CEASE AND DESIST ORDER AND NOTICE AND ORDER TO RESTORE PROPERTY

Public Resources Code (PRC), Sections 44002,45000,45005,45011,45023

Title 14, California Code of Regulations (CCR), Section 18304

TO: OPERATOR/OWNER

Juan Aviles Espinoza

IN THE MATTER OF
Unpermitted Solid Waste Disposal Site
South West property at the intersection of Mallard Road and Santa Fe Grade in Dos Palos
APN # 089- 010-018

ISSUING AGENCY

Merced Couty Community and Economic Development Department
Division of Environmental Health, Local Enforcement Agency (LEA)
2222 'M' Street
Merced, CA 95340

DATE OF ISSUANCE,

May 22, 2024

Regulatory Authority
The Merced County Community and Economic Development Department, Division of Environmental Health (the LEA) is certified by the California Department of Resources, Recycling, and Recovery (CalRecycle) to act as the Solid Waste Local Enforcement Agency (LEA) within the cities and County of Merced. The LEA is authorized by Division 30 of the Public Resources Code (PRC), section 43209, and Title 14 of the California Code of Regulations (CCR), sections 18051 and 18084, to enforce solid waste laws and regulations.

Pursuant to PRC section 45005, the LEA has the authority to issue a Cease and Desist Order and a Notice and Order to Restore Property to any person who is operating, has operated or proposes to operate a solid waste facility without a required solid waste facilities permit.

Pursuant to PRC section 45011, the LEA may include in the Order a time schedule according to which the facility shall be brought into compliance and a maximum administrative penalty of $5,000.00 for each day that the violation occurs if compliance is not achieved within that schedule.

Background

The owner of record of the property that is the subject of this order is Juan Aviles Espinoza (Respondent). Respondent has one listed mailing address 107 East Main Street, Merced, CA 95340. Parcel number 089-010-018, a property located to the South West of the intersection of Mallard Road and Santa Fe Grade in Dos Palos, hereafter referred to as "Subject Property", is comprised of approximately 12 acres.

On January 18, 2024, the LEA received a complaint alleging that Respondent was illegally disposing of waste material on the Subject Property.

On January 19, 2024, the LEA staff followed up and conducted an inspection of the Subject Property. The LEA met on the Mallard Road roadway with the complainant who submitted the complaint. The inspection and observations were all made from the Mallard Road and Santa Fe Grade roadways. Observations were made of stockpiled waste material at the east edge of the property and up against the Mallard Road roadway. Additionally, this same material was observed to have been spread throughout the center of the property. At the time of this inspection, no one was present on the subject property. The observed waste material had a strong chemical odor and appeared to contain, among other waste types, paper and plastic. Additionally, the waste material appeared to be crushed up construction and demolition material. It could not be confirmed from the offsite inspection that the material was hazardous. The Subject Property had perched groundwater and the waste material was observed to be in contact with the area of perched groundwater.

First Notification/Phone Call to Respondent

On February 1, 2024, the LEA was provided with the phone number to the Respondent that our office had access to because we had recently received a permit application for construction of a water well on the Subject Property. A phone call to the Respondent was made this same day. The Respondent (Spanish speaking) answered the phone and the LEA, in Spanish, was able to inform them about the current open case and that they are engaging in unlawful handling and disposal of a solid waste material on their property which could potentially lead to fines or other enforcement. The LEA requested the Respondent to stop the operations, but he indicated that the operations would not be stopped. The Respondent indicated that he would not stop the operations until he was provided with something in writing that indicates the Subject Property has restrictions or that it is a designated wetland, which prohibits the development of the property. The Respondent was very upset and it did not appear that they wanted to continue the conversation or answer any further questions. The LEA concluded the call with the Respondent saying that they would be seeking legal advice on this matter.

In-Person Meeting between Merced County Community and Economic Development Department, LEA, and Respondent

On February 5, 2024 at 4:00 PM there was an in-person meeting with the Respondent of the subject complaint, Juan Espinoza Aviles, and his mother, Maria at the LEA's office. In attendance at the meeting was Amanda Duran, Interim Deputy Director of the LEA, Melissa Palomino, Supervising Environmental Health Specialist with the LEA and Tiffany Ho, Deputy Director of Planning for the Merced County Community and Economic Development Department, which houses the LEA. The purpose of the meeting was to discuss the nature of the complaint involving the Subject Property, to explain to the Respondent why the activity needs to stop, and to inform them on how to come into compliance.

The LEA asked Respondent about the origin of the waste material that was being brought to the Subject Property at the time. Respondent and his mother both indicated that the waste material was donated from somewhere in San Jose and that it was not hazardous. The LEA requested receipts and contact information for the hauler and the company associated with the waste material. The Respondent and his mother refused to provide the requested information. The LEA then requested permission from them to collect samples of the waste material for testing and analysis. Respondent did not provide such permission, and instead stated that the site has previously been contaminated with oil and that is the reason why he has been unable to sell the Subject Property in the past. The LEA informed Respondent that both the County's records and the State database, GeoTracker, did not indicate that the Subject Property is considered a contaminated site due to disposal of a hazardous waste material.

Soon after the meeting, the LEA received a call from Respondent affirming that he would not provide authorization to the LEA to go onto the property and collect samples. Additionally, Respondent indicated that Merced County would have to pull a warrant to go onto the Subject Property and that Merced County would have to deal with the judicial system and his lawyer.

On April 26, 2024, the LEA staff conducted a follow-up inspection of the Subject Property. The inspection and observations were all made from the Mallard Road and Santa Fe Grade roadways. Observations were made that a portion of the waste material which had previously been stockpiled at the east edge of the property and up against the Mallard Road roadway, had now apparently been spread throughout the center of the property, adding to the waste material which had been previously spread throughout the center of the property.

Pertinent State Solid Waste Law

1. PRC section 40191 defines "solid waste" as "all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes," excluding hazardous waste, radioactive waste, and medical waste.
2. "Construction and Demolition Waste" or "C&D Waste" means the nonhazardous waste materials resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures. (14 CCR § 17388(c); 14 CCR § 17225.15.)
3. PRC section 40121 defines a "disposal facility" as "a facility or location where disposal of solid waste occurs."
4. A "solid waste facility" includes a disposal facility. (*Public Resources Code* § 40194.)
5. It is unlawful to dispose of solid waste or accept solid waste for disposal except at a solid waste disposal facility for which a solid waste facilities permit has been issued or as otherwise authorized by the Public Resources Code. (Public Resources Code § 44000.5.)

LEA Determination

Based upon pertinent State Solid Waste Law and the observed on-site solid waste stockpiling/spreading, the LEA determines that:

1. The nature of the material which had been disposed of at the Subject Property is classified as "solid waste." PRC section 40121 defines a "disposal facility" as "a facility or location where disposal of solid waste occurs."
2. Based upon the scope and extent of the material deposited, the Subject Property is operating as a solid waste disposal facility without a solid waste facilities permit and/or is operating without any other authorization by the Public Resources Code.
3. Respondents have violated:

a. PRC Section 44000.5(a), which states "a person shall not dispose of solid waste, cause solid waste to be disposed of, arrange for the disposal of solid waste, transport solid waste for purposes of disposal, or accept solid waste for disposal, except at a solid waste disposal facility for which a solid waste facilities permit has been issued pursuant to this chapter or as otherwise authorized pursuant to this division and the regulations adopted by the board pursuant to this division..... A violation of this section is an unlawful act; and/or

b. PRC section 44002, which states "No person shall operate a solid waste facility without a solid waste facilities permit if that facility is required to have a permit."

Specific Actions Required

Respondents shall complete the specific actions in the following Compliance Table.

Compliance Table

Violations	Actions to be taken by Respondents	Compliance Date
PRC 44000.5 and/or 44002	1.0) Cease and Desist from accepting, disposing/dumping, or grading any and all material at the Subject Property that is deemed "solid waste" under PRC section 40191, including but not limited to the materials observed having been deposited on the property at the LEA's 1/19/2024 inspection), or allowing any person not named in this Order to take such action.	1.0) Immediately and ongoing unless and until Respondents are issued a Solid Waste Facilities Permit or other authorization is provided by the LEA under the Public Resources Code.
	1.1) Post no signs inconsistent with this order at Subject Property entrance.	1.1) Immediately and ongoing.
	1.2) Submit to the LEA for its review and, if acceptable, approval, a: (a) **Plan for an Environmental Assessment/Characterization of Site Conditions** to determine the lateral and vertical extent, composition, chemical characterization/classification, and total estimated volume of the wastes and any contaminated soils present for purposes of determining where the wastes will be properly disposed or handled (i.e. recycling facility, a Class III solid waste facility or a Class I hazardous waste facility); and (b) a **Property Restoration Plan**, which provides a description of the methods and procedures to: (i) excavate, separate, manage, and remove all the wastes and contaminated soils; (ii) test the remaining soils to confirm that all solid wastes and contaminated soils have been removed; (iii) complete final stabilization of the property; and (iv) ensure that worker and public health and safety and the environment are protected until the property is stabilized.	1.2) Within **60 days** of service of this Order
	1.3) Complete the Property Restoration in accordance with the	1.3) Within **60 days** after the

	approved Property Restoration Plan and submit to the LEA a Completion Report certified by a registered civil engineer or a certified engineering geologist which includes: (i) a summary of activities conducted; (ii) laboratory results from sampling and analysis of the remaining native soil to demonstrate that all the solid waste and contaminated soils have been removed from the site; (iii) copies of daily field logs including photographs and results from health and safety monitoring; and (iv) copies of receipts, manifests, weigh tags or other disposal records to verify that all excavated solid wastes and contaminated soils were transported to an appropriate permitted recycling, solid waste and/or hazardous waste facility.	LEA approval of the Plans for Environmental Assessment/Characterization and Property Restoration.
Failure to allow inspections pursuant to 14 CCR 18083	2.0) Provide access to property for inspections by LEA staff during normal business hours until a written Notice of Compliance has been issued by the LEA.	In addition to providing access at the LEA's notification and direction, Respondent must contact Esther Canal, LEA Environmental Health Specialist III, at (209) 381-1081 or via email at Esther.Canal@countyofmerced.com to schedule a compliance inspection of the Subject Property upon completion of the removal action.

Terms and Conditions

- The required action specified in the Compliance Table shall be fully complied with in the manner and time specified above.
- The site shall remain in compliance with all applicable statutes and regulations.
- Pursuant to PRC section 45017, the orders and determinations contained in this Order shall take effect immediately upon service. There is no automatic stay of the effect of this Order if Respondents appeal. Pursuant to PRC section 45017 (a)(3)(A), if Respondents desire an Order staying the effect of this Order, Respondents may petition the Director of CalRecycle to stay the effect of the Order, pending the completion of an administrative appeal.

Respondents will be charged the expense of any additional time spent by the LEA staff to implement this enforcement action. Respondents will be assessed the cost of any additional required inspection and monitoring activity and shall fully cooperate with all inspections.

Failure to remedy the aforementioned violation(s) by the required date(s) may result in the LEA and/or CalRecycle expending available funds to perform any cleanup, abatement, or remedial work needed to protect public health and safety or the environment pursuant to Public Resources Code sections 45000 and 48020. If the LEA and/or CalRecycle expend(s) funds to perform any cleanup, abatement, or remedial work, the LEA and/or CalRecycle may seek repayment from responsible parties pursuant to Public Resources Code 48020 et seq. Moreover, funds so

expended by CalRecycle constitute a lien upon the real property owned by any responsible party that is subject to the remedial action, pursuant to Public Resources Code section 48023.5.

Failure to allow or provide the LEA, CalRecycle, or contractors for the LEA or CalRecycle with access to enter onto the property and perform all necessary cleanup, abatement, or remedial work may result in the LEA obtaining a warrant from the court to permit reasonable access to the property to perform the activity, pursuant to PRC section 44100 (c).

Nothing in this Notice and Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations. Notwithstanding compliance with the terms of this Notice and Order, Respondents may be required to take further actions as necessary to protect the public health, safety, or the environment. The LEA and/or CalRecycle. shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents or related parties in carrying out activities pursuant to this Notice and Order, nor shall the LEA and/or CalRecycle be held as a party to any contract entered into by Respondents or their agent(s) in carrying out activities pursuant to this Notice and Order.

This Notice and Order does not relieve Respondents from complying with other local, state, and federal requirements, nor does it preclude the LEA or CalRecycle from taking any and all other actions allowed by law.

This Notice and Order may only be amended in writing by an appropriate representative of the LEA.

Right to Appeal

Respondent may appeal this Notice and Order pursuant to PRC section 44307 by completing the following:

1. Submit to the LEA a completed Notice of Defense (Attachment 1) along with a written Statement of. Issues stating the reason(s) why Respondents should not be subject to the enforcement action, to be received by the LEA at the following address within 15 days of Respondents' receipt of this Notice and Order:

Merced County Community and Economic Development Department
Division of Environmental Health
2222 'M' Street
Merced, CA 95340.

2. Be available to participate in an appeal hearing before a Hearing Officer.

An appeal of this Notice and Order does not stay the effect of any provision of this Notice and Order; however, Respondents may petition the Director of CalRecycle, in writing, to stay the effect of this Notice and Order, or portion thereof, pending the completion of Respondents' administrative appeal. (PRC section 45017)

Respondents may be responsible for some or all of the hearing costs.

If Respondents fails to request a hearing within the required time, the Notice and Order will become final and enforceable.

Meeting Offered

If Respondents wish to meet to discuss this Notice and Order, Respondents may contact Esther Canal at (209) 381-1081.

Date: 5.22.2024 BY: _____

Amanda Duran, Interim Deputy Director
Merced County Environmental Health

Enclosure: Attachment 1: Notice of Defense

CC: CalRecycle
Merced County Community and Economic Development Department
Central Valley Regional Water Quality Control Board

Declaration

I, Esther Canal, declare under penalty of perjury under the laws of the State of California, based on my personal knowledge or information and belief, that the information in the foregoing Notice and Order is true and correct. The information was obtained from my plain view inspection of the Subject Property and from my review of Respondents' records and the LEA records concerning the Subject Property.

Esther Canal, REHS
Environmental Health Specialist III

State of California
CalRecycle 218 (Revised 9/11)

Department of Resources Recycling and Recovery (CalRecycle)

REQUEST FOR HEARING

Before the Local Solid Waste Hearing Panel or Hearing Officer

Public Resources Code (PRC) 44310 et. seq.

Enforcement Agency:					
Facility Name:		SWIS No:			
Facility Address:		City:		Zip Code:	
Name of Petitioner:					
Requests a Hearing in the matter of (check one):					

- ☐ Challenge terms and/or conditions of the issued (PRC 44307) Solid Waste Facility Permit (SWFP)
- ☐ Appeal an enforcement order (PRC 44307, 45017(b))
- ☐ Alleged failure of the EA to act as required by law or regulation (PRC 44307)
- ☐ Appeal completeness review of ☐ Registration (CCR 18104.4) or ☐ Standardized (CCR 18105.4) SWFP.
- ☐ Denial of the SWFP (PRC 44300)
- ☐ Suspension of the SWFP (PRC 44305)
- ☐ Revocation of the SWFP (PRC 44306)
- ☐ Denial of Proposed RFI Amendment(s) (CCR 21665)

Statement of the Issues (Appellants may wish to add additional pages to fully explain the legal and factual basis for their appeal) :	☐ Check if additional pages are attached.

Signature:		Typed Name:	
Title:		Date:	