

Permitting & Assistance Branch Staff Report

New Solid Waste Facilities Permit for
WM EarthCare of Marin
SWIS No. 21-AA-0068
December 19, 2013

Background Information, Analysis, and Findings:

This report was developed in response to the Marin County Environmental Health Services Division Local Enforcement Agency's (LEA) request for the Department of Resources Recycling and Recovery (Department) concurrence on the issuance of a proposed new Solid Waste Facilities Permit (SWFP) for the WM EarthCare of Marin, SWIS No. 21-AA-0068, located in Novato and owned and operated by Redwood Landfill Inc. A copy of the proposed permit is attached. This report contains Permitting & Assistance Branch staff's analysis, findings, and recommendations.

The proposed permit was initially received on October 30, 2013. A new proposed permit was received on December 10, 2013. Action must be taken on this permit no later than February 8, 2014. If no action is taken by February 8, 2014, the Department will be deemed to have concurred with the issuance of the proposed permit.

Proposed Project

The following are the key design parameters of the proposed project:

	Proposed SWFP
Owner/Operator	Redwood Landfill Inc.
Facility Type	Composting Facility
Proposed Permitted Hours/Days of Operation	<u>Public</u> : M – F, 7:00 am – 3:00 pm and Sat, 8:00 am - 3:30 pm <u>Commercial Haulers</u> (except sludge haulers): M - F, 12:00 am – 3:00 pm; Sat, 12:00 am - 3:30 pm and Memorial Day, July 4, Labor Day, Thanksgiving Day, 12:00 am - 12:00 pm <u>Closed to public and commercial haulers</u> : Sundays, New Year's Day, Christmas Day <u>Sludge Haulers</u> : M – S, 24 hours per day except New Year's Day and Christmas Day <u>Composting Operations</u> : 24 hours per day except New Year's Day and Christmas Day
Proposed Permitted Maximum Tonnage	514 TPD
Proposed Permitted Traffic Volume	662 (Total traffic for landfill and composting)
Proposed Permitted Area (acres)	35.2
Design Capacity (cubic yards)	300,000 CY
Proposed Waste Types	Green waste, agricultural, food waste, biosolids

Background

This is an existing composting facility currently operating under the Redwood Landfill Permit (SWIS No. 21-AA-0001). The operator is applying for a new Solid Waste Facilities Permit to separately permit and regulate the composting operations allowing for more organic materials to be diverted and composted thereby avoiding disposal. The composting process is also converting from a windrow composting method to covered aerated static piles. The current landfill permit already allows for composting of green waste and food waste, as well as biosolids. There are no plans to use biosolids as a feedstock at this time. Traffic to the whole of the landfill property will not increase, as some vehicle count will be reduced from the LF and transferred to the composting activity. There will be no change in hours, landfill capacity, or structural changes regarding internal traffic or operations or any change in visual impact.

Key Issues

The proposed new SWFP will allow for the following:

1. The facility will operate under its own Compostable Materials Handling Permit.
2. The facility will continue to operate within the permitted boundary of the Redwood Landfill, SWIS No. 21-AA-0001.

Findings:

Staff recommends concurrence in the issuance of the proposed new SWFP. All of the required submittals and findings required by Title 27 of the California Code of Regulations (27 CCR), Section 21685, have been provided and made. Staff has determined that the California Environmental Quality Act (CEQA) requirements have been met to support concurrence. The findings that are required to be made by the Department when reaching a determination are summarized in the following table. The documents on which staff’s findings are based have been provided to the Branch Chief with this Staff Report and are permanently maintained by the Waste Permitting, Compliance, and Mitigation Division.

27 CCR Sections	Findings	
21685(b)(1) LEA Certified Complete and Correct Report of Facility Information	The LEA provided the required certification in their permit submittal letter dated October 28, 2013.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(3) Solid Waste Facility Permit	Staff received a proposed Solid Waste Facilities Permit on October 30, 2013.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685 (b)(4)(A) Consistency with Public Resources Code 50001	The LEA in their permit submittal package received on October 30, 2013, provided a finding that the facility is consistent with PRC 50001. Waste Evaluation & Enforcement Branch (WEEB) staff in the Jurisdiction Product & Compliance Unit found the facility is identified in the Nondisposal Facility Element and with the Countywide Integrated Waste Management Plan, as described in the memorandum dated October 30, 2013.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(8) Operations	WEEB staff in the Inspections and Enforcement Agency	<input checked="" type="checkbox"/> Acceptable

27 CCR Sections	Findings	
Consistent with State Minimum Standards	Compliance Unit found that the facility was in compliance with all operating and design requirements during an inspection conducted on December 10, 2013. See Compliance History below for details.	<input type="checkbox"/> Unacceptable
21685(b)(9) LEA CEQA Finding	The LEA provided a finding in their permit submittal package received on October 30, 2013, that the proposed permit is consistent with and supported by the existing CEQA documentation. See the Environmental Analysis below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21650(g)(5) Public Notice and/or Meeting, Comments	A Public Informational Meeting was held by the LEA on October 10, 2013. Oral comments were addressed by LEA staff. Written comments were received by the LEA. See Public Comments section below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
CEQA Determination to Support Responsible Agency's Findings	The Department is a responsible agency under CEQA with respect to this project. Permitting and Assistance Branch staff has determined that the CEQA record can be used to support the Branch Chief's action on the proposed new SWFP.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

Compliance History:

WEEB staff in the Inspections and Enforcement Agency Compliance Unit conducted a pre-permit inspection on December 10, 2013, and found that the facility is in compliance with applicable state minimum standards and permit conditions. In addition, Permitting & Assistance Branch staff have determined that the design and operations described in the submitted Report of Composting Information will allow the proposed facility to comply with State Minimum Standards.

Below are the details of the compliance history for the composting activity at the site, based on the LEA's monthly inspection reports during the last five years:

- 2013 – no violations noted.
- 2012– (February) One violation for PRC 44014(b) –Permit Terms and Conditions
- 2008 – 2011 - no violations noted.

All violations were corrected to the satisfaction of the LEA.

Environmental Analysis:

Under CEQA, the Department must consider, and avoid or substantially lessen where possible, any potentially significant environmental impacts of the proposed SWFP before the Department concurs in it. In this case, the Department is a Responsible Agency under CEQA and must utilize the environmental document prepared by the County of Marin Community Development Agency, acting as Lead Agency, absent changes in the project or the circumstances under which it will be carried out that justify the preparation of additional environmental documents and

absent significant new information about the project, its impacts and the mitigation measures imposed on it.

The operations that will be authorized by the issuance of the proposed permit include:

- Operation of the existing composting activity with an increase in tonnage from 170 tons/day under the existing SWFP for the landfill to 514 tons/day.
- Operation of said composting facility with a change from windrow composting to a Covered Aerated Static Pile (CASP) system.

These changes are supported by the following environmental document and an Addendum dated August, 2013.

A Final Environmental Impact Report (FEIR), State Clearinghouse No. 1991033042, was circulated for a 30 day comment period from March 28, 2008 to April 28, 2008. The FEIR concluded that the environmental impacts caused by the project would have a significant effect on the environment (traffic) even after mitigation measures were made on the project. The Lead Agency certified the FEIR, together with the Mitigation Monitoring and Reporting Program, and the Statement of Overriding Considerations, on December 18, 2008.

A Notice of Determination was filed with the State Clearinghouse on December 24, 2008.

The 2013 addendum to the FEIR addressed:

- (1) Development and operation of a materials recovery facility (MRF);
- (2) Modification of the existing composting facility, including use of a different composting method and increasing maximum daily tonnage of materials accepted for composting from 170 tons per day to 514 tons per day; and
- (3) An increase in the maximum daily number of vehicles entering the facility from 662 vehicles per day to 690 vehicles per day.

The planned MRF and increase in vehicle count will be permitted in the future under a separate action.

The Marin County Environmental Health Services Division Local Enforcement Agency has provided a finding that the proposed new SWFP is consistent with and supported by the cited environmental documents.

Staff recommends that the Department, acting as a Responsible Agency under CEQA, utilize the Final Environmental Impact Report and Addendum as prepared by the Lead Agency in that there are no grounds under CEQA for the Department to prepare a subsequent or supplemental environmental document or assume the role of Lead Agency for its consideration of the proposed new SWFP. Department staff further recommends the Final Environmental Impact Report and

Addendum are adequate for the Branch Chief's environmental evaluation of the proposed project for those project activities which are within the Department's expertise and/or powers, or which are required to be carried out or approved by the Department.

The administrative record for the decision to be made by the Department includes the administrative record before the LEA, the proposed new SWFP and all of its components and supporting documentation, this staff report, the Final Environmental Impact Report adopted by the Lead Agency, the addendum and other documents and materials utilized by the Department in reaching its decision on concurrence in, or objection to, the proposed new SWFP. The custodian of the Department's administrative record is Dona Sturgess, Legal Office, Department of Resources Recycling and Recovery, P.O. Box 4025, Sacramento, CA 95812-4025.

Public Comments:

The project document availability, hearings, and associated meetings were noticed consistent with the SWFP requirements. The LEA held a public informational meeting on October 10, 2013, at the Marin Humane Society Auditorium, in Novato. Sixteen members of the public were in attendance. A transcript of the meeting is available.

1. A member of the public asked what reasons are needed for the LEA to not approve the project. The LEA answered by stating that as long as the application is consistent with the conditional use permit and the addendum to the FEIR, there is no reason for the LEA to reject a complete and correct application.
2. A member of the public asked if there will be more traffic associated with the landfill and the compost facility as a result of the proposed new compost permit. The LEA answered by clarifying that the new permit does not include an increase to overall permitted traffic and that the existing traffic entitlement for the landfill will be reduced so there is no net increase of vehicles per day.
3. A member of the public made a statement that the operator should be more considerate of the residents/community nearby and that in the past the landfill was the source of fugitive odors. The LEA responded that those odors were a result of sludge drying operations which have long been discontinued. The methodology for the proposed compost system will be a covered aerated static pile (CASP) which will reduce fugitive odors.
4. A member of the public asked why the operator will still have an entitlement to compost biosolids and at the same time no biosolids are planned to be composted. The answer the LEA gave at the meeting is that the entitlement will remain as a back up plan for use of biosolids in an unforeseen circumstance or emergency.
5. A member of the public asked questions about the FEIR, the Addendum to the FEIR, and the CEQA history for the facility. The LEA and operator answered by giving an explanation of the CEQA process and CEQA history of the facility. The Addendum to the FEIR analyzed for the proposed changes are a result of the effort to provide alternatives to waste disposal at the site and are meant to support the construction and operation of the expanded compost facility and a Materials Recovery Facility that will divert construction and demolition wastes from being disposed.
6. A member of the public expressed concerns regarding requirements of CEQA regarding the Addendum being tied to the existing FEIR for the landfill, as the FEIR has been challenged by No Wetlands Landfill Expansion in court and the operator is in an appeals process.

7. A member of the public asked about the composting facility was not addressed in the 1958 Conditional Use Permit. The LEA responded that the County supervisors have chosen not to open the CUP process. In lieu of revisiting the CUP, the County has used an extensive CEQA review which resulted in the FEIR for the landfill.
8. A member of the public asked why composting requirements are more stringent over the landfill footprint and yet less so over non-fill areas.
9. Also several comments related to water quality issues which are not under the jurisdiction of the LEA or CalRecycle.
10. One question regarding the impoundment for compost contact water and leachate. The contact water will be contained in a lined pond and recycled through the compost for additional moisture to produce a better end product.

The LEA received multiple emails following the meeting. The opinions stated in the emails in opposition to the project are similar to the concerns stated at the meeting. From the e-mails, two citizens were against the project but no reason was mentioned. Three citizens were not satisfied with the time allowed to comment. One citizen expressed concerns related to the amount of feedstock materials being handled, the amount of time to provide comment, and concerns with the siting. Two organized citizen groups provided comments regarding the siting, inadequacy of CEQA, and concerns with air emissions.

The No Wetlands Landfill Expansion Coalition (NWLE) provided a letter, dated October 21, 2013, to the LEA, which listed several issues relative to the proposed issuance of the new composting permit.

The LEA sent a letter to the NWLE on December 13, 2013, indicating they would not be responding to the comments submitted by the NWLE, but did state LEA staff was advised by Planning staff and legal counsel that the Addendum to the 2008 Final Environmental Impact Report, which analyzed this project, did not require circulation or responses to public comments.

In addition two citizens, one organized citizens group, one waste disposal company, and the Novato Sanitation District submitted emails in support of the project.

On December 9, 2013, Department staff received an email from the author of the above mentioned letter from The No Wetlands Landfill Expansion group, Bruce Baum. Mr. Baum inquired as to why the letter was not posted on the Department's public notice website. Although, not addressed to the Department, but rather to the LEA, per his request, this letter has been posted. In the letter, Mr. Baum lists several issues under two major headings.

1. “Unlawful Permitting and Environmental Review Process”

It is alleged that the Conditional Use Permit (CUP), issued in 1958, does not allow for composting. The LEA and the Department do not have authority with regard to the CUP.

Mr. Baum also states that the existing FEIR has been ruled invalid by the County Superior Court and because of this, the Addendum to it is not “appropriate”. Counsel for Marin County

Environmental Health Services and Department legal staff determined that the ruling has been appealed and a stay is in effect and the FEIR is valid until the case is resolved.

2. “Material Deficiencies to the Compost Addendum to the FEIR”

Mr. Baum objects to the project and findings of the Addendum to the FEIR. As indicated in the addendum, “The Addendum was prepared by the County of Marin in accordance with CEQA, the State of California CEQA Guidelines, and the Marin County Environmental Impact Review Guidelines. “

One of the objections was related to an increase in traffic count, which, although discussed in the Addendum, is not being contemplated in this permit.

Other objections are based on water quality and greenhouse gas emission concerns, over which the LEA and the Department do not have authority.

In addition, and as detailed in the Environmental Analysis section above, Department staff has reviewed the environmental documentation and has determined that the FEIR and Addendum to FEIR, as prepared by the Lead Agency, are adequate for the Department’s environmental evaluation of the proposed project for those project activities which are within the Department’s expertise and/or powers, or which are required to be carried out or approved by the Department.

In addition, under the circumstances, the Department must use the Lead Agency’s CEQA documents since the Department has no authority to prepare a subsequent or supplemental environmental document, pursuant to 14 CCR, Sections 15162 and 15163 respectively, or assume the role of Lead Agency, pursuant to 14 CCR, Section 15052, for its consideration of the proposed revised SWFP. None of the comments provided any substantial evidence to support an alternate conclusion.

In the final paragraph of the letter, Mr. Baum requests that the LEA “not proceed” with proposed SWFP until his concerns have been addressed and the appropriate CEQA procedures are followed.

In response, based on the information provided in the application package and as supported in this staff report, there are no grounds for the Department to object to the concurrence in the revised SWFP pursuant to PRC 44009(a)(2) or conduct further CEQA review.

The LEA also received an undated letter from the Sustainable Novato organization, which was made available to Department staff. In the letter, the composting activity is praised, but some concerns were identified.

1. Climate Change – the concern is that rising sea levels and more severe storms and tidal events might cause the composting areas to be inundated and then pollute the neighboring

waters. These are primarily siting and water quality issues not under the jurisdiction of the LEA and the Department.

2. Biosolids as a Feedstock – the concern is under what conditions biosolids would be composted. The entitlement to compost biosolids exists for the current facility and is not new. The operator does not intend to compost biosolids at this time.
3. The Addendum to the FEIR does not provide safeguards for the wetlands or does not indicate whether some mitigation measures from the FEIR were implemented. Neither of these are under the jurisdiction of the LEA or Department.
4. The Addendum to the FEIR does not analyze for the hazard of placing a wastewater pond adjacent to San Antonio Creek. This is a water quality issue, again not under the jurisdiction of the LEA or the Department.

Department staff provided an opportunity for public comment during the CalRecycle Monthly Public Meetings on November 19, 2013 and December 17, 2013.