

October 21, 2016

Jack Broadbent  
Executive Officer/Air Pollution Control Officer  
Bay Area Air Quality Management District  
375 Beale Street #600  
San Francisco, CA 94105

Subject: Newby Island Odor Study

Dear Mr. Broadbent:

This letter is to address the issues raised in the Bay Area Air Quality Management District's (Air District) letter dated June 30, 2016. As you may know, the Planning Commission hearing scheduled for August 24, 2016, was cancelled and rescheduled for Wednesday October 26, 2016, to allow City staff and the odor consultant, ERM West, Inc. (ERM), time to finalize the odor assessment report.

The City's Planning Division has coordinated extensively with the Air District on the scoping and preparation of the odor assessment report for the Newby Island Resource Recovery Park (Newby Island Facility). In June and July 2015, Air District staff reviewed consultant proposals and participated in interviews. In August 2015, Air District staff assisted City staff in selecting the consultant and refining the scope of work. Air District staff subsequently reviewed drafts of the report and provided comments to City staff and directly to ERM.

The odor emissions data gathered for this study adequately characterize processes at the Newby Island Facility over time and during different operating conditions. City staff settled on the overall study approach after much coordination and discussion with ERM and the Air District. It was determined that sampling during two seasons and under different conditions was reasonable and would result in a representative emissions sampling. ERM conducted two field programs, one during early October and the other during early December, in order to capture emissions during warm and cool weather. During these field programs, ERM collected multiple samples on each source type. The report describes in detail how samples were taken at different times of day, on different days, and under varying operational conditions to account for variability. The modeling for this study accounts for variability factors such as meteorological conditions, terrain features, distance and different operational conditions. The results of the odor emissions sampling were subsequently used in a U.S. Environmental Protection Agency-approved air dispersion model to predict the magnitude and frequency of potential odors off site. One full year of meteorological data for 2015, gathered from the San José Airport and Oakland, California, was incorporated into this model.

The City does not have an adopted odor threshold. The Air District's Regulation 7 establishes a 4 dilutions-to-threshold (D/T) limit on odorous substances at or beyond the property line. The draft report initially referenced this regulation, but upon request by the Air District, all references to Regulation 7 were removed. For the purposes of this study, an odor concentration of greater than 4 dilutions-to-threshold (D/T) was used as the odor concentration that may elicit odor complaints in a community. As discussed in the report, the 4 D/T values is often used in odor dispersion modeling studies as a metric for evaluating the potential for odor complaints. Relying on a lower dilution-to-threshold, such as 2 D/T as suggested in the Air District's letter, would be arbitrary and has no basis



Jack Broadbent  
October 21, 2016  
Subject: Newby Island Odor Study  
Page 2

in state, regional, or local policy, industry standards, and accepted scientific methodology.

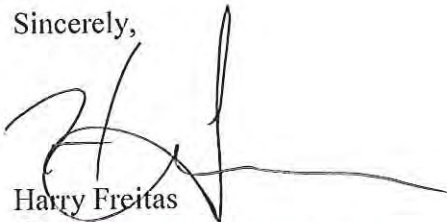
City staff have also continued review of recent odor complaint data from the Air District as recently as October 20, 2016. For the 19 months between December 2014 and June 2016, the Air District received a total of 5,717 odor complaints associated with the Milpitas regional odor from the cities of Milpitas, San José, and Fremont. Of these, 232 were confirmed by the Air District and were attributed to the Newby Island facility by the Air District, which represents approximately 4% of the total complaints. The Air District has issued 20 Notices of Violation (NOV) to the facility for alleged violations on 17 separate dates between December 2014 and September 2016. NOVs were issued for the landfill operation on ten separate days, and five of these NOVs were issued for odor issues. Air District staff were unable to provide City staff with information regarding the resolution of these NOVs as this information is considered enforcement confidential by the Air District. The Local Enforcement Agency was provided with a written summary of Republic Services' response to these NOVs since the end of 2014. The letter was sent to the Air District in early October.

The City is confident that the ERM report reflects, to the best extent possible, the potential odor emissions from the Newby Island Facility using scientifically accepted methods of inquiry. We remind the Air District that its staff participated from the outset in the selection of the City's odor consultant and the preparation of the consultant's scope of work on this project. As a result, the City questions why the Air District at such a late date in the process raises questions about the scope of work which it assisted in developing and suggests a standard for quantifying odor emissions that is not used by the City, the Air District, ASTM, or any other agency. The City does not have an odor standard, the Air District does not use any objective and quantitative standard governing odor emissions, and the Air District fails to provide any authority for using the standard it suggests. Additionally, the Air District has declined to share information regarding the resolution of complaint investigations and the Air District notices of violation.

Given these limitations in the Air District standards and its policies governing the release of public records, the ERM odor study is complete and is only limited by information that was not available to the consultant. We understand that the Air District may have concerns with its ability to investigate odor complaints and enforce alleged violations, but it is not the purpose of this odor study to resolve that issue. We find the comments in the June 30, 2016, letter untimely and a significant change in the Air District's direction and assistance with the odor study. We reiterate that the ERM report accurately employs scientifically acceptable methods of inquiry and analysis of odor from the various sources at Newby Island using available information.

Please contact me at 408-535-7900 should you have any questions or if you wish to discuss further.

Sincerely,



Harry Freitas  
Director  
Planning, Building, and Code Enforcement





BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

June 30, 2016

Harry Freitas

Director of Planning, Building and Code Enforcement

City of San Jose, Department of Planning, Building and Code Enforcement

200 E. Santa Clara St.

San José, CA 95113

Dear Mr. Freitas,

This letter is in response to the Newby Island Resource Recovery Park Odor Assessment Report, prepared for the City of San Jose by ERM West, Inc. (ERM). As you know, ERM was hired by the City's Planning Department to conduct an independent odor study of the Newby Island Resource Recovery Park to assist the San Jose Planning Commission in determining whether potential odorous emissions from the facility may pose an odor nuisance in the surrounding communities. It is the Bay Area Air Quality Management District's (Air District) understanding that the Planning Commission will soon decide whether to uphold or deny a permit appeal filed by the City of Milpitas on an approved Planned Development permit for the expansion of Newby Island Resource Recovery Park's landfill operation.

Back in March, Air District staff met with members of the City of San Jose's Planning Department to discuss our comments and concerns with the draft report dated 2/15/2016. Eric Stevenson, Air District Director of Meteorology, Measurement and Rules followed up with a phone call to Larry Hottenstein, the ERM consultant to further explain the Air District's concerns with the report. Our main concerns with the original version of the report included the minimal amount of sampling data collected and used in the modeling and analyses, as well as the resulting conclusions that seemed overly broad, definitive, and unsubstantiated given the data set used. In addition, we were surprised to find that certain assumptions made in the report were in direct conflict with Air District staff's extensive observations in field since early 2015, and that the recommendations made in the report to remedy the odor problem at Newby Island were inadequate.

The revised Odor Assessment Report dated 5/25/2016 addressed many of our concerns and we support its recommendations. However, from a scientific perspective the study still has major problems that stem from the limited duration of sampling, particularly for certain sources where odor intensity can change significantly throughout a day or year. We understand taking more samples is impractical at this point. However, our expectation was that the limitations of the data set and analysis would be made explicit and discussed in terms the public and Commissioners can understand. For example, conclusions drawn from the modeling should include an explicit reminder that 4 D/T (dilution to threshold) is not necessarily the concentration at which an



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

odor may become an odor nuisance. In fact, given the subjective nature of odor perception we know that the Milpitas community members actually affected by the odors from Newby Island are particularly sensitive to the odor of compost. Additionally, compost is one of the main contributors to complaints we receive, yet the report's results do not flag compost as a serious odor issue in the community. The Air District feels it would have been prudent to run the model using another odor concentration such as 2 D/T for comparison, or at the very least discuss why this was not done.

The one conclusion that can clearly be drawn from this Odor Assessment Report is that odorous sources at the Newby Island Resource Recovery Park do impact the Milpitas and Fremont communities. However, we believe the true impacts of each individual source were inadequately characterized, especially given the limited dataset used.

Overall, based on the data used to run the models, the Air District is not confident that this report reflects, to the best extent possible, what is occurring and what has been observed at Newby Island Resource Recovery Park and in the neighboring community over the last year and more. The Air District continues to receive daily complaints regarding both garbage and compost odors emanating from the facility and our inspectors are able to detect these odors.

If you have any questions regarding these concerns, please contact Eric Stevenson, Director of Meteorology, Measurement and Rules ([ESTevenson@baaqmd.gov](mailto:ESTevenson@baaqmd.gov) or (415) 749-4695) or Wayne Kino, Director of Compliance and Enforcement ([WKino@baaqmd.gov](mailto:WKino@baaqmd.gov) or (415) 749-4789).

Sincerely,

Jack Broadbent  
Executive Officer/Air Pollution Control Officer