

STEPHEN T. CLIFFORD
JAMES E. BROWN
ROBERT D. HARDING
ARNOLD ANCHORDOQUY
PATRICK J. OSBORN
MICHAEL L. O'DELL
GROVER H. WALDON
JOHN R. SZEWczyk
STEPHEN H. BOYLE†
JAMES B. WIENS
RICHARD G. ZIMMER
CHARLES D. MELTON

OF COUNSEL
ANTHONY L. LEGGIO

† LLM TAXATION

CLIFFORD & BROWN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

BANK OF AMERICA BUILDING
1430 TRUXTUN AVENUE, SUITE 900
BAKERSFIELD, CALIFORNIA 93301-5230

TELEPHONE NO. (661) 322-6023 • FACSIMILE NO. (661) 322-3508

T. MARK SMITH
JEREMY J. SCHROEDER
DANIEL T. CLIFFORD
CHRISTOPHER J. HAGAN
WINIFRED THOMSON HOSS
SHELLY S. MAURER
VICTORIA M. TRICHELL
NICHOLAS J. STREET
MARC E. DENISON
NICHOLAS A. ASHLEY

KATHY R. SMITH
OFFICE ADMINISTRATOR

www.clifford-brownlaw.com

April 27, 2012

50260-3

Via E-Mail Only (jbashaw@waterboards.ca.gov)

Jeannette L. Bashaw
Legal Analyst
State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100
Sacramento, CA 95812-0100

Re: **Tentative Cease and Desist Order R5-2012-XXXX**
Lamont Public Utility District

To the Central Valley Regional Water Quality Control Board:

This submission constitutes a Petition, comment and submission of evidence objecting to Cease and Desist Tentative Order R5-2012-XXXX requiring Lamont Public Utilities [sic] District Wastewater Treatment Facility, Kern County, to cease and desist from discharging waste contrary to requirements. This submission is made on behalf of Community Recycling & Resource Recovery, Inc., the operator of a compost facility pursuant to a lease by and between the Lamont Public Utility District ("LPUD") and Community Recycling & Resource Recovery, Inc. ("Community Recycling"). Correspondence concerning this submission may be addressed to:

Richard G. Zimmer, Esq.
T. Mark Smith, Esq.
Clifford & Brown
Bank of America Building
1430 Truxtun Avenue, Suite 900
Bakersfield, CA 93301
rzimmer@clifford-brownlaw.com
msmith@clifford-brownlaw.com

The proposed Cease and Desist Order of the Central Valley Regional Water Quality Control Board ("Tentative Order") is attached hereto as Exhibit "1." The Tentative Order was adopted on March 23, 2012. Comments concerning the Tentative Order are due on April 27, 2012.

State Water Resources Control Board
Re: Cease and Desist Order R5-2012-XXXX
April 27, 2012
Page 2

On November 29, 2011, the Kern County Superior Court granted a stay of the County of Kern's revocation of Community Recycling's Conditional Use Permit to operate the compost facility whereat LPUD's wastewater is disposed. At a February 6, 2012 hearing, the Kern County Superior Court again renewed the stay and a formal order staying the revocation through the term of the litigation. The Order of the Superior Court is attached hereto as Exhibit "2."

The purpose of the litigation is to overturn the revocation of the Conditional Use Permit thereby allowing the compost facility to continue in operation indefinitely. Community Recycling and the LPUD are joint petitioners and plaintiffs in the action. Petitioners and plaintiffs believe that the action will be successful and the revocation will be overturned.

The Tentative Order is in error because it disregards the LPUD's rights to litigate the legality of the revocation. At present, the action brought by Community Recycling and the LPUD (Kern County Superior Court Case No. S-1500-CV-275272-EB) is expected to be ongoing through the latter part of 2012. The voluminous administrative record has not yet been completed and the briefing process is expected to be extensive.

The Tentative Order requires the LPUD to submit a Technical Report by December 7, 2012 describing measures the Discharger has implemented or proposes to implement to ensure adequate Use Area to ensure compliance with the Discharge Specifications is ordered to be submitted. However, it is unlikely that the Superior Court litigation will be resolved on or before December 7, 2012.

The LPUD should not be required to take action and expend significant resources -- to the substantial detriment of its rate-payers -- to identify an alternative means of disposal of wastewater currently handled by the compost facility while the Superior Court action is pending. Assuming that petitioners' and plaintiffs' action is successful, any funds and resources expended to identify an alternative means of disposal would be a needless expenditure of public funds. Accordingly, the schedule contained in the Tentative Order for tasks, dates of compliance and dates of report, is premature and unnecessary.

As an alternative method of compliance, Community Recycling proposes that it assume the responsibility of reporting to the Regional Water Quality Control Board on significant events in the litigation and to advise the Board of the status of the Superior Court action. There should be ample opportunity for the LPUD to identify an alternative means of disposal. Even if petitioners and plaintiffs do not prevail in the Superior Court action, it is anticipated that a Writ of Supersedeas would be issued to further stay revocation of the Conditional Use Permit. There would be adequate time for the LPUD to find an alternative means of disposal during the pendency of the appeal.

In the alternative, the Tentative Order's requirement of the submission of a Technical Report on December 7, 2012 should be extended. An extension of approximately six (6) months (180 days) to one (1) year (365 days) should be adequate to allow completion of the Superior Court proceedings prior to requiring the LPUD to incur substantial public funds to locate an alternative method of disposal. Community Recycling also notes that the proposed schedule does not allow adequate time for public comment on any plan of alternative disposal in compliance with CEQA.

Community Recycling is aggrieved by the Tentative Order because such Order threatens Community Recycling's contractual relationship with the LPUD as documented in the compost facility lease.

There has previously been substantial briefing in the Superior Court proceeding concerning the stay of revocation. Petitioners' entitlement an order overturning the stay is expressed in Petitioners' Reply to Respondent's Opposition to Ex Parte Application for Stay of Administrative Order Revoking Conditional Use Permit [*C.C.P.* § 1094.5(g)]. Petitioners' legal papers submitted in support of its Reply to the County's Opposition are attached hereto and submitted into evidence as follows:

Exhibit "3"	Reply Brief
Exhibit "4"	Declaration of Mary Jane Wilson
Exhibit "5"	Declaration of Jesse Frederick
Exhibit "6"	Declaration of Tom Fry
Exhibit "7"	Declaration of Andrew Pandol
Exhibit "8"	Declaration of Fred Gillett
Exhibit "9"	Declaration of T. Mark Smith
Exhibit "10"	Declaration of Matthew Cotton (without exhibits)

Community Recycling also submits its closure plan for the facility as Exhibit "11."

Community Recycling also comments on the capacity of the compost facility to accept daily limits of waste water as follows:

State Water Resources Control Board
Re: Cease and Desist Order R5-2012-XXXX
April 27, 2012
Page 4

Community Recycling currently accepts all the waste water from the LPUD and utilizes it on the compost facility to provide a beneficial reuse of the water. Water balance calculations recently provided to the Central Valley Regional Water Quality Control Board demonstrate that Community Recycling currently accepts on average approximately 1.2 million gallons of water per day with an average daily intake of approximately 2500 tons of compostable feedstock per day. The LPUD currently accepts approximately 2 million gallons of water per day. The estimated average volume of percolation and evaporation in the LPUD ponds is therefore estimated to be approximately 800,000 gallons per day. Community Recycling currently balances its operation to match the LPUD water and supplements the waste water with well water when needed. The Community Recycling portion of the facility is permitted to accept 3692 tons of compostable feedstocks per day. With no change in operation by Community Recycling but simply increasing the feedstocks to the permitted limit, the LPUD inlet could be increased by 500,000 gallons per day to 2.5 million gallons per day.

Community Recycling could also make certain efficiency alterations in the composting facility to accept more waste water without revision of any permitting. An example would be to increase the volume proportion of woody materials that require more water to compost. Another example would be to utilize forced aeration of the windrows rather than the current scarab aeration system. Neither has been utilized as there has been no need due to the low water volumes. These efficiency operations are estimated to increase the volumes of waste water handling capability by 30% or to 2.25 million gallons per day by the compost alone. Simple calculations show then that the LPUD has sufficient acreage to handle an incoming flow to the facility of 3.25 million gallons per day, with 2 million gallons per day to non-food crops, .8 million gallons per day to evaporation and percolation and 2.25 million gallons per day to the compost facility.

A copy of this submission has been provided to the CVRWQCB and the LPUD.

Very truly yours,



T. MARK SMITH

T.MS/nm
Enclosures

cc: W. Dale Harvey *Via E-mail Only*
Senior Engineer
RCE No. 55628

Larry Peake, Esq. *Via E-Mail Only*
ioc: Richard G. Zimmer, Esq.