality. However given the location of the proposed site, it is critical to engage the community and solicit public input before making decisions that could have significant impacts to the surrounding neighborhoods.

Over the next couple of weeks, you will have the opportunity to demonstrate transparency and engage your constituents in this important matter. It is my view that the site on SE 101<sup>st</sup> is not the appropriate place to help achieve your recycling goal, and we encourage you to consider the impact that this facility will have on the citizens near the site.

Specifically, the Recology site is located in the center of a community, surrounded by the Lents and Mt. Scott neighborhoods and bordered by the Springwater Corridor, Johnson Creek, and Playhaven Park. Recology's operations will cause unnecessary public nuisances including foul odor and noise, but will also raise serious health concerns due to air and water pollution, traffic from large trucks, and disease-carrying vermin. We value the health and safety of local families and outdoor recreationists and wish to preserve the livability of the community.

I have come to this conclusion not just because I lived and represented east Portland for over 40 years, but also as a former Metro Councilor for 8 years who worked on recycling and garbage disposal issues throughout the Portland Metro area. I can tell you that as a Metro Councilor, we would have never approved food mulching site inside the limits of any city, especially one as dense as Portland.

We struggle daily to provide opportunities for our constituents to prosper. Given the shortage of real estate in the City of Portland where business and industrial development can occur, I believe that this site, with its proximity to Foster Road and Interstate 205, can be put to better use. This

Office: 900 Court St. NE S-306, Salem, OR 97301 - Phone: (503) 986-1724 District: 7802 SE 111th Ave., Portland, OR 97266 - Phone: (503) 760-4310

EXHIBIT OPAGE 1 OF 2

100-acre site has the potential to employ hundreds of citizens, while Recology's proposal would just employ a few individuals and spoil the site for future development.

Thank you for taking leadership on food recycling, but for the sake of our constituents, please do not approve Recology's permit to process food in the middle of the metropolitan area. There are many other viable sites in rural areas that already receive and treat compostable materials. I am confident that by choosing an alternate site for processing the city's food waste and wet yard debris, the City of Portland will be able to execute a successful recycling program without sacrificing the quality of life in our neighborhoods.

Thank you,

Senator Rod Monroe Senate District 24



## **Closed Caption File of Portland City Council Meeting**

This file was produced through the closed captioning process for the televised City Council broadcast and should not be considered a verbatim transcript. Key: \*\*\*\*\* means unidentified speaker.

#### JULY 13, 2011 3:15 PM

At 2:20 p.m., Council recessed. At 3:16 p.m., Council reconvened.

Adams: City council will come back to order. Karla, please call the roll. [roll call] Adams: A quorum is present and we shall proceed. Please read the title for 3:15 time certain, item number 736.

#### Item 736.

Adams: How many of you have been to a city council meeting before? Just a couple of the rules of chamber. This chamber does everything we can, operation of this chamber is geared towards the free flow of diverse points of view, so there's no cheering, hooting, clapping, audible noise. If you like something that somebody says, you can do a thumbs up, and if you don't like what somebody says, you can do a thumbs down. If you are here lobbying on behalf of for-profit, nonprofit school, any other organization, if you're here to phish if you're authorized to lobby on their behalf you need to disclose that under local law. If you want to sign up to testify, then you can approach our great council clerk, who can take your name. We call in add and the procedure of this particular hearing, given it's a land use hearing, is -- the process is ascribed by state law, and i'd ask the city attorney to describe for us the kind of hearing we're about to have.

Linly Rees, Office of City Attorney: This is an evidentiary hearing. It means you may submit new evidence to the council in support of your argument. We'll begin with a staff report by the bureau of development services staff for approximately 10 minutes. Following staff report, the city council will hear from interested persons in the following order. The appellant will go first and have 10 minutes to present their case. Following the appellant, person who support the appeal will go next. Each person will have three minutes to speak. The principal opponent in this case the applicant 1. Have 15 minutes to address council and rebut the appellant's presentation. After the principle opponent, the applicant, the council will hear from persons who oppose the appeal. That is, they support the application. Again, each person will have three minutes. Finally, the appellant will have five minutes to rebut the presentation of the applicant. The council may then close the hearing, deliberate, and take a vote on the appeal. If the vote is a tentative vote the council will set a future date for the adoption of finding and a final vote on the appeal. If council takes a final vote today, that will conclude the matter before council. There's several guidelines for those testifying or addressing the council today. First, regarding submitting evidence into the record. Any letters or documents you wish to become part of this record should be given to the council clerk, Karla, after you testify. The only or a copy of any slides, photographs, drawings, maps, videos or other items you show to council during your testimony, including power point presentations, should be given to the council clerk to make sure they become part of the record. Second, testimony must be directed to approval criteria. Any testimony, arguments, and evidence you present must be directed towarded applicable approval criteria, or other criteria in the city's comprehensive plan or zoning code that you believe apply to the decision. Staff will identify the criteria as part of their staff report. Third, issues must be raised with specificity. You must raise an issue clearly enough to

#### **EXHIBIT R PAGE 1 OF 33**

give council and other parties an opportunity to respond to the issue. If you do not, you will be precluded from appealing to the land use board much appeals based on that issue. Fourth, the applicant must identify cons constitutional challenges to any conditions of approval. Additionally, if the applicant fails to raise constitutional or other issues relating to proposed conditions of approval, with enough specificity to allow council to respond, the applicant will be precluded from bringing an action for damages In circuit court to challenge the condition of approval. And that concludes

Adams: Next I will ask members of the city council if they win the declare -- wish to declare any conflict of interest, a potential conflict or an actual conflict of interest. Does anyone have any conflicts to announce? Hearing none, if no council has a conflict of interest, i'll ask if any member of council has had any ex parte contacts to declare, or information gathered outside of this hearing process. Ex parte contact can include communication between a council member and a party to a quasi -- this quasi judicial proceeding about the substance of the proceeding that has taken place outside of this proceeding. Any ex parte conflicts or contacts I should say, that any member of council would like to declare?

Leonard: I've had multiple emails from both sighted and phone calls from both sides.

Fritz: I have also, and I think they're all entered into the record.

Adams: I have as well, and they're in the book in front of me, and I reviewed them.

Saltzman: I've had emailed, I don't think i've had any phone calls.

Adams: All right. Does any other member of the city council have any matter that needs to be discussed before we begin this hearing?

**Rees:** One of the things you need to do with ex parte contacts, if anybody asks if there are any questions from the -- from Anybody in the audience about those contacts.

Adams: Any challenges from anyone attending this hearing regarding conflicts of interest or ex parte contact declarations? Hearing none, we'll now move on to the hearing. We'll have staff, please come forward. Hi, how are you?

Sheila Frugoli, Bureau of Development Services: Wonderful. Thank you. Adams: Good.

**Frugoli:** Good afternoon mayor Adams and council. I'm sheila Frugoli, the assigned planner for the bureau of development services. I'm here to present the hearings officer's decision and the appeal issues before you today.

Fritz: Sheila, could you move the mike over a little bit? Thank you.

**Frugoli:** The applicant, recology Oregon waste material recovery, is requesting conditional use approval for a new waste-related use. The applicant wishes to accept food waste at an existing recycling facility that is located on a large industrial site his forically known as the freeway land property. The food waste will be delivered to the site primarily by garbage haulers who will collect the food waste from city residents who will dispose of their food waste in their yard debris containers. This will be a new curbside collection service. The applicant & anticipates 35 garbage hauler trucks coming to the site daily, also mixed food waste will be accepted from Private selfhaulers as well as the general public. The waste will be offloaded inside an existing building and then sorted. The mixed food and yard debris waste will remain in the building for no more than 48 hours before it is transported I have a semi truck to a different site for composting. Also as part of this application the applicant is requesting an adjustment to waive the requirement that the wasterelated use have access from a major city traffic street or a street that is within a designated freight district. This aerial photo shows the northern portion of the approximate 100-acre site. The green star identifies the building where recology will accept the mixed food and vard debris material. Recology will operate within a 6.2-acre ground lease area. This industrial site has access from southeast foster road from the southeast 101st avenue intersection. The access road crosses through private property, over the city-owned springwater corridor trail, and on to a private road

#### **EXHIBIT R PAGE 2 OF 33**

which was southeast 100th avenue before being vacated. Johnson creek runs through the northern portion of the site near the spring water trail. East of the site you see the east lents floodplain restoration project, a city-owned 80-acre facility that will provide flood, storage, and natural habitat benefits. This aerial photo shows the southern portion of the site. We see the i-205 interstate to The west, and the mount scott area to the south of southeast knapp street. The mount scott satisfactory primarily developed with single-dwelling residences there. Are some institutional uses on the hill, such as a small public park, church sites, and a residential group living treatment facility. There are also -- there is also a large multidwelling residential development located southwest of the site, south of mount scott boulevard. The freeway land site is within the eg-2 general employment, and the ih heavy industrial-base zones. Waste-related uses require conditional use approval in both those zones. The entire site is located within the Johnson creek basin plan district, portions of the site along johnson creek and its southern edge are within the environmental conservation and the environmental protection overlay zone. It is important to note that the recology facility is not located within the overlay zoned areas. The zoning and development pattern that surrounds the site is primarily residential. Specifically, the area north of the springwater corridor is zoned general employment in r2, a low-density multidwelling residential zone. To the east is the east lents wetland restoration project. It is zoned r10 single dwelling residential, and open space. On the south side of southeast knap, the owner of the freeway land site also owns a 6.2-acre Vacant site. It is residentially zoned. The lot is steeply sloped, forested, and has a creek running through it, and it is entirely within an environmental overlay zone. Finally, most of the mount scott residential area is zoned single dwelling residential. Concerns have been raised about potential ---

Adams: Can I ask a question? How long -- roughly how long has this residential and industrial zoning been in place?

Frugoli: I couldn't tell you exactly. At least the last 40 years.

Adams: Thank you.

**Frugoli:** Concerns about raised about potential flooding at or near the recology facility. This map identifies in light blue johnson creek designated floodway, the dark blue area is the designated 100year floodplain, which is labeled the flood hazard area. The red line outlines the recology building. This map shows that the proposed waste-related use will be outside of the flood hazard area. Again, the recology facility is within a ground lease area. It is located approximately in the center of the freeway land site. The recology facility contains a large metal building, a small office, a weight station, an exterior storage and processing area, and a small exterior retail sales area where ground cover materials are displayed. Now I will show a few photos of the site and surrounding area. This is the large building where the blended food waste material Will be offloaded for sorting and then stored temporarily. The recology facility is surrounded by a tall chain link fence. This photo shows again the building and the weight scale. Then looking northward, we see the weight scale the small portable office structure and parking for employees and visitors. This shows recology's exterior yard and wood debris disposal area or processing area. The applicant states that food waste will not be off loaded or stored in this outdoor area. This photo was taken near the southern gate of the facility, next to the interior road, which is identified as SE 100<sup>th</sup> avenue. We see other industrial uses on this site as well as the southern edge of the site. [captioner change]Part 2

And then looking north on the right we see the tall fence defining the recology lease area, as well as numerous other industrial buildings located near the interior road. This industrial business is located across from the recology building. Here's a photo of the segment of johnson creek that runs through the site. On the aerial photo, the yellow arrow identifies the location of the bridge over the creek. Again, the green star identifies the location of the recology building. The creek is located approximately 800 feet from the recology facility. The green arrow identifies the industrial site's

#### EXHIBIT R PAGE 3 OF 33
entrance from southeast 101st avenue. North of the entrance is the springwater corridor trail. You can see the painted pedestrian bicycle crossing and the stop sign.

Fritz: So there isn't a traffic light there.

**Frugoli:** No, not at the trail crossing, just a stop sign. This shows looking west part of that springwater corridor that passes near the site. Here we see residences located northwest of the site. These homes are located west of southeast 99th and south of southeast woodstock court. The homes are relatively close to the freeway land site but at least 1100 feet from the recology lease boundary. This photo was taken from southeast knapp which defines the southern edge of the industrial site. The locked gate prohibits access to the site from knapp street. The photo shows the elevation change from southeast knapp rate of way to the industrial activities on the site. The green arrow identifies the approximate location of recology building on the industrial site. Near the locked gate, looking east, we see southeast knapp and the forested vacant site across from the freeway land property.

Adams: The freeway land, oriented. The freeway land is on the left or right? **Frugoli:** The left-hand side of the photo.

Adams: Ok.

Frugoli: Yes. Again, the mount scott residential area is located above the site to the south. This photo was taken near the intersection of southeast la bell court and southeast 105th. As the crow flies this location is approximately 800 feet from the recology facility. The closest residential lot on the hill is located approximately 600 feet from the recology building. The hearings officer evaluated the proposal with conditional use approval criteria 33.815.202a through I and the adjustment review criteria 33.805040 a-f. The hearings officer considered the staff report and recommendations and the written comments submit into the record and the oral testimony offered at the hearing. The hearings officer determined that with conditions, the conditional use and adjustment approval criteria would be satisfied and, therefore, the proposal should be approved. Numerous conditions were imposed. The decision requires signs to be posted. It requires an aeration system and drainage collection system must be installed to address odor and keep liquids from escaping the confines of the building and information to guide customers to the southeast 101st entrance. And if it's ever reestablished, the recology related trucks are prohibited from using access from southeast knapp street. To specifically address concerns about raise -- raised about nuisance impact, a condition will require the applicant to lodge complaints -- lodge complaints and share a copy of the log with the lents neighborhood association apt east Portland neighborhood office and within 24 hours, the applicant must give bds access to the site to review the log. Lastly, a condition will require the food waste material to be removed in the site within 48 hours. The appellants disagree with the hearings officer's decision. City council received a full appeal -- a copy of the full appeal statement. In summary, the appellants state that the decision is flawed because the application did not provide technical or expert evidence to show that the facility would not create offsite impacts such as odor, attraction of vectors, increased noise, dust, air and water pollution and, therefore, the potential environmental impacts were not adequately addressed. The appellants state a mitigation plan should have been submitted and state that the overall public benefit and potential impacts were not correctly considered. They believe that the applicant submitted traffic study was flawed. And they contend that the applicant should have provided evidence that -- excuse me, that the applicant should have provided evidence that there is not new capacity of existing waste transfer stations. Again, this is an aerial photo showing the site and surrounding development. I should note there are other city staff from in attendance. We're all available to answer questions you may have. This concludes my presentation. Adams: Questions from council?

**Fritz:** Thank you, they was a very clear presentation. You said that one of the residences was 1100 feet from the facility Is that the closest?

**Frugoli:** No, the -- one of the residential lots on mount scott is within -- as the crow flies within 600 feet of the recology facility. Some of the southern residential lots are closer than those on the north side of springwater corridor.

**Fritz:** O.K. and is there any evidence in of the record, anybody determined the prevailing wind? **Frugoli:** No evidence in the record.

**Fritz:** That's a question i'll have for folks, then. And again, clarifying, is the property -- that part the property in the 100-year floodplain.

**Frugoli:** Part of the ownership is, yes, but not the recology lease area. But, yes, part of which is owned by jamison, yes, that site is within the 100 year floodplain.

Fritz: But this particular part of the facility is a foot above or more?

Frugoli: I don't know the elevation, but outside of the designated floodplain check.

**Fritz:** O.K. And the regulations require that odors cannot be detected for more than 15 minutes in a day. Is that considered at one time or cumulatively over the course the day?

**Frugoli:** I believe the zoning says you can have modest odor detections but it would have to be continuous, yes.

Fritz: For 15 minutes.

Frugoli: Or more.

Fritz: Is there a mechanism to objectively measuring odor?

Frugoli: Not that I know of.

**Fritz:** O.K. I was wonder being that. And on the kittelson traffic impact study. Peak times over two days, is this an adequate amount of time for a study of this kind?

**Frugoli:** If I could, we might ask the transportation representative, robert hailey to speak to that. **Fritz:** That would be very helpful and my final question for you then is, was county vector control notified and have they commented on the issue?

**Frugoli:** We did not notify them and we did not receive anything into the record from the county vector control division.

Fritz: Thank you.

Frugoli: Thank you.

**Bob Haley, Bureau of Transportaion:** Bob hailey with the bureau of transportation and your question was whether or not -- there was a claim made, two counts or two days' of counts was inadequate and, therefore, the study was invalid. In speaking with our traffic operations staff, there is no industry standard for the minimum amount of counts. There could be a problem if you took it on one day and it was a friday or monday, because it's atypical, but this was in the middle of the month on a tuesday and thursday and no holidays and nothing to make you conclude that these weren't typical counts for establishing a base set of traffic data.

Fritz: It's pretty normal for what you see in most applications?

Haley: Yes.

Fritz: Thank you.

**Saltzman:** So you showed us a picture of southeast knapp with I fence, so will -- you mentioned were that fence to be removed and the traffic -- truck traffic, i'm curious why is that fence there right now? To prevent traffic?

**Haley:** I'm assuming it's a security fence and that gate may be used for emergency access at times but it doesn't appear to be used on a regular basis. It's not really paved or graveled back there and the applicants were never intended to use knapp so they had no objection to the condition of approval prohibiting them.

Saltzman: So the entrance to the site would be from foster?

Haley: From 101st.

Saltzman: Foster to 101st.

Haley: Foster to 101st.

#### Saltzman: That's the only way?

Haley: Yeah.

Adams: We'll now hear our next presenter which is the appellant. Please come forward. Welcome to the city council. If you could introduce yourselves.

**Tom Rask:** Good afternoon, mayor Adams, members of council. I'm tom rask here on behalf of the appellants and along with mr. Lee kell to my right Mr. Dave Selugga, from Shaw

Environmental, and Marty Sharp from our law firm. Today we have the appellants, mr. Frank fleck who is present. Mr. Gary gossett who is present and Ms. Gigi DuBose and Mr. steve Clayton of the Cotton Wood Capital who are the property managers, owners of an apartment very near this project.

Adams: You're residential homeowners and representing the investor? Ok.

**Rask:** Briefly, you're going to hear in the balance of our time from mr. Kell who will explain and give a brief history of the garbage industry in Portland -- mr. Kell, why we have the rules we have and why motor can properly service this situation and then we'll turn the balance of our time over to mr. Dave Selugga who will analyze and explain the nuisance and other concerns as to why this application should be denied.

Lee Kell: I'm lee kell, you i've been practicing law in Portland for over 40 years and I good part of it with the solid waste industry and watched the development and worked with the development of this industry from the '70s on up to today. The basic thrust has always been sanitation. From the type of containers to the water tight truck to the sanitary landfills and transfer centers and material recovery centers to separate waste. The whole process has been developed in order to keep waste out of the city. Almost -- except for the central, merle central and he on areas, all of the transfer stations are outside of the city. As a matter of fact, all of our waste just disappears from this area. It goes up the columbia river and down to polk county, just leaves the area. This project brings the waste back into the city. Not only the waste but the waste to be dealt with. Metro has worked for years to develop the system we have now and they, right now, those -- the merfs and the private merfs around the area have the capacity to handle this project. As a matter of fact, they can start with right now. We don't need to reopen this recology project over on foster to handle this waste, to transfer this compostable material to the composting plants. And that briefly is my point. It's all I wanted to say and i'll turn it over to david.

Dave Selugga: I'm dave Selugga, a senior project manager with Shaw, an environmental consultant firm here in Portland and I was asked by the opponents to review the technical and environmental aspects of the application and the way I like to do that is I like to start looking at the process flow. And trying to gauge a sense of material and waste flow rates through the system. Looking at the application I found it difficult -- or I found significantly insufficient material to make a real simple process flow dynamic for this project. -- flow diagram for this project. And the reason we're interested in the process flow, because liquids management is a being deal with this project. You're dealing with food waste roughly 65%, 70% water. So the liquid management aspect of this project is very important. The other thing I wanted to look at is the nuisance mitigation plan. The city requirement -- the city requires a nuisance mitigation plan be put together for impacts. One for potential offsite impact, another for litter and finally vectors. En I look for a greet nuisance mitigation plan and did not find one. I was particularly interested in the odor and vector aspect of the project and again, did not find a mitigation plan. Going back to the liquids management, I want it talk about what the application did say. It said they were going to have a collection system, a storage tank, a spring system, and then the potential of offsite disposal. Of course, looking at all of that, I wanted to look at it from a purely technical standpoint and look at flow rate and disposal rates. I found none. Nothing like tank size or collection system size. Pumps. None of the stuff that we would -- you would consider relevant in a technical evaluation. In addition, the leach aid system is proposed to be subsurface. In our review of the area, the

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geological outlying area, we researched monitoring wells and geotechnical boring information for that area. And one of the things we found if n that area was a shallow groundwater is roughly five feet. So if you're talking about putting this a leach aid collection system below ground there's a definitely potential pathway in shallow groundwater for biological path generals and chemicals that could create further odor problems for the site and given the fact that johnson creek is in the immediate vicinity there this could be a problem if the system leaked underground. Finally, to conclude about leach aid, we did not see anything in the operations area that would indicate how leach aid is going to be presented being what's known as tract out. This is where you're -- there they'll be dumping food solids and mixing and everything, but there will be lick I hads in the area -liquids in the area and the liquids will stick to tires and tracked outside of the building and we saw nothing in the application that would deal with that and from a stormwater standpoint, you have the leach aid commingling with the stormwater during the rainy season. Odor, one of the things that the application said they were going to use biofilters to mitigate odors and when I look at the engineering drawings there's a application there's four biofilters with a fan system. General dimensions. A given depth of material that's going to be used for filter media, but the technical detail missing, air flow rates, pressure drop. Where was that information to determine how four biofilters were decided? So this was very difficult for me to make a -- to ascertain whether the system was adequate enough -- ascertain whether the system was adequate enough. And finally, in the matter of vectors, the application says that the sanitary conditions will be maintained inside of the facility. I don't understand what that means. That doesn't have a technical application to it. It just is sanitary conditions. So again, I saw nothing specific that would address on how vectors would be controlled, how vectors would be prevented from -- would be controlled and how they would be prevented from trucks themselves and how mosquitoes or standing water and birds and other flying creatures like that would be prevented from coming inside of the building. So again, the issues of vectors from a technical standpoint, I found no information that would indicate anything was being done to control vectors to that particular project. As a result of my request of the appellants for the technical review, I found the information at least from a technical perspective, to be wholly insufficient.

## Adams: Thanks.

**Rask:** To follow up, a couple other matters i'd like raise before you all -- all of you today. First, there's been some debate about the number of loads that will actually be coming into the site. The applicant say 35-truckloads and less than 5% food waste. What the applicants failed to do was even look at the pilot program that was run by the city. What you'll find is it's not 3% food waste, it's 6% in a one month snapshot. 17% in another month snapshot and 20% in another month's snapshot. One breath, you'd say that's excellent effort on behalf the citizens to utilize the system we support. But the flip side, to think this is only going to be a little bit of food waste with a fair amount of yard debris is simply not the case. Our own evidence from the pilot program justifies otherwise. The other main issue is traffic. And with regard to that issue, the 35 load dollars simply not realistic. Haulers from the east side of Portland will make their effort to get to this site. When we did our own review, looking at 400 trucks, not 35. It's just unrealistic to believe that 35 trips is adequate and in terms of the applicable code with regard to the major street usage versus the additional street usage, the applicable code with regard to the major street usage versus the additional street usage, the applicable code with regard to the major street usage versus the additional street usage, the applicable code with regard to the major street usage versus the

Adams: I want to give you an opportunity. We are bound to interpret as you know state law in these matters and the art and craft of interpretation allows for some latitude but we're bound by state law and the criteria -- latitude and we're bound by state law and I wanted to give you an opportunity to summarize where you think the three or a short list, this is intended to be a summary, not a soliloquy, where the proposal is a field of state law, specifically, which law?

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**Rask:** Initially in terms of applying state law, you have to look at the city code as overlaid against state law and I would urge you to start there. In our brief, we outlined the related waste condition review criteria the hearings officer was supposed to apply to this file. What you heard from is that it was substantially deficient in a number of criteria.

Adams: Again, I don't want you want you to repeat, I appreciate your testimony very much. Very eloquent, persuasive but I want to of what he said you think applies most directly to which local interpretation of state law.

**Rask:** With regard to the infestation, i'd point out there are significant health and safety issues that need to be considered. Environmental impacts, environmentally sensitive areas such as johnson creek and the watershed. Didn't address any potential nuisance impacts such as the litter and vectors, required to be considered under the conditional review criteria. The proposals don't address the regulatory issues regarding 33.254 and waste related uses and most importantly in looking at it all, you have to balance the public benefit n. This case, the public benefits do not outweigh the detrimental impacts and they apply strictly to the code and state law.

Adams: Thank you very much.

Fritz: Is the report from the pilot project in the record?

**Rask:** I do not believe we attached that as exhibit. I'd be happy top submit it as additional information. We do refer to it and I think we obtained and i'll refer to our exhibit list.

\*\*\*\*\*: If you look at exhibit i, there's an spreadsheet of the pilot program and the waste generated from that program.

Rask: Thank you. I believe that's a summary. Correct, we've got the summary attached.

Fritz: I'll check that out i'm assuming your intention because it's up to 20%, rather than 3%, that would have more odor and potential for vector problems.

Rask: Absolutely.

Adams: Thank you very much for your presentation.

Rask: Thank you.

Adams: We'll move as described to the principle opponent. Sorry, you're right. How many people have signed up.

Moore-Love: We have 16.

Adams: Ok.

**Moore-Love:** The first three please come on up.

Adams: Welcome to the city council chambers. Glad you're here. Again, give us your first name, no address or phone number and if you're an authorized lobbyist on behalf of any organization. Steve Clayton: Thank you, appreciate your time in considering this appeal. I'm steve clayton, an attorney with cottonwood capital management, .4-miles southwest of the proposed food and yard waste transfer station. Cottonwood has had an interest of assessing the impact of the proposed use since it came to our attention in late march in addition to the negative impacts described, the proposed use would adversely, number one, affect the use of scott mt. Apartments and marketing of the project to potential tenants and could result in a diminishment of who we -- of value. And diminish or current residents' enjoyment. They pay a freedom yum to live within the mount scott neighborhood because of open space and trees and terraced look to downtown Portland and the neighborhood east of 205 and south of johnson creek, including willamette national cemetery, brookside park and botanical guard gardens is a haven add egg garbage waste transfer station in this vicinity should not be viewed as a compatible use. Our ability to collect premium waste would be hampered by waste station in our area and equate the property with lower housing west of 205. And once there's a whiff of the food waste, it will be difficult to overcome the biases such an association presents. And the they would have a diminishment of the value in their investment, the increased vacancies and lowering of rents that would result from proximity to the waste station and

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the related nuisances of rodents and noise and traffic and other environmental impacts stated. For those reasons we ask that you accept our request to deny the proposed use. Thank you. **Adams:** Thank you, sir. Hi, welcome.

Gigi DuBose: Hi.

Adams: If you could move one of those mics, that would be great.

Gigi DuBose: My name is gigi DuBose, i'm the manager of scott mountain by the brook apartments of Cotton Wood Capital. And I -- I feel there's this is just a huge mistake. The environment there is so beautiful, it's all greenery, it's located below lincoln memorial and the national -- willamette national cemetery and it's beautiful. Now, it -- my concern is the toxic waste that's going to come through the water shelf or just, you know, directly into the creek, being only -the -- a quarter mile -- or .04 from our property and the river runs through our property. It worries me about when it floods, it will get in the river, it will go to everybody's home, not just ours. And right now we have deer and we have red tail hawk and many, you know, forest creatures and they're all at risk. And if you look at some of their other facilities when they were for cal, they were -- norcal, they were indicted for bribery and they had many, many violations to the city laws in san bernardino and forced out, \$6.6 million settlement so that part of the settlement they could not come back to san bernardino county for five years. Well, why would we want to bring a business with such tactics here in our hometown? They've been asked to leave not just california, they have many huge complaints and problems in nevada, I just don't feel it would be good for Portland, the neighborhood, or, you know, the world in general. I mean, earth. [laughter] put it somewhere else, outside, where there isn't beautiful trees that have been grown for years and there's people in their golden years that have built their life and their houses here and they're going to put the transfer station there. There's going to be the vectors and the rodents, the -- you know, the stuff coming -- you know flying off the trucks and waste.

Adams: How far is it from your investment?

Clayton: .04-miles.

Adams: How many feet?

Clayton: I don't know what that equates to.

Adams: Thank you for your testimony. Sir?

**Frank Fleck:** Good afternoon, i'm frank fleck. An appellant and president of springwater trail preservation society. In regard to sheila's staff report about the floodplain, the johnson creek floodplain understanding property is not in a floodplain, there's a creek coming down johnson creek -- not johnson creek, but mount scott that runs to where the gate is she showed you in the photo. The gate at the south end of the property. That creeks that flooded across the street into the property a number of times. I've live there had for 40 years and there's a number of times it's made the street impassable.

# Adams: What's the name the creek?

**Fleck:** It doesn't have a name. But my neighbors and I are concerned about the stench from of the rotting meat and it's a huge concern for my family and the community and deter businesses from lents and concerned about the odors and flies and disease carrying vermin that carry a real health risk. They say they're going to remove the waste in 24-48 hours. Well, I worked for 35 years in management of manufacturing. And manufacturing is simply input, there's a process and there's outputs. But this is not as simple as first in, first out. It's not packaged product. It's not in one door and out the door. It's rotten Fish and meat and other rotten food, including liquid. It will haul to the property and it's solids and liquids mixed on the floor in a building, the waste mix will be pushed to the push walls and around the buildings and the part at the -- in the walls around the building isn't going to be out in 48 hours. It's not like they're going to empty the building and watch it down and start over. There's going to be leach aid in the floors and drains that's going to be there for much longer. I'm surprises and disappointed that recology did not engage the lents

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neighborhood. On june 28th, the lents neighborhood association voted to pose recology operation based on odor, vectors, traffic, flooding, and recology's track record and lents' image. Multnomah county commissioner judy shiprack, district 3, in which lents is a part of, opposes the issuance of a permit and wrote a letter stating that please do not approve the permit. There's other viable sites able to handle this type of waste. Senator rod monroe also wrote a letter to council to oppose it. If it was proposed for eastmoreland, no. Dunthorpe, no. In lents, we also say no. Judy shiprack said no, and the lents neighborhood said no and rod said no. This is a big thing for business and reputation and image and the people of lents have been working hard to build and reorganize the image of lents, there are other viable sites that are ready to handle this product. Thank you. **Adams:** Thank you very much. Thank you all, appreciate your testimony. Next three. **Adams:** Hi, welcome to city council. Glad you're here.

**Debra Fleck:** Hi, i'm deborah fleck. I'm a resident in the neighborhood and I strongly oppose this site. It's going to be a big detriment to our neighborhood and community. The odors, the noise, the pollution from the garbage trucks is not healthy and especially it's not healthy for the kids playing in the new play haven park you just recently built. Metro has viable sites already that can handle this, so I urge you please don't put it at this site. Thank you.

# Adams: Thank you.

**Kathleen Gossett:** My name is kathleen gossett and my family lived in lents since the 1920ss, the site we're discussing used to be a lumber mill that I walked through as a child and trucks coming back and forth so i'm real familiar with the site. I've lived all over the world and many different states but I came back and lived and bought a home in lents. I appreciate all the work that they've done to try to revitalize the neighborhood and they're good people. And we don't need this here. I beg of you, please reconsider it. Because it will do just what she says. Does mcfarland ring a bell? You can smell their operation clear to 82nd from where they're located and that's just wood compost and debris. And I know they're not -- that's not -- it's been outside, but the stench is unbelievable. And once it gets in there, how do we get it out? You know, we've got to fill out a log sheet like they say and try and contact somebody. Let's just avoid the problem and not have it. **Adams:** Thanks for your testimony.

K. Gossett: Thank you.

#### Adams: Sir?

**Gary Gossett:** Hello, i'm gary gossett. Secretary of the spring water -- whatever, all of that stuff. Committee. [laughter]

Adams: Sounds very important.

**G. Gossett:** Yeah, very important. Basically you have people who live nearby are scared. But I don't need to say the same things that everybody else has said. You guys have all been working hard over the years trying to make Portland a better place, more transparent. A place we can all be proud to live. Well, the kind of people that we deal with, the companies that we bring in are a big issue, a big part of what our quality of life is going to be. And you've heard about recology's and norcal's history and all of that. Norcal they've have troubled in the past. I went and talked to mr. Dutra. The guy that's running this thing. And many of his staff, because I wanted more information. I wanted to find out what was true, not just what was being proposed or said on one side or the other. And the -- they seemed to be upright, great people. And promised me they would get back to me with the information showing their side of this whole thing, and about a plant that's in Washington state, that is using a lot of the same technology they're proposing to put in at this place. That's what I needed to know. Unfortunately, they've never got back to me, and that's telling. It means you've got somebody who is -- who is willing to make a promise to you and then not follow up on it. That's why i'm urging you not to let this thing happen here. Thank you. **Adams:** Thank you, sir. Thank you all very much. Appreciate it. Next three.

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**Peter Arbuzov:** Probably I signed the wrong paper. In just a few minutes to walk to that site [inaudible] so we're going to -- a sewer. It's -- opinion because i'd like to ask you to do everything possible to stop this building. Because it was 10 years ago, more than 10 years ago, we bought this house. It was nice, and we were glad because of springwater corridor, powell butte. But more and more, [inaudible] going to be -- things are going to be worse, of worse. I'm responsible for [inaudible] every building. And how is the danger, even human touch -- even [inaudible] deadly for humans. People should know more information what this danger about this future. It's inhuman.

Adams: Thank you very much for your testimony. Appreciate it. Ma'am?

**Katherine Sheehan:** Katherine Sheehan, 109th avenue shall up hill and upwind from the proposed facility. I've recently located here from upstate new york and before I purchased the property, I had my children do some checking on the area and they frequently ride the springwater trail and never detected any odors or anything coming from the facility that's there already so that's why I went ahead with purchasing the property and taking it off the foreclosure rolls for Portland. In rochester, there was a meat processing plant approximately two miles from interstate 590 and the smell carried that far from the meat rendering plant and the smell was -- excuse my expression -- enough to gag a maggot and I assume that the kind of smell will be emanating from this facility, despite recology's claims to the contrary. I believe this operation belongs far away from any urban area. Not just the lents area but far away from any urban area. And my final comment with all due respect, wondering it the city is prepared are not influx of requests to grieve their assessment because if this facility is approved, our values will immediately drop. I personally will get an appraisal of my property before it goes in and after it comes in and i'm sure there's going to be an enormous difference and I would urge my neighbors to get appraisals too. Thank you for your time.

Fritz: You mentioned you're upwind. What are the prevailing winds in the area?

Sheehan: I haven't been there long enough to figure it out.

Adams: Thank you.

**Paul L. Dieter:** My name is paul deer. I live in the lents neighborhood. I'm a life long Oregonian and would like to start with words of a former governor, let's not californicate Oregon. Their track record is not good, they're deceitful and not trustworthy. I don't see why we can't find someone in our own backyard if we have to perpetuate the garbage transfer. It's going it happen in Portland whether this one opens or not. We're aware of that. Why open a festering wound in this project. We've been told by the experts that this compost thing is going to happen. And whether this particular place is opened or not, I also live downwind and I know where the wind comes from and it comes from the east. I live on 86th, the wind buffets the back of my house on a regular basis. I've lived in lents all my adult life. And I see the traffic patterns they're showing and this back gate they say that will never be open, comes with the same adage that the arabs have. You don't want the call he will in the tent, don't let its nose under it. I appreciate your time. Thank you. Adams: Thank you for your testimony, thank you all. Appreciate it. Collect check. Adams: Mr. Endicott.

**Bill Endicott:** Hi, how are you. I live on 103rd and leadway. I bought from my parents and lived in the neighborhood all my life and I know what a lot of heavy traffic can do and i've got dump trucks coming up and down my street. There's a business end of the street that -- jay roth or something like that. There's dump trucks that go up and down the street 24 hours a day seven days a week. I know there's going to be an impact, it's going to disrupt the neighborhood. It's not so much the traffic situation as it is the environmental. I think the environmental impact is -- is where we're -- really, we're -- where you should focus on that more than the traffic. I know the traffic is not good. It disrupted my life but I think it's the environmental. And the gentleman over here talking about -- hi there -- made a lot of sense. We're talking the waste, the liquid, the driving in

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and out. And that's something that, you know, you're just going to have to, you know, it's a big decision and somebody is right and somebody is wrong. So I think this is not a good plan. Adams: Thank you, sir. Hi, welcome.

Joe Papasodero: Hi. My name is joe papasodero. I think this is a real bad thing going on. My family's been in the drop box business for 50 years and I know what the dumps and the transfer stations and everything look like and smell like. And I do not want my backyard to smell like a dutch. I live -- I got a -- like a dump. I've got a wetland behind my property. When it floods, they can't tell me that this facility isn't in a flood zone because it is. And when it floods it goes right into beggar's tick wildlife area and it's full of garbage. And i've been out there pulling garbage out of there and it's full of wet waterfowl all year-round. When it dries up, late august, they take off, and you should see the garbage out there. So i've been to the -- to metro central transfer station and seen the holes in the wall and stuff like that. I know exactly what's going on. Stuff leaks out. Gets out. There's no way to stop it. I've got that wetland, the mosquitoes are really bad. What are you going to do when this gets out of hand, because they say they don't have enough money to come out and take care of the mosquito problem. The city, metro, whoever owns that. So, I mean, when this gets out of hand and you've got leakage and stuff, going into the beggar's tick and johnson creek, and then you doctor -- you are guy going to sit there and say you don't have the funds to clean the mess up? I've got to clean up my backyard from when it floods and then that stuff goes into the wetland and right into my yard and I don't want any nor cleaning up. Any more cleaning up.

#### Adams: Thank you.

Rose Causey: My name is rose causey, i've been a resident in my area for 21 years -- 31 years, i'm a registered nurse and i'm concern about the vectors coming from the rotting meat and the food. It will attract fly, raccoon, rats and mice, the cdc website has a list of disease that's rodents carry and I brought that with me and includes hantavirus, hemorrhagic fever. Plague, rat bite fever, and many diseases you on the have to smell the death. Get a whiff of the dust and you're sick. Mice and rats can creep into little tiny crevice, a half inch in a building to get into the garbage there. And rats and mice reproduce at a fast rate. 200 rats can be reproduced by one female in a short amount of time. There's already a small rat problem in they. I live between knapp street and mount scott off 101st and lexington. The winds prevail from the east and wing around the mountain and come toward our property. We would be smelling the smell that you smell when you on your yard debris can after things have been setting there for a week. I'm also concerned about the increased traffic. We hear a lot of noise from i-205 and the max station already. We would be hearing the beep, beep, beep, from the trucks as they pull into the building and back up to dump their load. So as you see, I don't think this facility belongs within the city limits of Portland. Anywhere. I pride Portland on their recycling programs and I think we're one of the best in the west. And I want to keep it clean and sanitary. I don't want my backyard ruined when I go outside. I want to be able to open my windows and smell the fresh air and that's what I have to say. Please, mayor Adams and everybody else, please hear us. This is -- we're you're people. We're not from california, we're your people. Thank you.

Adams: You are our people and thank you for your testimony. Appreciate it very much. Adams: What were the three names? Ms. Murray.

**Tiffany Murray:** I live on 11 -- 101st one block north of foster and occasionally I have the smells from the facility. I wasn't notified until yesterday I found out about this, so most of my neighbors don't know what's going on with the plans over there. And I think they could do a better job of notifying and we have trucks coming into the facility and get lost and turn left on 101st instead of right and jackknife in the road and there's problems with the telephone wires and they're too big to get through the neighborhood and there's no way for them to get around and that happens in front of my house, i'm just across the street. And it floods, every winter. And I think they've

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overdeveloped the area and I think they've broken laws already and encroached on wetlands and that's why it floods. Builds it up and paved it. I hope you say no to their plans. Adams: Appreciate your testimony.

Tony Bonillo: I'm tony, I live in the area and I wanted to voice my concern. As far as odor, will any odorous materials be kept outside of the facility that recology say will be outfitted with an air filter. Environmental contamination. What safeguards are going to be put in place to ensure that the water and wildlife on and surrounding the recology site are not natively impacted by waste and contaminants and what additional policing by agencies would recology be willing to allow responsibility for inspecting and reporting the steps taken to avoid the strain to the area's green spaces. As far as liveability, the area south of the proposed site along southeast knapp is flesh with water courses and wildlife, such as deer and birds, wood peckers and hummingbirds and it's a safe place for these animals and a scenic green space. No one wants to look out and see a dump. What assurance can recology give? Public safety, the springwater corridor passes directly through the access road at southeast 101st. What steps will be taken to make sure that bicycles are without -out of harm. And there's no sidewalk along this road. If recology decided to use the southeast knapp street entrance, how will pedestrians stay safe when this is one of the few roads leading directly to the max station. So with regard to the environmental impacts, the only way I can see these problems will be address fire department recology is willing to voluntarily hire an independent agency or periodically inspect and maintain a higher level of compliance that might otherwise be dick date dictated by the city or county and a signal should be where the corridor pathway passes over because I think that would help safety somewhat. Thank you.

Adams: The springwater corridor trail?

Bonillo: Yeah.

Adams: Thank you very much for your testimony. We'll hear from the opponents of the -- the principle opponents.

Michael Robinson: Before we begin -- [inaudible]

Adams: I can't hear you. You have to sit down and introduce yourself.

**Robinson:** Michael robinson, on behalf of recology. Before we begin, we have an easel we'd like to put up so we can show you exhibits. Where would you like the easel?

Adams: Right in front of the city attorney -- thread the needle, if you could, between the city attorney and the crowd.

**Robinson:** And I have exhibits we'll be referring to. Would you like me to hand them to your clerk?

Adams: That would be great.

Robinson: Thank you.

Adams: So because we're here late in the day, we're going to take a five-minute compassion break so you can get organized. Bathrooms are on either end of the building. We'll reconvene at 4:34. [gavel pounded] We're in recess. [break]

At 4:28 p.m., Council recessed.

At 4:34 p.m., Council reconvened.

Adams: Oh, we have one more minute, sorry.

Adams: It is 4:34. All right, we are back from recess. [gavel pounded] quorum is present. And it's your choice to wait for commissioner Saltzman or we can proceed we are ready to go.

**Michael Robinson:** My choice is to go. Good afternoon, my name is michael robinson, on behalf of recology. To my left is dave dutra. We'll let dave start first and i'll finish up.

**Dave Dutra:** Thank you Mr. Mayor and commissioners. I'm happy to introduce to you today, the project as well as the company or the applicant. Recology is an integrated materials management

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company established in the late 1920s. Specifically in Oregon, we operate a number of refuge collections and material facilities and we're the operator of the metro central transfer facility and in california we have a large number of holdings that are similar in operations. Including residual landfill operation. I'd like to start today by focusing on some of the heights which will help provide you with additional information and how we plan to further ensure that we do not negatively impact on the neighbors who are so passionate about their communities and rightly so. We've provided to you six sheets of 30 sheets made available to the hearings officer that shows the elevation, both the north and south side of the building. That's the entire building which consists of 75,000 square feet of which we lease 40,000 square feet of it. The second page labeled c1.1, identifies what portion of the 40,000 square feet we're going to utilize as a tipping floor. To receive the loads. And again, the loads coming this are primarily commercial, residential, collection trucks consisting of between eight and 10-tons per truckload and the material presently today does not include type three organic or food waste material and it's received outside of the building presently, as the photos showed you earlier. The area that is designed to receive the material is an improved floor surface with perforated piping throughout the floor so that the floor is perforated and the negative air system pulls air, the ambient air want building and outside of the building through the material into piping and then exhausts that through the floor biofilters and i'll explain more. This shows the location of the biofilters outside, on the south side and as well as the tipping pad. The second page, p1.12, is a little bit closer detail of the tipping floor, giving you a sense of how much perforations are allowed for within the floor to pull moisture, as well as the -- as the odor, not odor, the air through the material, keeping it aerobic. And preventing it from becoming anaerobic which may generate odors. Page p402 shows details of the floor, again, as well as the push wall. I'd like to point out that the floor, the entire floor is also curbed so there's a slight curb that the trucks drive over and tip on the floor and drive off the floor and out of the building, we expect only the -- the truck will drive onto the floor and the material is extruded onto the floor and the truck drives off. We don't expect mud or suspended solids to be tracked out of the building and we have capabilities of washing the floor. The floor consisting of an area 40-by-40 will dictate much of the volume that the facility will receive. You simply can't put 400-truckloads of material on to a floor that's 1600 square feet. The material will come in, it will be pushed up against the retain -- the retention wall, and as we generate a semitruck-load, it will be loaded and hauled off site. Initially we expect three to four trucks hauled offsite with the material. The page m --

#### Adams: Per day.

**Dutra:** Sorry, per day. Per operating day. Correct. So the traffic study that indicated 35 trucks, that's really a maximum designed capacity at the facility. We would be limited to that. We cannot exceed it by permit and we would be held to standards specific to controlling that amount of material. If we were, in fact, to receive that. However, if we were, that's assuming no other facilities within the city limits are operating for receiving this type of material which is highly unlikely.

#### Saltzman: You say permit, which are you referring to?

**Dutra:** Both the deq permit as well as the metro permit which has oversight and enforcement capabilities over the facility would hold us to those standards. And so again, we have a deq permit, we have a metro license, and then we have also, oversight by the city health department. Page m402.02, shows the configuration of the fan system and how it ties into the biofilter, the biofilter is a sealed steel container roughly 22-by-4-4. Or I think that's -- in terms of cubic footage, 640 cubic feet. There are four of them. It is filled with woodchips. Those are the woodchips kept moist and as the air flows through, the volatile -- the volatiles are removed from within the woodchips and what is exhausted is about 98% free of any pocs or volatile organisms that generate odor. I'd like to point out in our design of the facility, this type of technology is typically used in enclosed operations for full composting operations. We're not composting here. We're receiving residential

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and commercial yard debris and pre and post-consumer food waste. It's blended and immediately removed. There's no obligation or sense of us to keep on the floor for any given time. As soon as we have a truckload, we want it out of the building. The reason I point out this technology is unique to this type of operation, again, it's used for composting operations. We operate a reload facility for the city of san francisco, 500-tons a day, it does not include this type of negative air and biofilters and we also receive and generate for composting source separate the food waste flew the metro transfer facility, and the floor there does not have a negative air radiation system and the food waste absorbs itself and does not generate large volumes of leach aid which is alleged and currently doing 18,000-tons a year at that facility. With homes in very close proximity. We've operated it since april without any complaints or notices of violations and that's receiving, again, commercial separated source.

Fritz: Where is that?

Dutra: Northwest, the city of reno, 6160 61st avenue.

Adams: I don't want to break your -

Saltzman: Portland, not reno.

**Dutra:** What did I say?

Saltzman: It's in Portland.

Dutra: Thank you for correcting me. I don't know where that came from.

Leonard: Reno.

Adams: Can I ask a question unless you're going to answer it later. To get a sense of how you operate. The trucks come -- on c1.1 -- and so the trucks pull in where? And

**Dutra:** The trucks pull in on the south side of the building through one of three doors that have -- that are roll-up doors, would be closed and sealed off at night. The trucks will back into the facility, back on to the floor, tip and then leave through the same door.

Adams: So they back -- ok.

Fritz: How does the material get pushed into one place?

**Dutra:** We have loader equipment on-site. There will be a loader assigned to the tipping floor and push it up against the push wall and from there, top loaded onto a semitruck. And we're currently doing that now. It's just we're doing it all outside with type one organic or yard debris material. **Fritz:** Like a bill bulldozer or something?

Dutra: A loader, yeah. A wheeled loader.

Adams: Ok.

**Dutra:** So I discussed a little bit about the technology. We -- as I pointed out, we have about 30 sheets of technical drawings and descriptions of the equipment. It's not typical to fully engineer and fully design it until the land use has been approved within we know we've got a real project that we'll submit to the city for approval for construction. So they are -- they are specific to the air system and general to the site configuration. I think i've adequately addressed thoughts regarding the leaching. Stormwater, again, it's indoors --

Adams: Just so -- sorry.

Dutra: No, that's ok.

Adams: So i'm clear, the liquid. There's concerns expressed about the adequacy of the containment and processing of that and the possibility of it leaking into the river or into the groundwater.

**Dutra**: Yeah, ok, so we have a new concrete floor which is fully curbed as well as the perforated pipes that will collect any liquids --

Adams: By curved you mean like a basin?

**Dutra:** Correct, it will be roll sod that the trucks can roll over it and enter onto the floor. The stein of the system allows for liquids collected to fall into a very small such area within the floor and within the building. There's a pump within sump that pumps in into a small 250 tank, when that

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tank is full. It's pumped into a collection vehicle and processed offsite. 250-gallons is not a lot of capacity. Our experience it ranges between 250, worse case 500. As I mentioned right now, we're doing 18,000 commercial food waste at metro central station without any controls and not finding leach aid on the floor to the extend we have -- extent we have to manage it, other than soaking it up yard debris.

Fritz: How far is it from the metro facility to the nearest Residence.

Dutra: I'm going to guess 600 feet.

Fritz: Where is the location?

Dutra: Yeon road, highway 30 heading to scappoose off 61st avenue.

**Saltzman:** You're talking about the single family homes on the south side of u.s. 30 up the ridge? **Dutra:** Correct. The facility has been there for many, many years, we've operated it for a year and a half how with this food waste without complaint or this is a violation or -- or concern. And metro as well as deq inspected the -- inspects the facility monthly.

Adams: How -- I mean, how -- the concern is that there could be leaks in that system and not know about it. How can you assure us that there wouldn't be leaks or if leaks occur, they would be detected?

**Dutra:** Well, it's a sealed tank that will be essentially in the concrete floor. It's a small collection basin or train inlet. I think that ongoing monitoring or dealing with the tank will ensure that it will not leak. The ag pump is above ground. That's simply a plastic ag tank. As far as the piping, we're not anticipating leaks, again, it's designed to flow, so it's -- liquids won't stay there for any length of time. It will go through the piping and under air pressure and into the drain inlet tank.

Fritz: How often do you plan to wash out the concrete basin?

**Dutra:** Best management practices dictate that. It may be on a weekly basis, it maybe on a daily basis, depending on the seasonality and the ratio of food to yard debris. Simply how -- how -- how the material comes in. At this point, right now, at metro central station, again we're finding that the yard debris we're mixing with the food waste is sufficient enough to keep the floor clean and imagine the odors.

Fritz: You don't have a concrete floor there?

**Dutra:** We do. It's solid concrete it. It Does not have perforated holes. There's no forced air or biofilters.

Fritz: With the ag tank, holds the water that is used to wash the floor as well?

Dutra: It would yes. Everything goes not perforated --

Fritz: Is all of the information you gave us in the record?

**Robinson:** It is now. Several of the sheets were before the bds staff prior to the prevention of the report and several before the hearings officer at the hearing.

Fritz: And there's more you added today.

**Robinson:** Yes, ma'am. I'm sorry -- I was going to add the reason we've added more today is exactly as dave said. Once you have the land use approval you begin spending the money to actually do the construction drawings and that's what you're seeing today. I was going to add if I could quickly. The testimony that mr. Dutra is giving you today is -- was before the hearings officer, so the oral testimony generally is -- has been available since the hearing in april. **Fritz:** Right, my concern is the appellant talk about not having the information that their expert could tell it's going to work.

**Robinson:** I sent an email and called and got no response. We reached out as soon as we found the appeal was filed. We wanted to share information and find out what the concerns were and happy to meet with him. We got no response at all. I saw his assistant on the tv yesterday saying that the information was [inaudible] the drawings may not have been in the file but mr. Dutra's teem was given to the hearings officer and none of those folks were present at the hearing. The

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minute we found about the appeal, we reached out and wanted to be proactive and talk but we got no response.

**Dutra:** I might add a couple of things, under the best management practices, it depends on the seasonality, and the amount of food beast, the ratio to -- food waste and the ratio. Because we generate 10,000-tons of biomass fuel on the site. We ship urban wood waste down -- we canned that as a top or biofilter over the term at the end the night, essentially burying any food waste or yard debris that comes in that would be a deterrent to vectors and we can hire and have hired row didn't control. As you know, the facility right now, operates as a solid dry waste material recovery facility so we have an ongoing program there for vector control. They -- they can indicate to us whether or not an additional measure like that is necessary. Whether or not we're generating vectors. As far as noise impact, the operation, we're not adding any additional equipment. In fact, we're take can the existing operation and moving it inside the build something we do not anticipate any additional noise. In fact, we anticipate reducing some of our noise. I think that i've covered all of the points that I have.

**Robinson:** Thank you, dave. Mr. Mayor, unless you have other questions, i'll proceed. **Adams:** Can I ask a couple of follow questions? You're subject to regular health inspections by the county, which is also if -- is that done on a -- what's the regime or protocol they use for that? Is it surprise visits like restaurants or regular surprise visits? How is that done?

**Dutra:** My understanding specifically the county, it would be on a complaint basis. However, deq and metro do both surprise and scheduled inspections on a monthly basis. We have indicated to all parties that we're willing to enter into a good neighbor agreement. That agreement will include how we not only report having received a complaint, but what actions we'll take immediately following the complaint. In this particular case, of course, there's a complaint of odors, the simplest thing we can do is ensure that the material is improved immediately and we'll do that. But again, in our experience, operating facilities like this, because of the throughput capacity and the time the material stays on the floor, odors are not an issue. They're not an issue at metro central where the ratio of food to yard is much higher. Up to 50% food waste to yard debris. They're not an issue in san francisco where we operate a similar operation with higher ratios and more volume. Adams: Have any of your operations ever -- there was testimony expressing concern about dust and bugs or -- or rodents that carry diseases. Has anyone at your -- working for you, anyone -- any neighbor living nearby ever contracted a disease?

**Dutra:** No. And we have not only transfer reload facilities but also composting operations which are currently receiving food waste and composting and again, the trick is all in how you manage the product. Or the feedstock and making sure that you've got the proper practices in place to control those vectors.

Adams: And then, questions were raised about the integrity of the company. Bribery and those things. I want to hear your side of the story.

**Dutra:** Recology is a company that ranked seventh largest, I believe, in the nation, but 100% employee-owned. We have 2700 employees. And i'm going -- I couldn't tell you how many operating sites. It's very difficult in the industry to operate from the 1920s to present day without incurring some problems. I think what's important is look at our track record here in Oregon with the facilities we have and the -- and that are operating this Oregon. We -- to my knowledge, have no notices of violations in the years we've been here and operating. We respond very quickly to any complaints. And I think overall, the municipalities would indicate we're a good -- good, responsible operator.

**Robinson:** If I may quickly, I heard those comments and i'm going to ask council to leave the record off. We have a big packet of materials we haven't had a chances to review. But I stand by this come. I do not represent criminals and I want to look carefully what they put in their materials and we'll give you a response to each item. This company would not have the contracts it is has in

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this state, as clean as this state is, if there were a problem with this company. I stand by this company.

Fritz: Thank you.

Adams: One last question: Flooding. So commissioner Saltzman and id off over the -- traded off over the years, reducing flooding with the johnson creek floodplain but it still floods, we're not guaranteeing it will eliminate all flooding. The concerns about the potential flooding, from what I tell from the map, let's say it goes above that, what happens? What do you do?

**Dutra:** We've got a facility located above a 100-year floodplain, as a business owner, we're willing to take the risk but in the event if we were to exceed that, we would certainly respond immediately. Taking controls to ensure that the material is cleaned. We don't anticipate garbage. It's a mixed dry waste facility presently. We don't experience or have any complaints of migrating garbage from the site presently. The yard debris organics and food waste does not contain garbage we would anticipate floating down the rivers or migrating from the site. And I think the property owner will testify that we are part of a program, we regularly police the roads going in and out of the facility collecting trash.

Adams: Thank you, sir.

Robinson: Please go ahead.

**Fritz:** I really appreciate your offer to keep the record open. Sometimes it takes coming to council before both sides know what's on the table and start talking with each other. I greatly appreciate that. And then I also heard and saw the letter about the good neighbor agreement. I'm taking it you're amenable to requiring a good neighbor agreement?

**Robinson:** Yes, we entered into one with the st. John's neighborhood facility and happy to do it with the lents group as well.

Fritz: I'd like to have that information.

**Robinson:** Thank you. We'd be happy to have that in the record.

**Fritz:** And my final question, the reversing of the truck, with the tipping, is that different from the way they do it right now?

Dutra: No, the trucks currently back into the facility and drive out the same door.

**Fritz:** Ok. That's just more of them, is -- so from the neighbors, i'd like to hear from you whether you can currently hear the beep beep beeping. And I know some folks have to leave and I appreciate everybody coming during the day to the hearing, we sometimes schedule them in the evening so more neighbors can participate. But if you can let your neighbors know that the record is held on for more comments.

**Dutra:** We do have a traffic study and there might be some concern differentiating between the other heavy uses on the property now. It's -- there's a cement facility plant on-site as well as an asphalt plant on-site. And a number of other heavy industrial uses that all rely on backup alarms and things like that.

**Fritz:** Is your proposal to add to this facility or are you going to take away any other recycling products?

**Dutra:** Only the type three organic term.

**Leonard:** I've been waiting -- I have a series of questions to ask. So i'm hoping you can finish your thought. I don't want to jump on board with the questions currently being asked.

**Robinson:** May I answer quickly your flood question without causing commissioner Leonard more consternation. I have testimony about actual approval criteria and I might if I might have two extra minutes.

Adams: Yeah, we've asked you questions, so ---

**Robinson:** Let me answer quickly. The hearings officer noted we're 800 feet away you can see from the map from the e-zones around johnson creek. We don't believe the site is susceptible to flooding but we know things happen. We would accept a flood mitigation plan in effect. We have

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a nuance mitigation plan. That was something bds looked at and the hearings officer looked at so we'll add that. I'll try and -- a couple of extra minutes. Try and do it in five minutes. **Leonard:** To be clear, your 3:20 was frozen for some time.

Adams: I'm giving you more time because I asked a bunch of questions.

Robinson: Thank you, mr. Mayor. I'll get to those in a minute. First, you wanted the record to remain on if the council would grant that suggesting one week for all parties to submit argument and evidence and one week to rebut and we've wavered the 120-day clock. And it was testified that we're proposing it's not like leach aid in the ground. That's not the case. Your bes -- sorry, bds, looked at our plan and agreed with how we proposed to collect leach aid and treat stormwater. Thirdly, I want to respond to the exhibit 1 page 6. Here's what they didn't say, this is text at the bottom of the graph. The trips generated, pilot routes are smaller than a typical yard debris route and based on the pilot trips would be a gross misrepresentation. End quote. We stand by our argument and the hearings officer agreed with us, that generally only about 5% compostable food waste is a small percentage, and mixed with yard debris as dave said, not larger than that. Let me turn to the approval criteria which you did not hear mentioned in the opponents testimony. First of all with respect to odor, I think the reason Dave explained to the extent that he did is we're not going to have a wind tunnel affect and the negative aeration floor is not going to be affected by strong winds. Plus the hearings office conditioned us to move that waste out within 48 hours. And as Dave said, there's no reason to leave it in there. Leaving it in there costs money. We want to get it out, that's what we will do. The leach aide is controlled. We think the system works, BES looked at it and agreed with it, Storm water is taken care of, BES looked at that as well. We don't believe the site would flood but, we will accept a reasonable condition of approval that deals with that eventuality. We believe nuisance control and vector control will be taken care of. You only have problems if you have nesting, water source and food source. You're not going to have that here. The materials going to be moved out. We've committed to having a clean site. And one of the conditions allows BES to come on site without notice anytime they want. And we're fine with that, we invite those kind of inspections. We have not one, we have three traffic reports, we have two that were

Part 3. 5:00-6:30pm To be combined with "Partial" file for 7/13/11 am.

done before the hearings officer, we have one that looked at the appeal, and that's in the record as well and you'll hear from ms. Kune a little later. There is no traffic impact. The parks department had no comment. Pbot had a favorable comment. If there were going to be an impact on spring water trail corridor we would have heard from it from those two agencies. That trail is already crossed by far busier streets. It's a good trail, i've ridden on it. Our additional 110 trips are not going to make it unusable. We met the approval criteria. Staff looked at it, the hearings officer looked at it, we received no negative bureau comments. This is something that we took great pains to make sure we addressed the approval criteria. This is 815220i. It requires us to demonstrate the public benefits outweigh impact that can't be mitigated. We don't believe there are any impacts that haven't been or can't be mitigated the public benefit is clear. If we're going to have this program. you have to have regional facilities that take this waste. It's not possible to ship individual garbage truckloads to compost facilities outside of The city that would not be sustainable it wouldn't make sense. Let me turn quickly to the exhibits and then i'll finish up. The important point to note is the forested slope on the south, that southeast knapp road, we have no access, the condition prohibits us. We'd accept a position saying we don't want access. We're going up to foster. The zoning map showing we're in the -- shows we're in the center of an industrially zoned area. There was a blowup, the ih area, it shows we're in the middle of it, we're not near johnson creek on the north and we're away from the forested slope to the south. And the last exhibit simply is a blowup of

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information that's already in the record. It shows the arrow shows how the trucks operate to and from the building and into the building. We think bds and the hearings officer got it right. We ask you to approve the application. We're comfortable the conditions the hearings officer imposed but we'll also accept additional conditions. And we'd like to you keep the written record open. Thank you for your time.

Leonard: Where does the food waste come from?

**Dutra:** In this particular case we anticipate food waste coming from residences within the area, including the lents area. As well as small businesses that generate restaurant food waste. **Leonard:** How does it get from where the food waste is generated to Your facility?

**Dutra:** As a resident in the area would be asked to spot -- deposit it into a container that would be placed on the curb, collected weekly into a compacted truck. It tips it onto the floor where it's consolidate and shipped offsite. That's what's happening now with the exception of the added component of food waste.

Leonard: At the facility?

**Dutra:** At the facility.

Leonard: With respect with the materials you take in. And so what is the geographic area in your proposal with that food waste?

**Dutra:** We're anticipating a service area which would include southeast Portland and surrounding communities. It may be market driven. There may be other facilities such as metro south that it will compete with. But we believe that there's going to be sufficient volumes to support the business and the investment we're moving forward.

**Leonard:** The nearest facility beyond the one you're proposing is sutter road and yeon road? **Dutra:** And there has been discussions from metro they plan to accept it as metro south, although I don't know that's been confirmed.

Leonard: Oregon city.

Dutra: Yes, Oregon city.

**Leonard:** I'm curious, if you don't have any particular geographical limitations, how you can estimate there will only be 110 extra trips a day.

**Dutra:** I'm not sure where the 110 trips a day come from.

Leonard: It comes from your Data from your traffic engineer.

**Dutra:** I'm considering both inbound -- you're considering both inbound and outbound trips. **Robinson:** 35 garbage trucks and 35 out and 10 semis in and out each.

Leonard: You're anticipating a question i'm going to ask, I want you to finish.

**Dutra:** Right now the only city that's moving forward with plans to allow for the collection of food waste is the city of Portland. The city is shared with us figures that range between 60,000 and 80,000 tons per year generated citywide. We're an anticipating receiving a percentage of that, that we'd then extrapolate down to the number of loads that we're receiving. As well as a design capacity.

**Leonard:** So then how would it be determined whether or not you actually would be the receiver of the food waste, ultimately if we had a full-scale program?

**Dutra:** It would be entirely up to the haulers. There's no flow control.

Leonard: I guess i'm wondering about the assumptions that were made, 110 trips, what were the assumptions made -- .

**Dutra:** The size of the floor. It's the design capacity of the facility. And that is the maximum amount we feel the facility under that design can manage.

Leonard: So you're comfortable saying would you agree to no more than a limit? **Dutra:** Correct.

**Leonard:** The analysis from the hearings officer also finds according to your data that retail sales will occur at the property for soil amendment Sales?

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#### Dutra: M-hmm.

Leonard: Explain that to me.

Dutra: Go ahead.

**Robinson:** Your code at louse in this zone retail sales no larger than 3,000 square feet. If you visited the site or look at the photos, what we have are open bins north of the building, it's bark dust, the kind of things that a gardener -- the kind -- the kind of things a gardener would back up his truck, to or her truck, put it into the truck and take it away.

**Dutra:** The hope is that as you bring yard debris to us, you're going to then say, hey, throw a couple yards of compost in for me.

**Robinson:** It's what would you find at a garden supply area. Julia kuhn can probably answer the questions better than i, but I can tell you in the discussions we had with mr. Haley we erred on the side of guessing more traffic than we believe the area will attract. It's that small retail area.

Leonard: But you're arguing on one hand that you're not going to be composting on the site, but you are saying you will sell compost --

**Dutra:** We do currently compost. It's a finished compost. It's no longer active or gassing or generating odor. It's a finished compost material that you would apply to your garden.

**Leonard:** Why does the hearings officer say on page 9 of his decision the expanded use including the soil amendment sales? What do you mean by the expanded use?

**Robinson:** In that zoning district, you can have up to 3,000 square feet After retail use, you have to call it out in your application. It's not part of the cup. We discussed it with bds staff. That's what the hearings officer was referring to, are those open bunkers where the bark dust and the final -- the same thing one would find in any garden shop.

Leonard: Are you taking any of the items coming in in this new application and turning around and selling them directly at a retail level?

Dutra: Not at this time, no.

Robinson: No.

Adams: Can I clarify?

**Robinson:** We have not applied for any permit to compost the -- the materials are trucked off site. **Fritz:** Where does the compost come from that you currently sell?

**Dutra:** Largely the sutter road facility and the foster road facility and one additional one in west linn that we operate. Assists.

Robinson: We're not making compost at either site.

Dutra: These are reload facilities only, materials largely generated out of north plains.

**Robinson:** That's where the composting occurs.

**Leonard:** In the hearings officer report, on page 13 he mentions that inside the building trash will be separated from the other materials. Is that trash that would be thrown improperly into food waste? Or what is that that he is describe something.

**Dutra:** We currently do that now as a dry waste facility on occasion, the waste can find its way into debris boxes that contain c & d material. We separate that at the facility. If a load was to come in and there was large percentages of contamination that would warrant some --- a laborer there to pull out trash bags, or something that was inappropriately placed into a residential container, we might if we have an opportunity to pull it out there, otherwise it's pulled out at the compost facility.

**Leonard:** So currently there isn't any limitation on the amount of food waste you could process at the site, other than your stated intention of not processing any more than a given amount.

**Dutra:** There are no stated limitations there. Are physical limitations in the design of the operation, and there are stated limitations within the permit capacity of the facility.

operation, and there are stated initiations within the permit capacity of the facility

Leonard: Stated limitations in terms of the square feet.

**Dutra:** That as well as the number of trucks.

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Leonard: But could you expand the hours of operation to accommodate more?

**Dutra:** Not without the approval of metro or deq. We'd have to go back through an approval process for the operating plan.

Leonard: What are the hours of operation of the other facilities?

**Dutra:** It ranges through the seasons, but at this point it's 7:00 a.m. To 5:00 p.m. At times during the summer seasons it's 6:00 a.m. To 6:00 p.m. Six days a week.

Leonard: And what are the hours of operation on the lents Side?

Dutra: They would be the same.

Leonard: Thank you.

Adams: Commissioner Saltzman?

**Saltzman:** So the 35 trips, or trips by hauling trucks per day is it totally driven by a hauler, are you going to stop a hauler at the gate and say you have to go to metro central, or metro south? Sorry, we've had our 35 trips?

**Dutra:** I believe that if we were to receive all 35 trips, it would total an amount that exceeds what the city has -- what the city currently generates in yard debris. 35 trips in roughly 10 tons a load, 350 tons a day, that's far and above what we think the city is generating.

**Saltzman:** At some point I think we're directed -- at some point you can expand your market to other jurisdictions?

**Dutra:** We could. At that point we would have to come back and amend the operating plan. Which would require deq and metro approval. It's our understanding that is a fixed facility capacity. We'd have to probably expand the floor as well, which would require a permit from the city. There's an approval process we would have to go through in order to expand that. You just simply can't open it up to 400 truckloads a day and operate.

Saltzman: According to your analysis, 35 trips by yard debris trucks, to be correct --

Robinson: Garbage trucks.

Saltzman: They're dedicated to picking up the yard debris. My hauler, there's a garbage Truck and a yard debris truck.

Dutra: Which are -- correct.

Saltzman: So 35 trips constitutes the most that Portland --

**Dutra:** That is the maximum design capacity of the facility. We get to that point, it's shut off. **Saltzman:** And then the -- I haven't read your application, but the expert from the appellant mentioned there's a phrase, the sanitary conditions will be maintained, but that's not defined. Could you define that for us?

**Robinson:** We went through each approval criteria and there were several that address the conditions of the application and the -- and provide a nuisance mitigation plan. I believe the phrase was in the nuisance mitigation plan. We set a baseline saying we maintain a sanitary facility so we wouldn't create nuisances. And beyond that commissioner to explain how we would do that.

**Dutra:** Typically those operating plans are approved by deq and metro and they include odor monitoring plans, they include best management practices, and certain daily and weekly activities. So, because, again, the facility hasn't gone through the step much being permitted through those entities, these plans have not yet been drafted and developed. But they will be.

Saltzman: You don't have at this point a deq permit or a franchise from metro. Is that --

**Dutra:** It's a license from metro and a permit from deq. And that is correct, we do not have those as of yet.

Robinson: But we do have permits we're operating under now.

**Dutra:** Right. We do for the solid waste and yard debris aspect of the operation. But not the type three organics.

Saltzman: When you do get your permits you intend to stipulate no more than 35 -- Dutra: Quite clearly.

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Saltzman: Ok. Just on the 48 hours for the waste being present --

Adams: You made a good point. Not knowing exactly what approval, but if council does consider a vote to move this forward, a requirement that you notify us a change of deq or metro so that we're not sort of on the shrines?

Robinson: Absolutely, we could accept that condition.

Saltzman: I share the notion when I think of no more than 48 hours, but I also think after waste transfer station, stuff moves from one end to the other more or less, in a big transfer station. So are you saying that in 48 hours -- something that comes in at hour one will not be there 48 hours later? **Dutra:** Typically --

Saltzman: At some point the floor will be clean, totally clean.

**Dutra:** Correct. In fact, if required, for example, should vectors become a matter of concern, we could operate the facility in such a way to make -- ensure all of the waste is off the floor by the end of the day and containerized, either in an On-site container or an awaiting truck that would continue to receive material for next day. Typically these loads will come in, one about 10:00 a.m. In the morning, the other about 1:00 in the afternoon. As those residential trucks come off the routes. It's very easy to consolidate the material and get it off and out of the building.

**Saltzman:** There was some testimony, and we were referred to the graph about the organics percentage. Again, by the appellant saying that it could be as high as 20%. You're saying you're handling more than that right now?

**Dutra:** At the metro central station it's a 1-1 ratio. Roughly 50%. That's 75 tons a day. Which is about three times what we expect out of this facility.

**Saltzman:** My final question, the bioreactors to control the odors and the negative pressure. Are you using this at other locations?

**Dutra:** Not in transfer or reload facilities. It's used within facilities that fully conduct composting. That actually take the material, leave it on site, and compost it.

**Robinson:** We're applying a technology that's used in a place with more intense use to this one to make sure we don't have an odor problem.

Saltzman: It's considered a proven, reliable --

**Dutra:** Very reliable, very proven. And very necessary in the pacific northwest. We do not own the building, it is a wood constructed building And bewant to maintain the integrity of the building and we feel that it will serve as not only a way in which to manage the odors, but also remove ambient moisture from the air, and preserve better preserve the building.

Saltzman: Thank you.

Adams: Commissioner Fritz.

**Fritz:** Thank you. Commissioner Saltzman asked many of the questions. Are you anticipating needing changes in the storm water runoff permit?

Dutra: No.

**Fritz:** Thatting with a one of the allegations in the appeal. Your information from the bes is that they won't be modifying that.

Dutra: That's correct.

**Fritz:** Ok. And then mr. Robinson, you mentioned you would be ok with the bureau of development services being allowed on site without notice. That's not the condition of approval that's currently there?

Robinson: That's correct.

Fritz: You would be ok with allowing them?

Robinson: Absolutely. Yes.

Fritz: Thank you.

Adams: Any other discussion from council? We'll now hear from -- thank you very much for your testimony. We'll now hear from individuals who appose the appeal.

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Moore: We have six people who signed up.

Adams: Thank you for waiting. We appreciate your patience. Welcome to city council. We need a third person.

Adams: Mr. Shay. Please come forward.

Kevin Loftus: I'm kevin Loftus, the representative of the owners of the freeway land two property at southeast 101st where recology is a tenant. The freeway land site has had a long and controversial history as an industrial site. Our group has owned the property for a little over five years. In that time considerable time, effort, and cash resources have been expended to eliminate past environmental concerns and make this a well-run operating location for a variety of good, mostly industrial tenants that employ about 200 people. Two years ago recology purchased the assets after failing come, which was then -- recology worked closely with deq and us to fully remediate a yard area site that had previously been used by the former company. In this process, I came to know and respect recology and their management, and concluded that this was a most responsible firm who would be a valued tenant at freeway land. It is important to note that we are not passive landlords. We do not want any tenant to create environmental hazards, nuisances, or storm water concerns on our property. While johnson creek goes through freeway land, i'd like to note that the developed parts of the property are not prone to flooding, and this has been confirmed by actual results during the 1996 and 2009 flood events. While developing the application for this conditional use permit, We had several meetings with recology to fully understand their plans. We involved our own consultants, this was our own environmental consult ant, and other people n these meetings and in the end we're satisfied that recology's plans and their conditional use application were sound we now continue to support their application. I would be happy to answer any specific questions that council has on the freeway property because i've heard some things that may not be accurate from my perspective, and so i'm happy to answer any questions you may have. Leonard: I do have some questions. As I recall, the site is approximately 110 acres in total and about 50-some acres that is not in the flood zone.

Loftus: The site we're talking about now, excluding --

**Leonard:** My question is freeway land itself, the entire amount of property, is about 110 acres? Is that right?

Loftus: It's actually 106 acres. We recently sold 2.9 acres to the city.

**Leonard:** And then the area that is in -- not in the flood zone is about 55, 50 acres in total? **Loftus:** It's approximately about 70 acres.

Leonard: It's not in the flood zone. So of the 70 --

Loftus: In the flood zone --

Leonard: It's not in the flood zone.

**Loftus:** I would say it's higher than that, because the flood zone, What is considered by the fema maps to be the flood zone would be johnson creek and then what had been part of the northeast corner of the property, and that was actually the parcel that was just recently sold within the last month and a half.

**Leonard:** How many of the 70 acres that let's just say is not in the flood zone s. Currently used? **Loftus:** We use 70 acres on the property.

Leonard: All occupied?

Loftus: Yes.

**Leonard:** And the particular parcel that is the subject of this hearing is how many acres? **Loftus:** A little over six acres.

Leonard: And so there's occupancy on both sides?

**Loftus:** There is occupancy on three sides, not on the southern side. That comes right up to a mitigation area. Which is probably 150 feet from knapp road.

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**Leonard:** The leases that are on the property surrounding the subject property are long-term leases?

Loftus: Yes. We have a variety of leases, month-to-month to up to 10 years.

**Leonard:** Month-to-month up to 10 years. But the point i'm trying to get at is, as you can tell from the questions I was asking earlier, I don't have a concern about whether or not this is in the flood zone, as i've said i've spent some time dealing with this property so I understand we're not talking about property in the flood zone, but it's about the amount of traffic that will be generated by the Potential expansion of the recycling of food. And particularly given it sounds like the geographic area could be unlimited as to where that product would come from in the city. Why wouldn't I think this might be a -- something that would allow them to allow them to further expand the site at some future point, given the proclivity of Portlanders to recycle and the desire to want to particularly recycle food?

Loftus: I would have to go back to the physical limitations of the building.

**Leonard:** But that's not my question. My question is, why wouldn't -- if this were successful, they seek to expand on the site to maybe offer you better terms than an existing lease is providing. To expand the operation.

**Loftus:** They can't, because we're not going to build any more buildings on the site. And this would -- this is an indoor operation. They're limited by their footprint.

**Leonard:** If you were to renegotiate a lease on an adjoining piece of property that you control that isn't the current site, what would stop that from happening?

**Loftus:** I'm not sure how to answer that, sir, because they would need -- they would have to come back to you, the city, and metro to expand their operation.

**Leonard:** And I understand that. But they already have an operation on the site, so it would be a matter of expanding An existing operation, not as we're doing today, creating a brand-new one. This seems an ironic argument, the irony is I expect this to be a hugely successful operation, and therein lies the concern, because of the traffic impact and because of the potential associated nuisances with this particular kind of business. It would cement to me there would be a huge expansive -- incentive to expand at some point.

Adams: We should ask those questions of the staff regulators, because I think you hinted at what my understanding is, but we need to make sure my understanding is correct. There are regulatory limitation and there are potential limitations we can put on it, and there are triggers that we can also put on it if we wanted to. In terms of from a landowner perspective, i'm not sure he might have all the details of how to do that. Thank you, sir. Sir?

Matt Hughart: Good evening mayor, commissioners. My name is matt, i'm with kittleson and associates. We prepared the traffic impact study on behalf of recology. I wanted to make a few points here this evening to clarify some misconceptions and expand upon a couple of things that have been discussed. In the opponent's appeal, there was an assertion that the traffic counts we conducted for our analysis were inadequate to support the traffic study itself. As you heard from city staff this evening, the traffic counts were conduct order two mid weekdays, which is consistent industry practice. We did look at those counts and determined that there were no anomalies, or unusual traffic patterns, and as such we concluded and so did staff that the traffic counts were sufficient to support the study. The second thing I wanted to point out was the trip generation that we developed for the site as mr. Dutra of recology pointed out, the site itself is limited in its ability to accommodate organic food waste. The amount of trips and associated truck traffic that we assumed is reflective of that. We do consider it to be a conservative analysis based on the information that was provided to us, all of the facilities transportation facilities within the area have been found to have the ability to accommodate the additional truck trips w regards to the springwater corridor, I think some testimony was provided tonight that the amount of truck traffic that this site would generate would not be conducive or would not overlap with the peak bicycle

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and pedestrian traffic that occurs -- currently occurs on the springwater corridor, and we have traffic counts included in our study that support that. So in conclusion, we found and do believe that the traffic impacts associated with the site can be accommodated, and that there are no detrimental impacts. Would that i'll be happy to answer any questions.

Adams: Thank you, sir. Hi. Welcome.

Alex Shay: Hi. My name is alex shay, and i'm -- i've been living in the lents neighborhood since 2003 b. Two miles west of the site. I visited the site. I have a business that involves greenhouse gas emissions, renewable energy, waste energy, that sort of thing, and it's in that context that I met chris choate and some of the other folks from recology and got to know them over the course of more than a year while working with the west Multnomah soil and water conservation issues around issues about making higher and better use of food waste. We're shifting the whole paradigm associated with management of food waste from regional collection, and long haul, to landfill or the compost fag silt at cedar grove, to local connection with short haul to a regional composting facility. So we're taking all the right steps, we're going in the right direction from sort of an extractive use of food waste where none of the value, the energy that's built up in food waste is taken advantage of, to a shorter distance, lower carbon footprint transportation model where the food waste is sully put to a good use. In getting to know the folks at recology over the past year. i've found them to be responsible, and reputable. I think that they've -- based on what i've heard. they've taken The steps to mitigate what would I regard as very legitimate concerns in terms of vermin, in terms of transportation, in terms of odors. I know from the industry that i'm in that they have a good reputation in the bay area with the east bay mud facility. I do not have a business relationship with recology, nor does my firm have a financial interest in this project. But I have gotten to know the guys over the course of the past year, so I have visited the site and I think that these are the kind of steps that Portland needs to take to make better use of food waste, it's something i've been committed to for quite some time. And i'd be happy to answer any questions you guys might have.

Adams: Thank you all for your testimony. Really appreciate it. Anyone else? Mr. Stanley? Roy hatcher? Going once, twice, three times. You're it.

Kerrie Standlee: My name is Kerrie Standlee, i'm an cues tall engineer with daley, stanley, and associates. I'm here to talk to you about the noise that will be associated with this operation. From a noise standpoint, this location is probably the best you could probably find because it's an industrial location. It's already occupied by many facilities many operations that have the same kind of equipment that will be used in this operation being proposed. We were asked because of the appeals that an adequate study wasn't done to address the Noise, even though the study -- the application originally just said noise would be comparable to what's already out there. That was asked to do a study and we went out, did measurements at the facility, existing facility and we did measurements near the neighborhood, and I think have you a copy of the report with you, I want to point out on the last page of that report, if you can flip over to that, it's a picture of the sound levels that were measured near the residences. And you can see basically what situation is out there, the levels are controlled by i-205 traffic, and by local traffic that is basically going by on southeast knapp street. And the -- you can see what we've identified within the data, things that happened on the site. There are quite a few other operations that have trucks, the c-mex concrete batch plant is next door to the recology facility. That's on the east side. On the west side there's the Oregon pallet, where they have an excavator used for moving material around. They also have -- there is a concrete batching, just a small batching plant adjacent to the east side of recology. While we were doing our measurement the we observed those trucks with their backup beepers operating the front end loaders operating at that facility, back up -- so would you not be able to discontinuing wish -in fact there was one truck that came in during that 20-minute measurement that started backing in to the recology facility. Could you barely hear that particular backup beeper, because it goes into

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the building fairly quickly and it's muted. So the study results show that you'll meet all the city and state noise regulations, and shouldn't be a problem. So if you have any questions i'd be happy to answer them.

Fritz: Thank you for staying to give your expert testimony. That's very helpful.

Adams: Thank you. We'll now hear from the appellant. Five-minute summary. Tom Rask: Mayor Adams, commissioners, I appreciate your time and patience today in listening carefully to the evidence that's been presented before you. Before I review what you've heard and what you haven't heard, miss sharp is going to respond to the question that mayor Adams raised

about specific state standards that would apply in the analysis of this matter. Ms. Sharp: I refer to you title 33, the planning and zoning code. As to an operating scenario, 33254040, where the operating plan for the site any heard it's been submitted to denise cloninger and metro, but it's not in this record. And that's one of your criteria. A complete -- 33254060, also 08a 3401960040, there is no new medication planned in your record. Noise impacts, we just heard mr. Stanley's testimony and we were handed a report dated july 11. Before that time there was no indication of noise standard in the record. That's 33262050. There's no groundwater study for potential impacts to the shallow grand water table and johnson creek by the below-grouped approached leachate collection system. There are no engineering specifications, calculations, or design parameters as to the system's adequacy to meet the odor standard. 33.262.070, 33.815.220. No engineering specifications or design parameters to the subsurface leachate system. 33.8 fin 2 ---- food waste liquid outside of the building where it would comingle with storm water. 33.815.220, i'd like to clarify the odor standard because that was a question that commissioner Fritz had ininguired of to the city. The odor standard is 33.0 -- continue odors may not be produced. The odor threshold is the point at which an odor may just be protected, an odor deducted for more than 15 minutes a day is except. The applicant has no information they will meet that odor standard. Rask: Thank you. I think that's a good point to start to summarize where we are. What's telling here is what you heard and what's telling here is what you did not hear. Let's take at what you heard initially. I heard the recology testimony, I it this words were "not Anticipate seven times." I heard "we haven't submitted any further studies or plans because we haven't been through the process yet with the city. I saw diagrams presented to you and testimony that the hearings officer and the staff had available to them diagrams and drawings. Councilors, mr. Mayor, look at the city file. It's got nothing in it. We attached it as x 8. It's not fair by staff to say judge something on a record that's devoid of information. You heard emissions, we haven't done that quote because we haven't gotten through the city process. It's your job and the citizens count on you to make sure the code is applied. And just simply saying, we'll get to it later, which is basically what recology testified to today, is simply unacceptable. You're heard mr.-- our expert tell you why their record is so weak. And at the end of the day, that's what you heard a judge on is the record. The record has nothing in it, and these are serious issues. Both commissioner Leonard, commissioner Saltzman, and commissioner -- you all honed in on critical issues. The catch-22 here is, you expect this process to grow. Well, you don't want a problem that's made worse over time by your own success. And that's why metro has the standards that it has. It's why what you didn't hear, why this is very different from Metro central. Commissioner Fritz you asked the question, you heard recology say metro central is the same as this. No it's not. Met trap sensor takes everybody's regular gorge and takes it to a transfer station. This is raw fort hood waste -- food waste and mixed in an open forum. It's very, very different. At the end of the day, we got need this here. And if you open this door, you may be hurt by your own success. And you have the capability as per metro to deal with the capacity. Metro's own report indicated --

Adams: Can you summarize?

**Rask:** Thank you. Indicated they have 50% capacity. They have plenty of cap to handle this. I commend you for doing it. It needs to be done in the right place.

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Adams: Questions before you take off? Any questions or discussion from council? Fritz: Could you submit a list of the approval criteria?

Sharp: We meant to do that.

Adams: Thanks for your testimony. Can we have staff come up here? As our staff, is there any -- commissioner Leonard, did you have questions?

**Leonard:** I did. So the applicant said that there were physical limitations that precluded the site from accepting any more waste than what they agreed to. Can you speak to that?

**Frugoli:** yes. The zoning code's conditional use chapter, the code says that when we evaluate and review conditional uses, the decision or the approval is based on the level of activity, the size, the amount of intensity that is evaluated and approved. So, for example, with this decision we're approving a facility that tells us it will have 35 truckloads, garbage trucks coming in, etc., or 110 vehicle trips generated, that's what is improved. The zoning code says the applicants must come back for another review if they exceed that threshold by more than 10%. And that's through a type three review. So again, it would be a public hearing. What you perhaps could consider in considering this decision is are there additional parameters or thresholds that the decision should specifically exclude in the decision for example, the amount of tons the number of trips, the percentage of wet to dry material, the hours of operation. Those elements could also be defined in the decision, and therefore it sets the limit and tells the city and the applicant when another work review would be required, if the facility wants to expand. Or is again, very successful. **Leonard:** I appreciate that answer, but the question I was asking, are there physical attributes to facility that prohibits it from accepting any more waste --

Frugoli: No. Not that we know of.

**Leonard:** And so if their estimate of trips ends up bowing more than what the basis for the permit were, what is it that we do that flags the property is being used more for more volumes of waste than what we thought we were approving?

**Frugoli:** This would be like most zoning code compliance issues. It would be complete generated, staff would be called out to verify if these certain parameters were missed, or violated. There would have to be the documentation and then we would go through the code enforcement process. **Leonard:** And so the testimony from the applicant was that they would gather waste, fought in -- underline the assumption of the number of trips generated, did you do any calculation as to what the potential amount could be of product that could come there, versus what they said they were going to take?

**Frugoli:** No, staff did not challenge or question what their application told us. This was the program they were proposing, and the level of activity that was proposed and evaluated.

Leonard: Thank you. And we've heard there wasn't an operating plan suspected. Is that accurate? Frugoli: There weren't specific separate pages or reports that spoke to an operating plan or a use in mitigation plan, but the narrative provided the explanation provided by the applicant in writing and in testimony at the hearing met with submittal requirements and therefore staff recommended Approval and as well as the hearings officer found that the position was adequate to render a decision.

**Leonard:** And finally, the 15 minutes of odor, I'm a little confused about what that means. Does that mean at any one time in a 24-hour period there can be no more than 15 minutes of odor, or within the 24 hours no more than 15 minutes of accumulated odar?

Frugoli: What the zoning code says is it's a continuous 15 minutes. Of odor detected.

**Leonard:** So i'm clear about that, could there have beenly be every hour 14 minutes of odor for 24 hours, and that would be within the soaping code?

Frugoli: Yes. That type of project would be september from the requirement, yes.

**Fritz:** Thank you. I found this hearing very helpful. I've heard a lot of interesting and compelling information and i'm going to be looking forward to coments in the record, on each others' testimony

and your expert assessment, particularly on the approval criteria that were not met. The burden of proof is on the applicant to prove the approval criteria is met. Do we have anyone on staff that is qualified to assess the odor control or the vermin control system?

**Frugoli:** I can pursue that. We have technical staff of course who can evaluate the source control components that's regulated by the environmental of environmental services. We do have code compliance division that can help us and guide us with determining how odor is monitored and detected, Etc. And I can -- we can offer that kind of information to you.

**Fritz:** I was thinking more about the pipe system that -- the reverse air system, the water containment. Do we have the ability to know whether the burden of proof has been met? **Frugoli:** The elements such as the catch basin and the containment are very viewed through the

building permit review process. So there is city staff that intoned look at that. The other building permit -- you'll say yes, I think we do. We can offer feedback.

**Fritz:** That would be very helpful. So that's something that i'll be look for in the record. And I really appreciate your assistance.

Adams: Commissioner Saltzman.

**Saltzman:** I'd like to follow up on that last point. We're not going to ever see - bds will see detailed plans, but we as a council will never see that prior to making a final decision on this. Isn't that correct?

**Frugoli:** Unless you summited to be submitted because of this is an evidentiary hearing, more information can be supplied by the campaign '08 as well as the applicant and staff. If you so desire. **Fritz:** Just following up on that point, I heard the applicants's tourney there would be a week to add more information, and a reek for Rebuttal. I'd like the stat to make that assessment.

**Frugoli:** If I could ask that after the close of the open regard, whatever time you deside that is the ever is propose rat, it would be wonderful if you gave staff an additional two weeks to offer feedback and further guidance if you will, to council, then of course after the -- we submit our information, the applicant was get final rebuttal, a period of final rebuttal.

**Saltzman:** I seem to hear from recology that they don't want to submit detailed plans until they've got the land use approval, because they don't want to spend the time, and effort, and money to do that. I guess i'm standing by my point, whether it's four or five weeks from now, it's going to be that long before we give a final approval or disapproval. We don't have another byte at the end of the apple. We're never going to see the building permits.

Adams: I think they've offered to provide us with spot checks, which we don't often get an applicant to agree in perpetuity to have, i'm schedule checks begins what we agreed to in terms of operational. In terms of text leading up to metro, where they have to get an agreement from them as well, we do have the ability to give them a certain amount of time to come in to satisfy any concerns we have to show us how they might fulfill everything from -- and also to nut as a stipulation, hours of amount imagination, Maximum number of tonnage, of trips, how they would interact with the association. What are the elements after good neighbor. They have successfully pursued and I understand got agreement from the cathedral park. St. Johns north Portland association on a good neighbor agreement, things like the flood control plan, the inspections, no access on napa road. The neighborhood rightfully has concerns about this and I think that level of detail and expectation is totally appropriate. I realize we're not used to doing that, and it's in our authority to do so.

**Leonard:** I have a fundamental concern with the application. There's a contradicion between what the applicant testified and what staff just said. That there is not – there might be code limitations but not physical limitations. There are distinctions that are important site and the roadside, and the yeon site. This is industrial to be sure and one that I have long proposed acting use on. I'm not sure this is the appropriate type of use for this particular site for a variety of reasons, which includes that contradiction and the i'm trying to figure of what the conditions are, I think as the

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testimony helped me realize that while the staff judged this application based on what was submitted, I think the council's job is to base the application as it is before us and not try to perfect the application for the applicant I think that are a Variety of concerns, including the lack after good neighbor agreement and others that need to be addressed before I could support this application.

Adams: I think that the concerns expressed -- I don't necessarily agree that I heard contradictions, I did hear a difference of agreement about what constitutes things such as a vector, nuisance, noise, mitigation.

Leonard: Can I address that? There were disagreements about what that is. We get to decide what we think is adequate in terms of those matters. We've done in the past, as we've done in the past, we've left open the record and allowed people to address any sort of short comings in an application in the past. In terms of concerns about this becoming widely successful, if it is wildly successful in this part of town, if it's wildly successful in whatever trips this part of town has served, we're going to limit how much of the overall effort is served by this one facility. I'm not comfortable with leaving -- i'm not comfortable moving this forward without those limitations. Leonard: To be crystal clear, I agree with you, mayor Adams, that there's no contradiction about vector control. There's no contradiction about whether or not this is in a floodplain. That was not my point. I asked a specific question, and that was what would prohibit you from operate can the site on -- the answer would be the Size of the building and the property would limit my ability to do that. The staff said that's not accurate, what limits the ability of the applicant to expand, the size of the property, are the unlimited line of assumptions that grant the approval in the first place. That is a huge contradiction.

Adams: The great thing about being a member of the city council is we get to establish the final parameters in which a business like this can operate. So whether or not people were consistent throughout the various points of this process or in the question and answers everyone understood fully what was exactly being asked or answered. We are invested with the authority to say hours of operation, amount of tonnage, number of trips, and appropriately so, having spot-checks by our folks who know what to look for, logs that have to be kept according to state and metro rules. Those contradictions we -- if they exist, we get to settle.

**Leonard:** In the ideal world that's what would happen. Unfortunately I -- I was late and the commission in charge of bds, which commissioner Saltzman has now, and know we have had to suggestion pend a number of inspections as a result of complaints due to staff shortages and layoffs, and I anticipate a problem that could exist with the follow-up you're describing, which should happen, but we're limited to enforce the code at times because of funding shortages. I see that as a potential huge problem.

Adams: I don't, because of the vigilance of the neighborhoods that surround this. And we don't mandate these kinds of regular spot checks as a matter of course. And this can be prioritized. So this isn't like other areas that we have had to cut back on and it can be prioritized. And it should be. **Fritz:** I share several of commissioner Leonard's concerns, so I have two process questioning. I'm still waiting to get the more evidence that I think all sides will be sending in for the city attorney. Could we as a condition of approval, put on a binding good neighbor agreement that would give neighbors a quicker resource than the code enforcement process?

Kathryn Beaumont, Office of City Attorney: Explain to me exactly how you would see that operating.

**Fritz:** I'm not exactly sure, but I know in many good neighbor agreements they're more as operational and the conditions that are in the good neighbor agreement don't allow an appeal even to the code hearings officer. And i'm wondering if we could craft something that would get quicker access back to the city council, in the event the good neighbor agreement was not implemented.

**Beaumont:** The purpose of approval is to ensure it can be satisfied. If you can tie the requirement of a binding good neighborhood involvement to ongoing satisfaction of the criteria criteria, I think you could Impose that condition. I think it would depend on how it's worded and how it would operate.

**Fritz:** Thank you. If we had a week to hold the record open and a woke for rebuttal and two weeks for staff assessment, and potentially an approval with revised conditions or potentially a denial, would -- if we were to have a hearing with revised conditions, would we be required to have a hearing on the revised conditions, or would it be council only?

**Beaumont:** I don't believe you would necessarily be required to hold a hearing. You might want to allow people an opportunity to comment on the revised conditions. And maybe as part of structuring sort of the open record period and rebuttal period, you would want to have any proposed conditions submitted during that period of time. So that when you come back, you have conditions that you are picking and choosing from.

Adams: I think --

Saltzman: I have a question for sheila.

**Beaumont:** Before the council add journals this hearing, I do want to talk about timing of the open record period and the rebuttal period. Because i've heard some concerns from staff about one week being insufficient amount of time, depending on what kind of technical review you want staff to conduct. So i'd like to revisit that with you.

Adams: Why don't we get commissioner Saltzman first.

**Saltzman:** So sheila, I Thought I heard in recology's testimony that there's not a 35-trip limit in our condition of approval, but that's what they intend to seek from deq and metro?

**Beaumont:** I think that might have been a mistake. The proposal specifically told us the number of vehicle trips, the number of trucks coming to the site, that's what was evaluated. Therefore that's one of those parameters that needs to be capped or if exceeded beyond 10%, it's subject to another requirement for another conditional use review.

Saltzman: Ok. And then -- thank you.

Adams: Catherine, you were going to explain?

**Beaumont:** The applicant has requested one week for an open record period, and then an additional week for people to respond to information submitted during open record period. Some of the council members have indicated -- there was at least a proposal made that staff conducts a more technical level review of some of the issues that have been raised or the information submitted. If the council wants staff to do that, one week is insufficient time according to staff. So one possibility – And I think you need to decide whether you want that technical review, if you do, I think what you may need to do is two-week periods. Two weeks to hold the record open, two weeks for rebuttal and council -- continued council hearing after that.

Adams: Are folks ok with that?

Saltzman: Do you need more than two weeks?

**Beaumont:** Two weeks would leave you -- would take to you july 27th for the initial period. And two weeks for rebuttal would take you to august 10th.

Leonard: I would -- .

Adams: I want to hear back from staff first.

Frugoli: I think council would like us to respond to all new information that's submitted.

Therefore we would like whatever time frame you give us and hopefully it's at least two weeks. We would like that argentina the close of the record to them, develop our feedback, and further guidance.

Adams: We don't know exactly what will come in in the first two weeks, do we have the ability to at the end much that time as staff needs more time, do we have the time to extend it? Or not?

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**Beaumont:** You do. The difficulty is, staff is going to be submitting a new -- staff needs to adhere to the same time period as the other parties.

Leonard: Before we go --

Adams: I want to take care of this time issue and then before we decide anything, i'll recognize you.

**Robinson:** Mike robinson, on behalf of applicant. We're fine with the two-week period. As I said, we waived the 120-day clock. It's strictly a matter of convenience for the parties, staff and city council. Let me make a discussion. Maybe what might make sense is a two-week part for other parts to submit argument and give staff two weeks to -- and a two-week rebuttal period so the parties have a chance to respond to the staff, and if your city attorney suggested you come back to a continued hearing after receiving that information, that's fine with us.

Adams: Is that fine with you?

Leonard: No it's not.

Saltzman: I like that approach.

**Leonard:** I think we need to take the temperature of the council and if that -- there are three members of the council that are needing that information, I think we should do it. If there's not, we shouldn't. I'm very sensitive to the workload that we're asking the staff to undertake. They are in a particularly overworked state right now, and i'm prepared today to make a motion. And if the rest of the council is not, that's fine. They should do the work, but if there are --

Adams: So we'll do that I promise we'll take the temperature. I promise.

**Rask:** I might make -- tom for the appellant here. In deciding what to do here, I guess what I would stress with the council is commissioner Fritz, you adequately pointed out, the burden is on the applicant. We're here today, and spent a lot of time and effort --

Adams: Is this a process -- I don't want to get back into your summary close. Are you ok with the suggested two, two, and two?

**Rask:** my struggle is that this is supposed to be done during this process. They start in november. So I think for the record we are opposed to leaving the record open for anything.

**Robinson:** We kept a record open at the request of your staff so we could do exactly what we're doing today, answer question and put new facts into the record. That's why there's no clock. **Adams:** I'm going to poll the council.

**Fritz:** May I ask a clarifying question? If the applicant asks us to keep the record open, do we have to keep the record open?

Beaumont: No. This is at the discretion of the council.

Fritz: Thank you.

Adams: Let's take a poll. We know commissioner Leonard is a no. Is that accurate? Ok. You are a -- I would like comments on the 2-2-2.

Saltzman: I like that idea. Ful that's all you're asking.

Adams: For the moment.

**Fritz:** There's been a lot of time and effort put into this, so i'd like to hear the additional comments on what has been said today, and what may be put in the record. So i'm in favor of the two, two, and two.

Adams: I'm in favor of it as well. So katherine, your advice on exactly what i'm supposed to do at this point?

**Beaumont:** This is the way I understand would it work. What the council would be doing Would be holding the record open for the submission of additional evidence for two weeks. And evidence would need to be submitted by 5:00 p.m. On july 20th. That's evidence in any form, whether it's written, snail mail, email.

Saltzman: Two weeks.

Beaumont: Two weeks.

#### Saltzman: Today is the 13th.

**Beaumont:** 13, plus the 14th, is 27. Evidence would be submitted by 5:00 p.m. On july 27th. Staff would have two weeks to analyze the evidence that had been submitted to respond to council's questions and submit any recommendations staff has, based on what was submitted during the first period. And staff would have until 5:00 p.m. On august 10th. Council would then -- all parties would have two weeks to rebut, staff's recommend indications, and any evidence --

recommendations, and any evidence during the two-week period and that would take us to 5:00 p.m. On august 24th. The council would convenient perhaps the following week, which would be august 31st. And we would need to set a time with Karla to engage in tentative decision making. **Moore-Love:** 2:00 p.m. On august 31st.

**Beaumont:** So as of 5:00 p.m. On august 24th at the end of the rebuttal period, the evidentiary record would be closed, it would then be council decision making and discussion on august 31st at 2:00 p.m.

Adams: Ok. So ---

Fritz: Are we all here on the 31st?

Moore: We are.

Adams: Ok. So that is the direction we're headed. Is there anything else I need to do before I lower will gavel?

Beaumont: This is continued until august 31st at 2:00 p.m.

**Fritz:** And I had mentioned to neighbors who had written that although I couldn't comment on the content of their comments, that I shared some concern about not having the hearing during the day rather than the evening when more neighbors could come. I think given the amount of time that the record is being left open for written comments, hopefully it will not be a four-hour hearing again next time, so i'm not requesting to have an evening hearing, but I do encourage everyone to participate.

Adams: All right. That is where we land. We are adjourned. [gavel pounded]

At 6:15 p.m., Council adjourned.



**Nature's Needs**, located near the city of North Plains, is owned and operated by Recology, a leading recycling and resource recovery company. The facility has been serving the neighboring communities for over a decade. We are committed to producing a high quality organic soil amendment to help rebuild and fortify agricultural soils for higher productivity and a cleaner environment.



Nature's Needs currently processes approximately 35,000 tons of yard trimming and land clearing materials each year. Organic compost products produced by Nature's Needs are used as soil amendments to many agricultural industries including landscape yards, orchards, and vineyards.

Nature's Needs utilizes an aerobic compost process, which produces a high quality amendment to any soil. Nature's Needs' quality assurance program includes

routine nutrient, metal, and pathogen analysis to ensure a high quality, consistent product that meets the needs and high expectations of our customers. Current test results are available upon request.

Nature's Needs is committed to providing our customers and the communities we serve with the highest quality of service, innovative programs and sustainable practices. We are available to respond to your questions and look forward to fulfilling your composting needs.



For more information:

Contact Us

click here?

Operating Hours: Monday - Saturday 8:00 AM - 4:30 PM Closed Sunday

The following PDF files can be printed for easy reference. You will need the free <u>Acrobat Reader</u> to view these files.

<u>Compost Brochure</u> <u>Credit Application</u> (Enterable PDF)

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**EXHIBIT S PAGE 1 OF 1** 



Portland ready to test recycling residents' kitchen scraps | OregonLive.com



# Portland ready to test recycling residents' kitchen scraps

Published: Wednesday, February 03, 2010, 8:30 PM Updated: Monday, February 08, 2010, 12:25 PM



By Scott Learn, The Oregonian Follow

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Doug Beghtel/The Oregonian

Portland ready to test recycling residents' kitchen scraps | OregonLive.com

A pile of yard debris steams at the Nature's Needs compost facility in North Plains. Recology Oregon Compost, which sells compost to farms and wineries, wants to expand into food waste composting to help meet the Portland area's needs for food scrap recycling. But the city of North Plains worries about the stench.

After five years of delays, Portland is ready to try out collecting food waste from residents at curbside for recycling into compost, addressing the biggest glob left in the city's garbage.

Including dinner scrapings, meat, egg shells, coffee grounds and other food scraps in the curbside yard debris cart isn't a revolutionary concept. **Seattle** and **San Francisco** are doing it; so is **Dubuque**, Iowa.

The finished compost benefits farms and wineries. Recycling food waste and wastepaper, which makes up just over a fifth of the region's garbage, prevents it from stewing in a landfill, where it produces methane, a powerful greenhouse gas.

But the city is planning to punt garbage collection from weekly to once every two weeks to help cover the extra cost of picking up the food-and-yard-waste cart weekly. Based on other cities' experiences, food waste collection and non-weekly garbage service -- at the same cost or more -- will shock a lot of customers.

"We're coming right into their kitchen saying, 'Please change your habits,'" said Bruce Walker, Portland's solid waste and recycling manager.

That's why the city will test food-waste pickup with 2,000 Portland homes starting in April.

Oregon's hopes to expand recycling of kitchen scraps already has raised a stink.

The Portland area's best local prospect for a big, economical place to compost tons of food waste along with yard debris -- **Nature's Needs** in Washington County -- is opposed by the city of North Plains, which worries about increased stench.

For Portland to go beyond a pilot program to full-fledged curbside recycling of food waste, it needs a compost processor to open closer than the Seattle area, where the city's limited commercial food scrap collections go now.

An industrial-scale processor would also allow Portland suburbs to expand commercial collection and eventually branch into residential.

"I'm hopeful," Walker said, "but we still need some puzzle pieces to snap in place."

Details of the pilot program –including where it will take place – are still being ironed out in advance of Portland Mayor Sam Adams' state-of-the-city speech Friday, Walker said. The test likely will be spread over several neighborhoods and haulers before expanding to Portland's 145,000 single-family and duplex homes.

During the test, haulers will pick up garbage every other week, recycling carts either every week or every other week and the food-and- yard-waste cart weekly.

The city has long hoped to move to residential food waste recycling, as well as expand collections from restaurants, grocery stores, cafeterias and other businesses. But it held off because Cedar Grove, the Seattle composter, couldn't find a spot for a compost plant in the Portland area or nearby.

In the last year, the outlook has changed dramatically, with waste

# Food Scrap Recycling

Portland is still figuring out what food scraps residents could put in a curbside cart for yard and Portland ready to test recycling residents' kitchen scraps | OregonLive.com

companies pursuing at least three large sites for composting food waste. **Recology**, the outfit that handles San Francisco's garbage, recycling and food waste, purchased Nature's Needs and another yard waste compost site in Aumsville, southeast of Salem, as well as transfer sites.

The company is trying to get permission to process food waste at both spots, and also acquired a minority interest in **Western Oregon Waste**, which has a composting facility in McMinnville.

**Allied Waste**, a national garbage company, has applied to Oregon's Department of Environmental Quality and Benton County for permission to accept the full suite of food waste at its yard waste composting facility north of Corvallis.

It's already accepting "green" food waste -- excluding meat and dairy -- from Corvallis's curbside food waste program, the first one in the state.

The Allied Waste site, at its Process and Recovery Center, is the most remote and appears to be facing little opposition. But it's also the farthest away from Portland, which would make it more costly for haulers to truck the combined food and yard waste there.

Today, Portland's yard waste is composted at multiple local sites. Once it contains food waste, it would have to go only to specially approved compost plants.

Recology's North Plains and Aumsville sites face concerns from neighbors. The 12-year-old Nature's Needs composting facility has a long history of odor complaints under previous owners, North Plains City Manager Don Otterman said, and a long history of broken promises about controlling the smell. food waste. Here's what the city of Renton, Wash., allows:

\* Fruit and vegetable scraps and leftovers \* Bread, pasta and grains \* Eggshells and nutshells \* Coffee filters and grounds \* Tea bags and tea leaves \* Meat, fish, poultry and beans \* Greasy pizza delivery boxes \* Food-soiled paper towels and napkins \* Shredded paper (layered, no plastic) \* Paper grocery bags containing food scraps \* Paper egg cartons \* Paper berry cartons \* Uncoated (not shiny) paper plates and cups \* Uncoated paper food wrap \* Uncoated paper food bags

Source: city of Renton

"We've had people complain that they can't open their windows in the summer," Otterman said. "It's like the region needs this, so let's sacrifice North Plains."

Recology says it called in two consultants to make improvements on the 66-acre site that will cut odors. The changes include building more berms around the site, aerating compost to prevent rot and buying backup heavy equipment so the waste still gets processed if machinery breaks down.

"But if you're sitting in Washington County with a site that's been a problem, we're just the new guy in town telling you everything's going to be wonderful," said Art Cimento, Recology's chief development officer. "We understand we need to demonstrate we can properly manage the odors."

Washington County, which controls the Nature's Needs franchise, is evaluating the company's request.

In the United States, 65 cities are picking up residential food waste, including meats and cheese, with almost half in Washington, according to a 2009 survey by **BioCycle** magazine.

**Renton**, Wash., bumped garbage collection to once every two weeks when it started its food waste program in January 2009. Linda Knight, the city's solid waste coordinator, said the switch was puzzling for many customers: "It's rethinking how you define garbage."

http://www.oregonlive.com/environment/HEEX.ssf/204095/30AEn3 ready to test collect... 7/14/2011


	City Council Meeting - Recology Project		
Issue		Reference	Códes
General	Application incomplete		
	No complete proposed/revised Operating Scenario	Exhibit A pg 8	33.254.040
		Brief pp. 14-17	
	No complete nuisance mitigation plan (litter, vectors, dust, noise)	Exhibit A pg 18	33.254.060
		Brief pp. 18-22	OAR340-096-00
			(Litter)
	No studies for noise impacts caused by proposed operations and facility changes.	Exhibit A pg 15	33.262.050
·	No studies for noise impacts caused by proposed operations and any s	Breif pp.7-8; 20-21	OAR340-035-00
	No engineering specifications, design calculations, frequencies for systems or methods used to	Exhibit A pg 7, 9, 11, 13, 18, 19	33.815.220G
	control nuisance issues	Brief pp. 5-9; 11, 13, 15-17-22	33.252.060
			33.262.040
	No groundwater study for potential direct pathway impacts to the shallow groundwater table and	Exhibit A , pg 6	33.815.220 D
	Johnson Creek by the below ground leachate collection system.	Brief pp. 10-11	
Nuisance - Odor	Application includes the use of biofilters to mitigate odors. Includes general dimesions of the	Exhibit A pg 13	33.262.070
	biofilter. No engineering specifications, calculations or design parameters were provided as to the systems adequacy to meet the City's narrative standard for odor control for the waste area or the		
	building.	Brief pp. 5-7, 8, 11, 18-20	OAR340-210-0
· · ·			OAR340-090-0
1			
Nuisance - Leachate	Application includes the use of a leachate collection system, storage tank, spraying system and potential off site disposal. No engineering specifications, calculations or design parameters were	Exhibit A, pg 10	33.254.040
	potential on site disposal. No engineering operation, store or dispose of the leachate. No indications of application rate was given for respraying leachate on incoming deliveries and the potential impact on odor control. No method for "off site disposal" was defined.		
		Brief pp. 6-7, 11, 16-17	-
	No method or system was proposed to prevent "track out" of food waste liquids outside of the	Exhibit A, pg 10	33.254.040
	building where it would co-mingle with stormwater.	Brief pp. 9-10, 13-14, 15-16	

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Nuisance - Vectors	Application says that sanitary conditions will be maintained inside of MRF. Since there is no nuisance	Exhibit A pg 19	33.254.040
	mitigation plan, no detailed systems or methods were described as to how sanitary conditions were		
	to be maintained	Brief pp. 15-17	
Shallow groundwater, Johnson Creek	Application says the leachate collection will be below ground. The depth to groundwater based on nearby monitoring wells and geotech borings indicates that shallow groundwater can be	Exhibit A pg 4	<b>33.815.220</b> D
	encountered at 5 ft. No information is presented on how leaks in the collection system will be prevented so that biological pathogens do not have a direct pathway to the shallow groundwater	· · ·	
· · ·	table or Johnson Crook	Brief pp. 10-11, 15-16	

· · · ·



600 NE GRAND AVENUE TEL (503) 797-1650 PORTLAND, OREGON 97232-2736 FAX (503) 813-7544



METRO

### NOTICE OF VIOLATIONS No. NOV-254-10

David Dutra

Recology Oregon Material Recovery, Inc. 4044 N. Suttle Road Portland, OR 97217

National Registered Agents, Inc. 325 13<sup>th</sup> St. NE, Ste 501 Salem, OR 97301

Facility:

To:

Suttle Road Recovery Facility ("SRRF") 4044 N. Suttle Road Portland, OR 97217

**Operating Instrument:** 

Date(s) of Violation(s):

June 10, 2010 and June 21, 2010

License Violation(s):

Section 7.2 of the License stipulates that:

The Licensee must operate the facility in accordance with an operating plan approved by Metro.

Solid Waste Facility License No. L-102-09 (the "License")

Section 7.5 of the License stipulates that:

The operating plan shall establish:

a) Procedures for inspecting incoming loads for the presence of incoming wastes;

Section 4.2.2 of SRRF's current operating plan stipulates that:

Each incoming load is visually inspected as it is weighed on the scale.

#### EXHIBIT V PAGE 1 OF 53

During an inspection of SRRF conducted by Metro on June 10, 2010, the inspector observed a commercial load of solid waste scaled into the facility without a visual inspection. The Metro inspector mentioned this to the operator and noted it as a concern on his Inspection Summary Report.

On June 21, 2010 the Metro inspector re-inspected SRRF in order to determine whether the facility was in compliance regarding load inspections. The inspector observed that, during the time of the inspection, the majority of the loads that entered the facility were still not visually inspected. Recology Oregon Material Recovery, Inc. is therefore found to be in violation of Section 7.2 of the License.

#### **Opportunity to Cure:**

**Civil Penalty:** 

Pursuant to Metro Code Section 5.01.200(b), you will be afforded an opportunity to cure these violations without the imposition of a monetary penalty. Metro will consider the violations cured provided that you immediately begin conducting visual inspections of incoming loads of solid waste in conformance with SRRF's current operating plan and remain in continuous compliance with this requirement for 90 days from the date of issuance of this Notice.

You may submit to Metro proposed amendments to the plan (see License Section 7.2) and, upon Metro approval, begin implementing the revised procedures.

No penalties are being imposed at this time. However, penalties of up to \$500 per violation may be imposed for additional violations that may occur within 90 days of the date of issuance of this Notice. Each load that is not visually inspected shall constitute a separate violation.

Date

Margo Norton Finance and Regulatory Services Director

#### **EXHIBIT V PAGE 2 OF 53**

#### CONTESTED CASE NOTICE

Under Metro Code Chapter 2.05, you have the right to request a contested case hearing regarding this Notice of Violation. You must make this request in writing to the attention of Steve Kraten, Solid Waste Enforcement Coordinator, and ensure that Metro receives the request within 30 days of the date this Notice was mailed. You may retain legal counsel to represent you at the hearing. Article IX, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, and Metro Code Chapter 2.05 and 5.01 provide Metro's authority and jurisdiction for the hearing.

#### Attachment

CC;

Roy Brower, Solid Waste Compliance and Cleanup Manager Steve Kraten, Solid Waste Enforcement Coordinator Warren Johnson, Solid Waste Compliance Supervisor Michelle Bellia, Senior Metro Attorney

#### CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing NOTICE OF VIOLATION including CONTESTED CASE NOTICE on the following:

> David Dutra Recology Oregon Material Recovery, Inc. 4044 N. Suttle Road Portland, OR 97217

National Registered Agents, Inc. 325 13<sup>th</sup> St. NE, Ste 501 Salem, OR 97301

On June 26, 2010, said individuals were served with a complete and correct copy thereof via regular mail and certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. Post Office at Portland, Oregon.

Roy W. Brower Solid Waste Compliance and Cleanup Manager

SKMN: S:REMVaten/Facilities/MRFs/Recology/NOV-254-10.dooqusus

#### EXHIBIT V PAGE 3 OF 53

600 NE Grand Ave. Portland, OR 97232-2736 503-797-1700 503-797-1804 TDD 503-797-1797 fax

#### www.oregonmetro.gov

Metro | People places. Open spaces.

April 22, 2010

Scott Heidegger, Environmental and Safety Compliance Manager Recology Oregon Material Recovery, Inc. 4044 N. Suttle Rd. Portland, OR 97217

RE: Noncompliance Advisory Letter (NAL-246-10) Failure to post required signage

Dear Mr. Heidegger:

The purpose of this letter is to notify you of incidents of noncompliance with provisions of Metro Solid Waste Facility License No. L-036-09, issued for the Foster Road Recovery Facility ("FRRF"), and Metro Solid Waste Facility License No. L-040-09, issued for the Oregon City Recovery Facility ("OCRF"). This Noncompliance Advisory Letter is a warning and is not intended as a Notice of Violation as specified in Metro Code Section 5.01.180.

Section 8.13 of the Licenses for both facilities stipulates that:

The Licensee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, and legible from off-site during all hours and shall contain at least the following information:

a) Name of the facility;

b) Address of the facility;

c) Emergency telephone number for the facility;

d) Operating hours during which the facility is open for the receipt of authorized waste;

. e) Metro's name and telephone number 503-234-3000;

f) A list of authorized and prohibited wastes;

Scott Heidegger April 22, 2010 Page 2

In addition to a) through f), above, the license for FRRF requires that the signage also include:

g) Vehicle / traffic flow information or diagram;

h) Covered load requirements; and

i) Directions not to queue on public roadways.

Recology has not fully updated the information on its signs since acquiring the FRRF and OCRF facilities from Pacific Land Clearing. Of particular concern is the fact that the phone numbers posted as emergency numbers were found to be out-of-service, when last tested by Metro (on April 19, 2010). It is Metro's expectation that FRRF and OCRF will come into full compliance with Section 5.13 of the licenses within a week of receiving this letter. Failure to do so may result in the issuance of formal Notices of Violations.

Thank you for your attention to this matter. Contact Steve Kraten, Solid Waste Enforcement Coordinator, at (503) 797-1678, if you have questions.

Sincerety

WARREN JOHNSON FOR

Roy W. Brower

Solid Waste Compliance and Cleanup Manager skyrabil cc: Steve Kraten, Solid Waste Enforcement Coordinator

cc: Steve Kraten, Solid Waste Enforcement Coordinator Warren Johnson, Solid Waste Compliance Supervisor SiREMKmaal/Facilities/MRF5/Recology/NAL-246-10.doc Queue

600 NE Grand Ave. Portland, OR 97232-2736 www.oregonmetro.gov

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# Metro | People places. Open spaces.

June 30, 2010

Scott Heidegger, Environmental and Safety Compliance Manager Recology Oregon Material Recovery, Inc. 4044 N. Suttle Rd. Portland, OR 97217

RE: Noncompliance Advisory Letter (NAL-255-10) Failure to properly maintain required documents

Dear Mr. Heidegger:

The purpose of this letter is to notify you of incidents of noncompliance with provisions of Metro Solid Waste Facility License No. L-040-09, issued for the Oregon City Recovery Facility ("OCRF"). This Noncompliance Advisory Letter is a warning and is not intended as a Notice of Violation as specified in Metro Code Section 5.01.180.

Section 5.14 of the License stipulates that OCRF must retain a complaint log and make it available for Metro inspection. During a Metro inspection conducted on June 25, 2010, the operator was unable to locate the complaint log. This constitutes a violation of the License. The complaint log must be maintained at a place known to the operator where it is readily accessible, either on the premises or at another location as specified in OCRF's operating plan.

Section 5.15 of the License stipulates that OCRF must maintain a copy of the License on the facility premises where it is readily accessible. During a Metro inspection conducted on June 25, 2010, the operator was unable to locate a copy of the License. This constitutes a violation of the License.

Section 6.4 of the License stipulates that OCRF must maintain a copy of the operating plan on the facility premises where it is readily accessible. During a Metro inspection conducted on June 25, 2010, the operator was unable to locate a copy of the operating plan. This constitutes a violation of the License.

It is Metro's expectation that OCRF will come into full compliance with Sections 5.14, 5.15, and 6.4 of the License within a week of receiving this letter. Failure to do so may result in the issuance of a Notice of Violations.

Thank you for your attention to this matter. Contact Steve Kraten, Solid Waste Enforcement Coordinator, at (503) 797-1678, if you have questions.

Sincerely,

Ø

Roy W. Brower Solid Waste Compliance and Cleanup Manager CC: Steve Kraten, Solid Waste Enforcement Coordinator

Warren Johnson, Solid Waste Compliance Supervisor S:\REM\kraten\Facilities\MREs\Recology\NAL-255-10.doc

#### **EXHIBIT V PAGE 7 OF 53**

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#### Department of Environmental Quality Northwest Region 2020 SW 4th Ave, Suite 400 Portland, OR 97201 (503) 229-5263

FAX (503) 229-6945 OTRS 1-800-735-2900

CERTIFIED MAIL NO.: 7099 3220 0000 9092 3759

September 1, 2010

Dave Dutra Recology Oregon Material Recovery Inc. 4044 N Suttle Road Portland, Oregon 97217-7732

RE: Warning Letter Recology Oregon Material Recovery Inc. WL - NWR-SW-2010-0007 Solid Waste Disposal Permit #501 Multnomah County

Dear Mr. Dutra:

On August 24, 2010 Metro conducted an inspection of your Suttle Road facility located at 4044 N Suttle Road in Portland. During the site visit Metro staff photographed accepted wastes located in the material recovery building. The Oregon Department of Environmental Quality received copies of the Metro photographs (see enclosure) and inspection notes. The photographs show piles of mixed waste in the material recovery building which included built-up roofing.

DEQ contacted Recology's Environmental and Safety Compliance Manager, Scott Heidegger, about the acceptance of built-up roofing. Mr. Heidegger confirmed that Recology Suttle Road Recovery Facility accepted built-up roofing.

Based upon the investigation of your facility, DEQ has concluded that Recology Oregon Material Recovery Inc. is responsible for the following violation of Oregon environmental law:

VIOLATION:

(1) Oregon Administrative Rule (OAR) 340-093-0040(1): "No person shall dispose of or authorize the disposal of solid waste except at a solid waste disposal site permitted by the Department to receive that waste, or at a class of disposal site specifically exempted by OAR 340-093-0050(3) from the requirement to obtain a solid waste permit." This is a Class I violation pursuant to OAR 340-012-0065(1)(c). Class I violations are the most serious violations; Class III violations are the least serious.

OAR 340-093-0050(6)(b) states in part that each person who is required to obtain a permit must fulfill each and every term and condition of any permit issued by DEQ. DEQ Solid Waste Disposal Permit #501, Section 6.7, states "The permittee must not accept built up roofing wastes from industrial, commercial or residential tear-offs." SWDP #501, Section 6.6, prohibits the

#### EXHIBIT V PAGE 8 OF 53

Recology Suttle Road Recovery Facility, SWDP #501 WL-NWR-SW-2010-007 Page 2 of 2

permittee from accepting friable asbestos or non-friable asbestos-containing materials at the facility.

Built-up roofing is a prohibited waste according to the facility's permit. Built-up roofing is considered asbestos containing waste material unless there is laboratory analysis indicating that the presence of asbestos is less than 1% by weight. Recology Suttle Road Recovery Facility accepted the built-up roofing without documentation that the built-up roofing was not ACWM. Recology Suttle Road Recovery Facility did not operate in accordance with its DEQ approved Operations Plan and ACWM special waste management plan. The ACWM plan is required to ensure procedures are in place to avoid the acceptance of asbestos containing materials.

The acceptance of asbestos containing waste materials could have released asbestos fibers into the air and exposed workers and the public to asbestos. Asbestos fibers are a respiratory hazard proven to cause lung cancer, mesothelioma, and asbestosis. Asbestos is a danger to public health and a hazardous air contaminant for which there is no known safe level of exposure.

This notice is a warning letter. DEQ does not intend to take formal enforcement action at this time. However, should you repeat this violation, the matter may be referred to DEQ's Office of Compliance and Enforcement for formal enforcement action, including assessment of civil penalties and/or a Department order. Civil penalties can be assessed for each day of violation.

If you believe any of the facts in this warning letter are in error, you may provide information to me in writing. DEQ will consider new information you submit and take appropriate action.

DEQ endeavors to assist you in your compliance efforts. Should you have any questions about the content of this letter, please feel free to contact me in writing or by phone at (503)229-5562.

Sincerely,

Sm

Stephanie Rawson Solid Waste Compliance Specialist Northwest Region Solid Waste Program

Enclosure(s): August 23, 2010 Metro Inspection notes and photos

ecc:

Scott Heidegger, Recology Oregon Material Recovery Inc. (via e-mail) <u>sheidegger@recology.com</u> Roy Brower, Metro (via e-mail) <u>roy.brower@oregonmetro.gov</u> Office of Compliance and Enforcement, DEQ Headquarters (via e-mail)

Facility Name:	Suttle Road Recovery Facility ("SRRF")	Date of inspection:	23AUG10
Metro License Number:	L-102-09	Time of Inspection:	10:00 to 11:35
Address:	4044 N Suttle Road	Weather:	58° F, cloudy, raining, we
	Portland, OR. 97217	Site Photographs taken:	X Yes No
Phone:	415-378-6448	Samples Collected:	Yes X No
nspector(s)	Duane Altig	If yes, material type:	N/A
lcensee Rep(s):	James Waterman		-

## Metro | Facility Inspection Notes

This routine facility inspection of Suttle Road Recovery Facility ("SRRF") was conducted to determine facility compliance with Solid Waste Facility License No. L-102-09 (the "License"). As I approached the site I observed the facility signage and noted that it met all requirements outlined in the Metro issued License. I entered the site and made contact with Greg Williams Scale Operator (SRRF). I informed Mr. Williams that I was present to conduct a routine site inspection. I was asked to sign the visitors log book and added that he would contact James Waterman and inform him that I was on site. I was informed that Mr. Waterman had recently been hired as Operations Manager for all of the current ROMR facilities located within the Metro Region. He replaced Mr. Keith Henely who had previously held this position.

While we waited for Mr. Waterman to arrive I asked Mr. Williams if he was now assigned to be the SRRF Scale Operator. He stated that due to personnel changes at all the facilities he was asked to help out at all the sites a few days each week. He added that he would probably be permanently assigned to the Foster Road Facility once the personnel issues have been taken care of. I asked if new load checking procedures were being used and if they made working this particular scale easier. He stated that the new load checking procedures were being used and added that this facility was much busier than the other sites and not having to visually check all incoming loads at the scale did make it easier to move the vehicles in and out of the facility. We were met by Mr. Waterman and after introductions we proceeded out in the main processing yard. As we walked the main access road I noted that the conditions at the facility were dry and dusty and that there was quite a bit of loose trash on the road way and the other paved areas. The day was calm so this material was not blowing around the site. I was informed that the site was normally swept and sprayed with water at least once a week. I informed him that these conditions appeared to be excessive and that I would be citing it as a concern on today's Inspection Summary Report. I noted that the whole site needed sweeping and watering and commented that they were lucky that it was a calm day because if it were breezy the situation would be much worse. It was added that the watering truck was currently at the Foster Road Facility but that they would have it brought to the site as soon as possible. Mr. Waterman also stated that he would be re-evaluating and developing a better schedule for sweeping and watering down this site.

I noted that a swale and larger retention pond had been designed for the collection of the runoff from the site. This aided with lessening the sediment problems in the filter chamber. Both the new designed retention pond located in the middle of the site and the swale looked to be well maintained. No wood chipping was currently being done during this site visit. I did observe the loading of chipped wood to the SP plant in Longview Washington. I also noted that there was a huge amount of recovered waste wood on site. I commented that it was the most unprocessed wood I have seen on site for a very long time. Mr. Waterman informed me that due to maintenance issues there is currently only one active wood grinder available to all the facilities but that it would take SRRF only a day or two to grind all the wood that is currently on site. Chips were actively being loaded to make room for the grinding to continue.

### EXHIBIT V PAGE 10 OF 53

As we approached the material recovery building I noted that the bunker for yard debris appeared to be fairly full and was later informed that a loaded transfer trailer leaves the site destined to Natures Needs about two to three times a week. We noted three drop boxes staged outside of the west end of the MRF building. These drop boxes contained recovered metals. Additionally I observed several drop boxes located outside of the northeast corner of the building contained scrap drywall, carpet, carpet pad and rigid plastics. The facility no longer stages recovered corrugated cardboard outside of the south end of the material recovery building. It is now placing the recovered cardboard into a small metal container that is located in the MRF building. When it is full it is emptied into a packer truck that will compact and store the cardboard.

As we neared the material recovery building I observed the active loading of residual wastes into t a transfer trailer. I was informed that this waste is hauled to the Wasco Landfill for disposal. I noted that the main MRF building was full and that there was currently no separation between the stockpile of processed dry wastes and the stockpile of the unprocessed dry wastes. I informed Mr. Waterman that there needed to be a clear separation of all waste types located in the MRF building and that I would also be citing this as a concern on the Inspection Summary Report. Additionally I observed a load of what appeared to be built-up roofing on the tip floor. I was informed that this load had entered the site as mixed dry wastes and that there was anything recoverable in the load. I informed Mr. Waterman that I believed that this type of waste was prohibited at this facility and that we would check the Metro license before the conclusion of this site inspection.

I watched as two dry mixed loads arrive and tip their loads. I noted that the loads were guided into the building and each load was inspected by a SRRF employee during the tipping process. I observed the contents of these loads and noted that they consisted primarily of mixed dry wastes and some yard debris consisting primarily of branches and limbs. I photographed these loads. I asked Mr. Waterman if the situation with the recovered carpeting was still the same as in my last site inspection. He stated that Far West Fiber (FWF) was still not accepting carpet loads on a steady basis but that they have continued accepting it. He added that all carpeting is currently being sorted and stored inside 40 cubic yard drop boxes which are then stored in the building located near the scale house. I then proceeded to evaluate processing residual staged in the southwest corner of the building. The residual did not appear to exceed the material recovery standard required by the License. Based on my observations, it appeared that SRRF was in compliance with the material recovery standard required by the License. All mixed dry waste were stored inside the building however I did note that the areas around the entrance bays into the MRF building required policing and that I observed small piles of wastes in these areas that were not contained within the MRF building. I pointed this out to Mr. Waterman and he stated that he would get it cleaned up immediately. I informed him that I would cite this as a concern in the Inspection Summary Report.

We proceeded over to the asphalt roofing stockpile and observed the active loading of transfer trailers. I was informed that each trailer holds approximately 30 tons of material and that there has been an average of 8 to 10 loads a day being delivered to facilities in Salem and Bend Oregon. I obtained a copy of the scale ticket for one of the transfer trailers I observed being loaded during the time of this site visit (see attachment). There appeared to be approximately 1/2, or a little less, of the roofing pile had been removed to date. As we observed the loading of the roofing wastes I asked Mr. Waterman if he knew anything about the ShellCore Foundry Casting (sand) that was observed on site during the July 26<sup>th</sup> site visit. He stated that he was informed that the material was placed into a drop box and that it was to be loaded out with the residual and hauled to Wasco LF for disposal. We located the drop box and I noted that it was partially full (see photo p15). I was informed that the most recent waste load to Wasco LF had contained some of the material and that due to weight constraints this would require at least 2 trips to remove the material from site (All documents regarding this material was included in the SRRF.26JULY10.dka report).

EXHIBIT V PAGE 11 OF 53

Before concluding the physical inspection I observed conditions in the facility's storage area for recovered electronic devices and fluorescent tubes. The tubes were contained in boxes and the electronic devices were palletized and shrink wrapped. I then photographed signage posted at the entrance to the facility. All information was current including the new summer operating hours. We then proceeded back to the scale house to check on the Provision in the license regarding built-up roofing.

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We discovered that in Metro License L-102-09 section 5.0, Limitations and Prohibition, subsection 5.2, Prohibited Wastes, states in part that "The licensee is prohibited from receiving, processing, reloading or disposing of any solid waste not authorized in this license...The licensee shall not knowingly accept...asbestos containing built-up roofing..." The requirements in the DEQ Permit (#501section 6.1) stated in part that any Built-up roofing is prohibited from being accepted at this solid waste facility.

I informed Mr. Waterman that I was not familiar with built-up roofing and that I would be speaking further with the DEQ about this issue. I added that I thought it prudent that SRRF not accept any more of this type of roofing until the DEQ was contacted. I spoke with Stephanie Rawson (Solid Waste) and Kevin McCrann (Asbestos) both with the DEQ about what I observed during this site inspection. It was determined that the DEQ would take lead on this issue and contact the facility officially via a letter.

I completed the inspection summary and cited two areas of concern with the Metro License. I cited 4.6, Processing Residual Managed as required and 6.7d, Site & Roadways Adequately Maintained. I explained that basic housekeeping would help greatly in both these areas and that the facility was messy and untidy. I reminded them that the facility is not allowed to create any excessive dust and that just sweeping and watering the paved areas more frequently would keep this facility from violating this provision. I also reminded Mr. Waterman that all processed and unprocessed material stockpiles should always be kept separate and also that all waste was to be kept within a covered building or water tight containers. I observed loose dry waste scattered just outside the main MRF doors.

I provided Mr. Waterman with copies of the photographs taken during this inspection and a copy of the inspection summary. He signed a copy of the inspection form for Metro's records. I then left the site.

End of inspection notes by Duane Altig

SRRF-23AUG10.dka.p01 Waste truck entering onto scale



### SRRF.23AUG10.dka.p02 View of hog fuel being loaded into transfer trailer

SRRF.23AUG10.dka.p03 View of storage area for all recovered E-wastes.

### SRRF.23AUG10.dka.p04 View of exiting box truck







### EXHIBIT V PAGE 13 OF 53

SRRF.23AUG10.dka.p05 View of hog fuel stock pile

SRRF.23AUG10.dka.p06 View of recovered wood wastes





SRRF.23AUG10.dka.p07 View from the central operations area facing west.



SRRF.23AUG10.dka.p08 Styrofoam processing area



### **EXHIBIT V PAGE 14 OF 53**



### SRRF.23AUG10.dka.p09 Styrofoam processing area

SRRF.23AUG10.dka.p10 Loading Asphalt roofing shingles into Hooker Creek vehicles.

SRRF.23AUG10.dka.p11 Loading Asphalt roofing shingles into Hooker Creek vehicles.



SRRF.23AUG10.dka.p12 View of ground surface at the loading area

#### **EXHIBIT V PAGE 15 OF 53**

### SRRF.23AUG10.dka.p13 View of excavation area at the Roofing pile

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### SRRF.23AUG10.dka.p14 Loading roofing

SRRF.23AUG10.dka.p15 View inside drop box containing foundry castings. A portion had been loaded into a waste transfer trailer.

SRRF.23AUG10.dka.p16 View iof the main MRF. Loading processed material





### EXHIBIT V PAGE 16 OF 53

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### SRRF.23AUG10.dka.p18 View facing east. Drop box for recovered rigid plastics

SRRF.23AUG10.dka.p19 Drop box recovered carpeting





SRRF.23AUG10.dka.p20 East side of main MRF building. Clear of all stored carpeting



### EXHIBIT V PAGE 17 OF 53

SRRF.23AUG10.dka.p21 Front of MRF building facing east. Observed wastes oustide building

SRRF.23AUG10.dka.p22 Front of MRF building facing west. Observed wastes oustIde building

SRRF.23AUG10.dka.p23 Inside MRF building. Waste transfer trailer being loaded with processed residual

SRRF.23AUG10.dka.p24 Observed a waste load entering MRF building









## EXHIBIT V PAGE 18 OF 53

### SRRF.23AUG10.dka.p25 Observed a waste load entering MRF building

### SRRF.23AUG10.dka.p26 Observed a waste load tipped

SRRF.23AUG10.dka.p27 Observed a waste load tipped.

SRRF.23AUG10.dka.p28 Observed a waste load entering MRF







### **EXHIBIT V PAGE 19 OF 53**

SRRF.23AUG10.dka.p29 Observed a waste load tipped.



SRRF.23AUG10.dka.p30 Observed no separation between processed and unprocessed waste piles



SRRF.23AUG10,dka.p31 Observed built-up roofing load inside MRF building



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SRRF.23AUG10.dka.p32 Hooker Creek transfer vehicle scaling out



#### **EXHIBIT V PAGE 20 OF 53**

SRRF.23AUG10.dka.p33 Hooker Creek transfer vehicle scaling out

2. A.



### SRRF.23AUG10.dka.p34 View of prohibited wastes pulled from waste loads.



**EXHIBIT V PAGE 21 OF 53** 

From: To: cc: Subject: Date: Attachments: Duane Altig <u>Warren Johnson; Steve Kraten;</u> <u>Will Ennis; Tiffany Gates;</u> Built-up roofing at SRRF Tuesday, August 24, 2010 11:48:00 AM <u>SRRF.23AUG10.dka.p31.jpg</u> <u>SRRF.23AUG10.dka.p32.jpg</u>

As most of you know that during a recent site inspection of the Suttle Road facility I observed a load of what appeared to be built-up roofing wastes on the main tip floor of the MRF. I contacted Stephanie Rawson with the DEQ and informed her of what I had observed and informed her that it was received as a mixed waste load. According to the DEQ permit all Industrial, commercial and residential built-up roofing is prohibited at this facility. Stephanie will be contacting Kevin McCrann with the DEQ Asbestos Program and confer with him about direction on this issue. She added that the minimum that would happen would be that SRRF would be receiving a Warning Letter from the DEQ. She will provide Metro with a copy.

I spoke with Kevin McCrann, via phone, and he had just gotten off the phone with Stephanie and confirmed that the materials in the photographs were Built-up roofing and instructed her that any warning letter should come from her office because OAR 340-248-0250(2)(d) states in part that, this type of waste is exempt from some of the asbestos rules provided that the materials are not made friable, so they should never be allowed to go to a MRF, which is why it is listed as a prohibited material in the current SRRF DEQ permit. He also added that Service providers are not required to abate the roofing because of this current exemption even though almost 99% of all this type of roofing contains asbestos.

I think some changes are needed in this License and any others regarding this type of waste.

#### **EXHIBIT V PAGE 22 OF 53**

## OAR 340-248-0250(2)(d):

2) The following asbestos abatement projects are exempt from certain provisions of this Division as listed in this Section: ...
(d) Projects involving the removal of mastics and roofing products that are fully encapsulated with a petroleumbased binder and are not hard, dry, or brittle are exempt from OAR 340-248-0110 through 340-248-0280. ..."

Duane Altig

Metro Solid Waste Facility Inspector Solid Waste Compliance & Cleanup 503 797-1694 Fax: 503 813-7544 duane.altig@oregonmetro.gov

## www.oregonmetro.gov

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### **EXHIBIT V PAGE 23 OF 53**

From:Duane AltigTo:Rawson, Stephanie;Subject:Built-up roofing.Date:Tuesday, August 24, 2010 10:25:00 AMAttachments:SRRF.23AUG10.dka.p31.jpqSRRF.23AUG10.dka.p32.jpg

Stephanie – Yesterday during a routine site visit to the Suttle Road Recovery facility I observed a load of what appeared to me to be built-up roofing wastes. I was informed that the load had just arrived prior to my arrival and was identified as a mixed load. However I didn't see a lot of recovery value to the load I observed (See Photos).

I noted that the DEQ permit does not allow the facility to accept built up roofing from industrial, commercial and residential sources. I believe it was section 6.7 of the DEQ permit. Their current Metro license restricts the acceptance of <u>Asbestos</u> <u>containing built up roofing</u> only (section 5.2).

So I am just giving you a heads up as to what I observed and would like to know how you think you will proceed.

Duane Altig

Metro Solid Waste Facility Inspector Solid Waste Compliance & Cleanup 503 797-1694 Fax: 503 813-7544 duane.altig@oregonmetro.gov

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## EXHIBIT V PAGE 25 OF 53

600 NE GRAND AVENUE TEL (503) 797-1835 PORTLAND, OREGON 97232-2736 FAX (503) 813-7544



## FIELD NOTICE OF VIOLATION(S) No. FNOV-277-11

Solid Waste Facility License No. L-040-09A

Facility:

Oregon City Recovery Facility 16020 S. Park Place Court Oregon City. Oregon 97045

**Operating Instrument:** 

February 17, 2011

License Violation(s):

Date of Violation(s):

Metro Solid Waste Facility Inspector <u>Will Ennis</u> inspected the above-referenced facility and observed the following violation of Section <u>4.6</u>. This license section requires that the facility remove all yard debris from the site within 72 hours of receipt. The operator provided the inspector with documentation establishing that the last time yard debris was removed from the site was on January 24, 2011.

**Opportunity to Cure:** 

Pursuant to Metro Code Sections 5.01.180 and 5.01.200, the facility can cure the cited violation and avoid imposition of a penalty by removing all yard debris from the site and delivering the material to an authorized facility for composting or use as hogged fuel. The facility operator shall have <u>7 days</u> from the date of this Field Notice of Violation to cure the violation described above. Metro will perform a re-inspection of the site on or about <u>February 25, 2011</u> to verify compliance. In order to cure this violation, the facility must take corrective action by this date and maintain compliance with the cited conditions for 90 consecutive days.

Failure to cure as described above may result in further enforcement action and the assessment of penalties against the facility pursuant to Metro Code Sections 5.01.180 and 5.01.200.

February 17, 2011

Date

Solid Waste Facility Inspector's Signature

C. TEdry

Facility Representative's Signature

Print Name & Title

Contested Case Notice attached

#### EXHIBIT V PAGE 26 OF 53

#### CONTESTED CASE NOTICE

Under Metro Code Chapter 2.05, you have the right to request a contested case hearing regarding this Notice of Violation. You must make this request to Steve Kraten in writing and ensure that Metro receives the request within 30 days of the date this Notice was received. You may retain legal counsel to represent you at the hearing. Article IX, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, and Metro Code Chapter 2.05 and 5.01 provide Metro's authority and jurisdiction for the hearing.

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### Oregon City Recovery Facility

## 🚯 Metro | Facility Inspection Summary

This form summarizes the findings of the Solid Waste Facility Inspector at that the time of the inspection. The purpose of the inspection was to determine if the facility was in compliance with applicable requirements of the Metro Code and Metro Solid Waste Facility License. The findings noted in this *Facility Inspection Summary* are based upon the observations and information available to the Inspector at the time of the inspection. This form is not intended to summarize all regulations nor does the information it contains signify that the facility is in compliance with all regulatory requirements. Metro reserves the right to reevaluate the compliance status of the facility. This form is a component of the Inspection Report and it will be maintained on file at Metro.

Facility Name:	Oregon City Recovery Facility	Date of Inspection:	February 17, 2011				
Metro License Number:	L-040-09A	Time of Inspection:	_10	:20-11:3	35		
Licensee Representative(s):	Fidel Rodriguez	Site Photographs taken:	X	Yes		No	:
inspector(s)	Will Ennis	Samples Collected:		Yes	X	No	
		If yes, material type:					

ltem	Verify	License Provision Description	Item	Verify	License Provision Description
		3.0 - AUTHORIZATIONS	5.9	Х	Operation Not Conducive to Vector Infestation
3.2	X	Wastes Authorized in Section 3.0 Accepted	5.10	X	Operate in Manner to Prevent Excessive Noise
3,3	X	Activities Authorized in Section 3.0 Performed	5.11	X	Comply with Water Quality Requirements
	4.0	- LIMITATIONS AND PROHIBITIONS	5.12	X	Public Access Adequately Controlled
4.2	X	Prohibited Waste Not Knowingly Accepted	5.13	X	Signage Posted as Required
4.3	X	Facility within Accumulation Limit	5.14	X	Log and Respond to Complaints as Required
4.4	X	Recyclable Materials Segregated from Waste	5.15	Х	Solid Waste Facility License Accessible
4.5	X	Source-Separated Recyclables Not Disposed			6.0 – OPERATING PLAN
4.6	0	Yard Debris Removed at Sufficient Frequency	6.4	X	Operating Plan Accessible
4:8	X	Comply with Prohibition on Size Reduction	6.5	X	Comply with Load Inspection Procedures
		5.0 - OPERATING CONDITIONS	6.6	X	Comply with Processing and Storage Procedures
5.2	X	Qualified Operating Staff Provided	6.7	X	Comply with Prohibited Waste Management
5.3	X	Fire Prevention, Protection, & Control Provided	6.8	X	Comply with Odor Prevention Procedures
5.4	X	Adequate Vehicle Queuing & Accommodation	6.9	X	Comply with Dust Prevention Procedures
5.6	X	Storage Managed in Manner to Avoid Nuisances	6.10	X	Comply with Emergency Procedures
5.6	X	Storage Areas Maintained in Orderly Manner	6.11	X	Comply with Nuisance Complaint Procedures
5.7	X	Minimize the Generation of Airborne Debris	6.12	X	Comply with Stockpile Management Procedures
5.7a	X	Haulers Notified to Keep Loads Covered		<ul> <li>Anglant</li> <li>Anglant</li> <li>Anglant</li> </ul>	12.0 - GENERAL OBLIGATIONS
5.7b	X	Transit Vehicles Adequately Maintained	12.3	X	Waste Delivered to Appropriate Destinations
5.7c	X	Prevent Dust Migration Offsite	12.4	X	Reasonable Access for Inspection Provided
5.7d	X	Site & Roadways Adequately Maintained		. 44	OTHER
5.8	X	Operate in Manner to Prevent Odors		N/A	OTHER PROVISION

Legend: "X" means that the facility appeared to be in compliance with the provision at time of inspection, "NA" means that the provision was not applicable at time of inspection, "NE" means that compliance with the provision was not evaluated at time of inspection, "O" means that a violation of the provision was identified and cited, "CN" means a concern was identified.

Additional information documented on *Supplemental Inspection Form*: *Field Notice of Violation* issued at time of inspection:

February 17, 2011

Date

Yes Х No No Yes

February 17, 2011 Date

Solid Waste Facility Inspector

If this box is checked, the licensee representative refused to sign this Facility Inspection Summary. In such case, by signing above, the Solid Waste Facility Inspector certifies that the Inspector personally provided a copy of this Facility Inspection Summary to the representative of the licensee identified in this form on the date listed next to the Inspector's signature.

OCRF.Form.Dec2010

EXHIBIT V PAGE 28 OF 53

Licerísee Representative

PAGE 1 of 1

Inspection Notes Oregon City Recovery Facility February 17, 2011

I contacted Warren Johnson and informed him that the facility was not in compliance with Section 4.6 of the License which requires that yard debris be removed from the site within 72 hours of receipt. I was instructed to issue a Field Notice of Violation ("FNOV") to the facility.

I completed the inspection summary noted that a violation of the License had been identified. Section 4.6 of the License, titled "Composting prohibited," states, in part, that the "Licensee shall remove all yard debris from the site within 72 hours of its receipt." I noted on the inspection summary form that a FNOV (No. FNOV-277-11) was issued at the time of this inspection (see attached).

I included the facility name, address and the date of this inspection on the FNOV. I included a brief description of the violation. In the FNOV the facility was provided seven (7) days to cure the violation. I included a re-inspection date of on or about February 25, 2011. The FNOV provides a contested case notice.

I met with Mr. Rodriguez. I described the nature of the violation to him. I described the action and timeline the facility must follow to cure the violation. I provided Mr. Rodriguez with a copy of the FNOV, inspection summary form and photographs taken during this inspection. He signed a copy of the FNOV and inspection summary for Metro's records. I then left the site.

End of inspection notes by Will Ennis

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EXHIBIT V PAGE 29 OF 53

## Metro | Inspection Notes

Facility Name:Oregon City Recovery FacilityDate of Inspection:February 17, 2Address:16020 S. Park Place CourtTime of Inspection:10:20-11:35	011
Address 16020 S. Davis Place Court Time of Inspection: 10:20-11:35	
Address. 10020 S. Faik Flace Court Thile of hispection. 10.20-11-55	
Oregon City, OR 97045 Weather: 42° F, partly st	unny
Phone: 503.285.8777 Site Photographs: X Yes	No
Inspector(s) Will Ennis Samples Collected: Yes X	No No
Facility Rep(s):       Fidel Rodriguez       If yes, material type:	

This routine facility inspection of Oregon City Recovery Facility ("OCRF") was conducted to determine facility compliance with Metro Solid Waste Facility License No. L-040-09A (the "License"). This inspection was unannounced to facility personnel. Upon arriving at the subject facility I photographed the site while positioned at the north entrance (see photograph #1). I did not detect malodors outside of the facility's bounds. I did not observe the generation of dust plumes during this inspection. I photographed informational signage posted on the scale house that included contact telephone numbers and tip fees (see photographs #2 & #3). I entered the scale house and made contact with Fidel Rodriguez (OCRF). I announced that I was present to conduct a routine inspection of the facility.

Mr. Rodriguez and I discussed operations at OCRF. He displayed a binder containing the License and facility operating plan (see photograph #4). When asked, he stated that yard debris is reloaded from OCRF approximately once per month. He stated that wood waste is reloaded approximately twice per month to Foster Road Recovery Facility for processing. He stated that yard debris is not transported with wood waste for processing. Mr. Rodriguez indicated that OCRF is not currently accepting composition roofing.

I continued the physical inspection of the facility without escort. I photographed yard debris stockpiled near the southwest part of the site (see photographs #5 - #8 & #14). I did not detect malodors in this area. I documented a small amount of land clearing debris on site (see photograph #9). I documented wood waste stockpiled near the eastern edge of the site (see photographs #10 - #13). I did not observe prohibited materials in the wood waste stockpile. Upon arriving at the site I observed Mr. Rodriguez removing contaminants from the stockpile and placing them in a covered drop box on the west side of the site (see photograph #15).

I concluded the physical inspection of the site. I returned to the scale house to speak with Mr. Rodriguez. I informed him that the facility is required to remove yard debris from the site within 72 hours of receipt. He indicated that OCRF receives only small volume of yard debris and it is not conducive to remove yard debris at that frequency. Facility documentation given to me by Mr. Rodriguez lists a figure of 16.88 tons of yard debris on site at the time of this inspection (see attached). Additional documentation provided to me by Mr. Rodriguez demonstrates that yard debris was last removed from the site on January 24, 2011 (see attached).

#### EXHIBIT V PAGE 30 OF 53

#### Recology-Oregon City

4. Oregon City Recovery Facility: Binder containing Metro license, operating plan and complaint log. (WE)



#### 5. Oregon City Recovery Facility: Stockpiled yard debris accepted at facility. (WE)

6. Oregon City Recovery Facility View of stockpiled yard debris accepted at facility. (WE)





### EXHIBIT V PAGE 31 OF 53

#### Recology-Oregon City

# 1. Oregon City Recovery Facility: View of site taken at north entrance. (WE)

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2. Oregon City Recovery Facility: Sign posted on scale house. (WE)

3. Oregon City Recovery Facility: Tip fees posted on scale house. (WE)





### EXHIBIT V PAGE 32 OF 53
#### Recology-Oregon City

10. Oregon City Recovery Facility: Stockpiled wood waste accepted at facility. (WE)

11. Oregon City Recovery Facility: Stockpiled wood waste accepted at facility. (WE)





12. Oregon City Recovery Facility: View of stockpiled wood waste accepted at facility. (WE)



#### EXHIBIT V PAGE 33 OF 53

#### Recology-Oregon City

7. Oregon City Recovery Facility: View of stockpiled yard debris accepted at facility. (WE)



 Oregon City Recovery Facility: View of stockpiled yard debris accepted at facility. (WE)



9. Oregon City Recovery Facility; Land clearing debris accepted at facility, (WE)



#### EXHIBIT V PAGE 34 OF 53

#### Recology-Oregon City

13. Oregon City Recovery Facility: View of stockpiled wood waste accepted at facility. (WE)



# 14. Oregon City Recovery Facility: Stockpiled yard debris accepted at facility. (WE)

15. Oregon City Recovery Facility: Drop box containing contaminants removed from waste loads accepted at facility. ( WE)





### EXHIBIT V PAGE 35 OF 53

08:33	202203011		
	υ		
LICE	NSEE: RECOLOGY OREGON MATERIAL RECOVERY, INC	<b>.</b>	
	SITE: OREGON CITY MATERIAL RECOVERY FACILITY	. •	
DATE	Z / 17/11	Totales 7	ONS
	EST. BEGINNING ALL MATERIALS OF	N SITE 54.89	
			- 1
	INCOMING WOOD	23.55	
		16.88 Sod	BEGINNING
		13.54 5tump	2-5
	OUTGOING WOOD	3.26	
••			
	OUTGOING OTHER MATERIALS		
· .	OUTGOING ASPHALT ROOFING		• •
	EST. ENDING ASPHALT ROOFING BALANCE	<u>C</u>	· · ·
,	EST, ENDING ALL MATER	NALS ON SITE	

22/2010

22/2010.08:33 5032853811

LICENSEE: RECOLOGY OREGON MATERIAL RECOVERY, INC.

SITE: OREGON CITY MATERIAL RECOVERY FACILITY

DAILY TONNAGE FORM

Totales TONS. DATE 1/24/11 EST, BEGINNING ALL MATERIALS ON SITE 8.81 INCOMING WOOD INCOMING YARD DEBRIS . 81 12002 BEGINNING 12 INCOMING OTHER MATERIALS Stumps L. . NN 3 OUTGOING WOOD OUTGOING YARD DEBRIS 12.02 OUTGOING OTHER MATERIALS OUTGOING ASPHALT ROOFING EST. ENDING ASPHALT ROOFING BALANCE

EST, ENDING ALL MATERIALS ON SITE

## LICENSEE: RECOLOGY OREGON MATERIAL RECOVERY, INC.

## SITE: OREGON CITY MATERIAL RECOVERY FACILITY

DAILY TONNAGE FORM Totales TONS. DATE 1/25/11 EST, BEGINNING ALL MATERIALS ON SITE INCOMING WOOD 076 8.81 INCOMING YARD DEBRIS 1.4. .81 Sod 50d BEGINNING INCOMING OTHER MATERIALS 1.54 12 OUTGOING WOOD OUTGOING YARD DEBRIS OUTGOING OTHER MATERIALS OUTGOING ASPHALT ROOFING EST. ENDING ASPHALT ROOFING BALANCE EST, ENDING ALL MATERIALS ON SITE 28.32

600 NE GRAND AVENUE TEL (503) 797-1650 Portland, Oregon 97232-2736 Fax (503) 813-7544



METRO

#### **NOTICE OF VIOLATION No. NOV-253-10**

To:

David Dutra Recology Oregon Material Recovery, Inc. 4044 N. Suttle Road Portland, OR 97217

National Registered Agents, Inc. 325 13<sup>th</sup> St. NE, Ste 501 Salem, OR 97301

Facility:

Oregon City Recovery Facility ("OCRF") 16020 S. Park Place Court Oregon City, OR 97045

**Operating Instrument:** 

Solid Waste Facility License No. L-040-09 June 17, 2010 through June 21, 2010

Date(s) of Violation(s):

License Violation(s):

Section 5.13 of the license stipulates that:

The Licensee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, and legible from off-site during all hours and shall contain at least the following information:

a) Name of the facility;

b) Address of the facility;

c) Emergency telephone number for the facility;

d) Operating hours during which the facility is open for the receipt of authorized waste;

e) Metro's name and telephone number 503-797-1650;

f) A list of authorized and prohibited wastes.

**EXHIBIT V PAGE 39 OF 53** 

During an inspection of OCRF conducted by Metro on April 19, 2010, the inspector observed that the signage was both incorrect and insufficient. Specifically, the sign at the facility entrance and signs attached to the scalehouse:

- 1. Identified the facility as "Pacific Land Clearing" rather than "Recology"; and
- 2. Listed emergency numbers that were incorrect.

Metro made Recology aware of the insufficient signage in a Noncompliance Advisory Letter (No. NAL-246-10) dated April 22, 2010 and allowed one week for the facility to come into compliance. Recology corrected the problem within that time by correcting the name and emergency numbers on the sign.

On June 14 and 17, 2010, Metro inspectors observed that the sign that had previously been posted on the OCRF scalehouse had been removed. This was the sign that contained items *b*), *c*), *e*), and *f*) of the required signage information. The required signage was still not posted during an inspection of OCRF conducted on June 21, 2010. During that inspection, Metro Solid Waste Facility Inspector-Duane Altig discussed the issue with Brad Beerkircher of OCRF. On the same date, Mr. Altig spoke with Recology Operations Manager Keith Henley and explained the need to replace the signage.

**Opportunity to Cure:** 

**Civil Penalty:** 

Pursuant to Metro Code Section 5.01.200(b), you will be afforded an opportunity to cure these violations without the imposition of a monetary penalty. Metro will consider the violations cured provided that you post the required signage prior to July 6, 2010.

No penalties are being imposed at this time. However, if the violations are not cured, penalties of up to \$500 per day may be imposed for violations beginning on July 6, 2010.

Margo Norton Finance and Regulatory Services Director

#### EXHIBIT V PAGE 40 OF 53

#### CONTESTED CASE NOTICE

Under Metro Code Chapter 2.05, you have the right to request a contested case hearing regarding this Notice of Violation. You must make this request in writing to the attention of Steve Kraten, Solid Waste Enforcement Coordinator, and ensure that Metro receives the request within 30 days of the date this Notice was mailed. You may retain legal counsel to represent you at the hearing. Article IX, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, and Metro Code Chapter 2.05 and 5.01 provide Metro's authority and jurisdiction for the hearing.

#### Attachment

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cc:

Roy Brower, Solid Waste Compliance and Cleanup Manager Steve Kraten, Solid Waste Enforcement Coordinator Warren Johnson, Solid Waste Compliance Supervisor Michelle Bellia, Senior Metro Attorney

#### CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing NOTICE OF VIOLATION including CONTESTED CASE NOTICE on the following:

David Dutra Recology Oregon Material Recovery, Inc. 4044 N. Suttle Road Portland, OR 97217

National Registered Agents, Inc. 325 13<sup>th</sup> St. NE, Ste 501 Salem, OR 97301

On June  $\underline{24}$ , 2010, said individuals were served with a complete and correct copy thereof via regular mail and certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. Post Office at Portland, Oregon.

EXHIBIT V PAGE 41 OF 53

Roy W. Brower Solid Waste Compliance and Cleanup Manager

600 NE Grand Ave. Portland, OR 97232-2736 503-797-1700 503-797-1804 TDD 503-797-1797 fax

#### www.oregonmetro.gov

## Metro | People places. Open spaces.

April 22, 2010

Scott Heidegger, Environmental and Safety Compliance Manager Recology Oregon Material Recovery, Inc. 4044 N. Suttle Rd. Portland, OR 97217

RE: Noncompliance Advisory Letter (NAL-246-10) Failure to post required signage

Dear Mr. Heidegger:

The purpose of this letter is to notify you of incidents of noncompliance with provisions of Metro Solid Waste Facility License No. L-036-09, issued for the Foster Road Recovery Facility ("FRRF"), and Metro Solid Waste Facility License No. L-040-09, issued for the Oregon City Recovery Facility ("OCRF"). This Noncompliance Advisory Letter is a warning and is not intended as a Notice of Violation as specified in Metro Code Section 5.01.180.

Section 8.13 of the Licenses for both facilities stipulates that:

The Licensee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, and legible from off-site during all hours and shall contain at least the following information:

a) Name of the facility;

b) Address of the facility;

c) Emergency telephone number for the facility;

 d) Operating hours during which the facility is open for the receipt of authorized waste;

- e) Metro's name and telephone number 503-234-3000;

f) A list of authorized and prohibited wastes;

#### EXHIBIT V PAGE 42 OF 53

Scott Heidegger April 22, 2010 Page 2

In addition to a) through f), above, the license for FRRF requires that the signage also include:

g) Vehicle / traffic flow information or diagram;

h) Covered load requirements; and

i) Directions not to queue on public roadways.

Recology has not fully updated the information on its signs since acquiring the FRRF and OCRF facilities from Pacific Land Clearing. Of particular concern is the fact that the phone numbers posted as emergency numbers were found to be out-of-service, when last tested by Metro (on April 19, 2010). It is Metro's expectation that FRRF and OCRF will come into full compliance with Section 5.13 of the licenses within a week of receiving this letter. Failure to do so may result in the issuance of formal Notices of Violations.

Thank you for your attention to this matter. Contact Steve Kraten, Solid Waste Enforcement Coordinator, at (503) 797-1678, if you have questions.

Sinceret

WARREN Johnson for

Roy W. Brower

Solid Waste Compliance and Cleanup Manager

cc: Steve Kraten, Solid Waste Enforcement Coordinator Warren Johnson, Solid Waste Compliance Supervisor SARBMunterWeitlikesMRFARecolog/MAL-246-10.doc 600 NE GRAND AVENUE Tel (503) 797-1650 PORTLAND, OREGON 97232-2736 FAX (503) 813-7544



METRO

#### NOTICE OF VIOLATIONS No. NOV-256-10

David Dutra

Recology Oregon Material Recovery, Inc. 4044 N. Suttle Road Portland, OR 97217

National Registered Agents, Inc. 325 13<sup>th</sup> St. NE, Ste 501 Salem, OR 97301

Facility:

To:

Oregon City Recovery Facility ("OCRF") 16020 S. Park Place Court Oregon City, OR 97045

**Operating Instrument:** 

June 25, 2010 through July 14, 2010

License Violation No. 1:

Date(s) of Violation(s):

Section 5.14 of the License stipulates that OCRF must retain a complaint log and make it available for Metro inspection. The complaint log must be maintained at a place known to the operator where it is readily accessible, either on the premises or at another location. During a Metro inspection conducted on June 25, 2010, the operator was unable to locate the complaint log. On June 30, 2010, Metro sent Recology a Noncompliance Advisory Letter (NAL-255-10) to make Recology aware of the violation. The letter required OCRF to come into compliance within one week of receiving the letter.

Solid Waste Facility License No. L-040-09 (the "License")

On July 14, 2010 the Metro inspector re-inspected OCRF in order to determine whether the facility had come into compliance regarding Section 5.14 of the License. The inspector found that the operator still could not locate the complaint log. OCRF is therefore found to be in continuing violation of Section 5.14 of the License.

License Violation No. 2:

Section 5.15 of the License stipulates that OCRF must maintain a copy of the License on the facility premises where it is readily

#### EXHIBIT V PAGE 44 OF 53

accessable. During a Metro inspection conducted on June 25, 2010, the operator was unable to locate a copy of the License. On June 30, 2010, Metro sent Recology a Noncompliance Advisory Letter (NAL-255-10) to make Recology aware of the violation. The letter required OCRF to come into compliance within one week of receiving the letter.

On July 14, 2010 the Metro inspector re-inspected OCRF in order to determine whether the facility had come into compliance regarding Section 5.15 of the License. The inspector found that the operator still could not locate a copy of the License. OCRF is therefore found to be in continuing violation of Section 5.15 of the License.

Pursuant to Metro Code Section 5.01.200(b), Recology will be afforded an opportunity to cure these violations without the imposition of a monetary penalty. Metro will consider the violations cured provided that OCRF is found to be in compliance with Sections 5.14 and 5.15 of the License at the first inspection that takes place after July 28, 2010.

No penalties are being imposed at this time. However, penalties of up to \$500 per violation may be imposed for additional violations of License Sections 5.14 and 5.15 that may occur after July 28, 2010. Each day that each of the required documents cannot be located constitutes a separate violation.

Margo Norton Finance and Regulatory Services Director

#### CONTESTED CASE NOTICE

Under Metro Code Chapter 2.05, you have the right to request a contested case hearing regarding this Notice of Violation. You must make this request in writing to the attention of Steve Kraten, Solid Waste Enforcement Coordinator, and ensure that Metro receives the request within 30 days of the date this Notice was mailed. You may retain legal counsel to represent you at the hearing. Article IX, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, and Metro Code Chapter 2.05 and 5.01 provide Metro's authority and jurisdiction for the hearing.

**Opportunity to Cure:** 

**Civil Penalty:** 

Attachment

CC;

SKAMA

Roy Brower, Solid Waste Campliance and Cleamup Manager Steve Kraten, Solid Waste Enforcement Coordinator Warren Johnson, Solid Waste Compliance Supervisor Michelle Bellia, Senior Metro Attonney

ANOV-256-10 de

#### CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing NOTICE OF VIOLATION including CONTESTED CASE NOTICE on the following:

David Dutra Recology Oregon Material Recovery, Inc. 4044 N. Suttle Road Portland, OR 97217

National Registered Agents, Inc. 325 13<sup>th</sup> St. NE, Ste 501 Salem, OR 97301

On July 19, 2010, said individuals were served with a complete and correct copy thereof via regular mail and certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. Post Office at Portland, Oregon.

Warren Johnson

Solid Waste Compliance Supervisor

#### Oregon City Recovery Facility

### Metro | Facility Inspection Summary

This form summarizes the findings of the Solid Waste Facility inspector at that the time of the inspection. The purpose of the inspection was to determine if the facility was in compliance with applicable requirements of the Metro Code and Metro Solid Waste Facility License. The findings noted in this Facility Inspection Summary are based upon the observations and information available to the Inspector at the time of the inspection. This form is not intended to summarize all regulations nor does the information it contains signify that the facility is in compliance with all regulatory requirements. Metro reserves the right to reevaluate the compliance status of the facility. This form is a component of the Inspection Report and it will be maintained on file at Metro.

Facility Name:	Oregon City Recovery Facility	Date of Inspection:	14	ziune 2	010 July "
Metro License Number:	L-040-09	Time of Inspection:	<u>_11</u>	- 11:29	5 am
Licensee Representative(s):	Fidel Rodriguez	Site Photographs taken:	X	Yes	No
Inspector(s)	Tiffany Gates	Samples Collected:	<u>}.</u>	Yes	X No
		If ves, material type:			

1					
illon i					
		S.D. AUTHORIZATICAS	5.9	X	Operation Not Conductive to Vector Infestation
3.2	X	Wastes Authorized in Section 3.0 Accepted	5.10	X	Operate in Manner to Prevent Excessive Noise
3.3	ж	Activities Authorized in Section 3.0 Performed	5.11	X	Comply with Water Quality Requirements
		A Martines and menunoles	5.12	X	Public Access Adequately Controlled
4.2	X	Prohibited Waste Not Knowingly Accepted	5.13	X	Signage Posted as Required
4.3	X	Facility within Accumutation Limit	5.14	CN	Log and Respond to Complaints as Required
4.4	X	Recyclable Materials Segregated from Waste	5.15	CN	Solid Waste Facility License Accessible
4.5	X	Source-Separated Recyclables Not Disposed			
4.6	X	Yard Debris Removed at Sufficient Frequency	6.4	CN	Operating Plan Accessible
4.8	X	Comply with Prohibition on Size Reduction	6.5	X	Comply with Load Inspection Procedures
		CULTER SAUNCESSON TRANSFER	6.6	X	Comply with Processing and Storage Procedures
5.2	X	Qualified Operating Staff Provided	6.7	X	Comply with Prohibited Waste Management
5.3	X	Fire Prevention, Protection, & Control Provided	8.8	X	Comply with Odor Prevention Procedures
5.4	X	Adequate Vehicle Queuing & Accommodation	6.9	X	Comply with Dust Prevantion Procedures
5.6	X	Storage Managed in Manner to Avoid Nuisances	6.10	X	Comply with Emergency Procedures
5.6	X	Storage Areas Maintained in Orderly Manner	6.11	X	Comply with Nuisance Complaint Procedures
5.7	X	Minimize the Generation of Airborne Debris	6.12	X	Comply with Stockpile Management Procedures
5.7a	X	Haulers Notified to Keep Loads Covered			
5.7b	X	Transit Vehicles Adequately Maintained	12.3	X	Waste Delivered to Appropriate Destinations
5.7c	X	Prevent Dust Migration Offsite	12.4	X	Reasonable Access for Inspection Provided
5.7d	X	Sits & Roadways Adequately Maintained			
5.8	X	Operate in Manner to Prevent Odors		N/A	OTHER PROVISION
not ar		edelas mai des escrito a presidente contribuentos ver al lime o respectoro 240 menora presidentes a errogan ver presentoro en contribuento a complicantes a	1112-11-21-12	and a second second second	
a manager and a second		Additional information documented on Si			ection Form: X Yes No
		Field Notice of Violation issued at time of		,	Yes X No

Field Notice of Violation issued at time of inspe

14 Jul 2010

Date

YUIDIT V DACE

Licensee Representative

14 Jul 2010 Date

Solid Weste Facility Inspector

If this box't's checked, the licensee representative refused to sign this Facility Inspection Summary. In such case, by signing above, the Solid Waste Facility Inspector certifies that the Inspector personally provided a copy of this Facility Inspection Summary to the representative of the licensee identified in this form on the date listed next to the Inspector's signature.

C:\Documents and Settingslichnson\Desktop\INSPECTION REPORTS\OCRF.14Jul2010.tsg.sum.doc of 1

PAGE 1

#### Oregon City Recovery Facility

## Metro | Facility Inspection Summary – Supplemental Form

This supplemental form provides additional information describing the findings of the Solid Waste Facility Inspector and the items cited on the corresponding *Facility Inspection Summary*. These Items were identified to assist the facility in maintaining compliance with the operational requirements of the Metro Code, Solid Waste Facility License, and other applicable regulations. The findings noted in this supplemental form are based upon the observations and information available to the Inspector at the time of the inspection. This form is not intended to summarize all regulations nor does the information it contains signify that the facility is in compliance with all regulatory requirements. Metro reserves the right to reevaluate the compliance status of the facility. This form is a component of the Inspection Report and it will be maintained on file at Metro.

Facility Name:	Oregon City Recovery Facility	Date of Inspection:	14	Jul 201	0	
Metro License Number:	L-040-09	Time of inspection:	11	- 11:28	am	
Licensee Representative(s):	Fide Rodriguez	Site Photographs taken:	X	Yes	· ·	No
inspector(s)	Tiffany Gates	Samples Collected:		Yes	X	No
		If yes, material type:		•		•

5.14, 5.15 & 6.4	Facility staff was unable to locate the Metro License, the facility Operation Plan for the complaint log.

14 Jul 2010 14 Jul 2010 Solid Weste Facility Inspector Date Date consee Representative If this box is checked, the licensee representative refused to sign this supplemental form. In such case, by signing above, the Solid Waste Facility Inspector certifies that the Inspector personally provided a copy of this document to the representative of the licensee identified in this form on the date listed next to the inspector's signature. If you have any questions, please contact the inspector identified on this form or Metro Solid Waste Compliance and Cleanup

Division at (503) 797-1836.

OCRF.14Jul2010.tsg.sum.doc

PAGE 2 of 2

#### EXHIBIT V PAGE 48 OF 53

Metro   Facility Inspection Notes	🔊 Metro	Facility	Inspection	Notes
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Facility Name:	Recology- Oregon City Recovery Facility	Date of inspection:	14 July 2010
Metro License Number:	L-040-09	Time of Inspection:	<u>11 - 11:25am</u>
Address:	16020 S. Park Place Ct	Weather:	73 sunny
	Oregon City, OR 97045	Site Photographs taken:	X Yes No
Phone:	(503) 285-8777	Samples Collected:	Yes X No
inspector(s)	Tiffany Gates	If yes, material type:	N/A
Licensee Rep(s):	Fidel Rodriguez	,	

This was an unannounced inspection of Oregon City Recovery Facility (OCRF) to determine compliance with the Solid Waste Facility License (L-040-09) and to follow up on NAL-255-10 that was issued on June 30, 2010. NAL-255-10 was issued after the June 25, 2010 inspection found that OFRC was missing the on-site copies of the Metro License, the Operation Plan and the Complaint Log.

I arrived at OCRF, notified Fidel Rodriguez that I was there to conduct an inspection; he said that I could have access to the site. I asked if he had received copies of the Metro License, the Operation Plan and the Complaint Log and he said no. Mr. Rodriguez then looked around the trailer, just to make sure that some other Recology staff had not put them into a desk drawer or other location, but was unable to find them. I told him that this was still a problem and he nodded.

I went out of the office and walked around the site. I noted that all required signs were posted and the prices had not changed.

The Styrofoam/monitor drop box was full and some foam was being stored outside in large bags. I asked Mr. Rodriguez if he knew when it would be picked up and he said that he was told Monday.

Overall the site was orderly and well maintained. There was adequate space between the different piles. I took photos (OCRF.14Jul2010.tsg.p5-6) showing the hog fuel pile that contained painted and treated wood.

There was no customer traffic while I conducted the inspection.

I made a copy of my photos for Mr. Rodriguez, obtained his signature on the Inspection Summary form, thanked him for his time and left the site. I marked 5.14, 5.15 and 6.4 as concerns on the Inspection Summary because the site personnel were unable to produce the License, Operations Plan or complaint log.

End of inspection notes.

#### **EXHIBIT V PAGE 49 OF 53**

OCRF.14Jul2010,tsg.p1 Styrofoam bagged up outside the box.

OCRF.14Jul2010,tsg.p Styrofoam and monitors inside the box.

OCRF.14Jul2010,tsg.p3 Wide shot of site.

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OCRF.14Jul2010,tsg.p4 Some of the site signs showing emergency numbers and prices.





#### **EXHIBIT V PAGE 50 OF 53**

#### OCRF.14Jul2010,tsg.p5 Part of the hog fuel pile

#### OCRF.14Jul2010,tsg.p6 Part of the hog fuel pile, note painted wood.

#### OCRF.14Jul2010,tsg.p7 Trash drop box

. .

OCRF.14Jul2010,tsg.p8

OCRF.14Jul2010,tsg.p8 Metal bunker



#### XHIBIT V PAGE 51 OF 53

2

#### 600 NE Grand Ave. Portland, OR 97292-2736

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### Metro | People places. Open spaces.

June 30, 2010

Scott Heidegger, Environmental and Safety Compliance Manager Recology Oregon Material Recovery, Inc. 4044 N. Suttle Rd. Portland, OR 97217

RE: Noncompliance Advisory Letter (NAL-255-10) Failure to properly maintain required documents

Dear Mr. Heidegger:

The purpose of this letter is to notify you of incidents of noncompliance with provisions of Metro Solid Waste Facility License No. L-040-09, issued for the Oregon City Recovery Facility ("OCRF"). This Noncompliance Advisory Letter is a warning and is not intended as a Notice of Violation as specified in Metro Code Section 5.01.180.

Section 5.14 of the License stipulates that OCRF must retain a complaint log and make it available for Metro inspection. During a Metro inspection conducted on June 25, 2010, the operator was unable to locate the complaint log. This constitutes a violation of the License. The complaint log must be maintained at a place known to the operator where it is readily accessible, either on the premises or at another location as specified in OCRF's operating plan.

Section 5.15 of the License stipulates that OCRF must maintain a copy of the License on the facility premises where it is readily accessible. During a Metro inspection conducted on June 25, 2010, the operator was unable to locate a copy of the License. This constitutes a violation of the License.

Section 6.4 of the License stipulates that OCRF must maintain a copy of the operating plan on the facility premises where it is readily accessible. During a Metro inspection conducted on June 25, 2010, the operator was unable to locate a copy of the operating plan. This constitutes a violation of the License.

It is Metro's expectation that OCRF will come into full compliance with Sections 5.14, 5.15, and 6.4 of the License within a week of receiving this letter. Failure to do so may result in the issuance of a Notice of Violations.

#### EXHIBIT V PAGE 52 OF 53

Thank you for your attention to this matter. Contact Steve Kraten, Solid Waste Enforcement Coordinator, at (503) 797-1678, If you have questions.

Sincerely,

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Roy W. Brower Solid Waste Compliance and Cleanup Manager

SV/C CC: Steve Kraten, Solid Waste Enforcement Coordinator Warren Johnson, Solid Waste Compliance Supervisor SikeMikranafadlider/MRFalkenlog/MAL265-104or

#### EXHIBIT V PAGE 53 OF 53

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201 N. Civic Drive, Suite 230 Walnut Creek, California 94596 Telephone: 925/977-6950 Fax: 925/977-6955 www.hfh-consultants.com Robert D. Hilton, CMC John W. Farnkopf, PE Laith B. Ezzet, CMC Richard J. Simonson, CMC Marva M. Sheehan, CPA

Advisory Services to Municipal Management

February 3, 2010

Mr. Stephen Rhodes City Manager City of Pacifica 170 Santa Maria Avenue Pacifica, CA 94044

## Subject: Recology Qualifications and Financial Ability to Perform and Review of Transition and Operations Plans

Reference Number: S3214

Dear Mr. Rhodes:

This letter summarizes Recology's statement of its general qualifications to provide service under the franchise agreement, describes Recology's financial ability to perform and summarizes findings from our review of Recology's transition plan.

#### A. RECOLOGY'S STATEMENT OF GENERAL QUALIFICATIONS

In response to HF&H's request, Recology provided the information presented in this Section A. Because Recology was recently selected by each of the tweive Member Agencies of the South Bayside Waste Management Authority to provide similar services to the residential and commercial customers within their jurisdictions, City staff determined that it would not be cost effective for HF&H to independently confirm the completeness or accuracy of Recology's responses.

#### 1. Legal Entity

Recology, formerly Norcal Waste Systems, Inc. has been organized and doing business under its current legal structure since 1986, although its organizational lineage dates back to 1920.

Recology is a 100% employee-owned corporation, through an Employee Stock Ownership Plan (ESOP). No individual owns as much as 1% of the value of the stock of Recology.

#### 2. Related Party Entities

Recology has 26 wholly owned subsidiaries operating in California, Nevada and Oregon.

Mr. Stephen Rhodes February 3, 2010 Page 2 of 9

HELL CONSULTANTS.

#### 3. Affiliates or Subcontractors

Recology proposes to engage the processing services of affiliates and subcontractors for the following functions required by the Franchise Agreement with the City:

• All compostable and recyclable materials will be transported by Recology to the San Bruno Transfer Station or its affiliate Recology San Bruno, for consolidation and transfer to processing facilities.

Advisory Services to Municipal Management

- Compostable materials will be transported by Recology San Bruno to its affiliate South Valley Organics, in Gilroy, for composting.
- Recyclable materials will be transported by Recology San Bruno to its subcontractor Smurfit Stone, in San Jose, for processing. Smurfit Stone has been the processor of recyclables collected by many of its Peninsula and South Bay subsidiaries for the past seven years.
- Municipal will be transported by Recology's collection trucks directly to Ox Mountain Landfill in Half Moon Bay for disposal.

#### 4. Collection Experience/References

Recology has an 89-year history of providing recyclable materials, organic materials, and solid waste collection, processing, composting, and disposal services to more than 600,000 households and 60,000 businesses in over 60 communities throughout Northern California, and in Nevada and Oregon. Recology's gross annual revenue is approximately \$530 million. Presently, Recology owns and operates five organic processing facilities; owns and operates five material recovery facilities (MRFs); operates ten transfer stations, six of which it owns; and operates five landfills, three of which it owns.

Recology was recently selected by each of the twelve Member Agencies of the South Bayside Waste Management Authority to provide recyclable, organics, and solid waste collection services to the residential and commercial customers within their jurisdictions.

Recology provided the following list of agencies in the greater Bay Area for which it has provided services similar to those required by the Franchise Agreement with the City.

- City of San Bruno
- City of Mountain View
- Cities of Los Altos, Cupertino and Santa Clara County
- Cities of Gilroy and Morgan Hill
- City of Vacaville
- City of Vallejo
- City and County of San Francisco

#### **EXHIBIT W PAGE 2 OF 69**

7

Mr. Stephen Rhodes February 3, 2010 Page 3 of 9

#### 5. Staffing Plan

#### Key Transition Team Personnel

LILL CONSULMANTS, LLC

Management of Recology's transition to provision of collection services in Pacifica will be the responsibility of a team, led by Mark Arsenault, Recology South Bay Group Manager, that will include operations and support managers that are current employees of Recology or one of its Bay Area subsidiaries.

Advisory Services to Municipal Management

#### Key Services Management Team Personnel

The following personnel will have key responsibilities for the ongoing provision of collection services in Pacifica by Recology:

- Chris Porter, General Manager
- Phil Couchee, General Manager (During 1st year transition period)
- Ron Gabrielli, Operations Manager
- Juan Ibarra, Maintenance Foreman
- Sharyl Roderick, Office Manager

The above key Recology services management team members in Pacifica will be joined by the leadership team of Recology's South Bay Group, which will include Pacifica:

- Mark Arsenault, Vice President and Group Manager
- Lisa Martinez-Ronan, Group HR Manager
- Mike Kelly, Group Controller
- Phil Couchee, General Manager

The Recology team that will be directly responsible for providing collection services in Pacifica will have the full support of its parent corporate management at Recology, in San Francisco, including

- Michael J. Sangiacomo, Recology President and CEO
- George P. McGrath, Recology Executive Vice President and COO
- Mark R. Lomele, Recology Senior Vice President and CFO
- Arthur P. Cimento, Recology Senior Vice President and CDO

The individual who will provide day-to-day liaison to representatives of the City of Pacifica will be the General Manager of Recology in Pacifica, Chris Porter. In addition to Chris Porter, Phil Couchee, General Manager from Recology South Valley will assist Chris during year 1 of the transition. Mark Arsenault, Recology Vice President and Group Manager will also act as liaison to the City of Pacifica.

#### EXHIBIT W PAGE 3 OF 69

3

Advisory Services to Municipal Management

Mr. Stephen Rhodes February 3, 2010 Page 4 of 9

E.H.CONSULTANTS, L

#### 6. Litigation and Regulatory Actions Payment of Fines, Penalties, Settlements, or Damages

A summary of criminal and civil litigation during the past five years that is pertinent to this Request for Information is provided as Attachment A.

#### Suspension or Revocation of Entitlement

Recology reports that neither Recology nor any of its subsidiaries has had a permit, franchise, license, business license, or other entitlement revoked or suspended in the last five years.

#### 8. Compliance Records

Copies of compliance records received by Recology and its subsidiaries during the last five years that are pertinent to this Request for Information are included as Attachment B.

#### 9. Administrative Proceedings

Recology is the parent company to numerous subsidiaries providing waste management services. Various federal, state and local regulatory agencies routinely inspect and investigate companies that provide these services. From time to time, in the normal course of its business, Recology and its subsidiaries are subject to various administrative proceedings, including but not limited to compliance investigations, notices of violation and enforcement actions, brought by federal, state or local agencies.

Recology provided a list of 16 enforcement actions, orders, decrees, and notices of violations of environmental laws, regulations and permits, and their remedy, to which Recology has been subject in the course of business between 2005 and 2009.

In addition to these sixteen items, Recology provided a list of 15 California Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) inspections applicable to Recology subsidiaries between 2005 and 2009.

#### 10. Claims

Recology reported that during the last fifteen years, neither it nor any of its subsidiaries has:

- Been subjected to claims against a bid, proposal, or performance bond
- Failed to receive a bid, proposal, or performance bond
- Been subjected to a contractual default or termination

#### **11. Other Significant Events**

The following information was provided as a summary of litigation arising from the operations of Norcal Waste Systems, Inc. in San Jose, California and in San Bernardino County, California.

#### EXHIBIT W PAGE 4 OF 69

HIEL CONSULTANTS, LLC

Advisory Services to Municipal Management

Mr. Stephen Rhodes February 3, 2010 Page 5 of 9

Subsidiary:Norcal Waste Systems, Inc.Action:People of the State of California v. Ronald R. Gonzales, Joseph August Guerra III, and<br/>Norcal Waste Systems, Inc.Court:Superior Court, County of Santa ClaraAction No.:N/ASummary:On June 21, 2006, a Santa Clara County Superior Court grand jury returned an

indictment in connection with a bid for a garbage and recycling contract with the City of San Jose. The indictment named Norcal Waste Systems, Inc. as a co-defendant. Norcal pleaded not guilty and denies any wrongdoing with the bidding for and performance of the contract. On June 11, 2007, Santa Clara County Superior Court Judge John F. Herlihy granted motions filed by Norcal and the other defendants to dismiss all charges against all the defendants. In July 2007, the Santa Clara County District Attorney's Office issued a statement that they do not intend to pursue an appeal or convene a new grand jury to review the matter.

Amount:

N/A

#### Subsidiary: Norcal Waste Systems, Inc., et al

Action:

County of San Bernardino; Inland Empire Public Facilities Corporation; Inland Empire Solid Waste Financing Authority; San Bernardino County Financing Authority; San Bernardino County Flood Control District and William Randolph v. James J. Hlawek: Harry M. Mays; Bio-Reclamation Technologies, Inc., a California corporation; Business Consultants, Inc., a Delaware corporation; Ronald R. Canham; Canham & Associates, <sup>°</sup> Inc., an Arizona corporation; Dionysus Properties, a California limited liability company; Gerald R. Eaves; Hinshaw & Culbertson, a Minnesota partnership; James E. Iverson; John R. Larson; Sol Levin; Williams S. McCook; Miller & Schroeder Financial, Inc., a Minnesota corporation; Norcal Solid Waste Systems, Inc., a California corporation; Norcal/San Bernardino, Inc., a California corporation; Oakridge Group Corporation, a Nevada corporation formerly known as Oakridge Corporation; Thomas F. O'Donnell; SHL Associates, Ltd., a New York corporation; Richard E. Tisdale; Kenneth James Walsh; Michael Welsh; and Does 1 through 1-180

Court: Superior Court of the State of California, County of San Bernardino, Central District.

Action No.: SCVSS 67808

Advisory Services to Municipal Management

Mr. Stephen Rhodes February 3, 2010 Page 6 of 9

**HERONSHIMANIIS** 

Summary:

On June 8, 2000, the County of San Bernardino (the County), its County Administrative Officer William Randolph (Randolph), and certain County-related entities (collectively, the County Parties) filed this action (Action). The complaint in this action (Complaint) named the Company and Norcal/San Bernardino, Inc. (Norcal/SB) (collectively, the Norcal Parties) as defendants together with 21 other entities and individuals, including Harry M. Mays and certain of his affiliated companies, James J. Hlawek, and Kenneth James Walsh, as well as certain other present or former County officials. The Complaint asserted as to the Company and Norcal/SB, together with, in most claims, Messrs. Walsh, Mays, Hlawek and Bio-Reclamation Technologies, Inc., a company affiliated with Mr. Mays, claims for breach of fiduciary duty and fraud; alleged violations of California Government Code Sections 1090 and 1092, California Government Code Sections 87100, 87103 and 91003 (the Political Reform Act), California Business and Professions Code Sections 17200 and 17203 (the Unfair Competition Law); and California Government Code Sections 12650 et seq. (the False Claims Act); and a claim for unjust enrichment and constructive trust. Each of these claims was brought by the County alone, with the exception of the Political Reform Act and Unfair Competition Law claims, which were also brought by Randolph. The complaint alleged, inter alia, a conspiracy to influence and reward Mr. Hlawek in connection with procuring the 1995 waste management contract between the Company and the County (1995 Contract), obtaining solid waste management work connected to the 1995 Contract, and causing the County to buy out certain existing contracts. The Complaint sought damages, restitution, disgorgement of profits, civil penalties, punitive damages and injunctive and declaratory relief.

The Norcal Parties denied that they have engaged in any wrongdoing of any kind and, in particular, that they had any liability in connection with the Action. The Norcal Parties contended that they have meritorious claims against the County and others as to whom the County has certain indemnification obligations arising out of the facts alleged in the Action, as well as other claims against the County under the 1995 Contract. The Norcal Parties asserted that, if the Action proceeded against the Norcal Parties, then the Norcal Parties would bring these claims.

Amount:

See Status.

Status:

On July 25, 2000, the Norcal Parties and the County Parties entered into a settlement of the Action. Pursuant to the settlement, the Norcal Parties made a payment to the County in the amount of \$6,561,000. The Company also agreed to pay the County fifty percent (50%) of the "Net Proceeds" (as that term is defined in the settlement agreement) of any claims the Norcal Parties choose to assert and pursue, in their sole discretion, against Mays, Walsh, and/or their affiliates. The parties executed releases of claims relating to or arising from the allegations of the Complaint.

On July 27, 2000, the Court approved the settlement agreement and entered judgment in accordance with the provisions of the settlement agreement. Effective as of August

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#### EXHIBIT W PAGE 6 OF 69

Advisory Services to Municipal Management

Mr. Stephen Rhodes February 3, 2010 Page 7 of 9

4, 2000, the Court entered a dismissal with prejudice of the County Parties' claims against the Norcal Parties. The Action is proceeding against other defendants.

#### **B. FINANCIAL ABILITY**

HE H CONSULTANTS, U.C.

Recology is a privately held, 100% employee-owned company. As such, the audited financial statements are not filed publicly. In response to HF&H's request, Recology provided financial statements in order that the City could evaluate Recology's financial condition. Recology believes that public disclosure of the audited financial statements and the information contained therein may put Recology at a competitive disadvantage. Recology asked that the City of Pacifica make every effort to treat the audited financial statements as confidential.

Using the financial statements provided by Recology, HF&H calculated some standard financial ratios and compared them to Coastside and companies of comparable size (revenues).

Recology's financial strength is significantly more than Coastside. Recology's liquidity and capital ratios, as measured by standard financial ratios, appear to exceed industry benchmarks and are more favorable than Coastside.

Industry benchmarks are based on the annual revenue of the company. Recology's annual revenue is greater than Coastside. Therefore, Recology is compared against different industry averages than Coastside, as noted in the tables below.

#### Table 1

#### Ratio Categories and Descriptions

Category	Art Calculation	Rurpose (Description) +
Size of Company	Pacifica Revenues/	This ratio describes the size of the company relative to
	Company Revenues	their contract with the City of Pacifica.
Liquidity: Current	Current Assets/	The current ratio is a rough measure of a company's
Ratio	Current Liabilities	ability to pay its current obligations. A higher ratio means
		the company is better positioned to meet its short-term
		payment obligations.
Capital Structure	Total Liabilities/	This ratio measures the relationship of capital contributed
	Total Equity	by a company's creditors to total assets. A higher
		percentage of total liabilities to total assets indicates
		higher financial risk.
Operating	Pre-tax Profit/	This percentage measures a company's profitability. A
Results: Profit	Total Revenues	higher percentage indicates higher profitability.
Margin		

#### 1. Size of Company:

Coastside reported annual revenues for 2008 of approximately \$8 million. Recology reported annual revenue for 2008 of \$534 million. The City's contract revenue is 100% of Coastside's 2008 revenue, compared to 1.29% of Recology's 2008 revenues.

HEH CONSULTANTS, LLC	
Advisory Services to Municipal Manage	ment

Mr. Stephen Rhodes February 3, 2010 Page 8 of 9

#### 2. Liquidity

Recology's liquidity ratio for 2008 of 1.14 is greater than Coastside's liquidity ratio for 2008 of .25. Recology's liquidity ratio significantly exceeds Coastside's and is higher than the industry average of similar sized companies.

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#### Current Ratio

Wear	Mark 1925 States Provident	Coastside in	Recology	
2008	\$5 - \$10 MM	.25		1.20
	\$25 MM +		1.14	.90

#### 3. Capital Structure

The ratio of total liabilities to total equity measures the relationship of capital contributed by a company's creditors to total assets. A lower number represents a stronger financial condition of the company. Recology's ratio is stronger than the industry average while Coastside's ratio is weaker than the industry average.

#### Table 3

Total Liabilities to Total Equity

Year	Annuali Revenue Range	Coastside, (%)	Recology	Industry (%)
2008	\$5 - \$10 MM	6.00		4.80
	\$25 MM +		1.86	3.80

#### 4. Operating Results

Pre-tax profits typically range from 2% to 8% for companies in the waste management industry. Recology's pre-tax profit margin exceeded Coastside for 2008. A negative number indicates the company incurred a net loss from operations for the period. Recology's pre-tax profit margin exceeded the industry average.

#### Table 4

#### Pre-Tax Profit Margin

Year ya	Annual:Revenue	coastside. (%)	Recology	ndustry (%) a
2008	\$5 - \$10 MM	(4.07)		2.40
	\$25 MM +		8.72	3.70

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Mr. Stephen Rhodes February 3, 2010 Page 9 of 9

#### C. TRANSITION PLAN

**IEH CONSULTANTS, LLC** 

In response to a request from HF&H, Recology provided a summary of and a schedule for the major transition events that are associated with taking over collection and drop-off services from Coastside.

Advisory Services to Municipal Management

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The transition from Coastside to Recology is far less challenging than often found in similar situations because: 1) The services will initially be unchanged from current services; and, 2) the current employees of Coastside, including the operations manager, will be retained in their existing capacities.

We believe the major initial risks associated with the transition relate to customer service. We encourage the City staff to work closely with Recology to: 1) Develop and agree upon a detailed schedule; 2) Ensure that the City reviews all public information for thoroughness, accuracy and clarity (with particular attention to changes to services at the drop-off facility); and, 3) Ensure that Recology has sufficient back-up to customer service representatives to respond to customer inquiries and possible complaints with regard to the change in the customer billing system.

We believe the major risks associated with the transition to new services in August relate to: 1) Ordering and delivery of customer containers; 2) Public outreach and education; and, 3) customer service. Again, we encourage the City staff to work closely with Recology in the development and monitoring of a service transition plan that details key tasks, timing and resources.

Very truly yours,

HF&H CONSULTANTS, LLC

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Robert D. Hilton, CMC President

Attachments:

- A. Litigation Summary
- B. Compliance Records

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Recology and Subsidiaries Litigation and Regulatory Actions Summary 2004-2009					
Subsidiary	Action	Dáte Résolved	Summary	Amount	Status
Norcal Waste Systems, Inc. and Norcal/San Bernardino, Inc.	Demand Letter from the County of San Bernardino	2005/11		See Summary	See Summary
Norcal Waste Systems of San Jose, Inc.	Arbitration	2006/04	On May 24, 2004, California Waste Solutions, Inc. ("CWS") filed an arbitration demand relating to its Subcontract with Norcal Waste Systems of San Jose, Inc. to process recyclable material collected by Norcal in the City of San Jose. CWS asserted claims totaling \$15 million on three theories: (1) that the recyclables Norcal collects and delivers to CWS include a percentage of nonrecyclable material that is greater than the percentage allowed in the Subcontract; (2) that Norcal overcharged CWS for the cost of transshipping material from San Jose to Oakland during a period when CWS's San Jose plant was non-operational; and (3) that Norcal improperly terminated a separate contract under which CWS was going to process recyclables collected by Norcal in other parts of Santa Clara County. Norcal denied the claims and filed a counter-demand against CWS for \$500,000 alleging that CWS's poor performance of the San Jose Subcontract has caused Norcal to incur extra costs. An arbitration hearing was held over several days im June and August 2005. On January 9, 2006, the arbitrator issued an interim award in CWS's favor for \$5.2 million on the first two of the three claims listed above. The arbitrator ruled in Norcal's favor on the third claim. Before a final award was entered, the matter was settled.	See summary.	See Summary.
Norcal Waste Systems Ostrom Road Landfill, Inc.	Norcal Waste Systems Ostrom Road Landfill, Inc. v Lionudakis Woold and Green Recycling	2004/02	Breach of contract action brought by Norcal Ostrom Road Landfill. to recover the remaining balance of \$67,159.51 owed by Lionudakis Wood and Green Recycling for dumping its green waste at Norcal's facility.	See Status.	The matter was settled and dismissed.
Norcal Waste Systems, Inc.	Gerald Bisordi v. Norcal Waste Systems, Inc.	2006/06	Asserts numerous statutory and common law tort claims.	See Status	Confidential settlement covering employment matter and workers compensation.

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## Attachment A Litigation Summary

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# Attachment A Litigation Summary

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Recology and Subsidiaries Litigation and Regulatory Actions Summary 2004-2009					
Subsidiary	Action	Date Resolved	Summary	Amount	Status
Norcal Waste Systems of San Jose, Inc.	Notice of Assessment	2007/03	Norcal provided residential collection and recycling services under a contract with the City of San Jose that was in effect between July 1, 2002 and June 30, 2007. Norcal no longer provides these services to the City of San Jose.	See Summary	See Summary
			Norcal Waste Systems of San Jose has addressed a Notice of Assessment, dated November 18, 2005, from the City of San Jose in the amount of \$900,000 for purported failures to comply with certain provisions of its waste collection services agreement with San Jose, dated March 28, 2001, relating to the processing of glass. Norcal subcontracted the processing and sale of recyclable materials, including glass, to California Waste Solutions, Inc. ("CWS") and, accordingly, Norcal believes that to the extent there have been any such failures to comply with the waste collection services agreement and any assessments or damages result therefrom, they are the ultimate responsibility of CWS. Norcal, with the assistance of CWS, contested the assessment. The November 18, 2005 assessment followed an earlier assessment for \$10.8 million regarding the same glass processing issues, dated March 5, 2005. The City's November 18, 2005 assessment stated that the balance of the initial assessment (\$9.9 million) was being deferred for additional review.		
л 2 0			Pursuant to a settlement agreement between the company and the City of San Jose dated March 2007, all outstanding issues have been resolved.		
Norcal Waste Systems of Ean Jose, Inc.	James Allen Smith, Jimmy Dale Young, Thomas Don Ford v. Norcal Waste Systems, of San Jose, Inc., Sanitary Truck Drivers and Helpers Union, Local 350	2006/11	Alleged damages for tortious discharge in violation of public policy; breach of contract; breach of covenant of good faith and fair dealing.	N/A	Case dismissed
Norcal Waste Systems, Inc.	Chil Adam	2006/07	Alleged wrongful demotion based on gender and perceived medical condition; breach of written contract; breach of implied in fact contract; breach of implied covenant of good faith and fair dealing.	Confidential settlement	A business decision was made to settle the matter out of court.
Los Altos Garbage Co., Inc.	Notice of Assessment		In May 1996, the San Jose City Council adopted an ordinance that imposes a franchise fee and a source reduction and recycling fee (AB939 fee) on haulers that collect solid waste from customers in San Jose. The fee is calculated based on the cubic yards collected from customers. Los Altos Garbage Company, Inc., dba Stevens Creek Disposal & Recycling, a Norcal subsidiary, has since 1996 collected solid waste from commercial customers in San Jose, including certain state agencies. San Jose's Department of Finance notified Stevens Creek in November 2005 of an assessment of approximately \$600,000 for failure to pay		See Summary

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Attachment A Litigation Summary							
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Recology and Subsidiaries Litigation and Regulatory Actions Summary 2004-2009							
Subsidiary	Action	Date Resolved	Summary	Amount	Status		
			franchise fees, and approximately \$200,000 for failure to pay AB 939 fees, during the period July 1, 2001 through June 30, 2004. Under the applicable ordinance, a hauler is responsible to pay the City any franchise fee due even if it fails to collect the fee from its customers. The hauler is not responsible to pay any AB 939 fee that is due, but is responsible for providing the City information necessary to collect the fee directly from the customer. The Company believes that it is not required to pay franchise fees under Stevens Creek's franchise agreement and applicable law. In June 2006, the Company and the City entered into a tolling agreement to allow the City time to review the matter further in light of objections raised by the Company and by				
Norcal Waste Systems of	Notice of Assessment	2006/00	another waste company with a similar assessment. On January 16, 2006, the City of San Jose assessed Norcal Waste	\$100,000	See Summary		
San Jose, Inc.			Systems of San Jose, Inc. \$100,000 for failure to meet certain diversion targets set forth in its waste collection services contract with the City. The assessment has been paid.				
San Bruno Garbage Co., Inc.	Lawsuit	2009/03	The Western Conference of Teamsters Pension Fund sued to recover contributions allegedly owed under the terms of the collective bargaining agreement and trust instruments. The case turns primarily on a legal interpretation of the contract language, namely whether certain employee time off (e.g., workers compensation leave) nevertheless requires pension contributions like ordinary work hours.	attorneys' fees, costs	The parties resolved all remaining portions of the dispute (\$5,015.44) and stipulated to entry of final judgment. In March 2009, the Ninth Circuit Court affirmed the		
					decision of the district court in favor of San Bruno Garbage Co.		
Norcal Waste Systems, Inc.	Norcal Waste Systems, Inc. vs. Apropros	2007/05	Contracted with Apropos for a "Multi-Channel Interactive Management software solution related to telephone voice processing." Defendant failed to implement and/or deliver the solution.	See Status	Claim resolved with a payment to Norcal of \$122,500.		
Norcal Waste Systems, Inc.	People of the State of California v. Ronald R. Gonzales, Joseph August Guerra III, and Norcal Waste Systems, Inc.		On June 21, 2006, a Santa Clara County Superior Court grand jury returned an indictment in connection with a bid for a garbage and recycling contract with the City of San Jose. The indictment named Norcal Waste Systems, Inc. as a co-defendant. Norcal pleaded not guilty and denies any wrongdoing with the bidding for and performance of the contract. On June 11, 2007, Santa Clara County Superior Court Judge John F. Herlihy granted motions filed by Norcal and the other defendants to dismiss all charges against all the defendants. In July 2007, the Santa Clara County District Attorney's Office issued a statement that they do not intend to pursue an appeal or convene a new grand jury to review the matter.	N/A	See Summary		
Sunset Scavenger	Juan Alvarez vs. Sunset	2007/06	Alleges employment discrimination, disability, retaliation, intentional	See status	Confidential settlement.		

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To

## Attachment A Litigation Summary

		Litigation	Recology and Subsidiaries and Regulatory Actions Summary 2004-2009		
Subsidiary	Action	Date Resolved	Summany	Amount	Status
Company	Scavenger Company, Jeff House		infliction of emotional distress, wrongful termination in violation of public policy and unfair business practices.		
San Bruno Garbage Co., Inc.	N/A	2007/03	Labor arbitration filed by Local 350 alleging that the Company violated the collective bargaining agreement by subcontracting the hauling of paper, cardboard and/or metal from the Company's San Bruno transfer station.	See status	Arbitrator ruled thât the Company owed \$19,901.80. The case is closed.
Sunset Scavenger Company	Orlando Hudson v Sunset Scavenger, Jeff House	2007/01	Alleges discrimination based on disability, wrongfully termination and retaliation.	Settled for a waiver of costs.	Case dismissed.
Norcal Waste Systems, Inc. dba Golden Gate Disposal & Recycling Co. Alta Environmental Servíces, Inc.	Barbara Thomas v. Norcal Waste Systems, Inc., dba Golden Gate Disposal & Recycling Company	2008/01	Alleged sex discrimination.	See Status	Case dismissed.
	Carl Harris v Alta Environmental Services, Inc., et al	2007/10	Alleges discrimination based on race, negligent hiring, and other claims	See Status	Confidential settlement.
Sunset Scavenger Co.	Alvaro Gonzalez v Sunset Scavenger, Norcal Waste Management, Specialty Risk Services, LLP, Clint Potter, M.D., as an individual, Comp Care Occupational Medicine, Inc., Greg J. Yancey		Alleges multiple counts including disability discrimination, violation of right to privacy, defamation.	See Status	Criminal proceedings against Plaintiff for workers' comp. fraud misdemeanor resolved in exchange for restitution to Sunset in amount of \$3,400. Civil case is now continuing. Misdemeanor resolved in exchange for restitution to Sunset in the amount of \$3,400. Civil case is now continuing.
Macor, Inc.	Macor, Inc. et al v. City and County of San Francisco, the State of California et al	2008/05	Property title dispute.	See Status	Macor awarded clear title to the property.
Golden Gate Disposal & Recycling Company	Trinity Towers, L.P. v. Golden Gate Disposal & Recycling Company		Customer claims that he was overcharged and is demanding a refund.	Unknown	Pending
Vallejo Garbage Service	Steven Hieb vs Vallejo Garbage Service, Inc.		Alleges violation of FEHA due to disability discrimination and failure to accommodate	Unknown	Pending
SF Recycling & Disposal Inc.	Rick Bennett vs Norcal Waste Systems, Inc. aka Recology; SF Recycling & Disposal, Inc.		Alleges discrimination and retaliation.	Unknown	Pending
SF Recycling & Disposal Inc.	Brian McVeigh vs. SF Recycling & Disposal, Inc. Norcal Waste		Alleges wrongful termination and wrongful termination in violation of public policy	Unknown	Pending

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Attachment A Litigation Summary

Subsidiary	Action	Date Resolved	and Regulatory Actions Summary 2004-2009 Summary	Amount	Status
	Systems, Inc., Norcal Waste Service Center, Inc. Sunset Scavenger Company				
olden Gate Disposal & tecycling Co.	Raymond Arthur Sharp v. Golden Gate Disposal & Recycling Company	2009703	Alleges wrongful discharge in violation of FEHA and failure to provide reasonable accommodation.	See Status	Confidential settlement.
Vorcal Waste Systems, nc., et al	County of San Bernardino; Inland Empire Public Facilities Corporation; Inland Empire Solid Waste Financing Authority; San Bernardino County Financing Authority; San Bernardino County Flood Control District and William Randolph v. James J. Hlawek: Harry M. Mays; Bio-Reclamation Technologies, Inc., a California corporation; Business Consultants, Inc., a Delaware corporation; Ronald R. Canham; Canham & Associates, Inc., an Arizona corporation; Dionysus Properties, a California limited liability company; Gerald R. Eaves; Hinshaw & Culbertson, a Minnesota partnership; James E. Iverson; John R. Larson; Sol Levin; Williams S. McCook; Miller & Schroeder Financial, Inc., a Minnesota corporation; Norcal Solid Waste Systems, Inc., a California corporation; Oakridge Group Corporation, a Nevada corporation, a Nevada corporation, formerly known as Oakridge Corporation; Thomas F. O'Donnell; SHL Associates, Ltd., a New York corporation; Richard E. Tisdale; Kenneth James Walsh; Michael Welsh;	2000/07	On June 8, 2000, the County of San Bernardino (the County), its County Administrative Officer William Randolph (Randolph), and certain County-related entities (collectively, the County Parties) filed this action (Action). The complaint in this action (Complaint) named the Company and Norcal/San Bernardino, Inc. (Norcal/SB) (collectively, the Norcal Parties) as defendants together with 21 other entities and individuals, including Harry M. Mays and certain of his affiliated companies, James J. Hlawek, and Kenneth James Walsh, as well as certain other present or former County officials. The Complaint asserted as to the Company and Norcal/SB, together with, in most claims, Messrs. Walsh, Mays, Hlawek and Bio-Reclamation Technologies, Inc., a company affiliated with Mr. Mays, claims for breach of fiduciary duty and fraud; alleged violations of California Government Code Sections 1090 and 1092, California Government Code Sections 87100, 87103 and 91003 (the Political Reform Act), California Business and Professions Code Sections 17200 and 17203 (the Unfair Competition Law); and California Government Code Sections 12650 et seq. (the False Claims Act); and a claim for unjust enrichment and constructive trust. Each of these claims was brought by the County alone, with the exception of the Political Reform Act and Unfair Competition Law claims, which were also brought by Randolph. The complaint alleged, inter alia, a conspiracy to influence and reward Mr. Hlawek in connection with procuring the 1995 waste management contract between the Company and the County (1995 Contract), obtaining solid waste management work connected to the 1995 Contract, and causing the County to buy out certain existing contracts. The Complaint sought damages, restitution, disgorgement of profits, civil penalties, punitive damages and injunctive and declaratory relief. The Norcal Parties denied that they have engaged in any wrongdoing of any kind and, in particular, that they have engaged in any wrongdoing of any kind and, in particular, that the		On July 25, 2000, the Norcal Parties and the County Parties entered into a settlement of the Action. Pursuant to the settlement, the Norcal Parties made a payment to the County in the amount of \$6,561,000. The Company also agreed to pay the County fifty percent (50% of the "Net Proceeds" (as that term is defined in the settlement agreement) of am claims the Norcal Parties choose to assert and pursue, in their sole discretion, against Mays, Walsh, and/or their affiliates. The parties executed releases of claims relating to or arising from the allegations of the Complaint On July 27, 2000, the Court approved the settlement agreement and entered judgment in accordance with the provisions of the settlement agreement. Effective as of August 4, 2000 the Court entered a dismissa with prejudice of the County Parties' claims against the Norcal Parties. The Action is proceeding against other defendants.

## Attachment A Litigation Summary

		Litigation	Recology and Subsidiaries and Regulatory Actions Summary 2004-2009		
Subsidiary	Action	Date Resolved	Summary	Amount	Status
	and Does 1-180		claims.		_
Recology Inc., and its Subsidiaries	Losses Related to General Liability and Automobile Liability	Annually ongoing.	The Company is self-insured for various risks of loss related to general liability and automobile liability and therefore is involved in litigation that would otherwise be handled by an insurer. The Company carries a broad range of insurance coverage above the self insured retentions that it considers adequate to protect its assets and operations from "risk of loss." The Company's commercial general liability, business automobile liability, and umbrella and excess liability policies provide an aggregate of \$50 million coverage for any single occurrence, subject to a variety of exclusions.	Company's accrued liability for	currently has a self-insured retention of \$500,000 related to general liability and automobile liability. The Company considers any expenses incurred as a result
Recology Inc. and its Subsidiaries	Losses Related to Workers' Compensation	Annually ongoing.	The Company's current workers' compensation liabilities are self-insured and therefore the Company is involved in litigation that would otherwise be handled by an insurer. This liability is currently capped at a maximum of \$1,000,000 per claim with workers' compensation insurance, to statutory limits, in excess of this amount.	Company's accrued liability for all self-insured claims was	No workers' compensation claim is individually significant. The Company currently has a self-insured retention of \$1,000,000 related to workers' compensation. The Company considers any expenses incurred as a result of this retention to be an ongoing cost of business.

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## SOLANO COUNTY Department of Resource Management

Environmental Health Division 675 Texas Street, Suite 5500 Fairfield, CA 94533 www.solanocounty.com

Telephone No: (707) 784-6765 Fax: (707) 784-4805 Birgitta Corsello, Director Clifford Covey, Asst Director

March 04, 2008

Mr. Greg Pryor, General Manager Jepson Prairie Organics 6426 Hay Road Vacaville, CA 95687

## RE: NOTICE OF VIOLATION: Jepson Prairie Organics (JPO) - Composting Facility, 48-AA-0083

Dear Mr. Pryor:

### BACKGROUND:

The Department of Resource Management of Solano County has made the commitment to provide an after hour response to the public in issues related to odor/litter/nuisance complaints. Solano County Local Enforcement Agency staff is part of the 24/7 Odor Response to address citizens complaints being generated at solid waste facilities. An on-call staff participates in Standby duties for environmental health issues and for response to complaints.

The response includes a toll-free number, a web based complaint form allowing citizens to log their odor/nuisance complaints, a pager that receives the complaint so on-call staff can retrieve the messages originated from the complainant.

On Saturday, February 16, 2008, on-call staff responded to an odor complaint from three residents who live approximately 3 miles north/north east of JPO. The complainants stated that strong rotten odors were detected at their places or residence and that were coming from the Hay Road Landfill/JPO sites.

In response to the complaints, on-call staff conducted a surveillance driving on Highway 113, Bighampton Road, Hawkings Rd, Fry Road and Hay Road. On-call staff detected odors at the residence of one of the complainants on Hawkins Road, which is located 3 miles north of JPO. A representative of the JPO facility was also present at the residence and confirmed the presence of

Building & Safety	•	I
David Cliche		•
David Chunc		_
Building Official		F

Pianning Services Mike Yankovich Program Manager

Environmental Health Terry Schmidtbauer Program Manager Administrative Serviceš Linda Zalesky Office Supervisor E

Public Works-Engineering Paul Wiese Engineering Manager Public Works-Operations Steve Hilas Operations Manager

#### **EXHIBIT W PAGE 17 OF 69**

odors. A follow up visit to the JPO facility revealed that the screening of age/cured compostable materials was the cause of the off-site odors.

Therefore, the LEA is issuing this Notice of Violation and directing you to update the Odor Impact Minimization Plan (OIMP) to include a protocol that will further minimize the generation of odors produced by the screening of aged/cured compostable materials.

#### AREAS OF CONCERN AND VIOLATIONS:

Jan 21, 08, Area of Concern, Title 14 CCR. Section 17867. General Operating Standards. (a) (2): All handling activities shall be conducted in a manner that minimizes vectors, odor impacts, litter, hazards, nuisances, and noise impacts; and minimizes human contact with, inhalation, ingestion, and transportation of dust, particulates, and pathogenic organisms.

Resident on Hawkins Road complained about strong odors at 7:10 AM. On-call staff responded to the complaint at 3:00 pm. Inspection was made at Hawkins Rd. and no odor was detected; however odors from the composting facility were detected on State Highway 113 approximately 1 mile from Jepson Prairie Organics composting site.

February 16, 2008: Violation, Title 14 CCR. Section 17867. General Operating Standards. (a) (2): All handling activities shall be conducted in a manner that minimizes vectors, odor impacts, litter, hazards, nuisances, and noise impacts; and minimizes human contact with, inhalation, ingestion, and transportation of dust, particulates, and pathogenic organisms.

Three (3) residents complained about strong odors. Surveillance was conducted around the area of State Highway 113, Fry Road, Bighampton Road, Kawkins Road and Hay Road. Odor was detected at one of the residents on Hawkins Road and traced to the JPO facility. The screening of age/cured compostable materials was causing the generation of off-site odors.

#### NOTIFICATION:

This letter is to notify you that steps to correct the Area of Concern and Violation shall be undertaken as detailed below in order to avoid further enforcement action by this Division.

Should compliance not be achieved, further enforcement actions to be considered may include, but not limited to the issuance of a Notice and Order for this facility. Please be aware that non compliance with SMS will result in the Waste Board issuing a Notice of Intent to list the facility on the Inventory of Solid Waste Facilities Which Violate State Minimum Standards (Inventory).

Jepson Prairie Organics Composting facility is required by the Solano County Department of Resource Management (SCDRM) to:

By March 31, 2008, provide an update to the Odor Impact Minimization Plan (OIMP) that details steps to further minimize the generation of odors during the screening of age/cured compostable materials during all types of weather.

If you have any questions or concerns or if there exists a condition which you do not feel can be corrected by the date indicated, please don't hesitate to contact me to discuss the actions undertaken and the possibility of an extension of the compliance date

#### EXHIBIT W PAGE 18 OF 69

1 d

I can be reached at (707) 784-3308. Please leave a voicemail message if I am unavailable.

Sincerely,

Terry Schmidtbauer, REHS Environmental Health Manager

cc: Beatrice Poroli, CIWMB Steve Rosenbaum, CVRWQCB Paul Yamamoto, Norcal Waste Systems Andrew Lehman. Norcal Waste Systems

R:\ENVHLTHYTECHNSOLID WASTE\NORCAL WASTE SYSTEMS INC HAY ROAD\COMPOST JPO SWIS 48-AA-0083\Enforcement2008\NOV\_odor\_complaint.doc



Department of Environmental Management 601 TEXAS STREET FAIRFIELD, CALIFORNIA. 94533-6301 www.solenocounty.com

Environmental Health Services (707) 421-5765, EAX (707) 421-4805

Terry Schmidtbauer Program Manager

70

March 15, 2004

Mr. Greg Pryor, General Manager Hay Road Sanitary Landfill 6426 Hay Road Vacaville, CA 95687

### RE: NOTICE OF VIOLATION: Jepson Prairie Organics - Composting Facility, 48-AA-0083

Dear Mr. Pryor:

#### BACKGROUND:

As of April 2003, Title 14 California Code of Regulations (CCR), Chapter 3.1, Article 1, Section 17852. Definitions (a)(1), defines active compost as "compost feedstock that is in the process of being rapidly decomposed and is unstable. Active compost is generating temperatures of at least 50 degrees Celsius (122 degrees Fahrenheif) during decomposition; or is releasing carbon dioxide at a rate of at least 15 milligrams per gram of compost per day, or the equivalent of oxygen uptake".

During the Solano County Local Enforcement Agency (LEA) inspections performed on February 20, 2003 and March 24, 2003, you were advised in writing on the inspection reports, that a "new set of Compostable Materials Handling Facilities Regulations will be adopted in April 2003".

However, LEA inspections at Jepson Prairie Organic Composting (JPOC) facility conducted on December 22, 2003; January 22, 2004 and February 24, 2004, revealed Areas of Concern and Violations of State Minimum Standards (SMS) related to the volume of "active compost" being handled, processed or stored on site. Copies of those inspections reports are attached.

The current Standardized Pennit 48-AA-0083, Terms and Conditions: 16(f) states that "The design capacity of 35,000 oubic-yards of material undergoing the composting process shall not be exceeded. This requirement does not include on-site storage of feedstook or stabilized compost". However, in a December 22, 2003 joint inspection with the State Board staff, and based on the definition change of "active compost", it was then determined that what you were defining as feedstook and stabilized compost was already above the 122 degrees Fahrenheit and it was active compost.

Mr. Greg Pryor, General Manager Jepson Prairie Organics Page 2, March 15, 2004

Approximately 70,000 cubic yards of active compost materials were observed to be stored, processed or handled within the composting footprint. In addition, several piles of active compost materials are stored outside the compost footprint and within the landfill boundaries including piles of compost overs to be used as Alternative Daily Cover (ADC). Because of the actual volume of active compost, this facility is in violation of current compostable regulations and therefore, the actual volume of active compost places this facility in violation of existing permit.

Therefore, the LEA is issuing this Notice of Violation and directing you to remove and/or manage all active compost at this site as to avoid reaching the regulated temperature of 122 degrees Fahrenheit, to conform to your existing permitted amount of 35,000 cubic yards.

#### AREAS OF CONCERN AND VIOLATIONS:

November 26, 2002; Area of Concern, Public Resources Code (PRC) 44014(b), Operator Complies with Torms and Conditions: "Composting operations have expanded outside the approved 12 acres footprint. Facility is approaching the permitted design capacity of 35,000 cubic yards of material undergoing the composting process."

December 22, 2003; Area of Concern, Public Resources Code (PRC) 44014(b), Operator Complies with Terms and Conditions: "Facility has exceeded 35,000 cubic yards of materials undergoing temperature required for active compost."

January 22, 2004; February 24, 2004. Violation, PRC 44014(b), Operator complies with Terms and Conditions: Active compostable materials in excess of current permitted capacity of 35,000 cubic yards. Active compostable materials stored outside composting footprint.

Jannary 22, 2004; February 24, 2004. Violation, PRC 44004, Significant change: Unapproved research composting project, presence of 5 windrows of approximately 2,000 cubic yards. Only the Ag Bag methodology has been approved for this site.

#### NOTIFICATION:

This letter is to notify you that steps to correct the Violation and Areas of Concern shall be undertaken as detailed below in order to avoid further enforcement action by this Division. Should compliance not be achieved, further enforcement actions to be considered may include, but not be limited to the issuance of a Notice and Order for this facility. Please be aware that non compliance with SMS will result in the Waste Board issuing a Notice of Intent to list the facility on the Inventory of Solid Waste Facilities Which Violate State Minimum Standards (Inventory).

Jepson Prairie Organics Composting facility is directed to:

By March 29, 2004, in accordance to Title 14 CCR, Chapter 3.1, Article 1. Section 17862(d), provide a detailed description of the research composing operation, with clear research

#### **EXHIBIT W PAGE 21 OF 69**

K \_\_\_\_\_Atachment, B. Compliance, Records

Mr. Greg Pryor, General Manager Jepson Prairie Organics Page 3, March 15, 2004

objectives, properly described methodology/protocol to be employed, frequency of data to be gathered, in depth analysis of the scope of the research, how the requirements of Chapter 3.1 will be met, and the proposed timeframe of the research operation.

By April 01, 2004, provide a plan that details steps to conform to your current permitted amount of 35,000 cubic yards of active compost and implement this plan within 15 days of LEA approval. This plan shall also include the steps for the removal/management of the existing piles of active compost materials stored outside the composting footprint.

By July 29, 2004, the facility shall be in compliance within the permitted amount of 35,000 cubic yards of active compost.

You may submit a request to modify these dates to the SCDEM for consideration at our meeting of March 19, 2004, if you feel that the violations can not be corrected by the dates indicated. Any request must be accompanied by supporting documentation or rational justifying the modifications. Please be advised that SCDEM is not obligated to modify the dates contained in this notice.

If you have any questions or concerns, please don't hesitate to contact me to discuss the actions undertaken and the possibility of an extension of the compliance date.

I can be reached at (707) 421-6765. Please leave a voicemail message if I am unavailable.

Sincerely,

aset

Terry Schmidtbauer, REHS Program Menager, Environmental Health

cc: Christine Karl, CIWMB Robert Busby, CVRWQCB Chris Choate, Norcal Waste Systems

Attachment: a) Inspection reports

### **EXHIBIT W PAGE 22 OF 69**



Mr. Michael Leggins City Garbage Company of Eureka 949 West Hawthorne Street Eureka, CA 95501

Re: City Garbage Notice of Violation

Dear Mr. Leggins,

Enclosed is a Notice of Violation regarding Wastewater Discharge Permit # 08. Please be advised that to avoid administrative penalties, you must fully comply with all terms stated in the Notice.

Your cooperation in resolving this matter is greatly appreciated. Please contact me at 441-4362 if you have any questions or concerns regarding this notice.

Sincerely,

Justin Boyes Source Control Supervisor 4301 Hilfiker Ln, Eureka, CA 95503

#### LITILITIES OPERATIONS DIVISION

Wastewater Treatment Water Treatment FAX - Wastewater Treatment

 (707)
 441-4364
 Press

 (707)
 441-4234
 Wast

 (707)
 441-4366
 FAX

Pretreatment Water Quality Laboratory FAX - Water Treatment

(707) 441-4362 (707) 441-4363 (707) 441-4265

## **EXHIBIT W PAGE 23 OF 69**

Ζ3

Actachment B Compliance Records

## CITY GARBAGE NOTICE OF VIOLATION 5/27/09

#### LEGAL AUTHORITY

The following Findings are made and Order issued pursuant to the authority vested in the City of Eureka City Manager under the City of Eureka Municipal Code (EMC) Title 5, Chapter 50, Sewers. This Order is based on findings of violation of the conditions of the Wastewater Discharge Permit issued under Section 50.051 of the City's Municipal Code.

#### FINDINGS

- 1. The City of Eureka owns and operates a Publicly Owned Treatment Works which could be adversely impacted by discharges from City Garbage, and other industrial users, and has implemented a pretreatment program to control such discharges.
- 2. Under this pretreatment program City Garbage was issued Wastewater Discharge Permit Number 08 on 2/10/09 that contains prohibitions, restrictions, limitations and self monitoring requirements related to the discharge of wastewater to the sanitary sewer.
- 3. Pursuant to the EMC and the above-referenced permit, data on the compliance status of City Garbage is collected by the City of Eureka.
- This data shows that City Garbage has violated EMC Section 50.022 (A) and Wastewater Discharge Permit Number 08 in the following manner:

Sample Location	Parameter	Date of Sample Collection	Analytical Results	Discharge Limitation
Sewer Outfall 001	Zinc	5/4/09	1,600 ug/L	678 ug/L

### CITY GARBAGE IS HEREBY NOTIFIED THAT:

- 1. It is in violation of Wastewater Discharge Permit Number 08 and the Sewer Use Ordinance of the City of Eureka.
- 2. It is required to notify this office in writing within seven (7) working days of receipt of this Notice of the reason for the wastewater discharge violation, the action to be taken to correct the non-compliance violation, and the date the corrective action has been or will be implemented.

Page 1

#### **EXHIBIT W PAGE 24 OF 69**



- 3. It is required to resample and analyze its wastewater discharge within seven (7) working days of the corrective action implemented for item #2 (above). Results shall be submitted to the City of Eureka within thirty days of sample collection.
- 4. Failure to respond within the time frames indicated will constitute a further violation of the Sewer Use Ordinance and may subject City Garbage to administrative fines in the amount of one thousand dollars (\$1000) per day per violation in accordance with section 50.123 (D) of the EMC.
- 5. This notice is effective upon receipt by City Garbage.
- 6. Correspondence regarding this notice shall be sent to;

Justin Boyes Source Control Supervisor City of Eureka 4301 Hilfiker Ln. Eureka, CA 95503

Page 2

**California Regional Water Quality Control Board** rry Tamminen Secretary for **Robert Schneider**, Chair Environmental Protection

**Central Valley Region** 

Arnold Schwarzenegger Governor

The los

11020 Sun Center Drive #200 Rancho Cordova, CA 95670-6114 (916) 464-3291 • Fax (916) 464-4775 http://www.swrcb.ca.gov/rwqcb5

26 February 2004

CERTIFIED MAIL 7002 0860 0005 3013 0766

Phil Graham Norcal Waste Systems, Inc. Ostrom Road Sanitary Landfill 3001 North Levee Road Marysville, CA 95901

## NOTICE OF VIOLATION FOR DISCHARGE OF LEACHATE TO SURFACE WATER, FAILURE TO PREVENT PONDING ON COVER MATERIAL AND REQUEST FOR WATER CODE SECTION 13267 ORDER REPORT, OSTROM ROAD LANDFILL, YUBA COUNTY

This Notice of Violation is being issued to Norcal Waste Systems Ostrom Road Landfill, Inc. (Discharger) for violations of Waste Discharge Requirements (WDRs) Order No. R5-2003-0018. Prohibition A.9. of WDRs Order No. R5-2003-0018 states:

The discharge of solid or liquid waste or leachate to surface waters, surface water drainage courses or groundwater is prohibited.

Provision I.4. of WDRs Order No. R5-2003-0018 states:

The Discharger shall comply with the applicable portions of the Standard Provisions and Reporting Requirements (SPRR) for Waste Discharge Requirements for Nonhazardous Solid Waste Discharges Regulated by Title 27 and/or Subtitle D (27 CCR Section 20005 et seq. and 40 CFR et seq.), dated April 2000, which are hereby incorporated into this Order.

Stormwater Provision XII.J. in the SPRR states:"

Cover material shall be graded to divert precipitation from the Unit, to prevent ponding of surface water over wastes, and to resist erosion as a result of precipitation.

Reporting Requirement H.1. of WDRs Order No. R5-2003-0018 states:

In the event the Discharger does not comply or will be unable to comply with any prohibition or limitation of this Order for any reason, the Discharger shall notify the appropriate Regional Board office by telephone as soon as it or its agents have knowledge of such noncompliance or potential noncompliance, and shall confirm this notification in writing within two weeks. The written

California Environmental Protection Agency

Recycled Paper

**EXHIBIT W PAGE 26 OF 69** 

-2-

Phil Graham

26 February 2004

notification shall state the nature, time, and cause of noncompliance, and shall describe the measure being taken to prevent recurrences and shall include a timetable for corrective action.

On 8 January 2004 Board staff inspected the landfill and observed leachate seeping out near the base of the intermediate cover along the northern edge of Cells 1A and 2A and into the perimeter storm water ditch. The discharge of leachate to surface waters is a violation of Prohibition A.9. of WDRs Order No. R5-2003-0018. Ponded surface water was observed on interim cover material on the northern portion of Cells 1A and 2A and on the southwestern portion of Cell 1A as shown in the enclosed inspection reports. The ponding of surface water over wastes is a violation of storm water Provision XII.J. in the April 2000 SPRR.

On 16 January 2004, Board staff conducted a follow-up inspection and observed leachate seeps emanating from numerous locations along the northern edges of Cells 1A and 2A and into the northern storm water ditch. Leachate was also observed seeping into the storm water drainage ditch along the western side of Cell 1A. Board staff collected surface water samples from three locations in the storm water drainage ditch as close to the leachate as possible. The samples were submitted for laboratory analysis for the presence of leachate indicators. Laboratory results confirm that leachate was discharged into the surface water.

The observed storm water ponding on Cells 1A and 2 A is due in part to inadequate grading of the cover material. Inspections performed by the Yuba County Environmental Health Department (YCEHD) on 13 and 20 November 2003 identified grading violations which were reported in their Disposal Site Inspection Reports and submitted to the Discharger. Ponding was also reported in the YCEHD's 29 December 2003 inspection report. However, Board staff did not receive verbal or written notification from the Discharger describing the presence of ponded water over waste until 20 January 2004 which is a violation of Reporting Requirement H.1. of WDRs Order No. R5-2003-0018.

Section 13267 of the California Water Code states, in part:

(b) (1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

#### EXHIBIT W PAGE 27 OF 69

26 February 2004

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Phil Graham

#### Section 13268 of the California Water Code in part states:

a) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). (b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

Attachment B Compliance Records

Pursuant to Section 13267 of the California Water Code, Norcal Waste Systems Ostrom Road Landfill, Inc. shall submit a report to this office forwith, and no later than **19 March 2004**, documenting the cause(s) of leachate seeps emanating from the landfill containment system, the measures being taken to achieve compliance with WDRs Order No. R5-2003-0018 and a timetable for corrective action. The report is necessary to ensure future compliance with WDRs Order No. R5-2003-0018 and to protect surface water and groundwater quality. The report shall include the fill plan for Cells 1A and 2A, an analysis of potential leachate migration pathways out the perimeter of the Cell 1A and Cell 2A containment systems and proposed measures to prevent ponding on top of the landfill. The report shall also include the analytical results of surface water samples obtained in the perimeter drain near the leachate seeps and from shallow perched groundwater from Piezometer PZ-11, PZ-12 and PZ-13. The enclosed inspection reports and laboratory reports provide evidence that supports the need for the report.

If you have any question, please call Robert Busby at (916) 464-4736.

THOMAS R. PINKOS Executive Officer

Enclosures:

8 January 2004 Inspection Report16 January 2004 Inspection Report and laboratory results

cc: Laura Niles, California Integrated Waste Management Board, Sacramento Frances McChesney, Office of Chief Counsel, State Water Resources Control Board, Sacramento Deborah Biersteker, Yuba County Environmental Health Department, Marysville Tim Daleiden, Alta Environmental Services, Inc., Dixon

## **EXHIBIT W PAGE 28 OF 69**

## CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

INSPECTION NEEDET

DISCHARGER: Norcal Waste Systems Ostrom Road Landfill, Inc.

LOCATION & COUNTY: Ostrom Road Landfill, Yuba County

CONTACT(S): Phill Graham

INSPECTION DATE: 8 January 2004

INSPECTED BY: Rob Busby

Approved:

ACCOMPANIED BY: Phill Graham and Bill Wood

#### **OBSERVATIONS AND COMMENTS:**

Waste was being placed in the winter disposal area on top of Cells 1A and 2A. Runoff from a recent rainfall event was being pumped from a topographically low area located immediately northeast of Cell 2 into the northern perimeter stormwater ditch. Ponded surface water was observed on the daily and intermediate cover on the northern portion of Cells 1A and 2 A and on the southwestern portion of Cell 1A as shown in the attached photographs. A work crew was in the process of removing plastic waste which had reportedly blown into the ponded water. Leachate was observed seeping out near the base of the intermediate cover along the northern edge of Cells 1A and 2A within several feet and possibly into the northern perimeter stormwater ditch.

The ponding was caused by inadequate grading of cover material and an insufficient number of downdrains required to transmit stormwater off the cover. The observed seeps were discolored and had a sheen characteristic of leachate. Phill Graham acknowledged that the seeps appeared to be leachate and posed a threat to surface water quality. I asked Mr. Graham to collect surface water samples from the perimeter stormwater ditch as close to leachate as possible as required by Monitoring and Reporting Program No. R5-2003-0018. Inspection reports prepared by the Yuba County Environmental Health Department in November and December cited violations and areas of concern for ponding and inadequate grading of fill surfaces.

Bushy

Robert Busby Associate Engineering Geologist

## OSTROM ROAD LANDFILL SITE INSPECTION

## 8 January 2004



**EXHIBIT W PAGE 30 OF 69** 

## OSTROM ROAD LANDFILL SITE INSPECTION

## 8 January 2004

## RDB



EXHIBIT W PAGE 31 OF 69

## CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

INSPECTION REPORT

DISCHARGER: Norcal Waste Systems Ostrom Road Landfill, Inc.

LOCATION & COUNTY: Ostrom Road Landfill, Yuba County

CONTACT(S): Phill Graham

INSPECTION DATE: 16 January 2004

**INSPECTED BY:** Rob Busby

Approved:

ACCOMPANIED BY: Sam McNile, Bill Wood

#### OBSERVATIONS AND COMMENTS:

This site inspection was conducted as a follow-up to my 8 January 2004 inspection. Ponded stormwater was still present in a few areas on top of Cells 1A and 2A although significantly less than was observed on 8 January 2004. Available information indicate that no significant rainfall occurred since the 8 January 2004 inspection. Plastic waste was still present in and around the ponded areas. Two white plastic pipes were recently installed to drain ponded stormwater down to the northern stormwater drainage ditch. The area west of the winter disposal area has been recently graded to promote runoff to the west.

Leachate seeps were observed emanating from saturated soils at numerous locations along the northern edges of Cells 1A and 2A and into the northern stormwater ditch. Leachate was also observed seeping into the stormwater drainage ditch along the western side of Cell 1A. Surface water samples were collected from the following three locations in the stormwater drainage ditch as close to the leachate as possible: 1) Ten feet east of the culvert located due north of Piezometer PZ-13; 2) Nine feet north of Piezometer PZ-12 and 3) five feet north of the culvert located south of Monitoring Well MW-6. The samples were collected in the appropriate containers provided by the laboratory, labeled, placed in a cooler with ice and transported under chain-of-custody control to CLS Laboratory for the following analyses: Volatile organic compounds by EPA Method 8260B; Total dissolved solids by EPA Method 2540C and; chlorides by I.C. Method 300.

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Robert Busby Associate Engineering Geologist

## OSTROM ROAD LANDFILL, FOLLOW-UP SITE INSPECTION 16 January 2004

## RDB



## OSTROM ROAD LANDFILL, FOLLOW-UP SITE INSPECTION

16 January 2004



## OSTROM ROAD LANDFILL, FOLLOW-UP SITE INSPECTION

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16 January 2004

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## RDB



EXHIBIT W PAGE 35 OF 69

## CALIFORNIA LABORATORY SERVICES

3249 Fitzgerald Road Rancho Cordova, CA 95742

January 27, 2004

CLS Work Order #: CNA0513 COC #: 42803

31

Rob Busby CRWQCB - Sacramento 11020 Sun Center Drive, Ste. 200 Rancho Cordova, CA 95670-6114

Project Name: Ostrom L.F.

Enclosed are the results of analyses for samples received by the laboratory on 01/16/04 15:20. Samples were analyzed pursuant to client request utilizing EPA or other ELAP approved methodologies. I certify that the results are in compliance both technically and for completeness.

Analytical results are attached to this letter. Please call if we can provide additional assistance.

Sincerely,

James Liang, Ph.D. Laboratory Director

CA DOHS ELAP Accreditation/Registration number 1233

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EXHIBIT W PAGE 37 OF 69

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# CALIFORNIA LABORATORY SERVICES

01/27/04 13:26

CRWQCB - Sacramento 11020 Sun Center Drive, Ste. 200	Project: Ostrom L.F. Project Number: 3-040-150-0	CLS Work Order #: CNA0513
Rancho Cordova CA, 95670-6114	Project Manager: Rob Busby	COC #: 42803

## Conventional Chemistry Parameters by APHA/EPA Methods

Analyte	Result	Reporting Limit	Units	Dilution	Batch	Prepared	Analyzed	Method	Notes
SP-1 (CNA0513-01) Water	Sampled: 01/16/04 00:00	Received: 0	1/16/04	15:20				· ·	
Fluoride	0.11	0.10	mg/L	1	CN00389	01/16/04	01/18/04	EPA 300.0	
Chloride	59	2.5	*	5	н	**	<del>11</del> .	π	,
Nitrite as NO2	ND	0.50	n	-1	N	<b>H</b> ,	*	۳.	•
Bromide	0.29	0.10	*	•* .	· H	•	•	-	
Nitrate as NO3	0.73	0.50	· <b>n</b>	tł		*	*	° 🙀	•
Sulfate as SO4	16	0.50	-	۳.	n	Ħ	۳.	. *	
Orthophosphate as PO4	ND	0.15		#	CN00410	01/16/04	01/16/04	EPA 365.2	
Total Dissolved Solids	450	10	17	n	CN00481	01/20/04	01/20/04	EPA 160.1	
SP-2 (CNA0513-02) Water	Sampled: 01/16/04 00:00	Received: 0	1/16/04 1	5:20					
Fluoride	0.14	0.10	mg/L	1	CN00389	01/16/04	01/18/04	EPA 300.0	
Chloride	9.8	0.50	н	Ħ	*			<b>.</b>	
trite as NO2	ND	0.50	*	R	-			-	
Aomide	0.12	0.10				. *	×		
Nitrate as NO3	0.67	0.50	•			×	n		
Sulfate as SO4	27	0.50	, <del>H</del>	*	η.		-	¥ -	
Orthophosphate as PO4	ND	0.15	Ħ	*	CN00410	01/16/04	01/16/04	EPA.365.2	
Fotal Dissolved Solids	280	10		· •	CN00481	01/20/04	01/20/04	EPA 160.1	
SP-3 (CNA0513-03) Water	Sampled: 01/16/04 00:00	Received: 01	L/16/04 1	5:20					
Fluoride	0.29	0.10	mg/L	´ 1	CN00389	01/16/04	01/18/04	EPA 300.0	
Chloride	59	2.5		5	₩.		<b>.</b> .	•	
Nitrite as NO2	ND	0.50		· I		*1	*	*	
Bromide	0.42	0.10	Μ.	. *	*	, <b>n</b>	· #	· M	
Nitrate as NO3	0.85	0.50	*	*	Ħ	n	=	11	
Sulfate as SO4	65	2.5	π	5	Ħ	м	-	*	
Orthophosphate as PO4	0.19	0.15		- 1	CN00410	01/16/04	01/16/04	EPA 365.2	
Cotal Dissolved Solids	760	10	×	Ħ	CN00481	01/20/04	01/20/04	EPA 160.1	

CA DOHS ELAP Accreditation/Registration Number 1233

3249 Fitzgerald Road Rancho Cordova, CA 95742 www.californialab.com 916-638-7301 F

Fax: 916-638-4510

3%

**EXHIBIT W PAGE 38 OF 69** 

# CALIFORNIA LABORATORY SERVICES

01/27/04 13:26

CRWQCB - Sacramento	Project:	Ostrom L.F.	CLS Work Order #: CNA0513	ļ
11020 Sun Center Drive, Ste. 200	Project Number:	3-040-150-0	Carb Work Order A. C. Arbbird	l
Rancho Cordova CA, 95670-6114	Project Manager:	Rob Busby	COC #: 42803	İ

## Volatile Organic Compounds by EPA Method 8260B

Analyte	Result	Reporting Limit	Units	Dilution	Barch	Prepared	Analyzed	Method	Note
SP-1 (CNA0513-01) Water Si	ampled: 01/16/04 00:00	Received: 0	1/16/04	15:20					
Acetone	14	10	μg/L	1	CN00555	01/22/04	01/22/04	EPA 8260B	
Benzene	ND	0.50	*	Ħ		H	**	n	
Bromobenzene	ND	0.50	н	۲	*	*		**	
Bromochloromethane	ND	0.50	в	*	ŧ	`н	•1	· •	
Bromodichloromethane	ND	0.50	81	'n	. 4		6	*	
Bromoform	ND	0.50	N	77	*1	*	u .'	<b>*</b> .	
Bromomethane	ND	1.0	Ħ	H	Ħ		*	. <b>H</b>	
Butanone	ND	10		' • <b>H</b>	m	n	H	· #	
Burylbenzene	ND	0.50	n	*	Ħ	*			
sec-Butylbenzene	ND	0.50	#	*		. *	n	н.	
ert-Butylbenzene	ND	0.50		Ħ.	. #	n	π	*	
Carbon tetrachloride	. ND	0.50	er	. H <sup>r</sup>	8			•	
Chlorobenzene	ND	0.50	Ħ	- #	· #	<b>H</b> 1			•
Chloroethane	ND	0.50	м				•		
Chloroform	ND	0.50	Ħ	*	<b>.</b> .		*	· •	
Chloromethane	ND	1.0	"	Ħ		Ħ	Ħ	н	
-Chlorotoluene	ND	0.50		Ħ	n	н, ,	**	н	
~Chiorotoluene	ND	0.50		#	H		H	"	
Dibromochloromethene	ND	0.50	÷.	Ħ	- <b>- 11</b>		*		
,2-Dibromo-3-chloropropane	ND	1.0	•.	H		n	=		
,2-Dibromoethane (EDB)	ND	0.50	ŧ	Η.	*	n		*	
Dibromomethane	ND	0.50	Ħ	, w	*	ŧ	41	н .	
.2-Dichlorobenzene	ND	0.50	n	Ħ		20		Ħ	
,3-Dichlorobenzene	ND	0.50	\$1		н		+	<b>H</b> .	
.4-Dichlorobenzene	ND	0.50			н	11		•	·
Dichlorodifluoromethane (Freon		1.0	<b>'</b> H	н .	۲	÷		н .	
.1-Dichloroethane	ND	0.50	ŧ	n		•	*	<b>#</b> `	
.2-Dichloroethane	ND	0.50		Ħ	Ħ	*	', н	•	
"1-Dichloroethene	ND	0.50		•	<b>,</b> #	H	N	•	
is-1,2-Dichloroethene	ND	0.50	<b>1</b> 1	w	**	17	¢J	Ħ	
rans-1,2-Dichloroethene	ND	0.50		. 11	π	ĸ	я		
,2-Dichloropropane	ND	0.50.	н .		*	n <sup>.</sup>	ŧ	41	
,3-Dichloropropane	ND	0.50	н	*	a	11	n	er.	
,2-Dichloropropane	ND	0.50	Ħ	11		· •	"	H	
,1-Dichloropropene	ND	0.50	н	н	81	8	. #	ti	
is-1,3-Dichloropropene	ND	0.50	Ħ		· п	н .	۲۲,	H .	
rans-1,3-Dichloropropene	ND	0.50	H		н,		n	<b>et</b> -	
thylbenzene	ND	0.50	۳	н ,	n	4	*	н	
,1,2-Tricholoro-1,2,2-trifluoroet		0.50	*1	*	n	W.	*		
Freen 113)		0.20							

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## **EXHIBIT W PAGE 39 OF 69**

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# ) CALIFORNIA LABORATORY SERVICES

01/27/04 13:26

CRWQCB - Sacramento	Project: Ostrom L.F.		
11020 Sun Center Drive, Ste. 200	Project Number: 3-040-150-0	CLS Work Order #: CNA0513	
Rancho Cordova CA, 95670-6114	Project Manager: Rob Busby	COC #: 42803	

## Volatile Organic Compounds by EPA Method 8260B

									,
Analyte	Result	Reporting Limit	Units	Dilution	Batch	Prepared	Analyzed	Method	Notes
SP-1 (CNA0513-01) Water Sa	npled: 01/16/04 00:00	Received: 0	1/16/04 15	:20			· . *		
lexachlorobutadiene	ND	0.50	µg/L	1 .	CN00555	01/22/04	01/22/04	EPA 82608	3
-Hexanone	ND	10		N	N	H			
sopropylbenzene	ND	0.50	*		*				
-Isopropyltoluene	ND	0.50	۳.	W		*	•	•	
fethylene chloride	ND	0.50	•#	H		Ħ	· •	*	•
-Methyl-2-pentanone	ND	10	4	N	*	×			
iethyl tert-butyl ether	·· ND	0.50	· 11	R	. <b>N</b>		PI	. *	
aphthalene	ND	0.50	' "	H	N	"	."	Ħ	
Propylbenzene	ND	0.50	π		Ħ	×	Ħ	н.	
tyrene	ND	0.50		. 🕶	н	ŧ	π	#	
1,1,2-Tetrachloroethane	ND	0.50			۳	*1	r	*	
1,2,2-Tetrachloroethane	ND	0.50	×	· N	×		н	w	
trachioroethene	ND	0.50	#	+	· •	*	n		
luene	ND	0.50	H	<b>R</b>	*	• 11	*		
2,3-Trichlorobenzene	ND	0.50	н	-	` н	· .	*	<b>n</b> '	
2,4-Trichlorobenzene	ND	. 0.50	1 <b>m</b> .	*	н.,		₩.	н	
.1-Trichlorocthane	, ND	0.50		H	*	*			
,2-Trichloroothane	ND	0.50	#	-	<b>#</b> .	*		Г <del>н</del>	
ichloroethene	ND	0.50	Ħ		*		87	Ħ	
ichlorofluoromethane	ND	0.50	Ħ	i.	н	M	H	r	• `
2,3-Trichloropropane	ND	0.50			H	Ħ		۰.	
2,4-Trimethylbenzene	ND	0.50	*	Ħ	` <del>11</del>		*	•	
3.5-Trimethylbenzene	ND	0.50	×	*	π	. #	· <b>R</b>	, N	
nyl acetate	ND	0.50		M			*		
nyl chloride	ND	1.0				M	*7	н	
vienes (total)	ND	1.0			Ħ				
			<i>66</i> 73		H	· 	<i>n</i>	#	
rrogate: 1,2-Dichloroethane-d4	x	122 %	66-13		н Н			. " #.	
rrogate: Toluene-d8		97.3 %	72-12			~	-	, .	
rrogate: 4-Bromofluorobenzene		<del>9</del> 9.5 %	73-12		7	r		~	
-2 (CNA0513-02) Water San	pied: 01/16/04 00:00	Received: 01	/16/04 15::	20			.*		
etone	ND	10	μg/L		CN00555	01/22/04	01/22/04	EPA 8260B	
nzene	· ND	0.50		-14		4	n ,	H	•
mobenzene	ND	0.50	-	н		n	. н	Ħ	
omochloromethane	ND	0.50	."	"	<b>1</b> 1	ni i	ta ta	*	
omodichloromethane	ND	0.50	Ħ	•	n	*		Ħ	
omoform	ND	0.50	n	м	H	์ พ		"	
omomethane	ND	1.0	н	Ħ	11	n	22		
Butanone	ND	10	Ħ	*	Ħ	н	17	· •	
Butylbenzene	ND	0.50	<b>41</b> ,	, <del>H</del>	Ħ		п	n	
-					•				
			•						

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# CALIFORNIA LABORATORY SERVICES

CRWQCB - Sacramento		
	Project: Ostrom L.F.	
11020 Sun Center Drive, Ste. 200	Project Number: 3-040-150-0	CLS Work Order #: CNA0513
Rancho Cordova CA, 95670-6114	· · · · · · · · · · · · · · · · · · ·	
Amieno Coldova CA, 30070-0114	Project Manager: Rob Busby	COC #: 42803

## Volatile Organic Compounds by EPA Method 8260B

sec-Butylbenzene tert-Butylbenzene Carbon tetrachloride Chlorobenzene Chlorothane Chlorotoluene Ochlorotoluene Ochlorotoluene Obromochloromethane ,2-Dibromo-3-chloropropane ,2-Dibromoethane (EDB) Dibromomethane ,2-Dibromoethane (EDB) Dibromomethane ,2-Dichlorobenzene ,3-Dichlorobenzene ,4-Dichlorobenzene Dichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,2-Dichloroethane	ND ND ND ND ND ND ND	Received: 0 0.50 0.50 0.50 0.50 0.50	1/16/04 1 µg/L *	15:20	CN00555	01/22/04	01 (04/0 /		
ert-Butylbenzene Carbon tetrachloride Chlorobenzene Chlorotethane Chloroform Chlorotoluene Ochlorotoluene Obromochloromethane ,2-Dibromo-3-chloropropane ,2-Dibromoethane (EDB) Obromomethane ,2-Dibromoethane ,2-Dichlorobenzene ,3-Dichlorobenzene ,4-Dichlorobenzene Dichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,2-Dichloroethane	ND ND ND ND ND	0.50 0.50 0.50 0.50	H H	. 1 	CN00555	01/22/04	01/00/0/		
Carbon tetrachloride Chlorobenzene Chloroethane Chloroform Chloronethane Dibromochloromethane .2-Dibromo-3-chloropropane .2-Dibromoethane (EDB) Dibromomethane .2-Dichlorobenzene .3-Dichlorobenzene .4-Dichlorobenzene Dichlorodifluoromethane (Freon 12) .1-Dichloroethane .2-Dichloroethane .2-Dichloroethane .2-Dichloroethane .2-Dichloroethane	ND ND ND ND	0.50 0.50 0.50	H H	н			01/22/04	EPA 8260B	
Chlorobenzene Chloroethane Chloroform Chloromethane O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene (2-Dichlorotenzene O-Chlorotoluenzene O-Chlorotoluenzene O-Chlorotoluenzene O-Chlorotoluenzene O-Chlorotoluenzene O-Chlorotoluenzene O-Chlorotoluenzene O-Chlorotoluenzene O-Chlorotoluenzene (1-Dichlorotethane O-Chlorotoluenzene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene (1-Dichlorothane O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene O-Chlorotoluene (2-Dibromo-3-chloropropane (Fren 12) (1-Dichlorotoluene O-Chlorotoluene O-Chlorotoluene (Fren 12) (1-Dichlorotoluene O-Chlorotoluene (Fren 12) (1-Dichlorotoluene O-Chlorotoluene (Fren 12) (1-Dichlorotoluene (Fren 12) (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotoluene (1-Dichlorotolue	ND ND ND ND	0.50 0.50		•	n		*	*	
Chloroethane Chloroform Chloroform Chloronethane Chlorotoluene Dibromochloromethane .2-Dibromo-3-chloropropane .2-Dibromoethane (EDB) Dibromomethane .2-Dichlorobenzene .3-Dichlorobenzene .4-Dichlorobenzene Dichlorodifluoromethane (Freon 12) .1-Dichloroethane .2-Dichloroethane .2-Dichloroethane .2-Dichloroethane .1-Dichloroethane	ND ND ND	0.50		Μ.		n,		n	
Chloroform Chloronethane Chlorotoluene Chlorotoluene Dibromochloromethane .2-Dibromo-3-chloropropane .2-Dibromoethane (EDB) Dibromomethane .2-Dichlorobenzene .3-Dichlorobenzene .4-Dichlorobenzene Dichlorodifluoromethane (Freon 12) .1-Dichloroethane .2-Dichloroethane .1-Dichloroethane .1-Dichloroethane	ND ND			*	Ħ	H		н	
Chloromethane Chlorotoluene Chlorotoluene Dibromochloromethane ,2-Dibromo-3-chloropropane ,2-Dibromoethane (EDB) Dibromomethane ,2-Dichlorobenzene ,3-Dichlorobenzene ,4-Dichlorobenzene Dichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,2-Dichloroethane ,2-Dichloroethane ,1-Dichloroethane	ND		н .		ĸ	н	н.	, H	
Chlorotoluene Chlorotoluene Dibromochloromethane ,2-Dibromo-3-chloropropane ,2-Dibromoethane (EDB) Dibromomethane ,2-Dichlorobenzene ,3-Dichlorobenzene pichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,2-Dichloroethane ,1-Dichloroethane is-1,2-Dichloroethene		0.50	· #	Ħ	er .	Ħ	н		
Chlorotoluene Dibromochloromethane ,2-Dibromo-3-chloropropane ,2-Dibromoethane (EDB) Dibromomethane ,2-Dichlorobenzene ,3-Dichlorobenzene ,4-Dichlorobenzene Dichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,1-Dichloroethane s-1,2-Dichloroethene	200	1.0	*	Ħ	¢j	**			
Dibromochloromethane ,2-Dibromo-3-chloropropane ,2-Dibromoethane (EDB) Dibromomethane ,2-Dichlorobenzene ,3-Dichlorobenzene ,4-Dichlorobenzene Dichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,1-Dichloroethane s-1,2-Dichloroethene	ND .	0.50	14	Ħ	н	ж.,	*	Ħ	
,2-Dibromo-3-chloropropane ,2-Dibromoethane (EDB) Dibromomethane ,2-Dichlorobenzene ,3-Dichlorobenzene ,4-Dichlorobenzene Dichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,1-Dichloroethane s-1,2-Dichloroethene	ND	.0,50	Ħ	tr			н -	Ħ	
,2-Dibromoethane (EDB) Dibromomethane ,2-Dichlorobenzene ,3-Dichlorobenzene ,4-Dichlorobenzene Dichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,1-Dichloroethane is-1,2-Dichloroethane	ND	0.50		n	, и		H	п	
Dibromomethane ,2-Dichlorobenzene ,3-Dichlorobenzene ,4-Dichlorobenzene Dichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,1-Dichloroethane is-1,2-Dichloroethane	ND	1.0	×	н	u		H	#	
,2-Dichlorobenzene ,3-Dichlorobenzene ,4-Dichlorobenzene bichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,1-Dichloroethane s-1,2-Dichloroethane	ND	0.50	H	н '	*)	,			
,3-Dichlorobenzene ,4-Dichlorobenzene bichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,1-Dichloroethene s-1,2-Dichloroethene	ND ·	0.50	۲	*	. n	*			
,4-Dichlorobenzene bichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,1-Dichloroethene s=1,2-Dichloroethene	ND	0.50	. н		н	ж,			
ichlorodifluoromethane (Freon 12) ,1-Dichloroethane ,2-Dichloroethane ,1-Dichloroethene s-1,2-Dichloroethene	ND	0.50	н .			*			
ichlorodifluoromethane (Freon 12) 1-Dichloroethane 2-Dichloroethane 1-Dichloroethene s-1,2-Dichloroethene	ND	0.50	н	Ħ					
l-Dichloroethane 2-Dichloroethane 1-Dichloroethene s-1.2-Dichloroethene	ND	1.0	Ħ					-	
1-Dichloroethene s-1,2-Dichloroethene	ND	0.50	e	 N				-	
l-Dichloroethene s-1,2-Dichloroethene	ND	0.50	n	Ħ	π		-	-	
s-1,2-Dichloroethene	ND	0.50	н					"	
	ND	0.50	Ħ					*	•
ans-1,2-Dichloroethene	ND	0.50				<b>n</b>	*1	4	
2-Dichloropropane	ND				n V	14	e:		
3-Dichloropropane	ND	0.50 0.50		н т	0	2.19	<b>H</b> .	<b>n</b> .	
2-Dichloropropane	ND			*		n	н.	н.	
l-Dichloropropene		0.50			Ħ	FC .	H	**	•
-1,3-Dichloropropene	ND	0.50		Ħ	Ħ	#	Ħ	*	
ins-1,3-Dichloropropene	ND	0.50	Ħ	n	·#		н	*	
hylbenzene	ND	0.50	Ħ	*	H~	*	*	-	
1,2-Tricholoro-1,2,2-trifluoroethane	ND	0.50	n	n	н	n		67	
reon 113)	ND	0.50	H	'n	н	n	er .	Ħ	
xachlorobutadiene									
Hexanone	ND	0.50	n	81	41	H	*	n .	•
propylbenzene	ND	10	π	<b>*</b> ·	n	H	•	Ħ	
sopropyltoluene	ND	0.50	41	n	H	Ħ		н	
	ND	0.50		Ħ	<b>'</b> ₽	н.	۰. ۲	19	
thylene chloride	ND	0.50	H	н -	11	π	11	n	
Methyl-2-pentanone	ND	10	¥	н		. *	́н	**	* <b>.</b>
thyl tert-butyl ether	ND	0.50	Ħ	Ħ	H		**	11	
phthalene	ND	0.50	. "	17	n	H		н	•
ropylbenzene	ND	0.50	Ħ		n	n	47		

CA DOHS ELAP Accreditation/Registration Number 1233

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01/27/04 13:26

#### **EXHIBIT W PAGE 41 OF 69**

# CALIFORNIA LABORATORY SERVICES

CRWQCB - Sacramento		And the second	
CICHQUD - Sacialienio	Project:	Ostrom L.F.	
11020 Sun Center Drive, Ste. 200	Project Number:	3-040-150-0	CLS Work Order #: CNA0513
Rancho Cordova CA, 95670-6114	-		
Kalicilo Coldova CA, 93070-0114	Project Manager:	Rob Busby	COC #: 42803

## Volatile Organic Compounds by EPA Method 8260B

Analyte		csult	Reporting Limit	Units	Dilution	Batch	Prepared	Analyzed	Method	Not
P-2 (CNA0513-02) Water	Sampled: 01/16/04	00:00	Received: 0	1/16/04 1	5:20					
tyrene		ND	0.50	µg/L	1	CN00555	01/22/04	01/22/04	EPA 8260B	
,1,1,2-Tetrachloroethane		ND	0.50	-	в					
1,2,2-Tetrachloroethane		ND	0.50	44	M	H	۲	Ħ	· •	
etrachloroethene	•	ND	0.50	H	×	ĸ	*			
oluene		ND	0.50		H	*	#	п.	-	
2,3-Trichlorobenzene		ND	0.50	<b>#</b> '	ĸ	×		н,	·· ••	
2,4-Trichlorobenzene	•	ND	0.50	Ħ	Ħ	*	н	н,		
1,1-Trichloroethane		ND	0.50		н	×	Ħ	н		
1,2-Trichloroethane	•	ND	0.50	×	π	, <b>N</b>	*	*		
richloroethene		ND	0.50		Ħ					
richlorofluoromethane		ND	0.50	к		<b>'</b> #	*	*	•	
2,3-Trichloropropane		ND	0.50	*	<b>#</b> ·					
2,4-Trimethylbenzene		ND	0.50		¥	н				
3,5-Trimethylbenzene	· 1	ND	0.50				*	Ħ		
inyl acetate	. 1	ND	0.50	-14		*	M	R.		
inyl chloride		ND	1.0		n					
vienes (total)		ND ND	1.0	н.	H				-	۰.
rrogate: 1,2-Dichloroethan	ue-d4		120 %	66-13	25	*		13	#	
rrogate: Toluene-d8			98.3 %	72-12		*				
rrogate: 4-Bromofluoroben	zene		98.1 %	73-12				<b>.</b>	"	
2-3 (CNA0513-03) Water		10:00 ]				. •				
	•									
etone	ر	JD.				MOOSSS	01/77/04	01/72/04	TDA POCOD	
zetone znzene			10	μg/L	1 (	CN00555	01/22/04	01/22/04	EPA 8260B	
	<b>1</b> ,	Ð	10 0.50	µg/L		CN00555	01/22/04	01/22/04	.EPA 8260B	
enzene omobenzene	1. 1	1D 1D	10 0.50 0.50	μg/L	1 (	CN00555	01/22/04	*	.EPA 8260B	
nzene omobenzene omochloromethane	ת ת ת	10 10 10	10 0.50 0.50 0.50	μg/L	1 ( n n	н П Н	01/22/04	*	EPA 8260B	
nzene omobenzene omochloromethane omodichloromethane	ת ת ת ת		10 0.50 0.50 0.50 0.50	μg/L	1 (	ы 17 17	01/22/04 # #	*	.EPA 8260B	
nzene omobenzene omochloromethane omodichloromethane omoform	ת ת ת ת		10 0.50 0.50 0.50 0.50 0.50	μg/L	1 ( 17 11 11 11 11 11 11 11 11 11 11 11 11	н Н Н	н Н - Л Н	*	EPA 8260B	
nzene omobenzene omochloromethane omodichloromethane omoform omomethane	ת ת ת ת ת		10 0.50 0.50 0.50 0.50 0.50 1.0	μg/L	1 ( n n	9 17 28 14 14	01/22/04	*	EPA 8260B	
nzene omobenzene omochloromethane omodichloromethane omoform omomethane Butanone	ת ת ת ת ת ת ת		10 0.50 0.50 0.50 0.50 0.50 1.0 10	μg/L * * *	1 ( 17 18 19 19 19 19 19 19	17 17 17 17 17 17 17 17 17 17 17 17 17 1	99 57 11 12 14 14 14 14	*	EPA 8260B	
nzene ornobenzene ornochloromethane ornodichloromethane ornoform omomethane Butanone Butanone	ת ת ת ת ת ת ת ת ת ת ת		10 0.50 0.50 0.50 0.50 0.50 1.0 10 0.50	μg/L. 	1 ( 17 18 19 19 19 19 19 19 19 19 19	н н н н	99 57 57 67 69 69 69 60 60 60 60 60 60 60 60 60 60 60 60 60	*	EPA 8260B	
nzène omobenzene omochloromethane omodichloromethane omoform omomethane Butznone Butzylbenzene -Butylbenzene	ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת		10 0.50 0.50 0.50 0.50 1.0 10 0.50 0.50	μg/L.	1 ( 17 18 19 19 19 19 19 19	위 위 원 원 위 위 기 기	44 14 14 14 14 14 15 15 11	*	EPA 8260B	
Inzène ornobenzene ornochloromethane ornodichloromethane ornoform omomethane Butzylbenzene I-Butylbenzene I-Butylbenzene I-Butylbenzene	r r n N N N N N N N		10 0.50 0.50 0.50 0.50 1.0 10 0.50 0.50	μg/L.		स १२ २३ २३ २१ १७ ११	99 57 57 67 69 69 69 60 60 60 60 60 60 60 60 60 60 60 60 60	*	EPA 8260B	
Inzene ornobenzene ornochloromethane ornodichloromethane ornoform omomethane Butznone Butzlbenzene I-Butylbenzene t-Butylbenzene t-Butylbenzene toon tetrachloride	r r n N N N N N N N N N N		10 0.50 0.50 0.50 0.50 1.0 10 0.50 0.50	118/L * * * *	1 ( 17 18 19 19 19 19 19 19 19 19 19 19 19 19 19	9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9	44 14 14 14 14 14 14 14 14 14 14 14 14 1	*	EPA 8260B	
Inzene ornobenzene ornochloromethane ornodichloromethane ornoform omomethane Butylbenzene Butylbenzene t-Butylbenzene t-Butylbenzene toon tetrachloride lorobenzene	r r n N N N N N N N N N N N N N N		10 0.50 0.50 0.50 0.50 1.0 10 0.50 0.50	118/L * * * * *	1 ( 17 18 19 19 19 19 19 19 19 19 19 19 19 19 19	н 11 14 14 14 14 14 14 14 14 14 14 14 14	44 14 14 14 14 14 15 15 11	*	EPA 8260B	
Inzene ornobenzene ornochloromethane ornodichloromethane ornoform ornomethane Butylbenzene Butylbenzene t-Butylbenzene t-Butylbenzene toon tetrachloride lorobenzene lorobenzene	r r r n N N N N N N N N N N N N N N N N		10 0.50 0.50 0.50 0.50 1.0 10 0.50 0.50	118/L * * * * * * *	I ( 	и 11 14 14 14 14 14 14 14 14 14 14 14 14	44 14 14 14 14 14 14 14 14 14 14 14 14 1	*	EPA 8260B	
Inzene ornobenzene ornochloromethane ornodichloromethane ornoform omomethane Butylbenzene Butylbenzene t-Butylbenzene t-Butylbenzene toon tetrachloride lorobenzene lorobenzene loroform	ר ר ר ר ר ר ר ר ר ר ר ר ר ר ר ר ר ר ר		10 0.50 0.50 0.50 0.50 1.0 10 0.50 0.50	118/L * * * * * * *	1 ( 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	44 14 14 14 14 14 14 14 14 14 14 14 14 1	*	EPA 8260B	
Inzène ornobenzene ornochloromethane ornodichloromethane ornoform ornomethane Butylbenzene Butylbenzene Butylbenzene Butylbenzene toon tetrachloride lorobenzene lorobenzene loroform oromethane	ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת		10 0.50 0.50 0.50 0.50 1.0 10 0.50 0.50	118/L * * * * * * *	1 ( 	4 4 5 4 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7	44 14 14 14 14 14 14 14 14 14 14 14 14 1	*	EPA 8260B	
Inzene ornobenzene ornochloromethane ornodichloromethane ornodichloromethane ornomethane Butylbenzene Butylbenzene Butylbenzene Butylbenzene chorobenzene borobenzene borobenzene borotetnane boroform boromethane chlorotoluene	, , , , , , , , , , , , , , , , , , , ,		10 0.50 0.50 0.50 0.50 1.0 10 0.50 0.50	118/L * * * * * * * *	1 ( 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4		*	EPA 8260B	
Inzène ornobenzene ornochloromethane ornodichloromethane ornoform ornomethane Butylbenzene Butylbenzene Butylbenzene Butylbenzene toon tetrachloride lorobenzene lorobenzene loroform oromethane	ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת ת		10 0.50 0.50 0.50 0.50 1.0 10 0.50 0.50	118/L * * * * * * *	1 ( 	4 4 5 4 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7		*	EPA 8260B	· · · · · · · · · · · · · · · · · · ·

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## **EXHIBIT W PAGE 42 OF 69**

# CALIFORNIA LABORATORY SERVICES

CRWQCB - Sacramento 11020 Sun Center Drive, Ste. 200 Rancho Cordova CA, 95670-6114 Project: Ostrom L.F. Project Number: 3-040-150-0 Project Manager: Rob Busby

CLS Work Order #: CNA0513 COC #: 42803

.01/27/04 13:26

## Volatile Organic Compounds by EPA Method 8260B

Analyte .	Result	Reporting Limit	Units	Dilution	Batch	Prepared	Analyzed	Method	Notes
· · ·					Datch	riepareu	Analyzou	MEDIOD	Notes
	: 01/16/04 00:00					·			
Dibromochloromethane	ND	0.50	µg/L	1	CN00555	01/22/04	01/22/04	EPA 8260B	
,2-Dibromo-3-chloropropane	ND	1.0	Ħ	*		M		*	
,2-Dibromoethane (EDB)	ND	0.50	*	M	н	۳		н	
Dibromomethane	ND	0.50			tri	M	۳.	к	
,2-Dichlorobenzene	ND	0.50	Ħ		<b>.</b> .	H	*	"	•
,3-Dichlorobenzene	ND	0.50	Ħ	н	۳.	78	*	n .	
,4-Dichlorobenzene	ND	0.50	×	*	м	•	41	· • .	
Dichlorodifluoromethane (Freon 12)	ND	1.0	*1	*		π	+		
,1-Dichloroethane	0.58	0.50	*	Ħ	, H,	*	T	<b>"</b>	
,2-Dichloroethane	ND	0.50		7	n	•	<b>n</b> '	n	
,1-Dichloroethene	·ND	0.50	. ж	Ħ	H	*		. 🗰	
ss-1,2-Dichlorosthene	ND	0.50	н			*			
rans-1,2-Dichloroethene	ND	0.50	H		*		×	*	
,2-Dichloropropane	ND	0.50	. *	· B	n		•		
,3-Dichloropropane	ND	0.50	н '		Ħ	Ħ		7	· . ·
,2-Dichloropropane	ND	0.50	π	Ħ	π	Ħ	**		
,l-Dichloropropene	ND	0.50		*	ħ	Ħ	#	et	
is-1,3-Dichloropropene	ND	0.50	H	*			*	· •	
ans-1,3-Dichloropropene	ND ·	0.50	Ħ	*		41	*	*	
thylbenzene	ND	0.50		π.	<b>H</b> ,	W		<b>#</b> `	
,1,2-Tricholoro-1,2,2-trifluoroethane	ND	0.50		н	×	n	u	π.	
Freon 113)						,			
lexachlorobutadiene	ND .	0.50	n	н	=		3 <b>N</b>	H	
-Hexanone	ND	10	e c		в	Ħ	*		
opropylbenzene	ND	0.50	Ħ		н	Η.			
-Isopropyltoluene	ND	0.50	ж	*	-	H.	*	-	
fethylene chloride	ND	0.50	н '	Ħ	Ħ			· #	
Methyl-2-pentanone	ND	10	Ħ	*	*	Ħ		×	
letbyl tert-butyl ether	0.89	0.50	۹	n		W	11		
aphthalene	ND	0.50		н.		17	**	n	
Propylbenzene	ND	0.50	a	n	н.	m	n	п	
tyrene	ND	0.50	n		π			м	
1.1.2-Tetrachloroethane	ND	0.50	Ħ			p	. 11		
1,2,2-Tetrachloroethane	ND	0.50	n	*	H		н	· "	
etrachloroethene	ND	0.50	Ħ	n	n	15	в.,	-	
oluene	ND	0.50	17	, H	м		*	H	
2.3-Trichlorobenzene	ND	0.50		H / .	. <b>W</b>		ri		
2,4-Trichlorobenzene	ND	0.50			м	Ħ	41	m ·	,
1,1-Trichloroethane	ND	0.50		n	Ħ		 N		
1,2-Trichloroethane	ND	0.50					-	-	•

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## **EXHIBIT W PAGE 43 OF 69**

# CALIFORNIA LABORATORY SERVICES

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11020 Sun Center Drive, Ste. 200 Project Number: 3-040-150-0 CLS Work Order #: CNA0513		Intile Organia Compounds by EDA Mother	COC #: 42803	
(TS Work Order #: CNA8513	Rancho Cordova CA, 95670-6114	Project Manager: Rob Busby	000 # 10000	1
	11020 Sun Center Drive, Ste. 200	Project Number: 3-040-150-0	CLS Work Order #: CNA0513	
CRWOCB - Sacramento Detrom LE	CRWQCB - Sacramento	Project: Ostrom L.F.		7

## Volatile Organic Compounds by EPA Method 8260B

Analyze	Result	Reporting Limit	Units	Dilution	Batch	Prepared	Analyzed	Method	•	Notes
SP-3 (CNA0513-03) Water S	ampled: 01/16/04 00:00	Received: 0	1/16/04 15:	20			······································			
Trichloroethene	ND	0.50	μg/L	I	CN00555	01/22/04	01/22/04	EPA 8260B		
Trichlorofluoromethane	ND	0.50	Ħ	H	H	es 1		*		
1,2,3-Trichloropropane	ND	0.50		*	H			*		
1,2,4-Trimethylbenzene	ND	0.50	<b>~</b> #	n	×	*	**	Ħ		
1,3,5-Trimethylbenzene	ND	0.50	H	n	н	Ħ		*		
Vinyl acetate	ND	0.50	• ·	*	Ħ	17	н,			
Vinyl chloride	ND	1.0	*		H					
Xylenes (total)	ND	1.0		*	× .	N.		*		
Surrogate: 1,2-Dichloroethane-c	14	142 %	66-13:	5	Ħ	H	#	н.		S-GC
Surrogate: Toluene-d8		97.1 %	72-12:	5	*	"	*			
Surrogate: 4-Bromofluorobenzei	ne .	97.4 %	73-12	5	*		<i>"</i>	<b>#</b> .	·	

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# CALIFORNIA LABORATORY SERVICES

01/27/04 13:26

CRWQCB - Sacramento	Project: Ostrom L.F.	CLS Work Order #: CNA0513
11020 Sun Center Drive, Ste. 200	Project Number: 3-040-150-0	· · · ·
Rancho Cordova CA, 95670-6114	Project Manager: Rob Busby	COC #: 42803

Conventional Chemistry Parameters by APHA/EPA Methods - Quality Control

Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch CN00389 - General Prep	. ;	× ·				•				
Blank (CN00389-BLK1)				Prepared:	01/16/04	Analyzed	±: 01/17/04	ŀ		
Fluoride	ND	0.10	mg/L							
Chloride	ND	0.50	"	•						
Nitrite as NO2	'ND	0.50	•							
Bromide	ND	0.10	. н					• .		
Nitrate as NO3	NĎ	0.50	*					•		
Sulfate as SO4	ND ·	0.50	'n							
LCS (CN00389-BS1)	•			Prepared:	01/16/04	Analyzed	1: 01/17/04	ļ		
Fluoride	2.21	0.10	mg/L	2.00		110	80-120			
Chloride	1.95	0.50	н.	2.00		97.5	80-120			
Nitrite as NO2	1.96	0.50	۳.	2.00		98.0	80-120			
Bromide	1.94	0.10		2.00		97.0	80-120			
Nitrate as NO3	2.15	0.50	R.	2.00		108	80-120			
Sulfate as SO4	4.76	0.50	•	5.00		95.2	80-120			
LCS Dup (CN00389-BSD1)	`			Prepared:	01/16/04	Analyzed	l: 01/17/04			
Fluoride	2.20	0.10	mg/L	2.00		110	80-120	0.454	25	
Chloride	1.96	0.50	n	2.00	. /	98.0	80-120	0.512	25	
Nitrite as NO2	1.94	0.50	*	2.00		97.0	80-120	1.03	25	
Bromide	1.95	0.10	н	2.00		97.5	80-120	0.514	25	
Nitrate as NO3	2.13	0.50	×	2.00		106	80-120	0.935	25	• .
Sulfare as SO4	4.76	0.50	а	5.00	.,	95.2	80-120	0.00	25	
Matrix Spike (CN00389-MS1)	Sou	rce: CNA04	89-01	Prepared:			: 01/17/04			
Fluoride	2.34	0.10	mg/L	2.00	0.17	108	75-125			
Chloride .	7.39	0.50	۲	2.00	5.7	84.5	75-125			
Nitrite as NO2	1.95	0.50		2.00	ND ·	97.5	75-125			
Bromide	1.96	0.10	н	2.00	0.091	93.4	75-125			
Nitrate as NO3	6,97	0.50	"	2.00	5.4	78.5	75-125			
Sulfate as SO4	18.3	0.50	R	5.00	14	86.0	75-125		· .	

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# ) CALIFORNIA LABORATORY SERVICES

CRWQCB - Sacramento 11020 Sun Center Drive, Ste. 200		Project l	Project: Number:	Ostrom 1 3-040-150-	-0 ,	(	CLS Wort	k Order #	CNA05	13
Rancho Cordova CA, 95670-6114		Project N	lanager:	Rob Busby	/		COC #: 4	2803		
Conventional C	hemistry ]	Parameter	s by A	PHA/EI	A Met	hods - (	Quality	Contro	ol	•
, Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
atch CN00389 - General Prep	•		•		•					
Antrix Spike Dup (CN00389-MSD1)	So	urce: CNA04	89-01	Prepared:	01/16/04	Analyzed	1: 01/17/04	<b>.</b> .	•	
Juoride	2.37	0.10	mg/L_	2.00	0.17	110	75-125	1.27	30	
Thlarida	7.48	0.50	×	2.00	5.7	89.0	75-125	1.21	30	
itrite as NO2	1.97	0.50	.*	2.00	ND	98.5	75-125	1.02	30	
romide	1.99	0.10	Π.	2.00	0.091	95.0	75-125	1.52	30	
itrate as NO3	7.00	0.50	۳	2.00	5.4	80.0	75-125	0.429	30	
ulfate as SO4	18.3	0.50	•	.5.00	14	86.0	75-125	0.00	-30	
Batch CN00410 - General Preparatio	n									
Blank (CN00410-BLKI)				Prepared	& Analyze	:d: 01/16/	04			
vitophosphate as PO4	ND	0.15	mg/L				,			
) (CS (CN00410-BS1)				Prepared	& Analyze	d: 01/16/	04			
rthophosphate as PO4	0.950	0.15	mg/L	0.918		103	80-120			
CS Dup (CN00410-BSD1)	. • •			Prepared	& Analyze	:d: 01/16/	04			
rthophosphate as PO4	0.895	0.15	mg/L	0.918		97.5	80-120	5.96	20	
latch CN00481 - General Preparatio	ut .	·								
				Prepared	& Analyze	:d: 01/20/	04			
Blank (CN00481-BLK1)										

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# CALIFORNIA LABORATORY SERVICES

CRWQCB - Sacramento	Project: Ostrom L.F.	
11020 Sun Center Drive, Ste. 200	Project Number: 3-040-150-0	CLS Work Order #: CNA0513
Rancho Cordova CA, 95670-6114	Project Manager: Rob Busby	COC #: 42803

## Volatile Organic Compounds by EPA Method 8260B - Quality Control

Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC	%RBC Limits	RPD	RPD Limit	Notes
Batch CN00555 - EPA 5030 Water	MS					•				
Blank (CN00555-BLK1)				Prepared	& Analyza	ed: 01/22/0	)4			
Acetone	ND	10	µg/L							
Benzene	ND	0.50	*							
Bromobenzene	. ND	0.50	*					•	•	
romochloromethane	ND	0.50	R					•		
bromodichloromethane	ND	0.50	Ħ			·	•	-		•
humoform	ND	0.50	Ħ							
romomethane	ND	1.0	77	•					•	
-Butanone	ND	10	11							
Butylbenzene	ND	0.50	17							
c-Butylbenzene	. ND	0.50	н	• •						
nt-ButyIbenzene	ND	0.50								
arbon tetrachloride	ND	0.50								
hlorobenzene	ND	0.50	н,							
hloroethane	ND	0.50	#			•				
hioroform	ND	0.50	×			• .				. ·
hloromethane	ND	1.0	π				۰.			
Chlorotoluene	ND	0.50	н							
Chlorotoluene	ND	0.50		•						
ibromochloromethane	ND	0.50	н		•					
2-Dibromo-3-chloropropane	ND	1.0	*				•			
2-Dibromoethane (EDB)	ND	0.50	n			•	•			
bromomethane	ND	0.50								
2-Dichlorobenzene	ND	0.50					• •			
3-Dichlorobenzene	ND	0.50 0.50					,			
4-Dichlorobenzene	ND	0.50			•					
chlorodifluoromethane (Freon 12)	' ND	1.0			•.					
-Dichloroethane	ND	0.50	*							
2-Dichloroethane	ND	0.50	. <del>п</del>							
-Dichloroethene	ND	0.50								
-1,2-Dichlorosthene	ND	0.50								
ns-1,2-Dichloroethene	ND	0.50	n							
-Dichloropropane			" T					•		
-Dichloropropane	ND	0.50								
-Dichloropropane	ND	0.50	**							
-Dichloropropene	ND ND	0.50					1			<u>^</u>

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# ) CALIFORNIA LABORATORY SERVICES

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CRWQCB - Sacramento	Project: Ostrorn L.F.	CLS Work Order #: CNA0513
11020 Sun Center Drive, Ste. 200	Project Number: 3-040-150-0	
Rancho Cordova CA, 95670-6114	Project Manager: Rob Busby	COC #: 42803

### Volatile Organic Compounds by EPA Method 8260B - Quality Control

				,						
Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC	%REC Limits	rpd	RPD Limit	Notes
	· · · · · · · · · · · · · · · · · · ·									

#### Batch CN00555 - EPA 5030 Water MS

Blank (CN00555-BLK1)				Prepared	& Analyza	ed: 01/22	/04			
cis-1,3-Dichloropropene	ND	0.50	µg/L							
trans-1,3-Dichloropropene	ND	0.50								
Ethylbenzene	ND	0.50	Ħ							
1,1,2-Tricholoro-1,2,2-trifluorosthane	ND	0.50	۳							
(Freon 113)	***	. 0.60			•			•		
Hexachlorobutadiene	ND . ND	0.50						•		
2-Hexanone		10 0.50			•	•				
IsopropyIbenzene	ND			•				•		
p-Isopropyltoluene	ND	0.50	N							•
Acthylene chloride	ND	0.50		•	• .					
ethyl-2-pentanone	ND	10								
Methyl tert-butyl ether	ND	0.50		•						
Naphthalene	ND	0.50		•				,		
n-PropyIbenzene	ND	0.50						,		
Styrene	ND	0.50				· .				
1,1,1,2-Tetrachioroethane	ND	0.50	 X					•		
1,1,2,2-Tetrachloroethane	ND	0.50							•	
Tetrachioroethene	ND	0.50	-							
Toluene	ND	0.50	-					1. 1. C	·	•
1,2,3-Trichlurobenzene	ND	0.50	-					۰.		
1,2,4-Trichlorobenzene	ND	0.50	-	•	•					
1,1,1-Trichloroethane	ND	0.50	-							
1,1,2-Trichloroethane	ND	0.50								
Trickloroethene	ND	0.50								
Trichlorofluoromethane	ND	0.50						۰.		
1,2,3-Trichloropropane	ND	0.50								
1,2,4-Trimethylbenzene	ND	0.50	1)			. •				
1,3,5-Trimethylbenzene	ND	0.50		•						
Vinyl acetate	ND	0.50	#							-
Vinyl chloride	ND	1.0						•		
Xylenes (total)	ND	. 1.0	۳.				•			
Surrogate: 1,2-Dichloroethane-d4	10.8			10.0		108	66-135			
Surrogate: Toluene-d8	9.71		۲	10.0		.97.1	72-125			
Surrogale: 4-Bromofluorabenzene	9.68		#	10.0		96.8	73-125			

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Fax: 916-638-4510

**EXHIBIT W PAGE 48 OF 69** 

# CALIFORNIA LABORATORY SERVICES

#### 01/27/04 13:26

CRWQCB - Sacramento 11020 Sun Center Drive, Stc. 200	Project: Ostrom L.F. Project Number: 3-040-150-0	CLS Work Order #: CNA0513
	Project Manager: Rob Busby	COC #: 42803

## Volatile Organic Compounds by EPA Method 8260B - Quality Control

Analyte	Result	Reporting Limit	Units	Spike Level	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch CN00555 - EPA 5030 Water MS	,									
LCS (CN00555-BS1)	,	,		Prepared	& Analyze	d: 01/22/	04	•	•	
Benzene	20.3	0.50	µg/L	20.0		102	60-135			
Chlorobenzene	20.9	0.50	*	20.0		104	60-133			
1,1-Dichloroethene	20.6	0.50	*	20.0		103	42-150			,
Foluene	20.6	0.50	*	20.0		103	60-137			
Trichloroethene	22.6	0.50		20.0		113	62-140	•		
Surrogate: 1,2-Dichloroethane-d4	10.3		π	10.0		103	66-135			
Surrogate: Toluene-d8	9.96	• •	*	10.0		99.6	72-125			
Surrogate: 4-Bromofluorobenzene	10.0		H	10.0		100	73-125			
LCS Dup (CN00555-BSD1)				Prepared a	& Analyze	d: 01/22/0	)4			
Benzene	18.4	0.50	µg/L	20.0		92.0	60-135	9.82	25	
Chlorobenzene	19.4	0.50	*	20.0		97.0	60-133	7.44	25	
, I-Dichloroethene	19.1	0.50		.20.0		95.5	42-150	7.56	25	
Foluene	18.7	0.50	۳.	20.0		93.5	60-137	9.67	25	
frichloroethene	20.5	0.50	۳	20.0	•	102	62-140	9.74	25	
Surrogale: 1,2-Dichloroethane-d4	10,4	· · · · ·	,	10.0		104	66-135			
Surrogate: Toluene-d8	9.91		. 17	10.0		99.1	72-125	,		
Surrogate: 4-Bromofluorobenzene	9,90		N	10.0		99.0	73-125			

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3249 Fitzgerald Road Rancho Cordova, CA 95742 www.californialab.com 916-638-7301 Fa

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Fax: 916-638-4510

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# California Laboratory Services

01/27/04	13:26	
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CRWQCB - Sacramento 11020 Sun Center Drive, Ste. 200	Project: Ostrom L.F. Project Number: 3-040-150-0	CLS Work Order #: CNA0513		
Rancho Cordova CA, 95670-6114	Project Manager: Rob Busby	 COC #: 42803		

#### Notes and Definitions

- S-GC Surrogate recovery outside of control limits. The data was accepted based on valid recovery of the remaining surrogates.
- DET Analyte DETECTED
- ND Analyte NOT DETECTED at or above the reporting limit
- NR. Not Reported
- dry Sample results reported on a dry weight basis
- RPD Relative Percent Difference
5307438649 NWS OSTROM RD LENDEI

PAGE 04/04

FEATHE	ER RIVER	
AIR QUALITY MANA		RIGT
man fine Comfig	e of Yuha and Sillier	
38 14 <sup>th</sup> Street, Marysville, CA 95901 (530) 6	34-7659 (FAX 634-7660) Bum Im	0 /4190/85
NOTICE OF VIOLA	TION # 15-05-12-2	
Date_17/26/05	Time10:0(; )	am PM
Veme_Phil Grahme	The Environmenta	l Comp.
Address 5900 Ostron Road, Wheat	lani, CA 95692	
Address		
Facility Norcal Waste Systems Ost	rom Road Landrill	
Loostion 5900 Ostron Poad, Wineat	land	A STATES
*************	Carl all and an one all the Advent areas and an and a second second second second second second second second s	
You are hereby notified that you are in vio	plation of Section(s):	
Health and Safety Code 42400 et se	30] <u>.</u>	
FRAQMD Rules and Regulations_4_5	5 Conditional Approval	
PRAUNID Rules and (us		
Description Failure to conduct re	CULTER WOLWARD AND THE	
emission observations using H	PA Method 22 between A	
2004 and May 2005 as per Perm		
	· · ·	
*****		*******
******	e subject to civil or criminal penal	ties, Each

Tille

Title

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Signing is not an admission of guilt

71812

David A. Valler Jr. Air Pullution Control Officer

L: data, admin, for

51

Received By **Issued By** 



938 14<sup>th</sup> Street Marysville, CA 95901 (530) 634-7659 FAX (530) 634-7660 www.fraqmd.org

57

David A. Valler, Jr. Air Poliution Control Officer

Serving Sutter and Yube Counties

December 1, 2005

Mr. Phil Graham, Environmental Compliance Manager Norcal Waste Systems Ostrom Road Landfill 5900 Ostrom Road Wheatland, CA 95962

RE: NOTICE OF VIOLATION #KS-05-12-Y AND SETTLEMENT OFFER #KS 05-12

Dear Mr. Graham,

Enclosed please find "Settlement Agreement and Release KS 05-12" for the alleged violation(s) against Norcal Waste Systems Ostrom Road Landfill as noted on Notice of Violation #KS-05-12-Y. Please sign the Agreement/Release and return it by December 15, 2005. Please return a \$1,500.00 check payable to the Feather River Air Quality Management District by January 2, 2006 and follow the requirements of the attached Settlement Agreement and Release.

This agreement was discussed in a settlement meeting with the District, Pat Sullivan, Brian Clarkson, and yourself to discuss the alleged violation(s) and settlement offer on December 1, 2005. If you fail to meet the conditions of the settlement agreement we will assume you are not interested in resolving this matter as outlined in this settlement agreement, and we will refer the matter to our legal staff for further action.

Sincerely,

David A. Valler, Jr. Air Pollution Control Officer

DAV/ks

Enclosure(s)

KS 05-12 Norcal Waste Systems Ostrom Road Landfill.doc



California Regional Water Quality Control Board

Central Coast Region

Internet Address: http://www.waterboards.ca.gov/centralcoast 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906 Phone (805) 549-3147 - FAX (805) 543-0397



Arnold Schwarzenegger Governor

#### February 28, 2005

#### CERTIFIED MAIL 7004 0750 0001 8314 9063

Mr. Don Gambelin Norcal Waste Systems, Inc. 160 Pacific Avenue, Suite 200 San Francisco, CA 94111-1968

Dear Mr. Don Gambelin:

# NOTICE OF VIOLATION FOR THE PACHECO PASS CLASS III AND INERT WASTE LANDFILL, GILROY, CALIFORNIA.

This Notice of Violation is issued for failure to report a leachate seep that occurred on January 27, 2005 at the Pacheco Pass Class III and Inert Waste Landfill in Gilroy, California. Regional Board Staff determined that a leachate seep had occurred by reviewing a Disposal Site Inspection Report submitted by the Santa Clara County Department of Environomental Health dated January 31, 2005. Leachate was reported to be leaking out of the fill slopes located between gas wells C-6 and C-7. Board Staff was not notified of the leachate seep as required by Provision 11 of the Waste Discharge Requirements (WDR) Order No. R3-2004-0111 and Reporting Section C.1. of the Monitoring and Reporting Requirements (MRP) Order No. R3-2004-0111.

Please submit a written report to this office within seven days of the date of this letter. This written report should contain at least the following information:

- A map showing the location(s) of seepage;
- An estimate of the flow rate for each seep;
- A description of the nature of the discharge (e.g., pertinent observations and analyses); and
- A summary of corrective measures taken and a description and time schedule for actions proposed. Corrective action should include a discussion of a training program that will be implemented to ensure that all reporting requirements will be met in the future.

If you have questions regarding this Notice of Violation, please call Thea Tryon at (805) 542-2776 or John Robertson at (805) 542-4630.

Sincerely,

cc

Roger W. Briggs Executive Officer

S:/Land Disposal/Land Disposal Facilities/Permitted Sites/Pacheco Pass/Letters/NOV 021505

Norcal Waste Systems, Inc. Mr. Paul Sherman 160 Pacific Avenue, Suite 200 San Francisco, CA 94111-1968

California Environmental Protection Agency

Recycled Paper

### EXHIBIT W PAGE 53 OF 69

California Regional Water Quality Control Board Alan C. Llovd, Ph.D. Agency Secretary

Interne Address: http://www.waterboards.ca.gov/centralcoast 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906 Phone (805) 549-3147 - FAX (805) 543-0397

**Central Coast Region** 

Actachment B Compliance Records



Arnold Schwarzenegg Governor

March 22, 2006

Mr. Bryan Clarkson Environmental Compliance Manager 235 N. First Street Dixon, CA 95620-3027

Dear Mr. Clarkson:

## NOTICE OF VIOLATION FOR THE PACHECO PASS CLASS III AND INERT WASTE LANDFILL, GILROY, CALIFORNIA

This Notice of Violation is for inadequate capacity in your precipitation and drainage control systems during the winter storms preceding December 21, 2005. Specifications C.23 and C.24 of your Waste Discharge Requirements Order No. R3-2004-0111 for the Pacheco Pass Landfill, require design, construction, and management of drainage facilities to accommodate 100 year, 24 hour rainstorm events.

Regional Water Board staff noted during an inspection on December 21, 2005 (several pictures are attached) that discharge of water was occurring from your northwest sedimentation pond. Although clean storm water may be discharged in a controlled manner, the discharge water had a greenish brown tint common to water impacted by green waste. Food waste impacted water was also observed entering drainageways from composting rows. The organic load impacted by the food waste did not appear to impact the final discharge, which may not be the case during higher flows. It was also noted that an unsorted green waste compost row was placed on the east edge of the compost pad; runoff from this row appears to go offsite to the east with no further controls or monitoring. Your staff indicated that this unsorted compost row would be moved away from the east edge of the compost pad to a location where runoff would go west towards site drainageways and controls. Regional Water Board staff also noted you were in the process of constructing improvements to the compost pad to reduce the potential for food waste impacted water to impact storm water runoff. The Regional Water Board is supportive of all appropriately designed efforts to minimize impacts to stormwater.

Please submit a written report by April 28, 2006, containing, at a minimum, the following information:

- 1. Calculated drainage flows resulting from 100 year, 24 hour storm.
- 2. An evaluation of and proposal for drainage control system improvements to comply with 100 year, 24-hour design requirements. Include improvements to allow for appropriate management of structures to ensure capacity is maintained throughout the rainy season.

California Environmental Protection Agency

**Recycled** Paper

### **EXHIBIT W PAGE 54 OF 69**

Mr. Bryan Clarkson Actachment B Compliance Records

March 22, 2006

- 3. An evaluation and a proposal for improvements, if necessary, to your surface/storm water-monitoring program.
- 4. Design plans of current/planned compost pad drainage improvements with evaluation of expected flows specific to the compost pad. Proposed improvements, if necessary, to compost pad drainage facilities.
- 5. Verify and document that all compost rows and landfill areas drain through engineered drainage control systems that include clear monitoring points.

The report is requested pursuant to section 13267 of the California Water Code and is required to ensure compliance is maintained with your Waste Discharge Requirements. Failure to submit the above requested information will likely result in formal enforcement action. Enforcement action could include administrative civil liabilities up to one thousand dollars for each day of violation. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with section 13320 of the California Water Code and Title 23, California code of Regulations, Section 2050. The petition must be received by the State Board within 30 days of the date of this order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

If you have questions regarding the inspection discussed above please call <u>Martin Fletcher at</u> (805) 549-3694, any questions related to this NOV or other Regional Water Board regulatory oversight should be directed to <u>Dan Niles at (805) 549-3355</u>.

Sincerely avour, goby

Roger W. Briggs Executive Officer

MAF: S:\Land Disposal\Land Disposal Facilities\PERMITTED SITES\Pacheco Pass\LETTERS\NOV, March-2006.doc

Enclosure: Inspection Pictures for NOV

cc (w/enclosures): Pacheco Pass Landfill IPL

California Environmental Protection Agency

Recycled Paper

## **EXHIBIT W PAGE 55 OF 69**

#### Actachment B Compliance Records DEC 15 '04 07:49 FR NORCAL WASTE 4158751188 TO 92285450

P.01/04

بند تصع



People - Service - Environment NORCAL WASTE SYSTEMS, INC.

### FACILITIES DEVELOPMENT & TECHNICAL SERVICES DEPT. **160 PACIFIC AVENUE, SUITE 200** SAN FRANCISCO, CA 94111 TEL: (415) 875-1000 FAX: (415) 875-1154

#### FACSIMILE TRANSMISSION

DATE: 12/15/04

FAX NO .: 228,5450 TO: BRIAN HAUGHTON

FROM: PAUL SHERMAN

RE: PPLF RELOND

NO. OF PAGES INCLUDING COVER:

Bran -

As anticipated. Lets start preparing the appeal. Call to discuss.

Thanks-

This facsimile may contain information or attachments that may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any further disclosure or use, dissemination, distribution or copying of this message or any attachment is strictly prohibited. If you think you have received this message in error, please contact the sender at the telephone or facsimile number above and discard the facsimile. Thank you.

## **EXHIBIT W PAGE 56 OF 69**

DEC 15 '04 07:49 FR NORCAL WASTE

## County of Santa Clara

Environmental Resources Agency Department of Environmental Health Hazardous Materials Compliance Division 1555 Berger Drive, Suite 300 San Jose, California 951 12:2716 (408) 918-3400 FAX (408) 380-6479 www.Etlinko.org

December 14, 2004

Archie Humphrey Vice President and Chief Operations Officer Norcal Waste Systems, Inc. 160 Pacific Avenue, Suite 200 San Francisco, CA 94111

#### NOTICE AND ORDER TO CEASE AND DESIST NORCAL WASTE SYSTMS PACHECO PASS LANDFILL 3675 Pacheco Pass Hwy., Gilroy, CA 95020 SWIS# 43-AA-0004

#### BACKGROUND

The Santa Clara County Department of Environmental Health, as the Solid Waste Local Enforcement Agency (LEA), has been conducting monthly inspections of the Norcal Waste Systems Pacheco Pass Landfill (PPLF) for many years as mandated by state law. PPLF is a facility that was issued a full solid waste facility permit (SWFP) by the LEA and is located at the referenced address. The facility operator is Norcal Waste Systems Pacheco Pass Landfill, Inc. Norcal Waste Systems Pacheco Pass Landfill, Inc. is the owner and operator of this site. During each monthly inspection by the LEA, a representative of PPLF has always been present and all violations that are noted in the inspection reports have always been discussed with a representative of PPLF.

On May 26, 2004, FPLF applied to the LEA for a JTD (spell out) amendment to conduct reload activities at the landfill. The amendment was approved on June 25, 2004. Subsequently, the CIWMB, as oversight agency, concluded that the amendment process was an incorrect approval method for this type of operational change at a landfill. The LEA rescinded its approval of the JTD amendment and rejected it instead in a letter dated Aug. 26, 2004. The June 25, 2004 approval was of no further force and effect. The operator appealed this rejection of the JTD Amendment and the appeal is pending. The LEA issued a Notice of Violation on Oct. 6, 2004 stating that until the activity of transferring waste is approved as a permit revision, the reload activity would have to cease. On Sept. 27, 2004 we received an application to revise the solid waste permit for just the Reload, but rejected it for lack of adequate CEQA compliance. Now we have a new permit application to revise the landfill permit for all changes identified in the 5-Year permit review report as well as the Reload Operation. This permit approval process will take several more months before possible permitting and concurrence by the Waste Board.

Reload operations have yet to be discontinued. Inspections of PPLF and the outbound tonnage records indicate that PPLF has continued to operate the Reload activity and the unpermitted transfer of solid waste out of the facility to landfills in Monterey County. Until such time as a permit revision is approved, the LEA must require that the operator CEASE AND DESIST all further use of the facility for transferring or reloading solid waste.

#### FINDINGS

Board of Supervisors: Donald F. Gage, Bianca Alvarado, Pete Mortugh, James T. Beall, Jr., Liz Kniss County Executive: Peter Kultas, Jr. 1 P.02/04 2002/004



### **EXHIBIT W PAGE 57 OF 69**

9

Actachment B Compliance Records TR NORCAL WASTE 4158751188 TO 92285450

DEC 15 '04 07:49 FR NORCAL WASTE 12/14/2004 17:07 KAX 4082806479

P.03/04 2003/004

Reload activities have continued at PPLF since the Aug. 26, 2004 rejection of the RDSI Amendment and rescission of the June 25, 2004 approval. The following tennages were noted in the inspection reports for the months of August through November, 2004:

 DETERMINATION: At each monthly inspection, July 30, Aug 27, Sept. 28, Oct. 28, and Nov. 24, 2004, the facility has conducted Reload operations. The PPLF tonnage reports document the following Transfer Activities:

Total transform	d Peak daily transferred	Transfer truck trip	Peak transfer	•
tons/month	in month	total/month	trip / day	
AUGUST 4818 tons	276	227	12	
SEPTEMBER 4470 tons	272	210	12	
OCTOBER 3620 tons	224	160	10	
NOVEMBER 3132 tons	189	138	8	

VIOLATION: The operator shall not conduct reloading activities without a permit revision, supported by a CEQA determination. [Public Resources Code (PRC) Sections 44004(a)]

#### THE OPERATOR IS ORDERED TO:

Immediately CEASE AND DESIST the above stated unpermitted Reload operations at this Solid Waste Disposal Facility. This ORDER is issued in compliance with the solid waste handling laws and regulations of the State of California pursuant to PRC § 45005 and T14 CCR § 18304.

#### NOTICE IS HEREBY GIVEN THAT:

- This ORDER shall go into effect IMMEDIATILY upon receipt of this notice. The ORDER will
  remain in effect indefinitely for this facility and will continue in effect until the listed violation is
  discontinued or the permit for this facility is revised so that this violation no longer exists.
- Failure of THE OPERATOR to comply with this CEASE & DESIST ORDER may result in civil penalties not to exceed \$10,000 for each day the violation occurs pursuant to PRC Section 45023. The operator may also be subject to civil penalties, which could be imposed administratively by the LEA, not to exceed \$5,000 for each day the violation occurs pursuant to PRC Section 45011.
- 3. Pursuant to Section 44307 of the PRC, the owner/operator has the right to appeal this NOTICE & ORDER to the hearing panel for the County of Santa Clara. The hearing panel consists of members of the Board of Supervisors pursuant to Section 44308 of the PRC. A request for a hearing must be made within 15 days of receipt of this ORDER. The request must be made in writing and filed with the Department of Environmental Health. If a request for an appeal hearing is made within the 15 day time frame, the hearing will be combined with the appeal hearing on the requirement of a permit revision for reload activities at PPLF.

If SVDRI desires a meeting to assist in compliance with this order, please contact Chris Rummel at (408) 918-1964 within 5 days of receipt of this NOTICE.

Sincerely

Ben Gale, Department Director Local Enforcement Agency [Affidavit to be included]

cc: Mary Madison-Johnson, CIWME Paul Sherman, Norcal Waste Systems Dave Schmetzer, Facility Manager

(Date)

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**EXHIBIT W PAGE 58 OF 69** 

LEC 15 / 14 47:50 FR NURGH WASTE B Compliance

#### P.04/04 2004/004

## County of Santa Clara

Environmental Resources Agency Department of Environmental Health Hazardous Materials Compliance Division

1555 Berger Drive, Suite 300 San Jose, California 951 13-2716 (405) 918-3400 FAX (408) 280-6479 www.EHinfo.org

> Noroal Waste Systems Pacheco Pass Landfill, Inc. 3675 Pacheco Pass Hwy. Gilroy, CA 95020

#### DECLARATION

I, Chris Rummel, declare under the penalty of parjury that the following is true and correct:

- 1. I am duly employed as a Senior Registered Environmental Health Specialist for the Local Enforcement Agency (LEA) Solid Waste Program, Hazardous Materials Compliance Division, of the Department of Environmental Health.
- 2. I am informed of facts obtained during inspections of the subject address on Aug 27, Sept. 28, Oct. 28, and Nov. 24, 2004, and believe that Findings of the foregoing Cease and Desist Order are correct. The basis of my information and belief is from a review of Solid Waste Statutes and Regulations, personal observations and review of photographs of the operations.

Executed at 1555 Berger Dt., Rm. 300, San Jose, CA 95112 on Dec. 14, 2004

Chris Rummel, R.E.H.S. Senior Registered Environmental Health Specialist

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, James T. Beall, Jr., Liz Kniss County Executive: Peter Kuras, Jr.



\*\* TOTAL PAGE.04 \*\*

## **EXHIBIT W PAGE 59 OF 69**



C IN ACTURE

SAN FRANCISCO PUBLIC UTILITIES COMMISSION Wastewater Enterprise/Collection System Division 3801 Third Street, Suite 500, San Francisco, CA 94124 - Tel, (415) 895-7310 - Fax (415) 695-7388



NOV nH local fed.dou

November 19, 2009

Gary Keep SF RECYCLING & DISPOSAL, INC. 501 TUNNEL AVENUE San Francisco, CA 94134

SIC/ID: 4953/00354

#### SUBJECT: NOTICE OF VIOLATION

Dear Mr. Keep:

The Wastewater Enterprise/Collection System Division collected grab and composite wastewater samples from your facility. All of the sampling and analyses were performed in accordance with procedures established by the EPA pursuant to Section 304 (g) of the Clean Water Act, and contained in 40 CFR Part 136 and amendments thereto.

The enclosed summaries of analytical results show that on 5 days during the monitored period, your facility's process wastewater discharges at Site B were out of compliance with the City and County of San Francisco's (City's) limit for pH (6.0 min.; 9.5 max.). The local limits are contained in Section 123(a) of Chapter X (Public Works Code) of Part II of the San Francisco Municipal Code, Article 4.1 (hereinafter referred to as "Article 4.1"), and in the Department of Public Works Order No. 158170.

On one day the measured pH was 0.5 below 5.0, which is specifically prohibited by the U.S. Environmental Protection Agency in federal regulations at 40 GFR Part 403.5(b)(2).

You are hereby required to cease immediately, the discharge of wastewater with pollutant levels in excess of the applicable limitations. You are also required to submit to this office, within fifteen (15) days, or by <u>December 7, 2009</u>, the operating and/or maintenance procedures you propose to implement (or have implemented) to avoid a recurrence of the above violations.

If you have any questions about this notice, please contact Chuck Hinson at (415) 695-7363.

Sincerely,

Brue Lel

Bruce Seale, Acting Manager Pretreatment Program Wastewater Enterprise / Collection System Division

Enclosures

EXHIBIT W PAGE 60 OF 69

## CITY AND COUNTY OF SAN FRANCISCO Wastewater Enterprise/Collection System Division Grab pH Compliance Report

SOURCE: SF Recycling & Disposal, Inc. - SITE\_B

SIC/ID #: 4953 / 00354

REQUEST: 22326

ľ	Sample Date	Sample Time	pH Measurement	pH Limit Violation?	
-		(Hours)	J		
1	09/29/2009	406	6.00	No	
2	09/30/2009	-437	4.50	Yes	
3	10/01/2009	413	5.40	Yes	
4	10/02/2009	415	5.20	Yes	
5	10/06/2009	400	6.76	No	
6					
7					
8					
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17 18			4		
18 19	ŀ				
20					
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	L.,,				

Local pH Limit:

## 6.0 min. : 9.5 max.

(Chapter X (Public Works Code) of Part II of the San Francisco Municipal Code, Article 4.1, Section 123(a)(1))

## 4953 / 00354

11/10/2009

## **EXHIBIT W PAGE 61 OF 69**

## County of Santa Clara

Department of Environmental Health

Hazardous Materials Compliance Division 1555 Berger Drive, Suite 300 San Jose, California 95112-2716 (408) 918-3400 FAX (408) 280-6479 www.EHinlo.org

April 20, 2006

## SENT BY CERTIFIED MAIL

Ray Fenstermacher, Facility Manager Norcal Waste Systems Pacheco Pass Landfill, Inc 3675 Pacheco Pass Hwy. Gilroy, CA 95020 Paul Yamamoto Group General Manager Alta Envir. Services, Inc. 235 N. First St. Dixon, CA 95620

RE: Notice of Violation to South Valley Organics composting facility 3675 Pachece Pass Hwy, Gilroy SWIS# 43-AA-0017 APN: 841-41-010, & 016

Dear Sirs:

#### Notice of Violation:

The facility operations which involve the receipt and handling of food waste at the above referenced facility located at the Pacheco Pass Landfill are in violation of your existing landfill permit. Furthermore, the unauthorized practices and operations for handling the material have resulted in a public health nuisance. Thus, the LEA is evoking permit condition 17.(f) to suspend specific receiving and handling operations due to the creation of a public nuisance and a potential health hazard. This notice is not appealable. A cease and desist order for operations in violation of the proper operating requirements will be issued if upon completion of an inspection to be scheduled for May 5, 2006, compliance with this notice has not be achieved. If the preparation of a Notice and Order is necessary to achieve compliance, your right to appeal the order to the hearing panel will be outlined. The violations which have resulted in repeated monthly violations and must cease are summarized as follows:

VIOLATION: TITLE 14 CCR 17867(a)(2) requires that the operation minimize vectors, odors and nuisances. Nuisance conditions have been confirmed by the presence of flies, odors, dust and contaminated run-off water for the past seven months. The conditions have been noted in inspection reports dated 10/14/05, 11/22/05, 12/27/05, 1/26/06, 2/24/06 and 4/13/06 (pending). Witnesses from the California Integrated Waste Management Board (CIWMB) and the Local Enforcement Agency (LEA) on April 13, 2006 observed and documented prolific fly populations due to breeding from within the Ag-Bags and in the insufficiently composted food waste windrows. The dense numbers of flies identified were the Black garbage fly (*Ophyra leucostoma*), commonly know as the Dump Fly. This fly is a disease carrying vector which breeds in garbage or other decaying matter. Dump flies are controlled by sanitary garbage practices. Proper

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pele McHugh, James T. Beall, Jr., Liz Kniss County Executive: Peter Kulras, Jr.

Page 1 of 3

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composting conditions will also prevent the growth and proliferation of this fly. The CIWMB staff, who were present at the last inspection, including the expert in composting activities, stated that they had never before seen this density of fly populations at a composting facility.

VIOLATION: PRC 44004 states that the operator may not institute a significant change in the operation of the facility unless the change is approved by the enforcement agency. The terms and conditions of the solid waste facility permit may need to be revised to reflect the change. PRC 44004 also requires the application to revise the permit to be filed at least 180 days in advance of the implementation of the proposed change, unless waived by the enforcement agency. The specific solid waste facility permit conditions 17. (a), (c), (e), (h), (m), (o), and (r) (see attachment) have been in violation for several months now as documented in the inspection reports.

VIOLATION: TITLE 14 CCR 17863 requires that the facility must operate in conformance with the Report of Compost Site Information (RCSI). The facility is not operating in conformance with the RCSI. Changes in the feedstock as described in the RCSI have not been approved. The Gilroy collection program is consistent with the approved compostable material definition in the RCSI. However, the San Francisco waste does not meet the compostable waste definition in the RCSI because much of what has been delivered to date has not been co-collected with yard trimmings from each service unit. Instead, some loads delivered are entirely restaurant putrescible garbage. Furthermore, the RCSI does not describe what processes are occurring at this time. Sections describing unprocessed material staging, processing, Ag-Bag Systems, vector control, and dust control are not being followed. The lack of proper particle size reduction (grinding), the lack of mixing to make uniform carbon/nitrogen ratios, moisture and oxygen control, and the lack of sufficient time of bagged composting are contributing factors to the nuisances of odors, excessive waste water, and flies.

VIOLATION: TITLE 14 CCR 17863.4 requires that the odor impact minimization plan (OIMP) be followed, or the EA may issue a Notice and Order (pursuant to section 18304.1) to require the operator to either comply with the odor impact minimization plan or to revise it. The OIMP is not being adhered to and odors have increased significantly with the unauthorized change of feedstock handling procedures. . Deficiencies have been noted in the areas of housekeeping around the bags, untimely processing, inadequate composting of putrescible material, run-off and process water accumulations, improper mixing, anaerobic conditions, lack of processing before bags are filled and no moisture control in the bags.

## TO CORRECT THIS VIOLATION, SOUTH VALLEY ORGANICS MUST:

1. Immediately cease receipt of all feedstock for composting containing food waste loads that are not co-collected with yard waste.

2. Discontinue the Ag-Bag processes now in place and return to the processing of feedstock by methods approved in the RCSI or as approved by the LEA.

Page 2 of 3

## **EXHIBIT W PAGE 63 OF 69**

3. Discontinue the unauthorized feedstock handling procedures and comply with the OIMP.

4. All existing putrescible food waste compostable material which is either in or out of the bags must be removed and properly disposed immediately upon receipt of this notice to prevent the further proliferation of the Black Garbage Fly.

If changes to the approved operations are desired, a revised permit application must be submitted along with a new RCSI at least 180 days in advance of any implementation of the proposed change, and the changes must go through the approval process. Please note that application packages which describe the current unapproved food waste handling processes will not be accepted.

#### NOTICE IS HEREBY GIVEN THAT:

Failure to comply with this Notice may result in the issuance of a Cease and Desist Order, pursuant to Public Resources Code Section 45005. The Cease and Desist Order would require the facility to cease operating outside the descriptions of the existing permit and the RCSI. Due to the failure to operate without the creation of a public nuisance, the facility will be limited to receipt of only yardwaste trimmings and limited wood, provided these feedstocks can be processed and handled without the creation of further public health nuisances or continued violations of the permit conditions.

Failure to comply with the Cease and Desist Order may also result in civil penalties not to exceed \$10,000 for each day the violation continues to occur, as stated in PRC section 45023. Norcal Waste Systems, Inc. may also be subject to administrative civil penalties not to exceed \$5,000 for each day the violation continues to occur as stated in PRC Section 45011(a)(1).

Norcal Waste Systems Inc. is requested to give prompt attention to this matter and abate this violation immediately. If you have questions regarding the compliance measures required, please contact Chris Rummel at (408) 918-1964.

Sincerely,

Ben Gale, Director Department of Environmental Health Local Enforcement Agency

BG:CR:rh cc: Angela Basquez, CIWMB Dan Niles, RWQCB

Jeff Watson, CIWMB

Attachment

Page 3 of 3

## SOLID WASTE FACILITY PERMIT

Facility/Permit Number:

43-AA-0017

### 17. Enforcement Agency Conditions:

 Any change that would cause the design or operation of the facility not to conform to the terms and conditions of this permit is prohibited. Such a change may be considered a significant change, requiring a permit revision. In no case shall the operator implement any change without first submitting a written notice of the proposed change, in the form of an RFI amendment, to the EA at least 150 days in advance of the change.

- b. This permit supercedes the previous Registration permit, dated Oct. 15, 2001, for this site. As new regulations pertaining to compost facilities are promulgated, operator shall begin implementation of the new regulations at least by specified dates or as deemed necessary by the LEA.
- c. The operations shall conform to the current Report of Compost Site Information and all of the current regulations applicable to the composting conditions.
- d. Record keeping shall include all of reports specified in 14 CCR, Article 8, Section 17869.

e. Site shall operate in a manner as to not become a public nuisance or create adverse environmental impacts. Site restoration shall comply with 14 CCR, Article 8, Section 17870.

- f. The EA reserves the right to suspend or modify feedstock receiving and handling operations when deemed necessary due to an emergency, a potential health hazard, or the creation of a public nuisance.
- g. Additional information concerning the design and operation of the facility shall be furnished upon request and within the time frame specified by the EA.
- h. The operator shall comply with all State Minimum Standards for solid waste handling and composting as specified in Title 14, California Code of Regulations.
- i. The site operator shall maintain a log of special/unusual occurrences. This log shall include, but not be limited to: Fires, explosions, flooding, earth movement, the discharge and disposition of hazardous or unpermitted wastes, and significant injuries, accidents or property damage, and vehicle/equipment related accidents, and disposition of material exceeding established limits. It shall also include for each incident entered a summary of any actions taken by the operator to mitigate the occurrence. The operator shall maintain this log at the facility so as to be available at all times to site personnel and to the Enforcement Agencies' personnel. Any specified entries made in this log must be reported to the LEA within 48 hours.
- j. The operation of the facility and response to complaints shall be consistent with the Odor Impact Minimization Plan, as found in Appendix D of the RCSI.
- k. All food waste containing feedstock must remain in AG-BAG vessels until pathogen reduction timelines as described in the RCSI have been achieved, unless otherwise approved by the LEA.
- I. All compost feedstock will be processed within 48 hours, or as described in the RCSI.
- m. Only green material or properly composted (8 weeks) bagged material will undergo open windrow composting.
- n. Facility receives only source separated organics as defined in the RCSL
- o. Processed material that is prescribed for sale without composting will be removed off site within 7 days.
- p. Manage incoming raw feedstock and non-composted ground material so as to not mix with finished compost product.
- q. The LEA will review and approve in writing all composting areas for use during both the dry and the wet seasons (wet season being between October 15 and April 15 of each year) in order to prohibit all composting activities in the dirt (non-all-weather) areas of the facility during the wet season.
- r. The capacity of the feedstock and active compost material that can be stored on site during the dry and wet seasons, and the length of time in which the compost must be processed shall be approved by the LEA.

## **EXHIBIT W PAGE 65 OF 69**

# FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

David A. Valler, Jr. Air Pollution Control Officer

Serving the Counties of Yuba and Sutter 938 14th Street, Marysville, CA 95901 (530) 634-7659 FAX: (530) 634-7660 Burn Information: (530) 741-6299 Web Site: http://www.fragmd.org Email: fraqmd@fraqmd.org

October 26, 2004

Certified Letter 7003 1680 0006 4961 0663 Mr. Doug Sloan Yuba-Sutter Disposal, Inc. (YSDI) P.O Drawer G Marysville, CA 95901

RE: NOTICE OF VIOLATION #JC-04-33-Y AND SETTLEMENT AGREEMENT #JC 04-33

The Feather River Air Quality Management District (District) alleges between September 25, 2004 and September 29, 2004, the following violations occurred at the YSDI facility located at 3001 North Levee Road, Yuba County, California.

Burning of green waste material and other prohibited materials, ignited on September 25, 2004 at approximately 1700 hours and extinguished on September 28, 2004 at approximately 1700 hours.

Discharge of air contaminants which caused nuisance conditions, annoyance and endangered the comfort, repose, health, or safety of the citizens in the city limits of Marysville and Yuba City.

The District evaluates each alleged violation based on settlement criteria as set forth in the California Health & Safety Code Sections 42400.8 and 42403. This criteria includes: the extent of harm caused by this violation, the nature and persistance of the violation, the length of time the violation ocurred, the history of past violations at this same address, the economic benefit of non-compliance, the degree and record of maintenance, factors associated with control equipment, actions taken to mitigate the alleged violations, good faith effort to comply with the regulations, and proven financial burden to the alleged violator. We would like to meet with you to discuss these alleged violations and attempt to resolve this matter in an informal settlement meeting without the need for formal litigation.

A copy of NOV # JC-04-33-Y is attached. Please contact the District if you wish to meet to discuss the alleged violations and terms for settlement of these alleged violations. If we have not heard from you by November 26, 2004, we will assume you are not interested in resolving this matter, and we will refer the matter to our legal staff for further action.

Sincerely.

David A. Valler, Jr. Air Pollution Control Officer

DV/jc

Attachment

EXHIBIT W PAGE 66 OF 69

Attachment B Compliance Records FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT Serving the Counties of Yuba and Sutter 938 14<sup>th</sup> Street, Marysville, CA 95901 (530) 634-7659 (FAX 634-7660) Burn info 741-6299 NOTICE OF VIOLATION #\_ Date Time AM PM Name Address Telephone Permit # / Facility Location \*\*\*\*\* \*\*\*\*\* \*\*\*\*\* You are hereby notified that you are in violation of Section(s): Health and Safety Code\_ L L., FRAQMD Rules and Regulations Description, Violations of the air pollution control laws are subject to civil or criminal penalties. Each day of violation constitutes a separate offense. Further violations could result in legal action. \*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\* Signing is not an admission of guilt Steven A. Speckert Air Pollution Control Officer. Received By **Issued By** L: data, admin, forms, nov

EXHIBIT W PAGE 67 OF 69



## SOLANO COUNTY Department of Resource Management

Environmental Health Division 675 Texas Street, Suite 5500 Fairfield, CA 94533 www.solanocounty.com

Telephone No: (707) 754-6765 Fax: (707) 784-4805 Bugilts Carachin, Director Cliffand Covey, Asst Director

Mr. Greg Pryor, General Manager Hay Road Sanitary Landfill 6426 Hay Road Vacaville, CA 95687 March 17, 2006

Certified Mail 7005 1820 0001 2497 3775

## RE: NOTICE OF VIOLATION: Jepson Prairie Organics - Composting Facility, 48-AA-9083

### Dear Mr. Pryor:

Solano County LEA performed inspections at Jepson Prairie Organic Composting (JPOC) facility in response to odor complaints received from residents living on Binghamton and Hawkins Roads. Neighbors living nearby the composting facility filed 17 odor complaints with the LEA in January, 2006 and 22 odor complaints in February, 2006. Additionally, the LEA performed routine inspections of the facility in January and February. The presence of off-site odor has been verified by LEA staff during routine and complaint investigations of the JPOC facility.

This letter is to notify you that steps to correct the Violations noted in previous inspection reports to JPOC shall be undertaken immediately and compliance achieved no later than April 21, 2006, in order to avoid further enforcement action by this Division. Further enforcement action may include the issuance of a Notice and Order for the Composting Operation. A Norice and Order would include scheduling of a Compliance Meeting as well as development of a Compliance Schedule and/or a Cease and Desist notification. Also, if Jepson Prairie Organics remains out of compliance, further consideration may be given to issue a Notice of Intent to list the facility on the Inventory of Solid Waste Facilities Which Violate State Minimum Standards (Inventory).

## Jepson Prairie Organies - Composting Facility

Violation, 14 CCR section 17867 (a)(2). General Operating Standards. (a) All composible materials handling operations and facilities shall meet the following requirements: (2) All handling activities shall be conducted in a manner that minimizes vectors, odor impacts, litter,

Bankling & Safety I David Cliche Building Official I

Planuing Services Mike Yankovich Pengam Mauagar

Environnenial Health Forry Schenidlisance Program Manager Administrative Services Linua Zaicsky Office Supervisor

Public Works-Hageneering Psul Wiese Hagineering Manager Buialia Works-Generations Steves Itilas Operations Monuger

### EXHIBIT W PAGE 68 OF 69

Notice of Violation Jepson Prairie Organics Page 2, March 17, 2006

hazards, nuisances, and noise impacts: and minimizes human contact with, inhalation, ingestion, and transportation of dust, particulatos, and pathogenic organisms.

\* Three complaints were received on January 10, 2006 from residents at different locations. On January 11, 2005, LEA staff investigated the complaints and conducted inspections at locations surrounding the JPOC facility. As a result, LEA staff found existing objectionable odors at several off site locations. LEA staff noted a violation in the inspection report to JPOC.

\* On January 25, 2006, LEA staff noted another violation to JPOC upon substantiating an odor complaint.

\* On February 23, 2006, in a response to an alter hours offer complaint, a site visit was made at the facility. The screening of agod/cured compostable material was creating strong onsite and offsite odors. A site meeting was held with Greg Pryor, General Manager. An inspection was conducted after the site meeting. LEA staff observed faint offsite odors from the composting facility around the complainant's residence. Mr. Pryor was notified via phone call of complaint verification after the investigation.

#### Corrective Action

Immediately, you are directed to take action to reduce the impacts to nearby residents by off-site odors. This may include a change in operations, or the hour specific operations that have potential to create off site odor impacts are performed, or modification of the material being composted.

By April 21, 2006, further revise the Odor Impact Minimization Plan to incorporate additional mitigation steps in each activity within the composting operation (potentially including screening, opening Ag bags, etc.) to further minimize the generation of off site odors.

I can be reached at (707) 421-6765. Please leave a voicernail message if I am unavailable.

Sincerely,

Terry Schmidtbauer, REHS Environmental Health Manager

Christine Karl, CIWMB
 Robert Busby, Water Board
 Pant Yamamoto, Norcal Waste Systems
 Brian Clarkson, Norcal Waste Systems
 Ron Glas, Planning Division
 Susan McLaughlin, YSAQMD

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