

Permitting & Assistance Branch Staff Report
 Modified Solid Waste Facilities Permit for the
 BFI Newby Island Recyclery
 SWIS No. 43-AN-0014
 January 20, 2016

Background Information, Analysis, and Findings:

This report was developed in response to the City of San Jose, Department of Planning, Building and Code Enforcement, Local Enforcement Agency's (LEA) request for the Department of Resources Recycling and Recovery (Department) concurrence on the issuance of a proposed modified Solid Waste Facilities Permit (SWFP) for the BFI Newby Island Recyclery, SWIS No. 43-AN-0014, located in the City of San Jose and owned by Los Esteros Ranch, LLC and operated by Browning-Ferries Industries of California, 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 November 3, 2015. A new proposed permit was received on January 20, 2016. Action must be taken on this permit no later than March 20, 2016. If no action is taken by March 20, 2016, the Department will be deemed to have concurred with the issuance of the proposed modified SWFP.

Proposed Changes

The following changes to the first page of the permit are being proposed:

	Current Permit (1999)	Proposed Permit
Name and Street Address of Facility	BFI-The Recyclery* 1601 Dixon Landing Road Milpitas, CA 95035 *NOTE: The Facility's actual location is in San Jose. However, the mailing address is in Milpitas.	BFI Newby Island Recyclery 1601 Dixon Landing Road San Jose, CA 94538
Name and Mailing Address of Owner	Browning-Ferris Industries of California, Inc. 1601 Dixon Landing Road Milpitas, CA 95035	Land owner: Los Esteros Ranch, LLC 1125 N. Amphlett Blvd San Mateo, CA 94401
Permitted Traffic Volume	Equivalent of 1,600 Tons Per Day	Traffic will be regulated by CCR, T14 section 17418.3. Traffic flow through the facility shall be controlled to prevent the following: (1) Interference with, or creation of a safety hazard on adjacent public streets or roads, (2) on-site safety hazards, and (3) interference with operations.

Enforcement Agency Name and Address	City of San Jose, LEA PBCE Dept. Code Enforcement 170 W. San Carlos Street San Jose, CA 95113	City of San Jose LEA Planning, Building and Code Enforcement Department 200 East Santa Clara Street, T-4 San Jose, CA 95113
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Other Changes include:

1. Updates to the “documents” section to include references to current governing documents by other regulatory agencies.
2. Revisions to the “LEA Conditions” section including rewording, additions and/or deletions for the purpose of updating and/or clarifying.

The proposed permit updates the facility name; correctly identifies the name and address of the land owner; updates the LEA mailing address; provides current references to supporting documents and approves the updated Transfer/Processing Report, dated June 2015. There will be no changes in the operating days/hours, permitted area, or permitted daily tonnage.

Background

BFI Newby Island Recyclery is an existing Materials Recovery Facility (MRF) located on the eastern portion of Newby Island Sanitary Landfill at 1601 Dixon Landing Road in the city of San Jose, California. The facility is located on approximately 10 acres of land under a long-term lease agreement from the Los Esteros Ranch Partnership. The SWFP currently allows a maximum receipt of 1,600 tons per day (TPD) of waste and an equivalent of 1,600 TPD maximum traffic volume. The facility processes commercial and residential single-stream and source-separated recyclables including paper, plastics, glass, metals, construction and demolition waste, tires, wood, and aluminum. The Recyclery also receives mixed municipal solid waste (MSW). The Recyclery processes recyclables for residents, municipalities, commercial and industrial customers in Santa Clara County, Alameda County, Contra Costa County, and other municipalities.

Findings:

Staff recommends concurrence in the issuance of the proposed modified 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 November 3, 2015.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(2) LEA Five Year Permit Review	A Permit Review Report was prepared by the LEA on November 8, 2014. The LEA provided a copy to the Department on November 14, 2014. The changes identified in the review are reflected in this permit modification.	<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 January 20, 2016.	<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 November 3, 2015, provided a finding that the facility is consistent with PRC 50001. Waste Evaluation & Enforcement Branch (WEEB) staff in the Jurisdiction Compliance Unit found the facility is identified in the Non-disposal Facility Element, as described in the memorandum dated December 8, 2015.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(8) Operations Consistent with State Minimum Standards	WEEB staff in the Inspections and Enforcement Agency Compliance Unit found that the facility was in compliance with all operating and design requirements during an inspection conducted on December 21, 2015. See Compliance History below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(9) LEA CEQA Finding	The LEA provided a finding in their permit submittal package received on November 3, 2015, 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 Notice was posted by the LEA on September 8, 2015. No written comments were received by LEA or Department staff. 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 modified 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 21, 2015 and found that the facility is in compliance with applicable state minimum standards and permit conditions.

Below are the details of the MRF's compliance history based on the LEA's monthly inspection reports during the last five years:

- 2015 – No violations were noted.
- 2014 – (December) - One violation of PRC 44004 – Significant Change; one violation of PRC 44014 (b) – Operator Complies with Terms and Conditions; one violation of 14 CCR Section 17410.1 – Solid Waste Removal; one violation of 14 CCR Section 17408.5 – Nuisance Control
- 2010 – 2013 - No violations were 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 City of San Jose, Department of Planning, Building, and Code Enforcement, 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 changes that will be authorized by the issuance of the proposed permit include:

- Updating the facility name; correctly identifying the name and address of the land owner; updating the LEA mailing address; providing current references to supporting documents and approving the updated Transfer/Processing Report, dated June 2015. There will be no changes in the operating days/hours, permitted area, or permitted daily tonnage

The City of San Jose Planning, Building and Code Enforcement Department, acting as Local Enforcement Agency, has provided a finding that the proposed modified SWFP is consistent with and supported by existing environmental documents.

Staff recommends that the Department, acting as a Responsible Agency under CEQA, prepare a Notice of Exemption, based on the Categorical Exemption, 14 CCR Section 15301 – Existing Facilities, to be filed with the State Clearinghouse after the Department's concurrence in the Modified SWFP proposed by the LEA, in that the proposed permit is to be issued to an existing facility that will not expand its operations from those authorized under the current permit that the LEA issued in 1999. Further,

there are no grounds under CEQA for the Department to prepare an environmental document or assume the role of Lead Agency for its consideration of the proposed Modified SWFP.

Department staff further recommends the Categorical Exemption is adequate for the Branch Chief's environmental evaluation of the proposed project for those project activities which are within the Department's expertise and authority, 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 modified SWFP and all of its components and supporting documentation, this staff report, the Notice of Exemption and other documents and materials utilized by the Department in reaching its decision on concurrence in, or objection to, the proposed modified 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. No verbal or written comments were received by the LEA or Department staff.

Department staff provided an opportunity for public comment during the CalRecycle Monthly Public Meeting on December 15, 2015. No comments have been received by Department Staff.