

County of Santa Clara

Recycling and Waste Reduction Commission
Integrated Waste Management Division

1553 Berger Drive, Building #1
San Jose, California 95112
(408) 282-3180 FAX (408) 282-3188
www.ReduceWaste.org



DATE: August 30, 2010
TO: Recycling and Waste Reduction Commission
FROM: Cynthia Palacio, Chair, Operations Subcommittee
SUBJECT: 9th Amendment to the NDFE

RECOMMENDED ACTION

1. Recommend the ninth amendment to the NDFE include: Recology Silicon Valley Processing & Transfer Facility and Zero Waste Energy Development Company's Anaerobic Digestion Facility. Direct TAC to request more information about scope of operations, processing methods, operating hours, source and destination of materials from Environmental Resources Recovery, Inc. doing business as Valley Recycling and Kings Row Transfer.
2. Request that city and County Planning Departments notify TAC when a facility applies for a permit.
3. Direct TAC via the Operations Subcommittee to establish a fee structure for the NDFE process.

REASON FOR RECOMMENDATION

Non-Disposal Facilities

A non-disposal facility (NDF) is any solid waste facility required to obtain a solid waste facility permit from CalRecycle. These facilities include fully permitted facilities such as the SMaRT Station but may also include smaller facilities with lower level permits which process a smaller volume or particular type of material for recycling or composting.

Amendments to Non-Disposal Facility Element

California Public Resources Code Sections 41730 et seq., requires cities and the County to prepare and adopt a Non-Disposal Facility Element (NDFE) to identify facilities which will be needed to implement local Source Reduction & Recycling Elements. These may be proposed as new facilities or expansion of existing facilities.

The countywide NDFE identifies transfer stations, material recovery (recycling) facilities, green waste composting facilities, and landfills that are necessary to implement local waste diversion goals. In order to apply for CalRecycle permits, facilities must first be listed in the Non-Disposal Facility Element of the County and the City where the facility is located.

Commissioners: Jamie McLeod, Chair; Ronit Bryant, Kansen Chu, Jim Griffith, Rosemary Kamei, Evan Low, Cat Tucker, Kris Wang, Curtis Wright, Ken Yeager

Process for NDFE Amendments & CalRecycle Permits

As provided by State law, a proposed amendment is brought before the Local Task Force (LTF, in this case the RWRC) at a public hearing. This commences the 90-day public comment period. At the end of that period the LTF makes a recommendation to the host jurisdiction and the Board of Supervisors whether to adopt the amendment to the NDFE. At this time, the LTF also provides comments, concerns or conditions to the Board of Supervisors, the LEA and CalRecycle.

Once a facility is listed in the NDFE, the operator may apply to CalRecycle for a solid waste facility permit via the Local Enforcement Agency (LEA). The LEA reviews the permit for a conformance finding. If it meets the criteria, the LEA approves the permit and forwards to CalRecycle for their concurrence before it is issued. Lower-level permits are automatically issued in 30 days if the LEA fails to process them within that time.

Concerns, Comments & Conditions

For the purpose of streamlining the permitting process, lower-level facilities are minimally regulated by the State and are not required to have local land use approval before the LEA/CalRecycle issues the solid waste permit. This sometimes places the LEA in the awkward position of having to oversee a State-approved solid waste site with inadequate or no local land use approval, and subsequently referring the matter to code enforcement.

The LEA enforces State regulations covering tonnage limits, traffic volume, dust and other health and safety concerns, but may not address Local Task Force concerns unless the State solid waste permit is the type that allows conditions. For example, lower-level permits are written on a template form which does not provide for conditions. Therefore, a facility may operate despite problems even if a land use permit was not obtained or a condition was omitted in the land use permit. Legislative changes may be needed to address the State's permit process. Also, a model ordinance with conditions specific to solid waste facilities could prove helpful to all.

The Technical Advisory Committee is advisory to the RWRC and provides input. In July, the draft NDFE ninth amendment came before TAC and was referred to the Operations Subcommittee for review because of concerns that had been raised by TAC.

Concerns of the Operations Subcommittee include:

- Land use issues including unpaved storage lots without buildings or sorting equipment, and/or situated on properties with legal, nonconforming land use status with the same condition.
- Code enforcement concerns.
- Applications for high-volume processing facilities on small parcels.

Some examples include a hauler that was cited for draining a bottle and can recycling compactor over a storm drain on a public street because their low-level permitted facility did not have sanitary sewer connections. In another case, a non-franchised hauler brought a full compactor from a franchised jurisdiction (illegal hauling) to an unpaved storage lot for debris boxes where it was stored for a week before being transferred to an unknown location. Compactors are open at one end making them accessible to rodent and other vector and fluids can drain onto the ground. The storage site is connected to an adjacent low-level permitted facility. The LEA was unable to determine if a violation had occurred because the permit did not contain assessor's parcel information and the street address applied to three different parcels.

These issues are associated with low-level solid waste facility permits that are minimally regulated by State law. These types of permits are meant to encourage the siting of diversion facilities to help a community reach its recycling goals. Previously there had been few notable concerns but the number of incidents has been increasing because it is easier to site low-level facilities than fully permitted facilities.

TAC also noted that the scope of operation described in the NDFE application is often far different than the local land use permit or LEA/CalRecycle permit. For example, one of the NDFE applications stated that they would be processing 500-600 tons of material per day on less than one acre. This operation is similar to others in the County that are on 5-10 acres. The applicant did not mention they were going to grind yard trimmings and food waste with a 1200 horsepower diesel grinder on an industrial site near a freeway. The applicant was already in process of obtaining a land use permit at the time they applied for the NDFE amendment. The land use permit for the grinder was granted about 2 weeks after the NDFE amendment was submitted.

Finally, NDFE amendments are often filed at the last minute and are time-consuming to process. TAC will be proposing a reasonable time and fee schedule to efficiently manage this process without negatively affecting applicants. California Public Resources Code permits assessing fees for the administrative process relative to amendments to the NDFE. TAC will be pursuing other process improvements and provide updates to the RWRC as they occur.

It is important that the RWRC, acting in the capacity as the Local Task Force, exercise their authority under State law to provide the host jurisdiction and the County with comments, concerns or conditions that may not have been considered during a local land use planning process.

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August 30, 2010

Elizabeth Constantino, Program Manager
Integrated Waste Management Division
County of Santa Clara
1553 Berger Drive, Building #1
San Jose, CA 95112

Dear Ms. Constantino:

The Recycling and Waste Reduction Commission of Santa Clara County, acting as the County Local Task Force (LTF) under AB939, has reviewed the Ninth Amendment to the County of Santa Clara Countywide Nondisposal Facility Element (NDFE), as required by Public Resources Code Section 41734 (a) and (b). LTF review and comment focuses on potential regional impacts of the NDFE.

Two nondisposal facilities are described in the Ninth Amendment to the NDFE:

1. Recology Silicon Valley Processing and Transfer Facility in the City of San Jose;
2. Zero Waste Energy Development Company's Anaerobic Digestion Facility in the City of San Jose;

These facilities are expected to assist the jurisdictions of Santa Clara County in their efforts to meet or exceed state mandated waste stream reduction goals. The Commission believes that the facilities included in the amended NDFE will positively impact the region.

Additionally, two facilities have submitted documents to be included in the Countywide NDFE but have been found to be deficient in information. The following two facilities will need to provide some ancillary information as requested by RWRC and TAC:

1. Environmental Resources Recovery Inc. dba Valley Recycling in the City of San Jose;
2. Kings Row Recycling Facility in the City of San Jose.

Sincerely,

Jamie McLeod, Chair
Recycling and Waste Reduction Commission of Santa Clara County

cc: Cities of Santa Clara County
CalRecycle Office of Local Assistance

Commissioners: Jamie McLeod, Chair; Ronit Bryant, Kansen Chu, Jim Griffith, Rosemary Kamei, Evan Low, Cat Tucker, Kris Wang, Curtis Wright, Ken Yeager

County of Santa Clara

Department of Agriculture and Environmental Management
Integrated Waste Management Division

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DATE: October 18, 2010

TO: Recycling and Waste Reduction Commission

FROM: Clifton Chew, Management Analyst

SUBJECT: TENTH AMENDMENT TO THE COUNTY OF SANTA CLARA COUNTYWIDE NONDISPOSAL FACILITY ELEMENT

RECOMMENDATION

Acting as the Local Task Force (LTF) under AB939, review the attached Tenth Amendment to the County of Santa Clara Countywide Nondisposal Facility Element (Amendment) submitted for your review and comments.

Modify the attached draft comment letter as desired and approve issuance of the final comment letter.

BACKGROUND

The Countywide Nondisposal Facility Element (NDFE) identifies transfer stations, material recovery facilities, and yard waste compost facilities necessary to implement local waste diversion goals.

According to California Public Resources Code (PRC), Section 41734, LTF review and comment is required for any amendment to the NDFE of facilities processing large tonnage or certain materials, and that review must include an assessment of the regional impact of potential diversion facilities. LTF comments must be submitted to the host jurisdiction and the County within 90 days of the LTF's receipt of the Amendment for review and comment. After adoption by the host jurisdiction and the County, CalRecycle has 30 days to determine completeness of application and 60 days to approve the Amendment.

In June 2010, Green Earth Management, LLC requested that the County initiate the process to amend the Santa Clara County Countywide Nondisposal Facility Element to include the Kings Row Recycling Facility. The applicant desires to process up to 600 tons per day of green materials and compostable materials on .91 acres prior to being transferred to a compost facility. The facility will be located at 650 Kings Row, San Jose 95112, near the intersection of Gish Road and Highway 880.

In order to operate at this tonnage level, the facility must first be identified in the NDFE. City of San Jose staff confirmed that the facility in their jurisdiction is expected to assist the City in meeting its diversion goals.

There was a concern that amending the NDFE to include a request from the applicant to process up to 600 tons per day was inconsistent with a previously approved City of San Jose land use permit to process 199 tons per day on a .91 acre parcel.

Based on the 199 tonnage level, the facility does not need to be listed in the NDFE and qualifies for the Notification tier of the State solid waste facility permit. Upon the filing of a Notification, the applicant may proceed to operate if all other requirements with the host jurisdiction and other agencies have been met.

The applicant has confirmed he desires to process up to 600 tons per day on a .91 acre parcel, which qualifies for the Registration tier of the State permit, and must first be listed in the NDFE. It is unknown whether the 600 tons per day also requires a revised local land use permit, but such use permit would likely address concerns about traffic or other impacts from processing a high volume of material on a small parcel.

The RWRC may recommend the facility be listed in the NDFE at the 600 tons per day level. The RWRC may also choose to provide comments about processing a high volume of material on a small parcel and the inconsistency with the City of San Jose's use permit for a lower volume.

The attached information will comprise the Tenth Amendment to the Countywide NDFE.

The City of San Jose's Planning Department is the lead agency for environmental review and is the Local Enforcement Agency (LEA) for the Facility. A description of the facility and a map showing the location are attached.

A draft comment letter is attached for consideration by the Commission. Comments and changes may be made to County staff and/or provided at the April meeting.

STEPS FOLLOWING LTF REVIEW

1. The Commission chair will execute the LTF comment letter addressed to the County.
2. As required by CalRecycle regulations, staff will forward copies of the LTF comment letter to local jurisdictions and CalRecycle.
3. Adoption of an amendment to a jurisdiction's NDFE requires consideration at a public hearing, with 3 days notice. Adoption of the Amendment does not require environmental review (Public Resources Code, Section 41735). Jurisdictions wishing to adopt the Amendment must schedule a public hearing to receive testimony and to consider adoption of the Amendment. Only those jurisdictions in which a facility is located must amend their NDFE; in this case, the City of San Jose will be asked to take action on the amendment. However, the amendment packet will be sent to all local jurisdictions; other jurisdictions may decide to take action on the amendment as desired.
4. City staff will schedule a public hearing before the host jurisdiction's City Council. Once the public hearing has been added to the City Council agenda, County staff will schedule a public hearing before the Board of Supervisors and will submit the Amendment for adoption.
5. After the Amendment is adopted by resolution, each adopting jurisdiction shall forward copies of the public notice and signed resolution to the County Integrated Waste Management Division (IWM).
6. County IWM will forward copies of the Amendment, LTF comments, public notices, and adoption resolutions to CalRecycle.
7. After adoption by the host jurisdiction and the County, CalRecycle has 30 days to determine completeness of application and 60 days to approve or disapprove the Amendment.

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October 25, 2010

Elizabeth Constantino, Program Manager
Integrated Waste Management Division
County of Santa Clara
1553 Berger Drive, Building #1
San Jose, CA 95112

Dear Ms. Constantino:

The Recycling and Waste Reduction Commission of Santa Clara County, acting as the County Local Task Force (LTF) under AB939, has reviewed the Tenth Amendment to the County of Santa Clara Countywide Nondisposal Facility Element (NDFE), as required by Public Resources Code Section 41734 (a) and (b). LTF review and comment focuses on potential regional impacts of the NDFE but may include other comments.

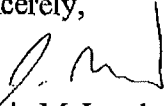
One nondisposal facility is described in the Tenth Amendment to the NDFE:

King's Row Recycling Facility
650 Kings Row
San Jose, CA 95112

The Commission believes that the facility is expected to assist the jurisdictions of Santa Clara County in their efforts to meet or exceed state mandated waste stream reduction goals. It is noted that the Technical Advisory Committee (TAC) has a concern about the feasibility of processing up to 600 tons of material on .91 acres. Additionally there was a conflict between the local land use permit to process up to 199 tons per day and the applicant's proposal to amend the countywide NDFE to process up to 600 tons per day.

It is the Commission's intent to amend the NDFE to include this facility for planning purposes.

Sincerely,


Jamie McLeod, Chair

Recycling and Waste Reduction Commission of Santa Clara County

cc: Cities of Santa Clara County
CalRecycle Office of Local Assistance

Commissioners: Jamie McLeod, Chair; Ronit Bryant, Kansen Chu, Jim Griffith, Rosemary Kamei, Evan Low, Cat Tucker, Kris Wang, Curtis Wright, Ken Yeager

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December 13, 2010

TO: Recycling and Waste Reduction Commission
FROM: Clifton Chew, Management Analyst
**SUBJECT: ELEVENTH AMENDMENT TO THE COUNTY OF SANTA CLARA
COUNTYWIDE NONDISPOSAL FACILITY ELEMENT**

RECOMMENDATION

Acting as the Local Task Force (LTF) under AB939, review the attached Eleventh Amendment to the County of Santa Clara Countywide Nondisposal Facility Element (Amendment) submitted for your review and comments.

Modify the attached draft comment letter as desired and approve issuance of the final comment letter.

BACKGROUND

The Countywide Nondisposal Facility Element (NDFE) identifies transfer stations, material recovery facilities, and yard waste compost facilities necessary to implement local waste diversion goals.

According to Public Resources Code (PRC), Section 41734, LTF review and comment is required for any amendment to the NDFE, and that review must include an assessment of the regional impact of potential diversion facilities. LTF comments must be submitted to the host jurisdiction, the county, and the California Integrated Waste Management Board (CIWMB) within 90 days of the LTF's receipt of the Amendment for review and comment.

Environmental Resource Recovery Inc. and Smurfit-Stone requested that the County initiate the process to amend the Santa Clara County Countywide Nondisposal Facility Element to include the respective facilities:

1. Environmental Resource Recovery Inc., (Valley Recycling)
2. Smurfit-Stone Recycling San Jose Facility

The facility must be identified in the NDFE in order for the facility to be in conformance with state requirements, and for a facility's permit application to be accepted as complete. The attached information will comprise the Tenth Amendment to the Countywide NDFE.

Valley Recycling is seeking a solid waste facility permit from the CalRecycle to allow for future expansion to include processing. The facility is located at 1615 B South 7th Street in the City of San Jose. The City of San Jose's Planning Department is the lead agency for environmental review and the Local Enforcement Agency (LEA) for the facility. A description of the facility and a map showing the location are attached.

Smurfit-Stone is seeking to obtain a Solid Waste Facility Permit from CalRecycle in as a precaution against feedstock that could raise their residual levels above 10%. The facility is located at 205 East Alma Avenue in the City of San Jose. The City of San Jose's Planning Department is the lead agency for environmental review and the Local Enforcement Agency (LEA) for the Facility. A description of the facility and a map showing the location are attached.

A draft comment letter is attached for consideration by the Commission. Comments and changes may be made to County staff and/or provided at the December meeting.

STEPS FOLLOWING LTF REVIEW

1. The Commission chair will execute the LTF comment letter addressed to the County.
2. As required by CIWMB regulations, staff will forward copies of the LTF comment letter to local jurisdictions and the CIWMB.
3. Adoption of an amendment to a jurisdiction's NDFE requires consideration at a public hearing, with 3 days notice. Adoption of the Amendment does not require environmental review (Public Resources Code, Section 41735). Jurisdictions wishing to adopt the Amendment must schedule a public hearing to receive testimony and to consider adoption of the Amendment. Only those jurisdictions in which a facility is located must amend their NDFE; in this case, the City of San Jose will be asked to take action on the amendment. However, the amendment packet will be sent to all local jurisdictions; other jurisdictions may decide to take action on the amendment as desired.
4. County staff will schedule a public hearing before the Board of Supervisors and will submit the Amendment for adoption. City staff will take similar actions in their respective jurisdictions.
5. After the Amendment is adopted by resolution, each adopting jurisdiction shall forward copies of the public notice and signed resolution to the County Integrated Waste Management Division (IWM).
6. County IWM will forward copies of the Amendment, LTF comments, public notices, and adoption resolutions to the CIWMB.
7. The CIWMB has 60 days to approve or disapprove the Amendment.

November 4, 2010 Approved TAC Minutes Item #4**11th Amendment NDFE**

Larry Sweetser with Sweetser & Associates provided a brief overview of Smurfit's operation. He noted that Smurfit has been in operation for some time and only handles separated recyclables. There is currently no intention to change that, however, the marketplace is evolving and as a cautionary move, they are seeking a solid waste facility permit. There is a correction to the factsheet, under **Jurisdictions Served**: in addition to the jurisdictions in Santa Clara County; some material will come from San Mateo County.

A question was asked about the kind of materials Smurfit is receiving. They stated that they receive a varietal mix from walking floors, mixed, segregated, commercial mix, single stream, etc.

Maryann Harmon from Valley Recycling said they receive C&D and inert materials that come in as both source separated and mixed commodities. They have bunkers to hold the materials and they take the materials to Guadalupe Landfill for further separation.

A question was asked about their operations and if they just unload and transfer materials. They stated that this is correct and that they also do some container service. Additional questions concerned the layout of the facility. Maryann replied that part of the parcel was subleased to DRS which they are not affiliated with. The APN # will be added and will help identify who is operating where.

Regarding the Smurfit-Stone Recycling Facility, Larry Sweetser confirmed Smurfit operations occur inside the building; the building is sprinklered; and the outside areas are paved. It was noted from reviewing the aerial pictures that the property appears to be very neat and clean.

Regarding the Valley Recycling C&D facility, Skip Lacaze asked about their location referring to an aerial photograph showing three parcels all with the same address of 1615B Seventh Street. Maryann Harmon of Valley confirmed that their operation unloads and transfers materials on the southernmost parcel (APN 477-08-020). Maryann and Valley uses an adjacent parcel to the north (APN 477-08-018) for parking and empty container storage, but the area of that parcel fronting on Seventh Street is not affiliated with Valley and they do not know who is operating there. Both parcels share the driveway entrance from Seventh St.

Cynthia Palacio asked questions about another business, DRS, storing full and empty solid waste compactors on the same parcel as Valley (APN 477-08-180), and expressed concern that the parcel is unpaved. Maryann advised that DRS subleases from Valley a portion of the unpaved parcel but it is for vehicle parking only and there is no operation going on as far as debris or construction materials. She advised that Valley is not connected or affiliated with DRS except through the sublease for parking only. Cynthia Palacio asked that the APN numbers be added to the document to help verify where Valley Recycling is operating or storing empty containers. Anthony Eulo suggested that parcel numbers should be requested of all future applicants to help clarify location. Cynthia Palacio agreed although APNs are not required by the State for permits, but such identification is helpful in case of code enforcement issues and determining the responsible party.

A motion was made by Tony Eulo to recommend that the RWRC recommends the host jurisdictions and Board of Supervisors adopt the 11th Amendment to the NDFE. The motion was seconded by Stan Chau. All present voted to approve.

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December 13, 2010

Elizabeth Constantino, Program Manager
Integrated Waste Management Division
County of Santa Clara
1553 Berger Drive, Building #1
San Jose, CA 95112

Dear Ms. Constantino:

The Recycling and Waste Reduction Commission of Santa Clara County, acting as the County Local Task Force (LTF) under AB939, has reviewed the Eleventh Amendment to the County of Santa Clara Countywide Nondisposal Facility Element (NDFE), as required by Public Resources Code Section 41734 (a) and (b). LTF review and comment focuses on potential regional impacts of the NDFE.

Two nondisposal facilities are described in the Eleventh Amendment to the NDFE:

1. Environmental Resource Recovery Inc., in the City of San Jose;
2. Smurfit-Stone Recycling San Jose Facility in the City of San Jose;

It is anticipated that these facilities will assist the jurisdictions of Santa Clara County in their efforts to meet or exceed state mandated waste stream reduction goals.

Sincerely,

Jamie McLeod, Chair
Recycling and Waste Reduction Commission of Santa Clara County

cc: Cities of Santa Clara County
CalRecycle Office of Local Assistance