

Lynda L. Brothers

November 20, 2009

VIA ELECTRONIC MAIL (BBergen@waterboards.ca.gov), ORIGINAL US POSTAL SERVICE

Brianna Bergen

Dear Ms. Bergen,

This letter is submitted on behalf of Nursery Products, LLC pursuant to the request for public comment by the California Regional Water Quality Control Board, Lahontan Region (RWQCB) on tentative waste discharge requirements for the Nursery Products Hawes Composting Facility. Nursery Products plans to operate a biosolids and green materials composting facility in San Bernardino County, California. The Nursery Products project, known as the Hawes facility, has undergone extensive environmental review, including legal challenges, and will represent a state of the art biosolids composting facility.

Nursery Products will be the permittee under the Board Order No. R6V-2009 [Tentative] (Tentative Permit). As such, Nursery Products is providing a number of comments that relate very specifically to certain operational issues that may not have been fully considered or fully understood in the preparation of the Tentative Permit. And, as you know, Nursery Products agreed for purposes of this Permit to regulation of the facility under the California Code of Regulations Title 27, even though certain questions arise as to the applicability thereof, however even there under, Nursery Products believes that some of the detailed monitoring requirements are inapplicable. Nursery Products looks forward to continuing to work cooperatively with you and the RWQCB staff.

The following comments are presented in lieu of a marked up copy of the Tentative Permit. The comments are presented in the order of the referenced numbered sections of the Findings, Order and Monitoring and Reporting Program, except that Comment II below refers to typographical-type issues throughout the Findings Section of the Tentative Permit.

COMMENT I - ADDITIONAL LANGUAGE NEEDED.

At the beginning of the Findings Section, we request the addition of language making it clear that the Findings are solely for the purpose of the Permit. We suggest the following:

Lynda L. Brothers

The Findings made and Definitions used in this Board Order No. R6V-2009 – [Tentative] are solely for the purpose of this Order and do not apply and shall not be used for any other regulatory or legal purposes. The Findings are made by the Water Board based solely upon matters within their jurisdiction.

COMMENT II – PLEASE MAKE THE FOLLOWING CHANGES TO THE FINDINGS AND ORDER SECTIONS:

- i. In Paragraph 6, please add the word "annually" at the end of the last sentence. The sentence will then read: "...400,000 cubic yards annually."
- ii. In Paragraphs 7, 9, and anywhere else it is so used, please remove the word "stored" and replace it with the word "located." No storage of wastes will occur on the site.
- iii. In Paragraph 7 remove the word "Process" where it is used to modify wastewater. For purposes of Water Board jurisdiction Nursery Products has agreed that there is a potential "waste" but the compost process does not produce process wastewater.
- iv. In Paragraph 18, please add the following sentence: "In the single deep boring, at depths ranging from about 200 Ft bgs to 365 ft bgs presence of a very low permeability layer was confirmed."
- v. In Paragraph 19, please revise the last sentence to read as follows: "...on March 19, 2009, depth to groundwater was measured as 365 ft bgs in boring 13; the next day the depth within the borehole had risen to 305.1 ft bgs."
- vi. In Paragraph 27, please revise the last sentence to read as follows: "The single nearest residence is located approximately 1.5 miles east of the Facility; thereafter the next closest residence is over eight (8) miles away."
- vii. Paragraph 29 seems wholly duplicative of Paragraph 17 and should be removed.
- viii. In Paragraph 31, please remove the last sentence of this paragraph. Earlier in the same paragraph it states that financial assurance must be provided prior to "operation" and inclusion of the date, February 28, 2010 is confusing and unnecessary.
- ix. In the Order, at Section V. A. entitled Financial Assurance Documents please remove "At least 60 days" and begin the sentence with "Prior." This change makes the Order consistent with the findings in Paragraph 31 which requires financial assurance to be in place prior to operation not 60 days prior to operation.
- x. In the Order, at Section V C., No. 1 and No. 2 change "January 30, 2010" to February 28, 2010 to make the due date in the Order consistent with the date in the Findings.

Lynda L. Brothers

COMMENT III-- FINDINGS, PARAGRAPH 33, at page 12. As drafted this paragraph is inaccurate. Please add the following at the beginning of the second paragraph:

The Final Environmental Impact Report was adopted by the San Bernardino County (County) Board of Supervisors on February 27, 2007 after extensive public review and comment. At that time, a Conditional Use Permit was also approved. The CEQA decisions were challenged in Superior Court (Court) and on April 11, 2008, the Court issued A Statement of Decision which was followed by a Writ filed on June 23, 2008. The Writ ordered further review in two areas: (1) identification and analysis of water supply and (2) further evidence in the administrative record regarding the infeasibility of the enclosed facility alternative. In all other respects the CEQA analysis was sustained. Water quality impacts were fully analyzed in the FEIR, specifically challenged but fully sustained by the Court. The RWQCB finds that no additional CEQA analysis of water quality will be necessary for the issuance of this Permit. A notice of preparation of a Supplemental EIR was issued on March 9, 2009 wherein the County proposed to address those two issues and to update the analysis of green house gas emissions.

COMMENT IV -- MONITORING AND REPORTING PROGRAM PAGE 3 SECTION IIA1-- SURFACE IMPOUNDMENT MONITORING WASTEWATER.

The tentative monitoring and reporting program (MRP) states that the liquid in the surface impoundments must be monitored quarterly and analyzed to determine the concentrations of parameters described in Table 1 (Attachment A). The Report of Waste Discharge (ROWD) submitted by Nursery Products intentionally did not include sampling of the liquid in the surface impoundments. The surface impoundments are solely for the collection of rainwater and rainwater runoff from the site and will be emptied of liquid regularly. As a mitigation measure under CEQA imposed by the County of San Bernardino, any water in the retention basins must be removed within 30 days of incidence. Since all of the liquid will be removed regularly and promptly, the requirement to sample such liquid is meaningless and impossible to fulfill when the impoundments are dry. There will not be liquid to sample. Nursery Products requests that this sampling requirement in the MRP be deleted. We note that removal of this requirement does nothing to lessen the protection to the environment or the waters of the State of California because the absence of water to sample in the retention basins also means the absence of water as a potential pollutant source.

Lynda L. Brothers

COMMENT V – MONITORING AND REPORTING PROGRAM PAGE 4 SECTION IIA4 – SURFACE IMPOUNDMENT MONITORING SLUDGE.

The tentative MRP states that the sludge in the surface impoundments must be sampled and monitored annually and analyzed to determine the concentrations of parameters described in Table 1 (Attachment A). The ROWD submitted by Nursery Products intentionally did not include sampling of the sludge in the surface impoundments. The surface impoundments will be emptied of any sludge regularly. Any liquid must be removed within 30 days of incidence and any sludge will be regularly removed as well. The surface impoundments are solely for the collection of rainwater and rainwater runoff from the site. The 30 day removal requirement was imposed by the County as a mitigation measure under CEQA. Since all of the sludge will be regularly and promptly removed, the requirement to sample such sludge is meaningless and impossible to fulfill. There will not be sludge to sample. Nursery Products requests that this sampling requirement in the MRP be deleted. We note that removal of this requirement does nothing to lessen the protection to the environment or the waters of the State of California because the absence of sludge to sample in the retention basins also means the absence of sludge as a pollutant source.

COMMENT VI – WDR REQUIREMENTS PAGE 17 SECTION D – LEAK DETECTION MONITORING SUMPS & MONITORING AND REPORTING PROGRAM PAGE 4 SECTION 3 – LEAK DETECTION MONITORING SUMPS.

Both referenced sections require Nursery Products to annually test the Leak Detection Monitoring Sumps (LDMS) in order to demonstrate proper operation. It is our understanding that it is not possible to test each LDMS. Once the surface impoundment liners are installed the LDMS become closed systems. This monitoring limitation imposed in the Permit is typically applied to a Leachate Collection and Removal System (LCRS) and not to a LDMS. Nursery Products requests that the annual leak detection test requirement be removed from both sections. The LDMS will be monitored weekly per the conditions of the MRP

COMMENT VII -- MONITORING AND REPORTING PROGRAM PAGE 4, SECTION 3a – LEAK DETECTION MONITORING SUMPS.

The referenced section states that Nursery Products must visually inspect for liquid in the LDMS on a weekly basis. Nursery Products requests that the monitoring be with a water meter and that the reference to visual inspection be deleted.

COMMENT VIII – MONITORING AND REPORTING PROGRAM PAGE 5 SECTION B – WASTE PILE MONITORING.

The MRP states that the discharger must collect background data of the native engineered fill material for the monitoring parameters and constituents of concern listed in Table 3 (Attachment C) prior to the construction of the composting pad. Nursery Products proposes to collect samples across the waste pile area and composite the samples together to characterize the soil below the waste pile. This approach is appropriate for the uniform soils at the site.

COMMENT IX – MONITORING AND REPORTING PROGRAM PAGE 5 SECTION B – WASTE PILE MONITORING.

The MRP requirement for monitoring of the waste pile is inconsistent with the ROWD submitted by Nursery Products. The MRP requires that annually a minimum of ten soil samples from approved locations within the waste pile must be collected at six-inch intervals to depth of 1.5 feet and the samples collected from the 6-inch and 1-foot interval be sent to the laboratory for analyses to determine the concentrations of monitoring parameters in Table 3 (Attachment C). The ROWD stated that these samples will be analyzed for arsenic, copper, lead, mercury, molybdenum, nickel, selenium, zinc, nitrate, and phosphorus. The ROWD then stated that the results will be compared to the levels listed in 40 CFR 503.13, Table 1. This monitoring requirement in the MRP is excessive and not well thought out. The purpose of this monitoring is to evaluate the potential for migration of leachate through the pad. As such the requirement would be more effective and meaningful if it were changed in two ways. First, annual sampling should be for a much more limited subset of analytes with emphasis on compounds that present a meaningful representation of the leachate. The best surrogate chemicals for leachate are the metals. The CEQA mitigation measures recognized this and required sampling of metals. The MRP requires that Nursery Products test for many more parameters than were proposed in the ROWD. Nursery Products requests that the sampling parameters in the MRP be consistent with the ROWD and that all other parameters be removed. Secondly, this monitoring requirement was not well conceived or well thought through with regard to the depth of samples. Obviously if a shallow sample shows no elevated levels the deeper sample in the same location will not show elevated levels. Therefore Nursery Products requests that it has the option to sample only at the 6 inch depth, await the results before sampling at the 12 inch depth. In addition, if after a number of years, results consistently show absence of metals in the pad, this requirement should be limited even further.

Lynda L. Brothers

COMMENT X -- MONITORING AND REPORTING PROGRAM ATTACHMENT C -- SOIL MONITORING.

MBAS, TDS, and total hardness are referenced for soil monitoring and are typically not applicable for soil. Nursery Products requests these constituents be removed from the soil monitoring program.

COMMENT XI -- MONITORING AND REPORTING PROGRAM PAGE 8 SECTION 2b -- DEPTH TO GROUNDWATER.

Measuring to the nearest 0.01 inch is not practical and Nursery Products requests this be changed to the nearest 0.01 foot.

COMMENT XII -- WDR REQUIREMENTS PAGE 3 -- DESCRIPTION OF THE SURFACE IMPOUNDMENTS.

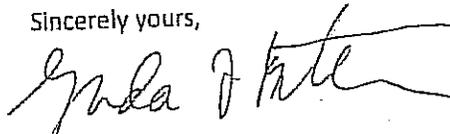
The section requires that process wastewater generated primarily as a result of the composting process must be disposed to Class II surface impoundments. Nursery Products requests that this statement be deleted because stormwater is addressed previously in the section.

COMMENT XIII -- MONITORING AND REPORTING PROGRAM PAGE 5 SECTION C -- FACILITY ODOR MONITORING

Nursery Products requests that the last sentence be changed to read "Water from an on-site well or from the surface impoundments will be used for dust suppression as necessary to prevent the release of airborne particulates from the Facility."

Thank you very much for your attention to these comments. If you have any questions about the interpretation or meaning of these comments please call the undersigned.

Sincerely yours,



Lynda Brothers
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cc David Coupe