

**BEFORE THE
DEPARTMENT OF RESOURCES, RECYCLING & RECOVERY
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF:

Dadaian Recycling – Matthew Alan Dadaian Address:

3230 Westminster Ave, Santa Ana, California

Type of Entity: Application Denial

File No.: IH22-016-BCR

Certificate No.: CN792294

PRECEDENTIAL DECISION No.: 23-10

**Designation of decision as precedential under Government
Code Section 11425.60**

Pursuant to Government Code Section 11425.60, the Department of Resources, Recycling and Recovery hereby designates as precedential its decision, dated December 30, 2022, in the above-referenced action.

This decision is designated precedential effective September 10, 2023,
Sacramento, California.

Dated: September 10, 2023.

As approved by Rachel Machi Wagoner on September 10, 2023,
Department of Resources, Recycling & Recovery.

**STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

IN THE MATTER OF:)	File No. IH22-016-BCR
)	
DADAIAN RECYCLING CN792294)	
)	
MATTHEW ALAN DADAIAN)	DECISION AND ORDER
)	
RESPONDENT.)	
)	

I. INTRODUCTION

The Division of Recycling (Division) of the Department of Resources Recycling and Recovery (Department) issued a notice to Matthew Alan Dadaian and Dadaian Recycling (Respondent) dated September 21, 2022, denying Respondent's application to operate a recycling center at 3230 Westminster Avenue in Santa Ana, California (Subject Location). The application denial was based on an unsatisfactory operational history at the Subject Location.

Respondent timely filed a request for hearing on the application denial pursuant to Title 14, Section 2130 of the California Code of Regulations (Regulations).

A hearing on this matter was conducted via written briefs and exhibits. The Division was represented by Jeannette Barnard, Staff Counsel. Respondent was represented by John Gugliotta, esq.

As of the date of the Decision and Order, the evidentiary Record is closed.

II. ISSUE

Whether the Division's denial of Respondent's application to operate a recycling center at the Subject Location shall be sustained, modified, or reversed.

III. EVIDENTIARY MATTERS

Official notice of the documents in the Administrative Record filed November 2, 2022, and amended on November 30, 2022, (Exhibits A—F) is hereby taken.

IV. FINDINGS OF FACT

On November 15, 2021, the Department Director Rachel Machi Wagoner adopted the Proposed Decision of the Administrative Law Judge Irina Tentster, as its Decision in the

Matter of the Statement of Issues Against: Jose Bautista dba A+ Recycling (OAH No.: 2020020190).

Pursuant to the Decision, the Department found that A+ Recycling: (1) failed to prepare and maintain cancellation verification documents, in violation of Public Resources Code (PRC) section 14539(d)(8)(C) of the Act and Title 14 California Code of Regulations section 2420(d) at its processor (PR248484.001) for the periods of April 1, 2018, through April 30, 2018, and January 1, 2019, through September 30, 2019; and,

(2) failed to prepare and maintain required records in violation of PRC section 14538(d)(7) and CCR sections 2525, 2085(b), 2085(c), and 2530 at its recycling center (RC221727.001) for the period of January 1, 2019, through September 30, 2019; and

(3) failed to prepare and retain required receipts and logs for the period of January 1, 2019, through September 30, 2019, in violation of Regulations, section 2530, and for the period of May 1, 2019, through September 30, 2019.

Based on the findings, A+ Recycling's certificates to operate recycling centers and its certificate to operate a processing facility were ordered revoked pursuant to Public Resources Code section 14591.2 and Jose Bautista was ordered to pay restitution, penalties, and costs.

Respondent applied for certification to operate a recycling center at the Subject Location on May 23, 2022. His application was denied based on the operational history of the Subject Location by letter dated September 21, 2022 (Denial Letter).

The Denial Letter noted that A+ Recycling (PR248484.001, RC221727.001) had previously been certified at the Subject Location and had an unsatisfactory compliance history.

V. LEGAL ANALYSIS

Public Resources Code section 14538(b)(2) requires that locations for certification exhibit a satisfactory five-year operational history:

(b) The director shall adopt, by regulation, a procedure for the certification of recycling centers, including standards and requirements for certification. These regulations shall require that all information be submitted to the department under penalty of perjury. A recycling center shall meet all of the standards and requirements contained in the regulations for certification. The regulations shall require, but shall not be limited to requiring, that all of the following conditions be met for certification:

(2) If one or more certified entities have operated at the same location within the past five years, the operations at the location of the recycling center exhibit, to the satisfaction of the department, a pattern of operation

in compliance with the requirements of this division and regulations adopted pursuant to this division. (Pub. Res. Code § 14538(b)(2).)

Section 2030(f) of the Regulations, in turn, specifies the steps the Division must take in reviewing a location's operational history:

"The Division shall review its records to determine whether one or more certified entities have operated within the past five years at the same location that is the subject of an application for certification of a recycling center or processor. If one or more entities have operated at the same location, the Division shall review the certification history of the entity or entities certified at the same location within the past five years and determine whether the operations at the location exhibit, to the Division's satisfaction, a pattern of operation in compliance with the requirements of the California Beverage Container Recycling and Litter Reduction Act, including all relevant regulations adopted thereunder." (14 Cal. Code Regs. § 2030(f).)

The record here establishes that A+ Recycling operated a dual recycling and processing facility at the Subject Location within the past five years and that its certifications were revoked for significant violations of the Act and Regulations.

Respondent does not dispute the factual basis for the application denial; rather, Respondent contends that section 14538(b)(2) grants the Division the discretion to grant an application for certification even where there is an unsatisfactory site history. Such an interpretation, Respondent argues, is consistent with the plain language of section 14538 and with the public policy to increase recycling as expressed in Public Resources Code sections 14501 and 14571.3.

Respondent further notes that A+ Recycling was a dual facility (processing and recycling) while Respondent is only recycling, that the Division's denial was not timely, and that Respondent is not affiliated with A+ Recycling.

Language of PRC Section 14538

Respondent contends that the phrase "to the Department's satisfaction" grants the Division discretion to grant an application for certification even where there is an unsatisfactory site history. "Specifically, the five-year lookback at the location must be done to the "satisfaction of the department", meaning that refusing certification is not required; it merely requires that the Department consider the prior history balanced against the legislative intent of increasing recycling opportunities." (Opposition P. 4, L 4-9.) The Division, on the other hand, argues that the certification must be denied where there is a negative five-year history.

Respondent's interpretation ignores the express language of Section 14538(b), which requires "all of the following conditions be met for certification." Three conditions follow, each of which must be met for certification to be granted. The applicant demonstrates

they will operate in compliance with the Act (Pub. Res. Code § 14538(b)(1)), the five year history of compliance at the location is satisfactory (Pub. Res. Code § 14538(b)(2)), and prompt notification of material changes in operations (Pub. Res. Code § 14538(b)(3)) are set forth as separate and distinct conditions of certification. If an applicant does not meet any one of these three conditions, the Division has grounds to deny an application. An unsatisfactory history of compliance at the location is a sufficient basis for application denial by itself, or in conjunction with other grounds.

Here, the Department previously determined that the operational history at the Subject Location failed to exhibit "to the department's satisfaction" a pattern of compliance when it was found that cause existed to revoke A+ Recycling's certification and to impose restitution and penalties for violations of the Act and Regulations. (See Exhibit D Decision and Order). As the Subject Location has a negative five-year compliance history, Respondent has not met one of section 14538(b)'s conditions of certification, and its application must be denied.

Public Policy to Increase Recycling

Respondent contends that requiring a satisfactory five-year compliance history is contrary to the public policy to increase recycling. "Ignoring legislative commands, intent and context, this interpretation of PRC [section] 14538(b)(2) closes the book for five year period on the Westminster location and removes one of the few spaces that are available and permitted for recycling activities." (Opposition P. 3. L 18-20.)

Respondent's argument is not supported by the record. There is no evidence that the Subject Location is one of the only available spaces for recycling activities. Respondent points only to its request for hearing which includes its statement that "it is not easy to find locations that have obtained necessary local approvals." (Exhibit B.) Respondent has not demonstrated by a preponderance of the evidence that the Subject Location is one of the few suitable locations for recycling in the area.

Moreover, there is no evidence that requiring a satisfactory site-history is contrary to public policies favoring recycling. Even if the requirement reduces the number of available sites, it may still promote recycling goals overall. The Division is tasked with implementing the responsibilities and regulations of the Department in a manner that favors the recycling of redeemed containers, and there is nothing to suggest that they have failed to do so here. The Division is in the best position to assess the implementation of its policies, and its determinations will not be set aside based on mere suggestion.

Other Arguments

Respondent notes that A+ Recycling was a dual processing and recycling facility whereas Respondent proposes to operate only a recycling facility. Respondent asserts that "the Department has rejected the application for a recycling center as it looked back at the site's previous violations in its capacity as a processor." (Opposition at P. 4 L 12-13.) Respondent misstates the record: the Department Revoked A+ Recycling's

certifications for violations that occurred in connection with both its recycling and processing operations (See Exhibit D Decision and Order). Furthermore, section 14538 does not distinguish between processing and recycling operations, requiring only that there has been a previous "certified entity".

Respondent further notes that it has no connection to A+ Recycling. However, whether there is a connection between a previously certified entity and an applicant for certification is irrelevant to the inquiry made under section 14538. Respondent again suggests that public policy would be better served by a more flexible approach, but offers no evidence that public policy is not being properly served here.

Finally, Respondent notes that the Division failed to meet its 60-day deadline to deny or approve Respondent's application when it issued its denial on the 61st day. "Therefore, the application must be deemed approved." However, the delay was minimal and Respondent does not claim it was prejudiced. Such a de minimis violation of section 14538(c) is not a basis to overturn the Division's denial of Respondent's application.

VI. CONCLUSION

Respondent has failed to prove by a preponderance of the evidence that the Division abused its discretion in denying Respondent's application for certification.

VII. DECISION AND ORDER

The Division's September 21, 2022, denial of Respondent's application for certification to operate a recycling center at the Subject Location is sustained.

IT IS SO ORDERED.

DATED: 12/30/22

HEARING OFFICER



Douglas C. Jensen

Attorney IV

Department of Resources Recycling
and Recovery (CalRecycle)



PROOF OF SERVICE

I, Yvette F Cox, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to this action. My place of employment and business is as in the letterhead.

On Jan 2, 2023, I served the attached entitled action:

Decision and Order; IH22-016-BCR, In the Matter of Dadaian Recycling; to the address(s) set out below each name:

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By:

 First Class Mail. In a sealed envelope, with postage thereon fully prepaid, in the United States mail.

 Certified Mail in a sealed envelope, return receipt requested with Postage thereon fully prepaid, in the United States mail.

 X **Electronically** – Sent to the email addresses listed above

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on the 2nd day of Jan 2023.

Yvette F Cox
Digitally signed by Yvette F Cox
Date: 2023.01.02
15:09:45 -08'00'

(Signature)