



# CITY OF MILPITAS

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November 6, 2014

City of San Jose  
Code Enforcement Division,  
Local Enforcement Agency  
Attn: Mr. Ed Schreiner  
Attn: Mr. Paul Tavares  
200 East Santa Clara Street, 4<sup>th</sup> Floor  
San Jose, CA 95113-1905

Department of Resources Recycling  
and Recovery (Calrecycle)  
Attn: Mr. Eric Kiruja  
1001 I Street  
P.O. Box 4025  
Sacramento, CA 95812-4025

RE: Proposed Solid Waste Facility Permit for the Newby Island Landfill and Recyclery

Dear Messrs. Kiruja, Schreiner, and Tavares:

Thank you for this opportunity to comment on the proposed Solid Waste Facility Permit (SWFP) for the Newby Island Landfill (SWIS # 43-AN-0003). **The City of Milpitas respectfully requests this permit be denied.** The primary reasons for this are the inadequacy of the CEQA Environmental Impact Report and the Planned Development Permit PD14-0014 and the significant errors in the proposed Solid Waste Facility Permit and back-up documentation. The City of Milpitas has appealed adoption of both the CEQA Environmental Impact Report to the California Court of Appeals and the Planned Development Permit PD14-0014 to the San Jose City Council. It would be prudent to allow the appeal process to reach its conclusion before rushing to take another action. In addition, the project is not ready for SWFP issuance as State minimum standards for landfill operation have not been met, required environmental mitigations have not been implemented, and permit documentation is incomplete and contains significant errors.

We have reviewed the proposed Solid Waste Facility Permit Permit, SWIS # 43-AN-0003, and backup documentation for the Newby Island Landfill and Recyclery (NISL) Project and have the following comments:

1. Solid Waste Facility Permit
  - a. There are multiple Solid Waste Facility Permits issued for the Newby Island site. It appears that some of the operations are overlapping, leading to confusion. We suggest combining the permits into one permit.
  - b. The draft Permit SWIS #43-AN-0003 does not identify requirements and/or limitations imposed by Planned Development (PD) Permit PD14-014.
  - c. The draft Permit SWIS #43-AN-0003 appears to allow all of the future improvements described in the Final Environmental Impact Report even though the improvements have not been addressed in the PD permit.
  - d. The draft Permit SWIS #43-AN-0003 does not address odor management and mitigation. Various landfill activities generate odors that travel off-site and require mitigation. Examples of these activities include but are not limited to: use of biosolids as Alternate Daily Cover (ADC), use of ground green waste as Alternate Daily Cover, and compost covers as Alternate Daily Cover.

- e. The draft Permit SWIS #43-AN-0003 does not address implementation of the Mitigation Monitoring and Reporting Program dated May 2012 and adopted by the San Jose City Council on August 14, 2012. The Mitigation and Monitoring Plan requires mitigations and avoidance measures addressing a variety of concerns. Examples of these concerns include but are not limited to: implementation of the Nuisance Species Abatement Plan and enclosing outdoor food processing area on Recyclery property within 90 days after issuance of the first PD permit. The first PD permit PD14-014 was issued on October 1, 2014.
- f. The draft Permit 43-AN-0003 includes a finding that the San Jose  Department has determined that the facility is in conformance with applicable standards. The Draft EIR notes that the closest Milpitas fire station is 1.5 miles from the project site and the two closest San Jose fire stations are 5.7 miles away and concludes that Milpitas Fire Department is the closest response. The Milpitas Fire Department has not had a chance to review the documents.
- g. The draft Permit 43-AN-0003 Section C contains significant errors involving the daily tonnage and daily traffic volumes. The DEIR and PD zoning actions did not increase the daily tonnage from 4,000 tons per day to 14,021 tons per day. Section 1.4.2.2 page 14 of the DEIR states “The proposed PD zoning does not include a change in the gate capacity tonnages for either of the permitted facilities (landfill and Recyclery). In other words, the existing permit limitations on maximum average incoming tonnages and on daily maximums will continue to be effective.” The following excerpt is from a table found in the response to comment B.12 (page 37) in the First Amendment to the EIR identifying proposed changes to the SWFP:

Proposed SWFP Changes:

	Current Landfill SWFP	Proposed Landfill SWFP
Permitted Tons Per Operating Day	4000 tons per day	No Change
Permitted Traffic Volume	Equivalent of 4000 tons per day	No Change (approximately 1200 vehicle trips per day)

There is no reason to believe that an additional 10,021 tons per day was intended, analyzed, or allowed in the DEIR for the landfill permit, Recyclery permit, or composting permit. The total incoming material is limited to 4000 tons per day, whether the material is landfilled, processed as construction and demolition (C&D) recyclables, or used for ADC or other purposes. The maximum number of vehicles conveying materials for use on the landfill site is 1,269 vehicles per day, regardless of whether the material is landfilled, processed for C&D, or used for ADC or other purposes. Revise the permit to reflect the tonnage and vehicle data as allowed in the DEIR.

- h. Section 7 of the draft Permit specifications discuss an ADC pilot program. Clarify if this refers to a pilot program in process, a proposed pilot program, or a future program. If the pilot program is in process or is proposed, provide details for review and comment.

2. The Joint Technical Document (JTD) describes and/or restricts the operation of the Newby Island Sanitary Landfill (NISL). The JTD is incomplete as described below:
  - a. The JTD references federal, state, and local regulations as the minimum standards to be met. Federal regulations focus on technical data and do not address community concerns. The NISL is located in an urban area and should be required to meet additional standards commensurate with its impacts on adjoining communities. An example is to employ state of the art odor controls.
  - b. The JTD includes a SWFP dated March 14, 1997 that is presumed to be the current permit. One of the permit requirements is for the Operator to maintain a log of complaints and actions taken to resolve the complaints. Has the Operator maintained such a log? Provide sufficient information to demonstrate that the Local Enforcement Agency (LEA) has not only inspected the log, but performed investigations and issued corrective notices as necessary. Provide similar information for SWFP Permits 43-AN-0014 and 43-AN-0017.
  - c. Section A2.2 discusses proposed landfill operational improvements at a conceptual level. The lack of detail indicates that the Operator will have liberal license for implementation without regard to impacts on the adjacent community.
  - d. Section B.1 is labeled to be a General Description but some of the content is a repeat of Section B.2 Waste Classification and Management.
  - e. Section B.2.2.1 identifies green waste, wood waste, and biosolids as requiring no special handling prior to disposal. This is incorrect as green waste, wood waste, and biosolids are significant odor sources that require special handling to mitigate odors. This section should also discuss how to manage food waste that is comingled with the green waste. This section should discuss the Operator's role as a stakeholder in the City of Milpitas Odor Action Plan, and include mitigation measures in the daily operations.
  - f. Section B.2.2.4 discusses green waste stockpiling. The text notes that the C&D area is an emergency storage area for green waste when the composting operation encounters operating difficulties. Add text identifying appropriate odor control measures during such emergencies. This section should also discuss how to manage food waste that is comingled with the green waste. This section should discuss the Operator's role as a stakeholder in the City of Milpitas Odor Action Plan, and include mitigation measures in the daily operations.
  - g. Section B1.2.2 discusses cell phasing. Include a schedule discussing phase implementation.
  - h. Section B3.6 states that the final use for most of the NISL site will be non-irrigated open space. Add text addressing future plans for a transfer station.
  - i. Section B.3.7.1 notes that the Recyclery, composting facility, and hauling company operations are regulated through SWFP SWIS #43-AN-0014 and SWFP SWIS #43-AN-0017. The text references an operational document last revised on January 15, 2002. The Recyclery and composting facilities have undergone several revisions since 2002. Update the reference to the current document. If the 2002 document is the current document, then SWFP SWIS #43-AN-0017 is out of date and requires revision and reissuance.
  - j. Section B.3.7.3 describes the disposition of landfill gas. According to the text, one of the energy-generating plants has been shut down since 2010 and the second is operating at half-capacity and will be phased out soon. The gas export plant was shut down due to low energy prices. The text states that the landfill gas

will be destroyed by flare until a new gas-to-energy facility is built in the future. Provide a timeline for construction of the new gas-to-energy facility. The EIR assumed that the energy-generating plants and gas export plants would be functional and only excess landfill gas would be destroyed by flares. The EIR did not analyze a scenario where all of the landfill gas would be destroyed by flares for any length of time, let alone several years.

- k. Section B.3.8 discusses future ancillary facility adjustments including improvements that have not been addressed in the PD permit.
- l. Section B.3.8.1 discusses mixed recyclable materials. Provide the environmental review for this process. The text states that wood waste and green waste will continue to be managed on the landfill site. This section should discuss how the Operator will manage food waste that is comingled with the green waste. This section should discuss the Operator's role as a stakeholder in the City of Milpitas Odor Action Plan, and include mitigation measures in the daily operations. This section should address the requirement to comply with Mitigation Measure BIO 13 that requires enclosing the outdoor food processing area on the Recyclery property and include the timeline.
- m. Section B.3.8.7 notes that composting areas may be relocated to different areas of the landfill property to allow for landfill development. This text should identify the allowable areas where the composting is allowed. Include the map from the FEIR that incorporated a north-south dividing line to limit the easterly edge of the composting area.
- n. Section B.4 fails to discuss several key operating criteria, including but not limited to: implementation of the Mitigation Measures, Odor Action Plan tasks, and the need to get additional PD permits and environmental clearance for future activities.
- o. Section B.5.2.1 discusses Alternate Daily Cover (ADC). The text acknowledges that biosolids and green waste are stockpiled and used for ADC. This section should discuss how to manage food waste that is comingled with the green waste. This section should discuss the Operator's role as a stakeholder in the City of Milpitas Odor Action Plan, and include mitigation measures in the daily operations.
- p. Sections B.5.3 and B.5.4 describe intermediate cover as cover material on areas where additional cells are not to be constructed for 180 or more days. The text states that ground green waste and biosolids may be used as alternate intermediate cover. Substantial odor intensities can be emitted from stockpiles, during spreading of these materials, and from the applied surface of these materials after spreading. Section 1.6 of the DEIR states that additional environmental review is required prior to use of biosolids as a constituent of interim or final cover. Provide the environmental documentation for this use of biosolids and identify control measures to be used to prevent and/or mitigate these odors.
- q. Section B.7.1.8 addresses Odor Control and describes several odor control measures. The text also notes that the March 2008 Odor Impact Minimization Plan addresses odor control and complaints from the composting facility. The green waste and compost facility has undergone several revisions over the years. Update the reference to the current Odor Impact Minimization Plan. If the 2008 document is the current document, then SWFP 43-AN-0017 and/or SWFP 43-AN-0014 are out of date and require revision and reissuance. The Odor Impact Minimization Plan should also address the relationship between increases in material volumes and make-up and increases in odor complaints. We are

disappointed to see that the Operator is not proactive in odor control and instead reacts to complaints.

- r. Section B.7.2.1 discusses the landfill gas collection system. The text describes the proposed make and model for flare replacement but not for the landfill gas-to-energy equipment.
- s. Sections B.8.2.3 and B.8.2.4 discuss regulatory agencies with jurisdiction over solid waste disposal. Add text identifying the roles and responsibilities of each agency in regards to odor control.
- t. Section C3.8 discusses landfill phasing. Add text identifying regulatory requirements to implement the phasing, such as additional PD permits and environmental clearance.
- u. Section C.4 provides design calculations. This section is missing information on enclosing the outdoor food processing area on the Recyclery property as required in Mitigation Measure BIO-13.
- v. Section E.2 describes several post-closure maintenance and monitoring activities. Add text discussing long-term odor control monitoring and control measures. Composting occurs on the landfill site. Identify long-term plans to relocate compost away from the Newby Island facility.
- w. Section F includes cost estimates for post-closure maintenance. Include costs for odor control and monitoring.
- x. Figure 5 states that the distance to the nearest human dwelling is 3,750 feet. Revise the figure to indicate that the nearest human dwelling is less than 1,500 feet from the boundary of the NISL site.
- y. Appendix A is supposed to include a summary of operational changes for environmental clearance. Unfortunately, the information provided is historical in nature and for reference only. There is only one letter dated February 7, 1995 relating to operational changes involving waste tire salvage, on-site compost bagging, use of biosolids for alternative daily cover, use of dredged and low-level contaminated soils for alternate daily cover, increase in recycled material diversion volume, and hours and days of operation. This section is missing documentation related to operations that have been made legal with the adoption of the FEIR and PD permit.
- z. Appendix B contains correspondence. Letters dated 1995 and 1998 relate to the use of alternate materials for daily cover, including use of green waste. There is no indication that environmental review or permitting activities occurred.
- aa. Appendix B includes a 2011 letter discussing the implementation of partial closure of the D-shaped parcel. There is no indication that environmental review or permitting activities occurred.
- bb. Appendix C is a compilation of operating permits for the NISL site. This section should include a list of the permits and their expiration dates so reviewers can identify expired permits at a glance.
- cc. Appendix C contains a SWFP permit dated 1997, reviewed in 2006, with a note indicating the next review is due in 2011. We assume a review occurred in 2011. Provide the most current SWFP.
- dd. Appendix C includes Waste Discharge Order R2-2005-0020 from the Regional Water Quality Control Board. Provide documentation that the landfill expansion is covered by this order dated 2005.
- ee. Appendix C includes a Major Facility Review Permit dated 2012 from the Bay Area Air Quality Management District. This permit does not allow for landfill expansion as it limits volume to 50.8 million cubic yards. Provide an

updated permit that will allow expansion. Condition 8178 For S-3 Composting Operation and A-3 water truck includes control measures such as complete enclosure of all operations in warehouse-like building if the plant receives 2 or more Public Nuisance Violations in any 180 consecutive day period. Given the absurd difficulty of confirming odor complaints, let alone a Public Nuisance Violation, BAAQMD and LEA should consider using an indicator more reflective of impact to the community such as 100 complaints whether confirmed or not in a 3 months period as the trigger for additional control measures.

- ff. Appendix C contains an expired permit from State Department of Industrial Relations to operate an air pressure tank. Provide an updated permit.
  - gg. Appendix J provides information regarding the C&D operations dated 2007. Provide updated information.
  - hh. Appendix L includes a Litter Control Program written in 2010. Update the Litter Control Plan to address vertical expansion of the landfill.
3. It is our understanding that the Local Enforcement Agency (LEA) has been delegated authority by the State to provide permitting and inspection of all activities occurring at Newby Island. We are concerned about the LEA's ability to be impartial in performance of these tasks as the needs of the City of San Jose seem to overrule regulatory requirements in favor of San Jose's preferred programs. Several years ago Milpitas requested that the San Jose Planning Department keep Milpitas in the loop when issuing permits and environmental documents. We have not received many notifications and conclude that very few environmental reviews or permits have been issued for NISL.
- a. The first compost activity was permitted by San Jose in 1993. The facility was allowed to process 210 tons per day and was approved with a Negative Declaration. The 1994 Settlement Agreement between the City of Milpitas, City of San Jose, and BFI (Operator) required an odor study. The odor study was completed in 1996 and stated that an increase in compost volume may require engineered improvements. The permitted compost volume was expanded from 210 tons per day to 980 tons per day in 2002 with another Negative Declaration. To our knowledge, no engineering study or comprehensive CEQA evaluation was performed to address the significant impacts of the composting process. The impact of processing 980 tons per day was not thoroughly evaluated in the DEIR as the 980 tons per day limit was treated as a baseline and incorrectly presumed to have no impact. San Jose has demonstrated a history of disregarding due process.
  - b. Over the years, the LEA has allowed several illegal activities to occur on the NISL site, as indicated by Table 1.4-1 of the Draft Environmental Impact Report. We have no assurance that the LEA will take their regulatory role seriously and enforce this new permit.
  - c. NISL has demonstrated a history of expanding processes although they are ill-equipped to handle them properly. One example was the acceptance of compost material from San Mateo County. The onset of this expansion caused odor complaints to exponentially increase. Another example was the acceptance of food waste commingled with green waste. The level of complaints increased significantly. More recently, in July 2012, NISL began a new process called wet-dry recycling for commercial accounts. The Milpitas community experienced a significant escalation in odor events due to this program as well. This program increases the proportion of food waste to green waste in the composting process

and increases the total volume of material to be composted. We are not aware of any permits or environmental review prior to allowing this expansion, even though this new process was implemented in summer 2012 in parallel with adoption of the EIR acknowledging the unpermitted activities allowed through 2008.

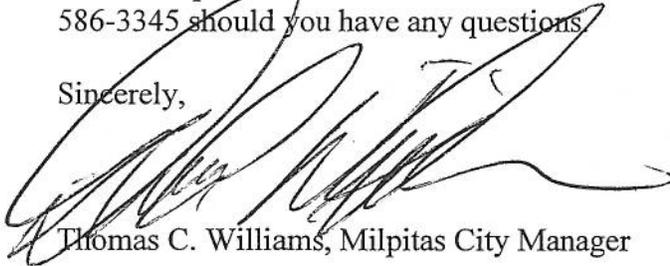
- d. The 2009 DEIR acknowledged that several ongoing activities had not been properly evaluated or permitted. The DEIR stated that the existing condition is the baseline for measuring impacts from expansion. The DEIR failed to acknowledge that the baseline condition causes severe impacts and is unacceptable.
  - e. The increase in daily tonnage is another example of lack of adherence to requirements by the Operator and lack of enforcement by the LEA. The current SWFPs allow maximum daily tonnage of 4,000 tons per day of municipal solid waste, 1,600 tons per day of recyclables, and 980 tons per day of composting. The maximum amount of municipal solid waste received in a single day at the landfill occurred in October 2006 and was 14,021 tons per day. This never should have happened because the maximum allowable is 4,000 tons per day. The additional 10,021 tons per day of material may have included significant volumes of green waste and biosolids. Substantial odor intensities can be emitted from stockpiles, during spreading of these materials, and from the applied surface of these materials after spreading.
  - f. Several years ago Milpitas staff worked diligently with LEA staff and other stakeholders when it became apparent that the LEA was unwilling to tackle the significant odor problem. We are disappointed to learn that the SWFP and JTD have only sketchy information about odor generation and control and does not include the fruits of this effort, nor build on them as new odor issues appear.
  - g. An audit of the LEA budget and performance is necessary to insure that community expectations have been met. San Jose needs to take these concerns seriously.
4. We have the following comments about the Odor Complaint Process:
- a. Another item of concern is the regulatory tools for measuring and monitoring odor complaints. Odor complaints are logged by Bay Area Air Quality Management District (BAAQMD) and investigated. It is our understanding that BAAQMD has jurisdiction over complaints resulting from landfill activities and LEA has jurisdiction over complaints resulting from composting and recycling activities. Provide records showing that LEA has performed these investigations and provide the outcomes.
  - b. The regulatory agencies and environmental documents use the number of confirmed complaints as indicators to determine if there is an impact to the community. The process starts with a complaint from the community, which is investigated by the appropriate regulatory agency. If the odor event is still occurring when the investigator arrives, the investigator attempts to track the odor back to the source. If successful, the complaint is confirmed. This measuring tool has a significant flaw in that odor events are transitory and is therefore unable to effectively evaluate site conditions and impacts. Odors ride the winds and quickly shift from block to block. It is nearly impossible for an odor event to be confirmed. Over the past few years, the number of confirmed complaints is less than 1 % of the total complaints.

c. I would like to describe an analogy of the complaint process. Suppose there is an intersection where a driver runs a red light. A witness reports this to the police; however the car is at another intersection several blocks away if the police arrive promptly; and in another county if the police arrive the next day to investigate. A red-light running event could happen a few hundred times per year at a single intersection. The only time the complaint is confirmed is if an accident occurs – yes someone ran the red light. The fact that most complaints are unconfirmed does not mean that the complaints are without merit – it simply means that the investigation process has serious flaws, provides meaningless data and conclusions, is inappropriate for use in CEQA findings, and needs to be revised.

5. Community Impacts – Odors are of such importance to the community that the Milpitas City Council implemented the Odor Action Plan Stakeholder process over 10 years ago and continues to require a monthly status report of odor complaints.

This permit and accompanying documentation does not meet minimum State standards for landfill operations and is not ready for approval. We request that the deficiencies be addressed prior to issuance. Please do not hesitate to contact my staff Jeff Moneda at (408) 586-3345 should you have any questions.

Sincerely,



Thomas C. Williams, Milpitas City Manager

cc: Jeff Moneda, Milpitas Public Works Director/City Engineer ✓  
Mike Ogaz, City Attorney  
Steven Machida, Principal Civil Engineer ✓  
Steven McHarris, Planning Director