



# CITY OF MILPITAS

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January 26, 2015

Department of Resources Recycling and Recovery (CalRecycle)  
Attn: Ms. Caroll Mortensen  
Attn: Mr. Kevin Taylor  
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 Ms. Mortensen and Mr. Taylor:

Thank you for this opportunity to provide additional comments 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 adjoining community is currently being subjected to an exponential increase in foul odors and the regulatory agencies are investigating the sources. It would be prudent to wait for the results of the investigation as it would not be appropriate to approve the permit if the Operator is unable to properly manage existing operations. 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 additional comments:

1. The facility received several violations recently from Calrecycle, BAAQMD, and the LEA. These actions demonstrate that the Operator is either ignorant or purposely violating permit requirements and minimum standard operating practices. The Operator should not receive a permit to expand until they employ effective odor control measures and demonstrate the facility can operate for 12 months without violations or odor complaints. In addition, the Operator should be cited for nuisance conditions with requirements to abate the problem by each of the regulating agencies.
2. The facility has outlived its useful life. Due to the meteorological wind patterns and geographical terrain, the prevailing winds will transport odors to the Milpitas

community most days of the year. The proliferation of "Spare the Air" days with stagnant air conditions also present a challenge as the odiferous air settles on the community and does not disperse. The community does not have any relief from the odors. Odor control measures include cessation of operations during certain wind patterns. However, with new material arriving daily and a 48 hour limit for material storage, the Operator is not able to cease operations. The odor control measures are not effective and the facility is a nuisance to the urban community.

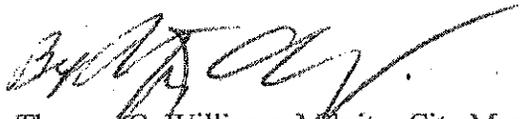
3. The BAAQMD Major Facility Review Permit needs to be revised to include limitations of the adopted Environmental Impact Report. The Major Facility Permit incorrectly states that the Operator could apply for a New Source Review permit to increase maximum daily tonnage. However, this would be in violation of the CEQA documents.
4. Food waste sorting and handling is an odor-generating nuisance process that is not adequately addressed in the proposed permit. The permit should clearly limit the daily tonnage for food waste sorting and handling to the amount that is included in the CEQA documents. Food waste sorting and handling did not have prior environmental clearance and the 2012 Environmental Impact Report grandfathered the average amount sorted and handled at the issuance of the Notice of Preparation. Unfortunately, this amount is not clearly identified in the CEQA documents. A firm upper limit is necessary in order to insure that the CEQA process is followed in the future for any proposed expansion of this process. The permit is lacking requirements to manage odor mitigation.
5. 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. Multiple permits allow the various processes to have an independent count of odor events for purposes of triggering regulatory actions such as violations. The community doesn't care which process is generating odors at any moment and needs a cumulative count of odor events to trigger regulatory actions. Combine all activities into one permit.
6. CalRecycle staff note that BAAQMD is responsible for odor complaint investigation. We disagree and believe odor management is an integral part of each regulatory agency's responsibilities. However, if that is true, then CalRecycle is unable to evaluate the permit's completeness on its own. BAAQMD staff should have equal responsibility to review and approve all aspects of the permit and supporting documents to insure that current operations are in compliance and odor mitigation is adequately addressed.
7. Our November 6, 2014 letter includes a comment that flaring 100% of the landfill gas was not analyzed in the CEQA documents as it was assumed that the majority of the gas would be converted into energy. This assumption is not true as 100% of landfill gas is currently flared and will be for the foreseeable future. We would like to make an additional point that the Joint Technical Documents do not provide any documentation demonstrating that the flares have adequate capacity to burn all of the landfill gas.
8. The primary purpose of the 2008 Odor Impact Minimization Plan (OIMP) is to address odors generated by the compost process. This OIMP is out of date and lacks

detail regarding odors generated by the various landfill processes and must be updated prior to issuance of the SWFP. The City of Milpitas Odor Action Plan is also out of date and contains insufficient detail to be used as the landfill OIMP. An OIMP is necessary since the Operators have failed to manage odors.

9. Add language to the permit requiring copies of all CalRecycle, BAAQMD, and LEA inspection reports and enforcement actions be provided to the City of Milpitas on a monthly basis.

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 Steve Machida at (408) 586-3355 should you have any questions.

Sincerely,



Thomas C. Williams, Milpitas City Manager

cc: Steve Machida, Milpitas Acting Public Works Director/City Engineer  
Mike Ogaz, City Attorney  
Steven McHarris, Planning Director