

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

ITEM: 9

SUBJECT: Recology, Inc. dba Recology Yuba Sutter, Recology Yuba Sutter  
Landfill, Yuba County

BOARD ACTION: *Consideration of an Administrative Civil Liability Order (ACLO)*

FACILITY  
BACKGROUND: Recology, Inc. dba Recology Yuba Sutter (Discharger) owns and operates a closed Class III landfill (Facility) near Marysville, adjacent to the Yuba River. The landfill operated, and was closed, prior to current Title 27 standards. It does not have a bottom liner and the closure cover is simply compacted soil. The Discharger operates a transfer station and composting operation on top of the closed landfill. Although this is not disallowed by regulations, the Discharger must adjust its operations and conduct additional maintenance activities in order to maintain the cap over the landfill, as well as prevent and mitigate the effects of water entering the buried waste. The Discharger also operates a landfill gas extraction system and is under corrective action for groundwater contamination.

The closed Class landfill is regulated under Waste Discharge Requirements Order (WDRs) R5-2003-0093. In 2012, the Board's Permitting Unit began the process of updating the WDRs to include the composting operation. However, significant permit violations were found and it was determined that a Cleanup and Abatement Order (CAO) was necessary to (a) bring the facility into compliance with the current WDRs and (b) develop the information necessary to update the WDRs. The Permitting Unit is currently working on the updated WDRs, which will be brought before the Board later this year.

On 29 August 2013, the Assistant Executive Officer issued Cleanup and Abatement Order (CAO) R5-2013-0701. The CAO was issued after an extensive period of consultation with the Discharger to obtain concurrence on the Order's contents and the due dates for various items. In addition to several other major requirements, the CAO addresses the need for an impermeable surface on which to conduct composting activities and the need to collect leachate generated from the compost pad. These requirements are necessary to keep liquid from entering the closed landfill and prevent impacts to water quality from compost leachate.

CAO ORDERED  
PARAGRAPH NO. 9

The proposed ACL Order is based on the Discharger's violation of Ordered Paragraph No. 9 of the CAO. This paragraph required the Discharger to submit a *Compost Area Leachate Collection Work Plan* to describe the installation of a containment system

which would collect all compost leachate and stormwater from storms up to a prescribed maximum storm of a 1,000-year, 24-hour event, which is consistent with the requirements of Title 27. The Discharger's design of the system was to be supported by a water balance showing that there was adequate capacity to contain all rainfall up to this maximum storm event. The containment system was to be installed and operational by 1 October 2014. Although the CAO was issued prior to the 2013-2014 rainy season, the requirement to collect compost leachate was not effective until the 2014-2015 rainy season, in order to allow the Discharger a full winter to install a temporary system, observe runoff patterns, and fully engineer its final collection system.

During 2014, the Discharger submitted multiple versions of a water balance and collection system design. However, the water balance, and therefore the size of the collection system, was consistently determined by staff to be materially inadequate as the Discharger's runoff calculations, in staff's best professional judgment, did not reflect actual site conditions. In addition, the Discharger did not propose a system designed to the standard required by the CAO. Staff frequently interacted with the Discharger and provided input regarding the deficiencies of the design and runoff calculations.

On 30 May 2014, the Discharger stated that it was considering moving its compost operation to another site within the next 3-5 years, and therefore requested that it not be required to install a leachate collection system designed for a 1,000-year 24-hour storm event as required by the CAO. Instead, the Discharger proposed a system designed for a 5-year, 24-hour storm event. Board staff counter-proposed that the Discharger collect all contact stormwater generated by storms up to, and including, a 25-year, 24-hour event. While this size storm is significantly less than what was in the original CAO, it reflected the size of the storm event in the State Water Board's Draft General Order for Composting Operations, at the time.

The Parties agreed to amend the CAO in regard to the size of the leachate collection system. The Amended CAO requires the collection of compost leachate generated from all storms up to and including a 25-year, 24-hour storm event. The Amended CAO retains the same date for compliance, 1 October 2014, as the original CAO. This is the date by which the Discharger was to have installed a fully operational leachate collection system designed to collect all leachate generated by all storms up to and including a 25-year, 24-hour storm.

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

Despite discussions and input by Board staff throughout the summer of 2014, the Prosecution Team alleges that the Discharger did not comply with the Amended CAO and did not install an adequate collection system by the 1 October 2014 deadline, resulting in at least two instances of uncontrolled discharges of leachate (on 3-4 December 2014 and 11-12 December 2014).

On 20 January 2015, the Assistant Executive Officer issued an Administrative Civil Liability Complaint in the amount of \$440,440, based on the State Water Board’s Enforcement Policy. The Complaint alleged that the Discharger was in violation of Ordered Paragraph 9 of the Amended CAO for a 112 day period, from 1 October 2014 through 20 January 2015. Although the Discharger caused unauthorized discharges of compost leachate from its compost area, the Complaint only alleged non-discharge violations of the Amended CAO.

The maximum penalty under the Water Code is \$560,000. The minimum penalty is the economic benefit plus 10%; a conservative estimate of this amount is \$47,193.

ACL ISSUES:

The Parties disagree on four areas within the penalty calculation methodology: number of days of violation, potential for harm, the culpability of the Discharger, and the extent to which the Discharger voluntarily cooperated in returning to compliance.

Days of Violation: The Prosecution Team’s calculation of 112 days of violation is based on the requirement in the Amended CAO that the Discharger install, by 1 October 2014, a leachate collection system capable of containing leachate generated from all storms up to and including a 25-year, 24-hour storm. The Prosecution Team contends that the Discharger was in violation for a period of 112 days, from 1 October 2014 through 20 January 2015 (the date that the ACL Complaint was issued). The Discharger argues that there were only 10 days of violation, from 3 December 2014 (the first overflow event) to 12 December 2014 (the second overflow event).

Potential For Harm: The Prosecution Team asserts that a “moderate” factor is appropriate based on the characteristics of the waste and the existing groundwater impacts at the facility, including the closed landfill cell on which the compost site is located. The Discharger asserts that a “minor” factor is appropriate because it contends that there are no exposure pathways for the compost leachate to discharge to waters of the State or the United States.

Culpability of the Discharger: The Enforcement Policy methodology uses a factor between 0.5 and 1.5. The Prosecution Team assigned a culpability factor of 1.3 based on the fact that the Discharger was fully aware of the terms of the Amended CAO, that staff repeatedly commented on the underestimation of the calculated amount runoff which resulted in a system was undersized, and that other similarly situated dischargers have engineered and installed adequate leachate collection systems. The Discharger asserts that the culpability factor should be 0.75 because it acted reasonably and in good faith, employed several consultants and reasonably relied on their calculations, and worked with Board staff to revise the CAO to allow for a smaller, interim system.

Cleanup and Cooperation: The Enforcement Policy methodology uses a factor between 0.75 and 1.5. The Prosecution Team assigned a factor of 1.1 because of the Discharger’s lack of action during the first spill event, lack of sufficient upgrades prior to the second spill event, and the lack of cooperation and drawn out back and forth over the Discharger’s water balance analysis. The Discharger states that the factor should be 0.8 because it made significant improvements in response to the 3 December and 11 December spills.

SUMMARY:

The Amended CAO required that, by 1 October 2014, the Discharger install and operate a compost leachate collection system that was sized to collect, contain, and dispose of all leachate generated by rainfall events up to and including a 25-year, 24-hour event. The Prosecution Team alleges that a system that complied with the Amended CAO’s requirement was not installed by the required deadline, resulting in at least two discharges of compost leachate. The Prosecution Team asserts that a penalty of \$440,440 is appropriate, while the Discharger asserts that a penalty of \$47,193 (the economic benefit plus 10%) is appropriate.

RECOMMENDATION:

The Prosecution Team recommends that the Board adopt the ACLO for \$440,440, as proposed.

Mgmt. Review \_\_WSW\_\_\_\_\_  
 Legal Review \_\_MeO\_\_\_\_\_

**16/17 April 2015**  
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