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**CHIQUITA CANYON LANDFILL
APPEAL OF ENFORCEMENT ORDER, ADMINISTRATIVE PENALTY,
SOLID WASTE MANAGEMENT FEE
HEARING OFFICER DECISION**

Introduction

The Los Angeles County Public Works ("PW" or "Public Works") asserts that Chiquita Canyon Landfill ("CCL" or "Chiquita") failed to comply with reporting requirements regarding the quantity of beneficial reuse materials being received, processed, and disposed at the CCL, resulting in the underpayment of the Solid Waste Management Fee ("Fee"), when it failed to report 772,133 tons of clean soil and, therefore, Public Works rescinded its audit approval findings due to its determination that CCL inappropriately classified an excessive amount of beneficial reuse material. PW argues that Chiquita should have reported its acceptance of clean soil, and as a result, Public Works reclassified as solid waste 75 percent of materials originally classified as beneficial reuse. This reclassification was based on a 4:1 ratio of total disposal material to beneficial reuse materials. Based on those calculations, Public Works determined that Chiquita underpaid the Fee in the amount of \$2,434,910.82 and imposed an administrative penalty of \$2,701,121.24.

Factual Background

Chiquita Canyon, LLC owns and operates CCL, located at 29201 Henry Mayo Drive, Castaic, CA 91384. Los Angeles County Department of Public Health acts as the Local Enforcement Agency and Public Works is primarily responsible for enforcing the Los Angeles County Code ("LACC"), policies, and statewide solid waste regulations.

In March of 2015, Public Works notified Chiquita that the department was conducting an audit to determine whether the landfill was current in its payment of the Fee. On December 22, 2015, PW sent Chiquita a letter concluding that the Fee was current for the period of October 2011 through September 2014. During an unrelated meeting in January 2016 for CCL's new conditional use permit, Public Works understood Chiquita reported receiving quantities of material during the previously audited period that were greater than what it had reported to PW through the Solid Waste Information Management System ("SWIMS"). Thereafter, on February 16, 2016, Public Works informed CCL that it was rescinding its audit findings of December 2015 to allow PW to further investigate whether Chiquita had underpaid the Fee. Public Works' discovered that Chiquita had not been reporting quantities of inbound clean soil received at the landfill. Reportedly, CCL received 722,133 tons of clean soil. Subsequently, Public Works requested that CCL begin reporting that information on the SWIMS Form 13. To which, CCL agreed.

As a result of the previously unreported soil, Public Works determined that CCL classified as disposal and paid the Fee on only 50% of the material received at the landfill, which altered its previous audit findings. Public Works further found that CCL classified an excessive amount of material as beneficial use unless Chiquita could substantiate the amount of claimed beneficial use material.

On September 15, 2016, Public Works informed CCL that it planned on reclassifying approximately 1.6 million tons of purported beneficial use material as disposed, and CCL would be responsible for underpayment of the Fee and penalties. Public Works used a 4:1 solid waste to beneficial use ratio to determine the amount of beneficial use material to determine the Fee due by CCL. Chiquita responded to PW by providing (i) monthly and quarterly monitoring reports submitted to the LEA during the audit, (ii) monthly and quarterly monitoring reports submitted to PW, and (iii) all previous correspondence between PW and CCL relating to the Fee. The parties met twice in November 2016 where Chiquita's consultant presented information to PW about Chiquita's use of beneficial reuse materials. On July 27, 2017 by letter to CCL, Public Works disputed the evidence provided by Chiquita's consultant and indicated that the report provided did not substantiate the landfill's application of beneficial reuse materials during the audit period.

On August 30, 2017, pursuant to its authority under the LACC, PW issued the Enforcement Order for what it determined to be the delinquent Fee, in violation of Title 20, Chapter 88. PW alleges that Chiquita underpaid its Fee from October 1, 2011 to September 30, 2014 by \$2,434,910.82. The enforcement order imposed an administrative penalty in the amount of \$2,701,121.24, for a total of \$5,136,032.06.

Chiquita timely filed an appeal on September 28, 2017 requesting an administrative review of the assessed Fee and accrued penalties.

Prior to the hearing, CCL and PW submitted opening briefs, reply briefs, exhibits for the hearing officer's consideration in reviewing the Fee, enforcement order, and penalty.

The administrative hearing occurred on September 11 and 12, 2018 at the PW Headquarters, 900 South Fremont Avenue, Alhambra, CA 91803.

Legal Standard

As a landfill operating in Los Angeles County that disposes, transfers, processes waste, CCL is responsible for the payment of the applicable Fee monthly based on the tons by cubic yards for solid waste received, collected, conveyed or hauled, in addition to any administrative penalty accrued and unpaid. (LACC § 20.88.030.) Each payment is required to include: 1) a statement from the operator specifying and certifying the total tons or, if applicable, cubic yards of solid waste received, collected, conveyed, or hauled during the preceding month and, 2) if applicable, the notice of the claim of exemption. (LACC § 20.88.030(C).)

Landfill operators are required to maintain records and the procedures used to substantiate the tons or cubic yards of solid waste for three years. (LACC § 20.88.060.) The Director of PW may access through inspection or copying all records by providing three days' notice. (LACC § 20.88.060.)

The PW Director is authorized to issue an enforcement order upon determining a violation of LACC chapter 20.88 has occurred with the notice, applicable administrative penalty, and the opportunity for the landfill to seek an administrative appeal. (LACC § 20.88.070(A).) An enforcement order is final unless an appeal is filed. (LACC § 20.88.070(A)(3).) Violations of LACC Chapter 20.88-Solid Waste Management Fee are subject to an administrative penalty in the amount of \$100 for the first violation, \$200 for the second, and \$500 a day for each additional violation within any calendar year. (LACC § 20.88.070(B)(2).) Every day's failure to comply with the enforcement order constitutes a separate violation of chapter 20.88. (LACC § 20.88.070(B)(2).)

The Fee is delinquent if unpaid within 30 days of being due. (LACC § 20.88.070(B).) Thereafter, each day that Fee is unpaid constitutes a separate violation and is subject to the administrative penalty no less than \$500 per month but may be the lesser of 10 percent of the delinquent amount for each month or \$100 for the first day, \$200 for the second day, and \$500 each additional day, in a year. (LACC § 20.88.070(B).)

An enforcement order and associated penalty is subject to administrative review upon the filing of a written notice of appeal with the Director of PW within 30 days of service of the enforcement order, including the evidence sought to be reviewed. (LACC § 20.88.070(C)(1).) The PW Director must designate a hearing officer to conduct a hearing. The designated hearing officer must sustain, rescind or modify the enforcement order. (LACC § 20.88.070(C)(2).) The hearing officer's decision is final and is not subject to further administrative appeal. (LACC § 20.88.070(C)(2).)

Findings

In my capacity as the Hearing Officer, I have reviewed all documentation, recorded evidence, and testimony relating to the legal authority and responsibilities of Public Works and its abilities to regulate solid waste. The parties dispute Public Works' authority to reclassify clean soil and to use a 4:1 ratio for waste to beneficial reuse material for CCL to impose the Enforcement Order and penalty. The LACC does not provide a method for determining whether a material is appropriately classified as disposal or beneficial reuse. (See LACC § 20.88.)

The basis of my decision focuses on the 722,133 tons of clean soil and whether it should have been reported and if it had been reported, would the Fee be due, since it is owed for solid waste. Solid Waste is defined in the LACC as "all putrescible and nonputrescible solid, semisolid and liquid wastes, such as trash, refuse, garbage, rubbish, paper, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid, semisolid, and liquid wastes." (LACC § 20.56.060.) The Fee is calculated for each landfill based on the "tons or cubic yards of solid waste received, collected, conveyed, or hauled during a calendar month." (LACC § 20.88.050(A).) Clean soil is not explicitly included in the definition of solid waste, but if soil is disposed of, the Fee would apply. Alternatively, if soil is used in a beneficial way, like "for daily, intermediate, and final cover" it is exempt from the Fee. (LACC § 20.88.040(I).) If soil is used by a landfill beyond the exemptions in paragraphs (H) and (I) of LACC § 20.88.040, the Fee is due under the County's ordinance. PW admitted, and Chiquita agreed, that it did not dispose of soil. (See Declaration of Martin Aiyetiwa, ¶ 31.) Therefore, there is no other conclusion than that the Fee is not for clean soil that is not disposed of as solid waste.

Pursuant to its authority under the LACC, when the question arose as to whether Chiquita had correctly paid the Fee, Public Works requested to review Chiquita's records. The operator of a landfill is required to maintain records, information, and documents that substantiate the ton or cubic yards of solid waste the landfill receives, or that is collected, recycled, reused, conveyed or hauled per month. (LACC § 20.88.060(A).) CCL had an obligation to provide PW with records to substantiate the amount of solid waste received, recycled, reused, conveyed or hauled.

When Public Works performed its independent audit for the period October 1, 2011 to September 30, 2014, it requested raw data and various reports and documentation from CCL including daily weight tickets, which were provided by CCL to Public Works' satisfaction. Upon the second review of the audit period, it became apparent that Chiquita had not been reporting clean soil that it received. Chiquita responded that it did not understand that to be an obligation under the law but agreed to do so moving forward. Public Works acknowledged that CalRecycle does not require its monthly reporting of soil in its Disposal Reporting System but stated that facilities report the same information to the Local Enforcement Agency ("LEA") and CalRecycle through the disposal reporting system mandated by CalRecycle and that they report to Public Works through SWIMS.

According to Public Works, a change in the law led CalRecycle and the LEA to cease requiring reports of inbound clean soil. But when the change occurred, and the LEA ceased the reporting requirement for clean soil, there is nothing to indicate that Public Works told or required CCL to continue the clean soil reporting. Documentation provided by CCL shows that it was reporting clean soil at least until 2009. Furthermore, if it was a requirement by Public Works, it could have easily reviewed the Form 13 information submitted by Chiquita, which clearly revealed that the reporting of clean soil column was empty. The unreported clean soil in Form 13 went on for over five years. This implies that Public Works reviewed all of the data Chiquita made available and should have been aware at the initial audit that clean soil was not being reported. From a visual review of the data sheets, as well as the raw data, it should have become evident at the time of the initial audit that clean soil was not being reported properly, if at all. The audit findings were approved by Public Works, concluding that the Fee paid was appropriate based on the information reported by CCL.

In January 2016, when Public Works realized that clean soil was not being reported, it concluded after some review that CCL underreported the tonnage of clean soil and rescinded the audit approval, because it could not determine how that unreported soil was used by CCL. Public Works acknowledged that materials accepted at the landfill for beneficial reuse are exempt from the fee, but only to the extent necessary to meet minimal requirements as appropriate for operational uses. Public works argued that CCL's use of the unreported clean soil diminished its need for beneficial reuse material, and CCL failed

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to provide evidence to support its use, which led to Public Works' reclassification of 75 percent of inbound material as waste based on a 4:1 ratio of total disposal material to beneficial reuse. This Hearing Officer agrees with CCL that Public Works has failed to demonstrate its independent authority under the LACC or statute to reclassify clean soil as excessive beneficial reuse material, making it waste and subject to the Fee.

No overall regulatory standard for what constitutes excessive beneficial reuse was presented. Public Works testified that the 4:1 ratio was an industry standard, but there was no evidence or testimony that the 4:1 total disposal to beneficial reuse ratio is anything but arbitrary. The ratio is not substantiated in any of the documents referenced by Public Works. While, there was a reference to the 4:1 ratio in the 1995 Draft Environmental Impact Report ("EIR") for the landfill, the EIR is not an operational document intended to be used for this purpose. In fact, other documentation provided shows the 4:1 ratio has been exceeded in several other landfills. The 4:1 ratio used by Public Works to reclassify material was not supported by the evidence.

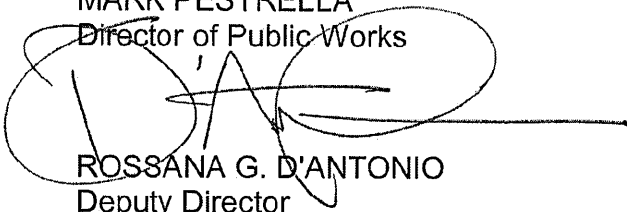
This Hearing Officer recognizes that the operation of a landfill is dynamic and that waste to cover ratio determinations and calculations are not an exact science. Clearly, there can be difficulty in precise monitoring and reporting for the landfill, but it is CCL's obligation under the law to do so. Ultimately, this decision is rendered on the evidence and arguments available to this Hearing Officer.

Conclusion

Per LACC Section 20.88.070(C)(2), the Hearing Officer may sustain, rescind, or modify the enforcement order. Without additional written documentation supporting Public Works' authority to reclassify material as waste, a modified Enforcement Order and penalty decision by this Hearing Officer would be inappropriate. Therefore, the decision is to rescind the Enforcement Order of August 30, 2017 and any associated administrative penalties.

Very truly yours,

MARK PESTRELLA
Director of Public Works



ROSSANA G. D'ANTONIO
Deputy Director

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