

**DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**1001 I STREET, SACRAMENTO, CALIFORNIA 95814 • WWW.CALRECYCLE.CA.GOV • (916) 322-4027

P.O. BOX 4025, SACRAMENTO, CALIFORNIA 95812

December 27, 2012

Justin Roberts, Manager
California Bio-Mass, Inc.
83-109 Avenue 62
Thermal, CA 92274

RE: California Bio Mass, Facility No. 33-AA-0259, Request for Stay of Notice and Order (12-03)

Dear Mr. Roberts:

On December 19, 2012, Department of Resources Recycling and Recovery (CalRecycle) staff received a request to stay the Riverside County Local Enforcement Agency's (LEA) Notice and Order (N&O) (12-03). I have considered the request and the information provided by Fullerton, Lemann, Schaefer, and Dominick, LLP on your behalf, as well as information provided by the LEA and CalRecycle staff. On the grounds stated in the enclosed Director Action Request, date December 19, 2012, I cannot find any evidence of extraordinary circumstances that would justify a stay of the N&O. Therefore, I cannot support a request for a stay of the N&O.

If you have any questions regarding this action, please contact Georgianne Turner of my staff at (916) 341-6429.

Sincerely,



Carol Mortensen, Director
CalRecycle

cc:

Michael R Schaefer
215 North D Street, First Floor
San Bernardino, CA 92401
mschaefer@flsd.com

Mr. Steve Van Stockum, Director
Community Health Agency
Department of Environmental Health
P.O. Box 7600, Room 104
Riverside, CA 92513-7600

Laurie, Holk, Supervising REHS, Riverside County LEA
lholk@rivcocha.org



**DIRECTOR
ACTION REQUEST**

To: Caroll Mortensen, Director
Department of Resources Recycling and Recovery

Reviewed by: Lorraine Van Kekerix, Branch Chief *CPST FOR LVK*
Waste Evaluation and Enforcement Branch

Michael Bledsoe, Senior Legal Counsel
Legal Affairs Office

From: 
Mark de Bie, Deputy Director
Waste Compliance, Mitigation and Permitting Division

Prepared By: Georgianne Turner, Section Manager
Solid Waste Enforcement Section

Request Date: December 19, 2012

Action By: December 27, 2012

Decision Subject: Consideration of Stay of Notice and Order, No. 12-03, for California Bio Mass Composting Facility, Riverside County (33-AA-0259)

SUMMARY

On November 28, 2012, the Riverside County LEA issued California Bio Mass a Notice and Order No. 12-03 (N&O) to minimize off-site odors and cease causing a public nuisance. A letter dated December 12, 2012, originally received by e-mail from the LEA on December 13, 2012 and e-mailed directly to CalRecycle staff on December 19, 2012, indicates that the operator of the California Bio Mass, through their lawyer Fullerton, Lemann, Schaefer & Dominick, has requested the Director of CalRecycle to stay the N&O under provisions of Public Resources Code (PRC), Section 45017. The operator has also appealed the N&O to the LEA's Hearing Officer pursuant PRC 44307. The LEA is currently in the process of setting up the hearing which must occur within 30 days pursuant to PRC 44310.

DIRECTOR ACTION REQUEST

TIMEFRAMES:

Under PRC 45017(a)(2)(C) CalRecycle is required to consider and act within three (3) days if the owner or operator of a permitted facility alleges, and the Director of CalRecycle finds, that the enforcement order will *preclude or interfere with the provision of an essential public service that would cause an adverse effect on the public health and safety or the environment*. That provision does not apply here because the owner/operator has not alleged such facts and CalRecycle staff is not aware of any facts on which the Director could make the necessary finding.

Under PRC 45017(a)(2)(D), if CalRecycle's Director **does not find** that that the enforcement order will *preclude or interfere with the provision of an essential public service that would cause an adverse effect on the public health and safety or the environment*, the Director's determination must be made in **14 days**.

Staff received a *copy* of the request on December 13, 2012 via e-mail from the LEA. On December 19, 2012 staff had not yet received the request in the mail. Staff contacted the operator's attorney to ask for the request to be directly e-mailed to CalRecycle so that we could process the request in a timely manner and assure that we had all evidence provided by the operator's attorney in order to assure a complete and accurate assessment of the request. CalRecycle staff received the request directly via e-mail on December 19, 2012. Since PRC 45017(a)(2)(C) does not apply, **CalRecycle has 14 days to act on the request.**

OPTIONS

1. Stay the effect of a portion of the order, *as requested by the operator*, pending the completion of administrative appeals before the Riverside LEA hearing officer or CalRecycle.
2. Stay the effect of a portion of the order, *amending the request of the operator*, pending the completion of administrative appeals before the Riverside LEA hearing officer or CalRecycle.
3. Deny the request for stay.

ANALYSIS AND FINDINGS

PRC Section 45017(a)(2) allows the owner or operator of a solid waste facility operating under a solid waste facilities permit to petition the Director of CalRecycle to stay the effect of an enforcement order or determination, or portion thereof, pending the completion of administrative appeals before the hearing panel or hearing officer or CalRecycle. The petition is required to be in writing and must state the *extraordinary circumstances* that justify the stay. It must also state facts which demonstrate that, if the order or determination takes immediate effect, it "will preclude or interfere with the provision of an essential public service...(such that) the public health and safety or the environment will be adversely affected." (PRC Section 45017(a)(2)(B))

DIRECTOR ACTION REQUEST

The request is for a stay of four (4) of the six (6) orders in the N&O No. 12-03, as follows:

1. **Request to stay the order** to minimize off-site odors occurring from the facility in any direction and cease causing a public nuisance.
2. **Request to stay the order** that by December 31, 2012, the operator is to submit a plan with timeframes providing assurance of continued minimization of odors and lack of creation of a public nuisance. The Plan is to include all existing measures being taken and any future measures to maintain the requirements in 1 above.
3. **Request to stay the order** to continue the cessation of acceptance of any odiferous liquids that may cause a public nuisance.
4. **Request to stay the order** that the operator, by August 19, 2013, completely process existing static piles and overs that contain grease in a manner that minimizes off-site odor from occurring from the facility in any direction and in a manner that does not cause a public nuisance.

The operator is not requesting a stay for the following two (2) orders in the N&O:

1. The operator to continue the new liquid waste integration protocol of applying non-odiferous liquids.
2. The operator to process all other static piles in a timely manner per Title 14, CCR, and Chapter 3.1 Regulations.

The request states that if the N&O goes into effect immediately neither the LEA nor the operator will have the benefit of any objective (odor) criteria for determining whether the operator is in compliance with the N&O and only after that objective standard is set is it reasonable for the operator to submit a plan to meet the criteria that is set forth in the amended order. Furthermore, the request indicates that beginning to process the static piles in the winter may cause more odors due to the climatic conditions. Staff note the compliance date for such processing does not have to be completed until August 19, 2013, thus does not create any immediate consequence from implementing this section of the N&O and therefore is more appropriate for discussion during the appeal process.

The request for stay *did not identify any essential public service interruption* that would result from the N&O. Staff cannot find any evidence that there would be any interruption of service to the community that would affect the public health and safety or the environment. Since October 1, 2012, the operator had ceased taking all odiferous liquid wastes, including but not limited to, grease containing liquid waste, milk and fruit juice. According to the LEA, the current infrastructure is handling the diverted material effectively. The material is being handled out of county and some material is being accepted by Coachella Valley Composting Facility.

DIRECTOR ACTION REQUEST

Compliance History

In 2011 the facility did not receive any violations for odor. However in 2012 the LEA received numerous odor complaints and cited eight (8) violations for failure to minimize odor impacts and two (2) violations requiring the operator to revise its Odor Impact Minimization Plan (OIMP). As a result the LEA and the operator took the following steps in an effort to obtain compliance at the site:

- The LEA met with the operator on the required OIMP revisions and the following operational changes were requested by the LEA and memorialized in a letter dated June 14, 2012;
 1. Reduce grease trap waste,
 2. Eliminate placement of grease trap waste/water on material not going through pathogen reduction process,
 3. Eliminate grease trap water to be used as dust control,
 4. Reduce acceptance of any odiferous loads which may contribute to off-site odor impacts,
 5. Decrease size of any new static piles to maximize aeration,
 6. Cease adding material to existing static piles,
 7. By June 15, 2012 cap the top of the dirt pile that received grease water on the Southwest side of the facility,
 8. Begin to combine materials to create a higher carbon to nitrogen ratio (greater than 30:1).
- The operator complied with the requested and implemented the revised June 11, 2012 OIMP. However odor issues were still being documented by the LEA.
- The LEA issued a N&O (12-02) on August 30, 2012 requiring the operator to reduce all grease containing liquids by 50% by September 30, 2012 and continue to follow the measures of the June 2012 letter (details above).
- The operator complied with all the requirements of the N&O (12-02) and additionally stopped taking ALL odiferous liquids, however, odor issues were still being documented by the LEA.
- Between September 1, 2012 and November 28, 2012, the LEA received over 200 off-site odor complaints and confirmed approximately 80 off-site odor complaints and found that the additional measures taken since the end of August 2012 were not minimizing odors from the facility and off-site odors were still occurring resulting in complaints.
- The LEA met with the operator, the City of La Quinta, representatives of the Board of Supervisors, and representatives of the homeowner association of Trilogy (the community complaining about odors) on November 14, 2012 regarding the ongoing odor issues and the need for the issuance of a new N&O.
- On November 28, 2012, the LEA issued a new N&O 12-03. The operator is appealing to the LEA's Hearing Officer (described above and attached).

DIRECTOR ACTION REQUEST

CalRecycle listed the facility on the Inventory of Facilities Violating State Minimum Standards on October 11, 2012 due to repeat odor violations. The LEA is required to issue a Compliance Schedule within 15 days of the facility being put on the Inventory. Since the action required by N&O 12-02 had not resulted in odor minimization, the LEA took the appropriate action and issued another N&O (12-03), requiring additional measures to minimize odors.

Findings

CalRecycle staff do not find any evidence of *extraordinary circumstances* to support the request to stay the N&O:

1. The operator states that it wishes to stay the N&O requirement **to minimize off-site odors occurring from the facility in any direction and cease causing a public nuisance**. Title 14, 17867(a) requires “*all handling activities shall be conducted in a manner that minimizes vectors, odor impacts, litter, hazards, nuisances, and noise impacts; and minimizes human contact with, inhalation, ingestion, and transportation of dust, particulates, and pathogenic organisms*”. An order to minimize off-site odors in any direction to the level that a public nuisance is not created is consistent with the standard. Odor impacts are professionally evaluated by state certified LEAs which must have a state Registered Environmental Health Specialist (REHS) overseeing its programs. In this case the LEA inspectors and supervisor are REHSs and are qualified to evaluate this state standard. It is up to the Hearing Officer in this case, through the local hearing process under PRC 44307, to determine whether the operator’s appeal should lead to a modification of this order.
2. The operator states that it wishes to stay the N&O requirement that **by December 31, 2012, the operator is to submit a plan with timeframes providing assurance of continued minimization of odors and lack of creation of a public nuisance. The Plan is to include all existing measures being taken and any future measures to maintain the requirements in 1 above**. The operator is required to continuously address odor issues through its OIMP. Through the N&O the LEA is requiring a specific plan due on a specific date.
3. The operator states that it wishes to stay the N&O requirement that **the operator must continue the cessation of acceptance of any odiferous liquids that may cause a public nuisance**. This is a continued request of the LEA and the operator has been meeting this requirement since October 1, 2012. The LEA is ordering the operator to maintain status quo.
4. The operator states that it wishes to stay the N&O requirement that **the operator, by August 19, 2013, completely process existing static piles and overs that contain grease in a manner that minimizes off-site odor from occurring from the facility in any direction and in a manner that does not cause a public nuisance**. The operator argues that beginning to process the static piles and over during the winter may cause more odors

**DIRECTOR
ACTION REQUEST**

due to the climatic conditions. Compost odors can vary as a result of climatic conditions. However, it is noted that the compliance date for achieving the condition this order requires does not occur until August 19, 2013. Staff find that there should be adequate time to process the material during times when weather conditions are such that they would not exacerbate odors.

RECOMMENDATION

In summary, based on the evidence provided by the operator and the LEA, staff do not find evidence of extraordinary circumstances that would justify the stay of the Notice and Order. Therefore, staff recommends that the stay be denied.

DIRECTOR ACTION:

On the basis of the information in this Request for Action, I find that there are no extraordinary circumstances that would justify a stay of the N&O and that the immediate effect of the N&O. Therefore, I hereby deny the request for a stay of the N&O.

Dated:

12/24/2012


Caroll Mortensen, Director
Department of Resources Recycling and Recovery

Attachments:

Stay of Appeal of Riverside County LEA Notice and Order No. 12-13 (sic); note that the correct identification of the N&O is N&O No. 12-03), dated December 12, 2012