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8 **BEFORE CALRECYCLE**
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10 CITY OF MILPITAS,

11 Petitioner,

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13 vs.

14 CITY OF SAN JOSE LOCAL
ENFORCEMENT AGENCY,

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16 Respondent.
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**CITY OF MILPITAS' REQUEST FOR HEARING;
APPEAL OF CITY OF SAN JOSE LOCAL
ENFORCEMENT AGENCY HEARING DECISION**

[California Public Resources Code §§ 45030, 45031]

LEA Hearing:

Date: August 12, 13, 14, 2015

Time: 8:30 a.m.

Room: Department 2,
Santa Clara County Superior Court
191 N. First Street, San Jose, CA 95113

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1 **I. SUMMARY**

2 “Each disposal site shall be operated and maintained so as not to create a public nuisance.” 27 CCR
3 §20760.¹

4 The City of San Jose Local Enforcement Agency (LEA) failed to investigate and inspect for
5 violations at the Newby Island solid waste facilities. It allowed BFI’s Recyclery to stockpile compost
6 feedstock. It failed to require a Compost Odor Impact Minimization Plan adequate to respond to the
7 2,400 odor complaints this year from the Newby Island solid waste facilities. It failed to provide a
8 “complete and correct” description of violations with the December 8, 2014 landfill expansion permit.

9 Milpitas requested hearing pursuant to Public Resources Code §44307 on March 2, 2015. The LEA
10 refused to provide the hearing. Milpitas appealed that refusal to CalRecycle, which issued a June 9, 2015
11 written decision that some Milpitas issues were not subject to PRC §44307 hearing, while others were.

12 San Jose thereupon appointed its contract zoning code enforcement hearing officer, Suzanne
13 Nusbaum, to hear Milpitas’ claims. Hearings were held in the downtown San Jose Santa Clara County
14 courthouse over three days, August 12, 13 and 14; two full days on August 12 and 13, a half day on
15 August 14, which also included public comment.

16 Nusbaum issued a tentative decision on August 21, received comments on the tentative, and issued
17 a final written decision on August 28. She found no failure by the San Jose LEA.

18 Milpitas disagrees with her findings and requests hearing on its issues before CalRecycle. The LEA
19 ignores complaints of odors from Newby Island, and fails to report them to the BAAQMD. The LEA
20 has failed to assure that the Newby Island composting operation minimizes odors, especially those from
21 the food-waste and mixed-waste composting feedstock handled at the landfill and the Recyclery.

22 These failures touch upon cutting-edge developments in waste diversion and solid waste handling.
23 California law under AB 341 is driving mixed-waste processing, recycling and composting such as that
24 at Newby Island. But the impacts of improper oversight of such activities by the LEA promise a public
25 backlash to the consequent nuisances.

26 _____
27 ¹ “ ‘Nuisance’ includes anything which is injurious to human health or is indecent or offensive to the senses and interferes
28 with the comfortable enjoyment of life or property, and affects at the same time an entire community or neighborhood or any
considerable number of persons although the extent of annoyance or damage inflicted upon the individual may be unequal
and which occurs as a result of the storage, removal, transport, processing or disposal of solid waste.” 14 CCR §17225.45.

1 This is an opportunity to guide how such problems are handled.

2 **II. BACKGROUND**

3 Milpitas’ original petition for administrative review, in its Statement of Claims on pages 8 and 9,
4 raised six detailed claims. CalRecycle’s Decision essentially eliminated two of them, leaving four. The
5 Decision’s result on the individual claims is detailed below, after the following background.

6 **1. The Newby Island facilities.**

7 The Newby Island facilities in the City of San Jose at its border with Milpitas include the Newby
8 Island Sanitary Landfill, its nearby Composting Facility, and the “Recyclery,” a mixed-waste processing
9 facility. International Disposal Corporation is the owner of all three Newby Island Facilities, with offices
10 at 1600 Dixon Landing Road. The landfill operation was issued a revised permit for greatly expanded
11 capacity, after approval by the LEA December 20, 2014, with CalRecycle concurrence February 14,
12 2015.

13 The two adjacent Newby Island facilities, operating under separate solid waste facility permits by
14 the same operator, are the Recyclery (43-AN-0014), and the Composting Facility (43-AN-0017).

15 **2. The LEA’s role under statute.**

16 The City of San Jose Department of Planning, Building and Code Enforcement (“San Jose,” or
17 “City”) functions as “Local Enforcement Agency” for solid waste facilities in its jurisdiction, certified as
18 such by CalRecycle under Public Resources Code §43200.

19 The LEA “shall inspect and investigate solid waste collection, handling, and storage, solid waste
20 facilities, operations and disposal sites and equipment to verify compliance with the state minimum
21 standards, solid waste facilities permits, and related state solid waste laws and regulations within their
22 purview for the protection of the environment and the public health and safety.” 14 CCR §18083(a).

23 The LEA must issue notices and citations for operations not consistent with the solid waste facility
24 permit, its conditions, or the technical documents. 14 CCR §§ 18081(c)(3), §18084(a)(3).

25 Where variations from the permitted operations occur, the LEA must require documentation from
26 the operator, and must require an amendment, addendum or revision of the permit, depending upon the
27 extent of the variance. 27 CCR §21600(a).

1 Where changed operations reviewed for permit revision indicate a potentially significant
2 environmental impact, it is the LEA who is charged with ordering a revised solid waste permit,
3 supported by the environmental analysis as required under the California Environmental Quality Act
4 (CEQA). 27 CCR §§ 21570, 27 CCR §21620.

5 The LEA is thus required to inspect the Newby Island facilities for violations. PRC §43209(h)(1);
6 14 CCR §18303. Such violations can arise under the facility’s failure to have a conforming Report of
7 Disposal Site Information (RDSI) or comparable Joint Technical Document (JTD), hereafter sometimes
8 “the technical documents.” The technical documents must reflect the actual operations. 14 CCR
9 §18221.5; 27 CCR §21590.

10 Furthermore, and in addition to these requirements, where the solid waste facility is composting
11 with certain feedstocks—materials which present a clear nuisance risk, such as sludge—the LEA is
12 required to obtain from the operator a “demonstration” that the process meets certain performance
13 standards, including sufficient absence or mitigation of nuisance. 27 CCR §20690(a)(1).

14 **3. The Newby Island odor problem.**

15 Odors from the Newby Island facilities have become a nuisance to Milpitas residents. The problem
16 increased in the closing months of 2014 and have remained high. A massive spike in odor complaints to
17 the Bay Area Air Quality Management District (“BAAQMD”) has been reported early this year: 719 in
18 January versus 121 in December 2014.

19 **4. The Composting and Recyclery permits.**

20 While Milpitas’ request for hearing and statement of issues clearly takes issue with the early-2015
21 permit approved by CalRecycle for the landfill, the request also asserts that the separate composting and
22 recycling facilities’ permits are required to be reviewed by the LEA, but have not been. (See claims “b”
23 and “c” under paragraph 46 of the petition requesting the hearing.)

24 Essentially, Milpitas contends that the LEA allows the Newby Island facilities to play a shell game
25 with the wastes accepted there. “Mixed waste” recycling collected under the overall operation’s
26 collection agreement with the City of San Jose is accepted at the Recyclery. The noxious slop is then
27 sent to compost at the Compost facility. The Compost facility then “co-composts” with waste types such
28 as sewage sludge stored for that purpose.

1 **5. The CalRecycle decision on appeal.**

2 The CalRecycle Decision, over signature of its Director, Carroll Mortensen, dispatched San Jose’s
3 comprehensive time-bar argument, while providing extensive clarification on the grounds available,
4 particularly as they relate to claims of odor nuisance. That clarification is summarized here:

5 a. Milpitas first claim, landfill odor and the 2015 permit.

6 CalRecycle’s Decision barred Milpitas’ first claim, paragraph 46(a) of its March 2 petition, as
7 outside the statutory scope of the PRC §44307 hearing. Milpitas contended in its first claim that the LEA
8 is required to order review of the 2015 landfill permit because that permit failed to address the landfill’s
9 odor problems. Odor nuisance control, CalRecycle held, is under the jurisdiction of the local Air Quality
10 Management District (AQMD).

11 b. Second claim, unpermitted composting feedstock.

12 CalRecycle allowed the next claim under paragraph 46(b) of Milpitas’s petition, that the LEA failed
13 to require the Newby Island composting permit to be revised where undisclosed feedstock operations,
14 including storage of such materials in violation of the permit, resulted in odor nuisances. The section of
15 that claim stating a violation under the California Environmental Quality Act (CEQA), however, was not
16 within the statutory scope of the §44307 hearing, CalRecycle held.

17 c. Third claim, Recyclery permit defects.

18 CalRecycle allowed the third Milpitas claim (paragraph 46(c)). Milpitas claims that the Recyclery
19 repeatedly violated its permit conditions by unauthorized material storage and handling, requiring that it
20 revise its permit.

21 d. Fourth claim, landfill permit JTD and odors.

22 CalRecycle barred Milpitas’ fourth claim (paragraph 46(d)) that the JTD technical documents in
23 support of the 2015 landfill permit failed to provide odor control. CalRecycle found that this claim was
24 outside the scope of LEA review. Decision, paragraphs 39, 40.

25 e. Fifth claim, storage and handling violations for ADC feedstock, all three facilities.

26 CalRecycle allowed the fifth claim under paragraph 46(e) of Milpitas petition: “Storage and handl-
27 ing of waste derived materials at the landfill for use as alternative daily cover.” Milpitas contends the
28 LEA allowed the Newby Island facilities to improperly store and handle materials such as sludge and

1 putrescible waste that were used as alternative daily landfill cover (ADC). These practices could occur,
2 Milpitas contends, at any of the three facilities and sometimes in combination, as where the Recyclery
3 accepts putrescible “wet” waste for composting at the composting facility, then uses it for landfill ADC.

4 f. Sixth claim, landfill permit defects for incorrect tonnages.

5 CalRecycle allowed the sixth and final Milpitas claim that the LEA failed to obtain correct tonnages
6 when it issued the 2015 landfill permit, especially where tonnages were moving in different process
7 streams through the three facilities. The CalRecycle Decision found that this issue was properly before
8 the Hearing Officer.

9 Thus, to reiterate, CalRecycle upheld Milpitas’s right to hearing on the claims that all three Newby
10 Island facilities violate state minimum standards. See CalRecycle Decision page 18, finding 5, 6 and 7.

11 However, CalRecycle found that odor nuisance—from the landfill and the Recyclery—was not
12 within the laws and regulations of LEA jurisdiction such that they were reviewable by the Hearing
13 Officer. See findings 1 and 2 at page 17 of the Decision. Nor was the adequacy of odor mitigation in the
14 Joint Technical Document for the landfill expansion permit subject to review. Finding 4.

15 Elsewhere, however, CalRecycle’s Decision held that odor nuisance from the compost operation
16 clearly was within LEA laws and regulations and subject to Hearing Officer review.

17 Importantly, at paragraphs 42 and 43 of CalRecycle’s Decision, CalRecycle approved review of
18 Milpitas’s claims that the composting operation misstated volumes which are being exchanged between
19 the three facilities, and that the landfill permit is therefore non-conforming with the actual operations.

20 Milpitas also raised violation of state minimum standards for demonstrating proper “storage and
21 handling of waste derived materials at the landfill for use as alternative daily cover.” Decision, para-
22 graphs 40 and 4, pages 14, 15. CalRecycle emphasized that enforcement of odor nuisance occurring as a
23 result of such violations was outside LEA jurisdiction. Yet, CalRecycle required hearing on Milpitas’
24 claim that the LEA knowingly and repeatedly failed to enforce the 48-hour limit on putrescible waste
25 storage at the Recyclery, and that the LEA failed to require the operator to submit for permit revision to
26 control this practice. Decision, paragraphs 34 and 35 (again with the *caveat* excluding odor nuisance
27 enforcement from that review, paragraph 36).

28

1 **III. SUMMARY OF ISSUES**

2 Milpitas reasserts the claims brought before the hearing officer and raised in its initial request for
3 hearing.² The evidence submitted in the lower hearing and which Milpitas will raise before CalRecycle
4 support those claims.

5 **1. Failure to correct the dysfunctional odor protocol of the Odor Impact Minimization Plan.**

6 CalRecycle allowed the claim under paragraph 46(b) of Milpitas’s petition that the LEA failed to
7 require the Newby Island composting permit to be revised where undisclosed feedstock operations,
8 including storage of compost feedstock in violation of the permit, resulted in odor nuisances.

9 The evidence was clear that the odor reporting protocol in the compost facility’s Odor Impact
10 Minimization Plan (OIMP) is useless because: 1) the operator, given most of the responsibility under the
11 OIMP, refused and refuses to acknowledge any odor complaints arising from the operations there; 2) the
12 composting operations overlap the landfill operations and Recyclery; 3) the OIMP’s failure to provide a
13 mechanism to respond to the BAAQMD allows the operator to ignore potential violations; 4) the LEA’s
14 inspector Bob Bates testified he rarely even looks at the complaint logs required to be maintained by the
15 facilities because “I know what I’m looking for.” Yet, the one time the written evidence shows he
16 looked at composting odor complaints, it was more than a week after the complaints.

17 **2. The hearing officer confirmed violations occurred during the claim period.**

18 CalRecycle allowed the third Milpitas claim (paragraph 46(c)). Milpitas claims that the Recyclery
19 repeatedly violated its permit conditions by unauthorized material storage and handling, requiring that it
20 revise its permit.

21 The Recyclery was overflowing with rotting garbage and it used the landfill to store that overflow.
22 This violation was occurring when the LEA submitted the landfill expansion to CalRecycle (December
23 8-9, 2014). The Hearing Officer’s decision confirms this violation. Indeed the LEA allowed the landfill
24 to stockpile Recyclery overflow in a bunker—one of the worst odor sources.

25 Bear in mind that nobody outside the facility reasonably knew that this was the source of the odor.
26 The LEA did nothing until CalRecycle investigated the violations.

27
28 _____
² By noting the CalRecycle restrictions, Milpitas does not waive objection to them.

1 **3. The LEA allowed sludge to be used as ADC until CalRecycle showed up.**

2 CalRecycle allowed the fifth claim under paragraph 46(e) of Milpitas petition: “Storage and
3 handling of waste derived materials at the landfill for use as alternative daily cover.” As the Tentative
4 Decision finds, sludge was being used and either the LEA allowed it or was too blind to notice, until
5 CalRecycle showed up for its inspections. TD, page 22.³

6 Milpitas had no notice of this before it filed its petition in this matter.⁴

7 Thus, again, the Tentative Decision confirms Milpitas allegations that the LEA allowed the landfill
8 to use improper ADC materials.

9 **4. Milpitas proved the variation in landfill tonnage due to the bunker.**

10 CalRecycle allowed the sixth Milpitas claim that the LEA failed to obtain correct tonnages when it
11 issued the 2015 landfill permit, especially where tonnages were moving in different process streams
12 through the three facilities.

13 The irrefutable evidence is that a large bunker was being used to stockpile overflow that the
14 Recyclery couldn’t handle—even as the landfill permit was submitted by the LEA to CalRecycle on
15 December 8, 2015. That material was then shuttled back to the Recyclery later, evading the 48-hour
16 limit on storage and never providing an accounting of the volumes handled.

17 But the landfill expansion application did not disclose that the landfill was also providing a spillover
18 function for the Recyclery, which apparently was unable to handle the volumes arriving. At the lower
19 hearing, the operator provided no accounting for the volumes at any of the three individual locations.

20 **5. The LEA ignored composting odor and failed to report odor the other facilities.**

21 Inspector Arnold Argao of the Bay Area Air Quality Management District (BAAQMD) testified
22 that BAAQMD received has received more than 2,400 complaints related to the Newby Island
23 operations this year, confirming 109 of them at the landfill.

24 Mr. Argao was a neutral witness. There was nothing contradictory about his testimony. No
25 objections were raised to it.

26
27 ³ “On November 25, 2014, Troy Weber noted that the landfill operator was combining sludge with green waste to use as
28 alternative daily cover (ADC) at the landfill.”

⁴ For example, it is not mentioned in the LEA’s Exhibit 245.

1 When asked directly how many of the confirmed BAAQMD odor complaints were from sources
2 other than the Newby Island operations, Mr. Argao’s testimony was “only a handful.”

3 The Milpitas residents who testified during the August 14 public comment are among those who—
4 again first-hand—smelled the odors and submitted complaints. Their testimony gave clear witness to the
5 nature of the odors as being related to waste materials. Milpitas City Manager Tom Williams testified to
6 his personal experience with the odors and their nuisance at Milpitas City Hall.

7 Mr. Argao’s testimony confirmed this odor problem and the simple fact that they come from Newby
8 Island, and at times from the compost facility.

9 These events were occurring as the landfill expansion permit was being submitted and reviewed by
10 CalRecycle for concurrence. Furthermore, it was shown that the LEA didn’t take action until CalRecycle
11 inspectors found the violations.

12 Thus, there were clearly violations that the LEA did not investigate or report. And this occurred just
13 after the LEA had satisfied a CalRecycle workplan to get into certification compliance, imposed for
14 similar shortcomings.

15 Finally, CalRecycle’s Decision held that odor nuisance from the compost operation is clearly within
16 LEA laws and regulations and subject to PRC §44307 administrative review.

17 The lower hearing conclusively proved that: 1) there were odors from Newby Island; 2) which
18 facility caused the odors was unknown until and unless there was an immediate response; 3) the LEA
19 often failed to respond to odor complaints, or even check to see that there had been any; 4) *ergo*, the
20 LEA failed to investigate composting odor because it failed to investigate odors.

21 Thus, even on April 23, 2015, the LEA was waiting almost a week to check out odor complaints,
22 long too late to identify if they might have come from the compost facility. “One object of this visit was
23 to investigate why odor complaints were received on 4/16 and 4/17 in the evening.” Exhibit 224.

24 Furthermore, it was conclusively proven that the landfill and Recyclery function as staging areas for
25 the composting feedstocks. Those feedstocks are integral to the composting odors. Composting
26 feedstock odor is composting odor, and thus within the enforcement purview of the LEA. Moving
27 compost feedstock somewhere besides the actual composting windrows does not change that fact.

28

1 **IV. DISCUSSION**

2 Milpitas offered eight witnesses and more than 100 exhibits in support of its case. Most of its
3 exhibits consisted of documents provided by CalRecycle July 20, 2015 in response to Milpitas’ Public
4 Records Act request. Those responses—and testimony of CalRecycle inspector Troy Weber—
5 irrefutably prove that the final CalRecycle December 9, 2014 inspection of BFI’s Recyclery has still not
6 been completed and released.

7 Thus the drafts of that inspection are clearly of significant public interest. However, the hearing
8 officer refused to admit them because the release of the inspections of the landfill and Recyclery had
9 been “withdrawn” by CalRecycle staff.

10 Milpitas strongly objects to that decision by the hearing officer. The contents of the inspection and
11 the CalRecycle file regarding it are clearly relevant and still timely as the final is still pending.

12 **1. CalRecycle’s recent OIMP regulations should be considered on appeal.**

13 The hearing officer took notice of the LEA’s recent revision of the Odor Impact Minimization Plan
14 (OIMP) for the composting facility, but did not address Milpitas’ challenge to find any material change
15 between the old OIMP’s failed odor reporting and the same protocol readopted in the new OIMP.

16 Under 14 CCR §17863.4(e) the LEA is to assure the OIMP is being followed. But further, under
17 subsection (f) of §17863.4: “If the odor impact minimization plan is being followed, but odor impacts
18 are still occurring, the EA may issue a Notice and Order (pursuant to section 18304) requiring the
19 operator to take additional reasonable and feasible measures to minimize odors.”

20 Even as the hearing was being held here, CalRecycle was finalizing regulations which beef up the
21 mandated OIMP in a way which would especially address the Newby Island problem.⁵

22 CalRecycle’s August 18 changes take special note that: “Approaches to verification of odor
23 complaints at compost sites are not consistent statewide.”

24 This problem is especially acute where—as at Newby Island—three different facilities have
25 overlapping composting functions. The Recyclery handles composted mixed waste; the landfill should
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28 ⁵ <http://www.calrecycle.ca.gov/Actions/Documents%5c62%5c20152015%5c1417%5cRequest%20for%20Approval.pdf>

1 accept overflow that the Recyclery cannot handle (as occurred); and the actual compost material sizing
2 and windrowing produce alternative daily cover for the landfill.

3 The new AB-341 era of increased multi-material composting requires a hard look at its impacts to
4 the health and safety of the public around operations handling mixed-waste compost feedstocks.

5 CalRecycle’s new regulations recognize this fact and specify steps to be taken under 14 CCR
6 §17863.4 where the OIMP is not adequate to control the nuisance. It provides the following bolstering of
7 the OIMP:

- 8 • An operator would be required to minimize odor impacts so as to not cause a “nuisance;”
- 9 • The Enforcement Agency would be required to investigate odor complaints as soon as practical, and
10 include specified information (e.g., date, time, climatic conditions, odor characteristics and
11 intensity) in the investigation (emphasis added);
- 12 • If an Odor Impact Minimization Plan (OIMP) is being followed but odor impacts are still occurring,
13 the Enforcement Agency would require the operator to:
 - 14 1. Prepare and implement an Odor Best Management Practice Feasibility Report;
 - 15 2. Take additional reasonable and feasible measures to minimize odors;
 - 16 3. An operator could also voluntarily prepare an Odor Best Management Practice Feasibility
17 Report and take additional measures to minimize odors.

18 Milpitas urged the hearing officer to order the LEA to modify the Newby Island composting facility
19 and BFI’s Recyclery to provide an adequate OIMP, proven by a feasibility study. Such a study should
20 address composting feedstock from the Recyclery or wherever it is stockpiled. Otherwise, *ad hoc*
21 feedstock management, composting and ADC methods will expose the public to odor nuisance.

22 **2. The composting and Recyclery permits should address complex overlaps that rendered the**
23 **landfill permit incorrect.**

24 Again, CalRecycle upheld Milpitas’ right to a hearing on the complex but important failure of the LEA
25 to submit a “complete and correct” permit application for the landfill expansion on December 8, 2014.

26 As defined by 27 CCR §21563(d)(2): “‘Correct’ means all information provided by the applicant
27 regarding the solid waste facility must be accurate, exact, and must fully describe the parameters of the
28 solid waste facility.”

1 “Accurate.”

2 “Exact.”

3 “Fully describe the parameters of the solid waste facility.”

4 Milpitas proved, and indeed the hearing officer found, that the LEA assisted landfill violations even as
5 it submitted the proposed permit for CalRecycle concurrence.⁶

6 The Newby operator was shuffling materials between the facilities because it couldn’t handle the
7 volumes or types within the required times. It undercounted “alternative daily cover” to escape true
8 disclosure of the materials at the landfill. Thus neither CalRecycle, nor the public, could have had correct
9 information on which to assess the LEA’s December 8, 2014 permit application.

10 But the hearing officer barred these facts because on December 30 the LEA sent Milpitas an email
11 regarding December 9 inspection violations, long after the LEA submitted the landfill permit application on
12 December 8, 2014.

13 CalRecycle’s Decision makes very clear that “challenges to the Landfill permit revision are not time-
14 barred.” Decision paragraphs 42 and 43. This is especially so when Milpitas could not reasonably know
15 what was taking place behind the scenes until it received the CalRecycle PRA response in July, 2015.

16 The failure here to “fully describe the parameters of the solid waste facility,” as required for a correct
17 permit application, is the failure to explain the “integrated” nature of the three facilities.

18 Those parameters are critical where the Recyclery’s compost feedstock is improperly stockpiled at the
19 landfill when it cannot handle the food waste and other compostable MSW.

20 Recyclery permit violations require permit revision to fully describe how it integrates with the
21 composting operations and the landfill. The lower hearing produced solid evidence that the Recyclery was
22 unable to process food waste, but was stockpiling it longer than the allowed 48 hours.

23 The landfill permit should also be required to submit to review for a revision based on the revision of
24 the Recyclery and the composting facilities. The volumes currently accepted at the Recyclery have proven
25 to be too much for the operation to handle.

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28 ⁶ “In October, 2014, LEA Inspector Schreiner gave the operator verbal approval for food waste to be stored at the Recyclery and then moved to a bunker located on the landfill facility. The operator constructed a concrete on the landfill to hold unprocessed materials from the Recyclery. Use of the bunker caused odors.”

1 **3. The LEA failed to investigate violations at the Recyclery and revise its permit.**

2 The landfill permit application was incomplete because of the blind eye turned from odors by both the
3 operator and the LEA. The hearing officer found that the LEA actively ignores odor from the Recyclery and
4 the Landfill, and “improperly indicated that there were no violations or areas of concern.”

5 Thus the hearing officer found the LEA indeed failed to investigate complaints, and the operator has
6 failed to report them to the LEA.⁷ “The facility received a violation from the Bay Area Air Quality Manage-
7 ment District but failed to notify the LEA within 2 business days as required by Condition 16.a.6 of the
8 SWFP.”

9 Obviously, the LEA should report any odors. If they are from the other facilities they are required to be
10 reported to the BAAQMD. If they arise from composting, the LEA should enforce their abatement.

11 Unfortunately, the hearing officer brushed over such violations, making subjective conclusions which
12 in sum pointed to the “good faith” of the LEA’s later actions.

13 Milpitas has less faith in the LEA, especially after the LEA’s history of ignoring violations.

14
15 **V. CONCLUSION**

16 The issues raised by Milpitas speak to the very important public health and safety impacts which can
17 arise from mixed waste recovery, composting and landfilling when they try to “integrate.” The San Jose
18 LEA allowed violations and failed to obtain permit revisions necessary to address nuisances caused by the
19 “integrated” Newby mixed waste handling.

20 Instead of allowing these significant problems to be ignored on the procedural and time bars upon
21 which the LEA and the operator rest, CalRecycle should assure that the administrative hearing process is
22 assured to provide the public protections that the “informal” hearing process is intended to provide.

23
24 DATE: September 7, 2015

_____ /s/
KELLY T. SMITH
Attorney for Petitioner
CITY OF MILPITAS

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28 ⁷ Bear in mind that this is the same operator which refuses to acknowledge any odors from any of the Newby Island facilities,
according to the testimony of its witness Don Litchfield.

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