

**Note: This document has been prepared by the  
Central Valley Water Board's Prosecution Team**

ITEM: 9

SUBJECT: Recology Hay Road, Jepson Prairie Organics as a DBA of  
Recology Hay Road, Recology Hay Road Landfill, Solano County

BOARD ACTION: *Consideration of a Cease and Desist Order (CDO)*

FACILITY  
BACKGROUND: Recology Hay Road (Discharger) owns and operates an active landfill and composting operation regulated by the Water Board under the name "Recology Hay Road" (facility). The facility consists of two Class III landfills (LF-1 and LF-2), one Class II landfill (LF-3), a Class II sewage sludge waste pile (WP-9.1), a Class II sewage sludge land treatment unit (LTU), green-waste and food-waste composting areas, and two lined compost leachate ponds. The Discharger performs active composting on a 22-acre all-weather pad and stores finished compost product on a 32-acre area, all with the landfill footprint. The facility is located eight miles east of Vacaville in Solano County on a 640-acre site, of which 256 acres are permitted for landfill disposal and composting operations. Discharges at the facility are subject to three different permits:

Waste Discharge Requirements Order (WDRs) R5-2008-0188  
WDRs Order R5-2008-0188, adopted by the Central Valley Water Board on 5 December 2008, implements the regulations found in Title 27 of the California Code of Regulations and the California Water Code for the discharge of waste to the landfill units and the composting area. Monitoring and Reporting Program (MRP) R5-2008-0188 accompanies the WDRs. The WDRs represent the minimum standards for properly managing waste to ensure, among other things, that there are no discharges of waste constituents to the unsaturated zone, to groundwater, or to surface waters.

State Water Board Water Quality Order 97-03-DWQ (and Order 2014-0057-DWQ)

Discharges of industrial stormwater from the facility are subject to the State Water Board's Industrial General Permit, Orders 97-03-DWQ and 2014-0057-DWQ, which are National Pollutant Discharge Elimination System (NPDES) permits. The Industrial General Permit authorizes industrial stormwater discharges to the Alamo Creek A-1 Channel, an agricultural drainage canal along the northern and eastern boundaries of the facility, then to Ulatis Creek, then to Cache Slough, and the Sacramento-San Joaquin Delta, all waters of the United States. Pursuant to the Discharge Prohibitions of the Industrial General Permit, materials other than stormwater that discharge either directly or indirectly to waters of the United States are prohibited.

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Order R5-2013-0073: NPDES Limited Threat General WDRs

The Discharger actively pumps groundwater from the area directly west of the existing landfill known as the "borrow pit." The discharge of this dewatered groundwater to surface waters is subject to Order R5-2013-0073, which is also known as the NPDES Limited Threat General Waste Discharge Requirements.

The proposed CDO addresses violations of WDRs R5-2008-0188.

**CDO BACKGROUND  
AND CONTENT OF  
CDO:**

Water Code section 13301 authorizes the Board to issue a CDO where it "*finds that a discharge of waste is taking place or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or state board.*" The proposed CDO identifies eight different categories of noncompliance with WDR requirements or instances where discharges of waste are taking place or threatening to take place in violation of the WDRs. Though the Board has the authority to order immediate compliance with the WDRs, the goal of the Prosecution Team's proposed CDO is to afford the Discharger time to comply with the Board's requirements, to allow the Discharger to continue to operate its business in a manner that is protective of water quality, and to ensure that the Order is readily enforceable if the Discharger does not comply with the deadlines therein. The information required by the tasks in the proposed CDO will provide the Board's permitting staff with the information needed to consider updating the WDRs to reflect the Discharger's current operations. In this regard, the proposed CDO effectively bridges the gap between the WDRs and a potential future revision of the WDRs while holding the Discharger accountable for operating in an environmentally responsible way in the interim.

On 11 July 2014, the Prosecution Team issued the first draft of the proposed CDO addressing eight categories of noncompliance or threatened noncompliance with WDRs. The eight categories include:

- 1) Food waste composting violations;
- 2) Leachate pond violations;
- 3) Construction of an unauthorized green waste runoff pond;
- 4) Improper use of leachate for dust control;
- 5) Lack of separation to groundwater;
- 6) Inadequate runoff and drainage controls;
- 7) Inadequate temporary fill slope stability; and
- 8) Inadequate flood protection.

The proposed CDO contains requirements addressing each of these eight categories and provides a reasonable time schedule

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for the Discharger to implement measures necessary in order to comply with WDRs Order R5-2008-0188.

Prior to and since issuing the first draft of the proposed CDO, the Prosecution Team and the Discharger have been meeting periodically to discuss and potentially narrow down the number of contested requirements in the proposed CDO. In response to these meetings, the Prosecution Team issued a second and a third draft of the CDO. In response to an additional meeting and the Discharger's 3 September 2014 submission pursuant to the Hearing Procedures, the Prosecution Team has further modified and/or clarified the requirements pertaining to each of the eight categories listed above.

After engaging in this iterative process with the Discharger, the Parties have reached agreement on the requirements that correspond to categories 1-4 and 6-8 above. The Parties remain at odds over the requirements that correspond to category 5 above, the lack of separation to groundwater. In response to the Discharger's 3 September 2014 submission, the Prosecution Team narrowed the scope of the requirements regarding the separation to groundwater, as discussed further below.

#### CDO ISSUES:

On 3 September 2014, the Discharger submitted its Response to the Prosecution Team's Legal and Technical Analysis (Response) and raised three specific issues: 1) the requirements in the proposed CDO pertaining to the separation to groundwater are excessive, unnecessary, and unwarranted; 2) the Regional Board should adopt a Time Schedule Order (TSO) pursuant to Section 13300 of the Water Code in lieu of the Prosecution Team's proposed CDO; and 3) compost leachate should not be classified as a "designated waste" in the proposed CDO.

##### Issue 1: Separation to Groundwater

The WDRs implement the Title 27 requirement that groundwater not be allowed within five feet (5') of waste or leachate, unless an engineered alternative provides equivalent protection. The WDRs require 5' of separation for two landfill units, 3' for another unit, and 2.5' for the newer landfill units. The first draft of the proposed CDO described the Prosecution Team's concerns with data quality and required remedial actions if groundwater was to rise to within the separation area.

In its Response, the Discharger raises a number of objections to the Prosecution Team's proposed requirements pertaining to the separation to groundwater category and requests that all findings and required actions on this issue be removed. The Prosecution

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Team disagrees with removing these references in their entirety, but in response to the Discharger's comments, has provided additional specificity to the areas of concern and narrowed the scope of the necessary remedial actions.

To address the Discharger's arguments regarding accuracy of the separation measurements reported to the Board, the Prosecution Team has modified the proposed CDO to require that separation to groundwater measurements be reported to an accuracy of 0.1', and if desired, the Discharger may include what it believes, in its professional opinion, is the margin of error for that measurement. Furthermore, the proposed CDO clarifies the MRP requirement to "determine the separation of groundwater from the lowest point of each unit and/or module" by providing the elevations for the bottom of each unit.

To address the Discharger's arguments regarding the proposed requirement to submit a plan to immediately lower groundwater in the event that the separation requirements cannot be maintained, the Prosecution Team has narrowed the scope of this requirement to apply to only units DM-1 and DM-3.3, rather than the entire facility. The Prosecution Team understands the Discharger's concern that a plan to "immediately lower" groundwater may not be practicable. Therefore, this requirement has been modified to follow the step-wise concepts of Title 27, namely, a delineation of the problem, a study of the options to return to compliance (i.e. an Engineering Feasibility Study), identification/implementation of the chosen option, and monitoring to demonstrate effectiveness.

The Prosecution Team has ongoing concerns regarding the Discharger's manner of data reporting with respect to rounding sump elevations, the impacts of the slurry wall on groundwater gradient determinations, the screened intervals of groundwater monitoring wells, and the adequacy of the current groundwater monitoring network. However, the Prosecution Team revised the proposed CDO to remove the requirements pertaining to these issues in order to give the Parties additional time to continue their ongoing dialog over these complex issues outside the context of the proposed CDO.

#### Issue 2: Adoption of a TSO in lieu of the Prosecution Team's proposed CDO

Along with its Response, the Discharger also submitted a proposed TSO for the Board's consideration in lieu of the Prosecution Team's proposed CDO. As explained in extensive detail in the Prosecution Team's Rebuttal Argument (Rebuttal), other potential enforcement options were evaluated prior to issuing the first draft of the proposed CDO. Ultimately, the Prosecution

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Team determined that a CDO was the most effective order to achieve its goals and address its concerns of having a readily enforceable order.

The Discharger proposed additional language to satisfy the Prosecution Team's concern over the TSO's enforceability. However, the Discharger's proposal requires further legal clarification. Though the Board retains its inherent power to exercise such additional powers as necessary for efficiently administering its powers expressly granted or those that can be fairly implied by statute, further clarification is required as to the Board's ability to order sanctions it would otherwise lack the power to impose in an adjudicative context.

The Discharger's proposed additional language in the TSO causes the order to substantively mirror the Prosecution Team's proposed CDO in relief sought and potential liability of \$5,000 for each day in which the underlying order is violated. Effectively, with the addition of the Discharger's proposed stipulated language, the Discharger is agreeing to the Prosecution Team's proposed CDO in all ways except the order's name and asks the Board to label the order a TSO rather than a CDO. The Prosecution Team respectfully encourages the Board to maintain its transparency and adopt the CDO as proposed.

Issue 3: "Designated Waste"

The Findings in the proposed CDO describe the compost leachate discharged to the low-flow and high-flow ponds as "designated waste," pursuant to the definition in Section 13173 subdivision (b) of the Water Code. The Discharger objects to the use of this term stating that it is unnecessary to define the waste stream in the context of the proposed CDO, that the classification of the compost leachate should only be made through the State Water Board's proceedings related to the forthcoming Compost General Order, and the appropriate classification methodology was not used when making this finding in the proposed CDO.

The "designated waste" classification is a site-specific determination based on a number of factors unique to a particular site. The State Water Board's Compost General Order cannot make broad sweeping classifications of compost leachate as "non-designated waste" at all facilities covered by the Order. Rather it will only be able to make that determination under certain circumstances which are dependent upon the site-specific waste management unit and ambient environmental conditions. The Prosecution Team asserts that the *Designated Level Methodology* supports the classification of compost leachate at this particular facility as "designated waste" in the context of both a surface water

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and groundwater release. However, the Prosecution Team recognizes that the classification of compost leachate as "designated waste" is not an integral component of the proposed CDO and has replaced this term with the phrase to "high strength waste," as proposed by the Discharger.

**SUMMARY**

Prosecution Team has identified eight areas in which the discharge of waste at the Recology Hay Road landfill is taking place in violation of, or threatened violation of, the WDRs. The proposed CDO provides the Discharge with a schedule to either make improvements to come back into compliance with the WDRs, or to seek revised WDRs allowing its current practices to continue, while in the interim allowing the Discharger to continue operating the landfill in an environmentally acceptable manner. The Prosecution Team has spent a significant amount of time negotiating the proposed CDO with the Discharger, and the parties have come to agreement on the majority of the document. The only outstanding issues are in respect to the separation between the waste and groundwater, and whether a CDO is the most appropriate enforcement order.

**RECOMMENDATION:** The Prosecution Team recommends that the Board adopt the CDO as proposed.

Mgmt. Review \_\_WSW\_\_\_\_\_  
Legal Review MeO\_\_\_\_\_

**9/10 October 2014**  
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