

Permitting & Assistance Branch Staff Report
New Solid Waste Facilities Permit for the
Otay Landfill Composting Operation
SWIS No. 37-AA-0984
March 2, 2021

Background Information, Analysis, and Findings:

This report was developed in response to the San Diego County Department of Environmental Health Local Enforcement Agency's (LEA) request for the Department of Resources Recycling and Recovery (Department) concurrence on the issuance of a proposed New Solid Waste Facilities Permit (SWFP), Compostable Materials Handling Facility Permit, for the Otay Landfill Composting Operation, SWIS No. 37-AA-0984, located in San Diego County and owned and operated by Otay Landfill Inc. A copy of the proposed SWFP is attached. This report contains Permitting & Assistance Branch (PAB) staff's analysis, findings, and recommendations.

The proposed SWFP was received on January 20, 2021. Action must be taken on this SWFP no later than March 21, 2021. If no action is taken by March 21, 2021, the Department will be deemed to have concurred with the issuance of the proposed new SWFP.

The following are the key design parameters of the proposed project:

Parameter	Proposed SWFP
Operator	Otay Landfill Inc. 1700 Maxwell Road Chula Vista, CA 91911
Owner	Otay Landfill Inc. 1700 Maxwell Road Chula Vista, CA 91911
Facility Type	Compostable Materials Handling Facility
Proposed Hours/Days of Operation	Receipt of Feedstock: 6:00 AM – 5:00 PM, Monday – Saturday Ancillary Operations: 6:00 AM – 5:00 PM, Monday – Saturday
Proposed Maximum Tonnage	200 Tons per Day
Proposed Area (acres)	230
Design Capacity (cubic yards)	108,700
Annual Capacity (cubic yards)	380,488

Parameter	Proposed SWFP
Waste Types	Food Material, Green Material, Wood Waste, Manure and Agricultural Material

Background:

The Otay Landfill Composting Operation (OLCO) origins are as a pilot composting operation located at the Otay Landfill, SWIS No. 37-AA-0010, which operates under an Enforcement Agency (EA) Notification, originally filed with the LEA on August 6, 2012 as a Research Composting Operation. Subsequent Enforcement Agency Notifications were filed as research objectives have changed, most recently October 4, 2018. Otay Landfill Inc. (OLI) is proposing to expand the composting operation and up-tier to a fully permitted Compostable Material Handling Facility. Additionally, Otay Landfill currently utilizes processed green material (PGM) as alternative daily cover; however, this will cease and the PGM will be processed at OLCO.

Findings:

Staff recommends concurrence in the issuance of the proposed new SWFP. All of the required submittals and findings required by Title 27 of the California Code of Regulations (27 CCR), Section 21685, have been provided and made. Staff has determined that the California Environmental Quality Act (CEQA) requirements have been met to support concurrence. The findings that are required to be made by the Department when reaching a determination are summarized in the following table. The documents on which staff's findings are based have been provided to the Branch Chief with this Staff Report and are permanently maintained by the Waste Permitting, Compliance, and Mitigation Division.

27 CCR Sections	Finding
21685(b)(1) LEA Certified Complete and Correct Report of Facility Information	Acceptable: The LEA provided the required certification in their permit submittal letter dated January 20, 2021.
21685(b)(2) LEA Five Year Permit Review	Acceptable: This is a new facility and a Permit Review Report is not required.
21685(b)(3) Solid Waste Facilities Permit	Acceptable: Staff received a proposed Solid Waste Facilities Permit on January 20, 2021.
21685(b)(4)(A) Consistency with Public Resources Code (PRC) 50001	Acceptable: The LEA provided a finding in the proposed SWFP received on January 20, 2021 that the facility is consistent with PRC 50001. Waste Evaluation & Enforcement Branch (WEEB) staff in the Jurisdiction Compliance Unit found the facility is identified in the Nondisposal Facility Element, as described in their memorandum dated January 25, 2021.

27 CCR Sections	Finding
21685(b)(8) Operations Consistent with State Minimum Standards	Acceptable: WEEB staff in the Inspections and Enforcement Agency Compliance Unit found that the operation was in compliance with all operating and design requirements during an inspection conducted on February 23, 2021. See Compliance History below for details.
21685(b)(9) LEA CEQA Finding	Acceptable: The LEA provided a finding in their permit submittal package received on January 20, 2021, that the proposed SWFP is consistent with and supported by the existing CEQA documentation. See Environmental Analysis below for details.
21650(g)(5) Public Notice and/or Meeting, Comments	Acceptable: A Public Informational Meeting was held by the LEA on November 10, 2020. No written comments were received by Department staff. Written and oral comments were addressed by LEA staff. See Public Comments below for details.
CEQA Determination to Support Responsible Agency's Findings	Acceptable: The Department is a responsible agency under CEQA with respect to this project. PAB staff has determined that the CEQA record can be used to support the Branch Chief's action on the proposed new SWFP.

Compliance History:

WEEB staff in the Inspections and Enforcement Agency Compliance Unit conducted a pre-permit inspection on February 23, 2021 and found that the operation is in compliance with applicable state minimum standards. Based on the LEA's quarterly inspection reports done under the EA Notification, the LEA has not cited any violations at the site since operations commenced in 2012.

PAB staff have determined that the design and operations described in the submitted Report of Composting Site Information (RCSI) will allow the proposed facility to comply with State Minimum Standards.

Environmental Analysis:

Under CEQA, the Department must consider, and avoid or substantially lessen where possible, any potentially significant environmental impacts of the proposed SWFP before the Department concurs in it. In this case, the Department is a Responsible Agency under CEQA and must utilize the environmental documents prepared by the San Diego County Department of Planning and Land Use and the LEA, each acting as Lead Agency for their environmental document, absent changes in the project or the circumstances under which it will be carried out that justify the preparation of additional environmental documents and absent significant new information about the project, its impacts and the mitigation measures imposed on it.

The changes that will be authorized by the issuance of the proposed SWFP include: composting facility that will receive food material, green material, wood waste, manure

and agricultural material; permitted hours for receipt of feedstock and ancillary hours will be Monday through Saturday, 6:00 a.m. to 5:00 p.m.; permitted maximum tonnage will be 200 tons per day; permitted acreage will be 230 acres; the design capacity will be 108,700 cubic yards; and the annual capacity will be 380,488 cubic yards. These changes are supported by the following environmental documents.

An Environmental Impact Report (EIR), State Clearinghouse No. 1996091009, was circulated for a 45 day comment period from February 23, 1999 to April 9, 1999. The Final EIR was certified by the Lead Agency (San Diego County Department of Planning and Land Use) on February 18, 2000.

Under CEQA Guidelines Section 15162, when an EIR has been certified or a negative declaration (ND) adopted for a project, no subsequent environmental document shall be prepared for that project unless the Lead Agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project, which will require major revisions of the previous EIR or ND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or ND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the ND was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or ND;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

PRC Section 21068 defines "Significant effect on the environment" as a substantial, or potentially substantial, adverse change in the environment. CEQA Guidelines Section 15382 further defines, a "Significant effect on the environment" as meaning a

substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. A lead or responsible agency may prepare an addendum to a previously certified EIR if some changes or additions are necessary and none of the conditions described in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent EIR have occurred, pursuant to Section 15164(a) of the CEQA Guidelines.

Thus, Section 15164(a) of the CEQA Guidelines provides that an addendum to an EIR is the appropriate documentation when the Lead Agency or a Responsible Agency has determined that none of the conditions described in CEQA Guidelines Section 15162 exist – specifically there are no new significant environmental effects as a result of the changed project.

An Addendum to the EIR, State Clearinghouse No. 1996091009, was prepared by the Lead Agency (LEA), dated October 29, 2020.

The LEA has provided a finding that the proposed new SWFP is consistent with and supported by the cited environmental documents.

Staff recommends that the Department, acting as a Responsible Agency under CEQA, utilize the EIR and Addendum as prepared by each Lead Agency in that there are no grounds under CEQA for the Department to prepare a subsequent or supplemental environmental document or assume the role of Lead Agency for its consideration of the proposed new SWFP.

The administrative record for the decision to be made by the Department includes the administrative record before the LEA, the proposed new SWFP and all of its components and supporting documentation, this staff report, the EIR certified by the San Diego County Department of Planning and Land Use, the Addendum to the EIR adopted by the LEA, and other documents and materials utilized by the Department in reaching its decision on concurrence in, or objection to, the proposed new SWFP. The custodian of the Department's administrative record is Ryan Egli, Legal Office, Department of Resources Recycling and Recovery, P.O. Box 4025, Sacramento, CA 95812-4025.

Public Comments:

The project document availability, hearings, and associated meetings were noticed consistent with the SWFP requirements. The LEA held a public informational meeting on November 10, 2020, utilizing the BlueJeans video chat platform.

Comments received during the meeting. The comments and the LEA's responses to those comments are summarized below.

Five comments were received in support of the project regarding the need for these types of project to meet waste diversion targets of SB 1383 and AB 1826, reduce emissions and odor and greenhouse gases.

One comment was received regarding if the City of Chula Vista has yet been consulted on this project and if the city is aware of what is proposed. Can you tell me specifically who you addressed that to?

LEA Response: Yes, the City of Chula Vista has been provided a copy of the public informational meeting notice and they are aware of this project.

Note: The Environmental Services Manager for the City of Chula Vista indicated during the meeting that they have been working with Republic Services on this facility, and mainly on the collection side of the material that will be received by the facility, since the application was submitted. If there are any questions that the gentleman, who was asking the question has, I can put my contact information in the chat box.

The LEA confirmed that the individual who made this comment had obtained the contact information for the City of Chula Vista Environmental Services Manager before the meeting was adjourned.

In addition, On November 12, 2020, the LEA followed up with the individual who made Comment 6 and provided the names of the City of Chula Vista staff who the LEA informed regarding the project.

One comment was received asking if the facility is adjacent to the City of Chula Vista boundaries?

LEA Response: Yes.

Written comments were also received by the LEA after the meeting. The comments and the LEA's responses to those comments are summarized below.

Six comments were received regarding the Report of Composting Site Information (RCSI) figures, buffer areas and set-backs, surrounding land use/residential development, parking, and closure:

LEA Response: In regards to figures in the RCSI, the applicant updated the figures to accurately reflect approved land uses and property boundaries and identify the limits of the composting facility to illustrate its proximity within 1,000 feet of residential properties around the perimeter boundary.

LEA Response: In regards to buffer areas and set-backs (1,000 foot-perimeter) the LEA has no authority to require this in this permit. This is because of the buffer requirement in the Planning Department Master of Urban Planning (MUP), and perhaps also because of the 2014 Landfill Expansion Agreement referenced in the comment. However, neither of those are enforceable by the LEA. Nevertheless, given the current and future design of Otay Landfill, and the requirement in the MUP, the Otay Landfill Composting Operation (OLCO) activities would maintain a distance equal to or greater than 1,000 feet of any

residential property along the southeastern portion of the site adjacent to Village 3. Actual operations within the LEA allowable area will be limited by the Planning Department MUP to maintain a 1,000 buffer from these overlay areas.

LEA Response: In regards to parking of collection and transfer trucks, they are third party vehicles delivering feedstock to the composting operation and will park at their designated place of business. Employees and visitors of the OLCO will utilize the adjacent Otay Landfill designated parking lot located near the scale houses.

LEA Response: In regards to clarifying that the landfill will cease operation in 2030, the OLCO is a separate permit from the Otay Landfill operating permit and is not subject to the estimated closure date for the Otay Landfill.

Two comments were received regarding the permit conditions - additional conditions must be added to the Compost Material Handling Facility Permit (CMHFP) to ensure compliance with restrictions in the 2019 MUP that prohibits composting within 1,000 feet of residential development.

LEA Response: In regards to adding conditions to ensure compliance with restriction in the 2019 MUP that prohibits composting within 1,000 feet of residential development, the LEA has no authority to enforce the County MUP and has no authority under state law to independently require a similar buffer zone in this permit. Therefore, additional permit conditions to require compliance with the MUP buffer zone will not be added to this permit. LEA permit Section 17, Condition C requires the operator of the OLCO to operate in compliance with the most recent RCSI. Buffer zone depictions within the revised proposed RCSI correctly attribute the buffer zone to Planning Department MUP requirements, which are not enforceable by the LEA. A standard term in the proposed LEA permit will require the applicant to operate in compliance with the approved RCSI. The LEA cannot require the applicant to show MUP requirements as requirements on figures in the RCSI, because that would create LEA permit requirements that the LEA is legally unable to impose and enforce. Instead, the applicant has acknowledged the MUP buffer requirement as an applicable MUP requirement on Page 1 of the RCSI. This MUP buffer requirement will be enforced by County Planning and Development Services (PDS), not the LEA.

LEA Response: In regards to notifying the LEA within 180 days before relocating the composting system to another location within the active landfill, the LEA permit, Section 17, Condition C specifies that the operator of the OLCO shall operate in compliance with the most recent RCSI and Odor Impact Minimization Plan. The 180 days' notice requirement is therefore enforceable as a permit condition.

One comment was received requesting the LEA extend the comment period beyond the November 23, 2020 imposed deadline.

LEA Response: Additional comments on the proposed OLCO can be provided to the LEA. State law requires the LEA to forward any additional comments received to the California Department of Resource Recycling and Recovery (CalRecycle) during their concurrence evaluation on the proposed permit.

No verbal or written comments were received by Department staff.

Department staff provided an opportunity for public comment during the CalRecycle Monthly Public Meeting on February 16, 2021. No comments were received by Department staff.

Attachment: Proposed New SWFP