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January 25, 2016

SENT VIA EMAIL
[PUBLICMEETINGS@CALRECYCLE.CA.GOV]

Attention: Eric Kirjura
Department of Resources Recycling and Recovery
1001 I Street – P.O. Box 4025
Sacramento, CA 95812-4025

Re: BFI Newby Island Recyclery – Modified Solid Waste Facilities Permit

Dear Mr. Kirjura,

The City of Milpitas (“City”) respectfully requests that the California Department of Resources Recovery and Recycling (“CalRecycle”) not concur with the City of San Jose Local Enforcement Agency’s (“LEA”) issuance of the Modified Solid Waste Facilities Permit (SWIS No. 43-AN-0014) for BFI Newby Island Recyclery (“Recyclery Permit”).

The Newby Island solid waste facilities are located in the City of San Jose at its borders with the City of Milpitas. The facilities consist of the Newby Island Sanitary Landfill, the Composting Facility, and the Recyclery, a mixed-waste processing facility. These facilities are partly integrated and located closely together, with the Recyclery located adjacent to the Landfill and the Composting facility sharing portions of both the Recyclery and the Landfill to accommodate its operations.

The Recyclery Permit fails to properly address odor complaints caused by the Recyclery. Section 16 of Recyclery Permit sets forth a self-monitoring system where the owner/operator of the Recyclery must submit to the LEA copies of all written complaints regarding the Recyclery and the operator’s actions taken to resolve these complaints. However, importantly, the LEA must only be notified if the written complaint is confirmed by the operator. This language effectively allows the Recyclery to avoid reporting odor complaints to the LEA by not confirming odor complaints.

Odors from the Newby Island facilities are a frequent and serious problem to City residents. The Bay Area Quality Management District reported 2,400 complaints about the Newby Island facilities in 2015 alone. Out of these 2,400 complaints, none were reported by the Recyclery’s operators. These numbers underscore the significance of ensuring that the



BEST BEST & KRIEGER
ATTORNEYS AT LAW

January 25, 2016

Page 2

Recyclery Permit's self-monitoring system requires accurate and timely reporting of odors caused by the Recyclery. As it stands now, the Recyclery Permit fails to meet this standard by giving operators of the Recyclery a loophole to disregard its responsibility to report odor complaints.

The City strongly urges CalRecycle to consider using alternative language in the Recyclery Permit to close this self-monitoring loophole. Specifically, the Recyclery's self-monitoring obligations with respect to odor complaints should: (1) extend to both written and oral odor complaints, (2) require a physical log available on the facility's premises for a minimum of one year describing the written or oral complaint, date the complaint was received, and the operator's actions taken in response, and (3) be timely communicated by written correspondence to the LEA within one day.

Please call or email should you have any questions regarding these comments. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Chris Diaz', with a long horizontal flourish extending to the right.

Christopher Diaz, City Attorney

cc: Tom Williams, City Manager