

BEFORE THE CALIFORNIA DEPARTMENT  
OF RESOURCES RECYCLING AND RECOVERY

In the Matter of:

Rio Santiago Inert Debris Type A Disposal  
Facility  
6145 E. Santiago Canyon Road  
Orange, CA 92869  
SWIS No. 30-AB-0472

Rio Santiago, LLC (Facility Operator)  
Milan REI X LLC (Property Owner),

**Appellant,**

Orange County Health Care Agency, Solid  
Waste Local Enforcement Agency,

**Respondent,**

APPEAL OF WRITTEN DECISION OF  
HEARING OFFICER REGARDING  
THE ORANGE COUNTY LOCAL  
ENFORCEMENT AGENCY'S CEASE  
AND DESIST ORDER ISSUED TO  
THE RIO SANTIAGO FACILITY

DECISION AND ORDER

Public Resources Code Sections  
45030 et seq.

**I. INTRODUCTION**

This matter came before the Department of Resources Recycling and Recovery (CalRecycle) based on an appeal filed pursuant to Public Resources Code (PRC) section 45030. Appellant is Rio Santiago, LLC (Rio Santiago), and Milan REI X LLC (Milan) (Collectively Appellants).

Appellants appealed the written decision of the Orange County Local Enforcement Agency (OCLEA) issued on November 4, 2020 (Decision), upholding the validity of OCLEA's Notice and Order of Cease and Desist for Registration Permit for Rio Santiago Facility, SWIS No. 30-AB-0472 (CDO), for the site located at 6145 E. Santiago Canyon Road in the city of Orange, California (Site).

CalRecycle determined that Appellants' appeal raised one or more substantial issues and accepted the appeal. The Parties submitted the record on December 4, 2020, and written arguments on January 8, 2021.

Having considered the record and the Parties written arguments, and for good cause appearing, CalRecycle has made the following determinations:

## **II. FACTUAL BACKGROUND**

### **A. Timeline**

In January of 2020, OCLEA received a public complaint of illegal dumping at the Site. (LEA-RIO-0001) In response to the complaint, OCLEA conducted an inspection of the Site where it observed the unloading and stockpiling of Inert Debris Type A (IDTA). (LEA-RIO-0004-0009)

On February 4, 2020, OCLEA informed Appellants that receipt of IDTA at the Site would require a registration permit. (LEA-RIO-0019) A meeting between OCLEA and Appellants occurred on February 21, 2020, and it was agreed that Appellants would apply for a registration permit. (LEA-RIO-0021)

In March 2020, Appellants submitted an initial registration permit application, but it was rejected by OCLEA as incomplete. OCLEA identified several deficiencies in the application, including 'Siting Element Conformance Finding'. (LEA-RIO-0037—0038)

Appellants sought to address the deficiencies in its application identified by OCLEA. As part of that effort, they sought guidance from CalRecycle regarding the Siting Element Conformance Finding. On April 20, 2020, CalRecycle offered a preliminary assessment that the Site would need to be listed in the Non-Disposal Facility Element (NDFE) only. (LEA-RIO-0045—0049)

Appellants submitted a revised registration permit application (Application) on May 29, 2020. As part of the Application, Appellants were required to 'check' one of the following two statements regarding siting element conformance:

- 1) "The facility is identified and described in or conforms with the County Solid Waste Management Plan, or otherwise complies with Public Resources Code 50000; and the facility is consistent with the city or county General Plan."
- 2) "The facility is identified in either the countywide siting element, the nondisposal facility element, or in the source reduction and recycling element for the jurisdictions in which it is located; or that the facility is not required to be identified in any of these elements pursuant to section 50001 of the Public Resources Code."

Appellants 'checked' the second statement and signed the Application, certifying that the information provided was true and accurate. (LEA-RIO-0156)

The Application was submitted to OCLEA, along with a cover letter explaining that the Application had addressed deficiencies identified by OCLEA in the initial application. Regarding the siting element conformance statement, the letter offered the following:

"The facility has been in contact with Joshua Soliz from the City of Orange and Wendy Dunlap from CalRecycle. The City and CalRecycle are in the process of adding the site to the City's Non Disposal Facility Site Element." (LEA-RIO-0043)



On June 22, 2020, OCLEA wrote to Appellants indicating that they had received the Application and deemed it "complete and correct" pursuant to Title 14, California Code of Regulations (CCR) section 18104.2. The OCLEA issued the registration permit dated June 22, 2020 (Permit) and a copy was provided to Appellants. (LEA-RIO-0155—0158)

On July 16, 2020, the City of Orange (City) updated its NDFE to include the Site. However, on July 23, 2020, CalRecycle informed the City, OCLEA, and Appellants that the Site must be identified in the Countywide Siting Element (CSE), and not the City's NDFE. CalRecycle further indicated that it would not process the City's NDFE update, as the Site is not considered a non-disposal facility. (LEA-RIO-0163)

On July 23, 2020, OCLEA wrote to Appellants stating that since the issuance of the Permit, it has learned that the Site must be identified in the CSE as opposed to the NDFE. "Based on these facts, the LEA has determined that the Application cannot be deemed complete and correct. This means that the LEA has reasons and the authority to issue a revocation proceeding ... to revoke the Registration Permit." The letter went on to say that Appellants would be allowed to voluntarily surrender the Permit in lieu of "instituting a formal revocation process". (LEA-RIO-0165—0167)

On July 22, 2020, Orange Park Association (OPA) requested a hearing before OCLEA pursuant to PRC section 44307, seeking revocation of the Permit and issuance of a cease and desist order to stop Appellants' disposal activities. (OPA-0001)

On August 3, 2020, OCLEA issued Notice and Order of Cease and Desist for Registration Permit for Rio Santiago Facility, SWIS No. 30-AB-0472 (CDO), the subject of this appeal. (LEA-RIO-0169—0174)

On August 11, 2020, OCLEA issued to Appellants its Notice of Intent to Revoke (NIR) the Permit pursuant to PCR section 44306(a) and 14 CCR section 18307. The NIR stated that Appellants had the right to request a hearing within 15 days of receipt of the NIR, otherwise the Permit would be revoked "effective August 28, 2020." (LEA-RIO-0185—0186)

On August 17, 2020, Appellants requested a hearing pursuant to PRC section 44310, et seq. regarding the CDO, contending that it was improper. (LEA-RIO-0169—0174)

On August 25, 2020, Appellants requested a hearing on the Notice of Intent to Revoke. (LEA-RIO-0169—0174)

OPA and Appellants' requests for hearing were consolidated and hearing occurred on October 8 and 9, 2020, before Hearing Officer Blum. At the outset of the hearing, Hearing Officer Blum ordered Appellants' Permit revoked.

Hearing Officer Blum (Blum) issued his written conclusions and findings (Decision) on November 4, 2020. Blum found that "The CDO was validly issued and properly

asserted as against the Petitioners' operations as an Inert Debris Type A Facility only, i.e., the CDO is limited to its express terms..."

Appellants submitted a request for hearing and statement for basis for appeal to CalRecycle on November 16, 2020, seeking to overturn Blum's Decision upholding the CDO and seeking to strike OPA's submittals, examination, and argument from the record<sup>1</sup>.

The Parties submitted the record to CalRecycle on December 4, 2020, and written statements on January 8, 2021.

### **B. Cease and Desist Order**

On August 3, 2020, OCLEA issued Notice and Order of Cease and Desist for Registration Permit for Rio Santiago Facility, SWIS No. 30-AB-0472 (CDO). (LEA-RIO-0169—0174) The CDO makes the following relevant orders:

- Immediately cease and desist the acceptance and disposal of IDTA.
- Prior to resuming operations, demonstrate appropriate siting element conformance and receive financial assurance from CalRecycle
- If the Site is unable to demonstrate appropriate siting element conformance:
  - Submit a plan to remove all material collected onsite by September 1, 2021
  - Obtain OCLEA approval for removal plan
  - Remove all IDTA material collected onsite to an authorized facility within one year of plan approval
  - Submit proof of IDTA material removal

The CDO makes the following relevant findings in support of its orders:

- OCLEA conducted a site visit and observed active unloading of IDTA to large stockpiles
- OCLEA issued the Permit on June 22, 2020, pursuant to CCR section 18104.2.
- "Since the issuance of the Permit, OCLEA has been informed by CalRecycle that the Site is not identified the appropriate planning document, namely the CSE as required pursuant to CCR 18104.1(e)(2)."
- "Given the fact that the application's statement [regarding siting element] is not correct as of the date of this Notice and Order and the application for the Site remains incomplete."
- "the LEA cannot accept the application pursuant to CCR section 18104.2."
- "Based on the facts described above, the Site's operator is currently conducting IDTA disposal activities at the Site while the Registration Permit issued for this Site remains incomplete and in violation of PRC, Division 30 and the regulations

---

<sup>1</sup> The Parties agree that the two issues on appeal to CalRecycle are: 1) the propriety of the CDO; and, 2) OPA's participation at hearing. There is an ongoing dispute regarding the Site's status as an Inert Debris Engineered Fill Operation (IDEFO) which is not before CalRecycle on appeal.



adopted thereunder ... thus requiring the LEA to issue an immediate cease and desist order pursuant to PRC Section 45005(a)(1) and 14 CCR sections 18304(a)(1),(2), and 18304.1(a)(2)."

### III. STANDARD OF REVIEW

PRC section 45032(a) provides that:

"In the board's hearing on the appeal, the evidence before the board shall consist of the record before the hearing panel or hearing officer, relevant facts as to any actions or inactions not subject to review by a hearing panel or hearing officer, the record before the local enforcement agency, written and oral arguments submitted by the parties, and any other relevant evidence that, in the judgment of the board, should be considered to effectuate and implement the policies of this division." (PRC § 45032(a).)

PRC section 45032(b) provides, in part, that: "The board may only overturn an enforcement action, and any administrative civil penalty, by a local enforcement agency if it finds, based on substantial evidence, that the action was inconsistent with this division."<sup>2</sup>

Substantial evidence is evidence " 'of ponderable legal significance,' " which is reasonable in nature, credible and of solid value. (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633; *Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 305, fn. 28.)

### IV. LEGAL CONCLUSIONS

#### A. The CDO is Inconsistent with Waste Management Law

##### 1. The CDO is not Authorized by PRC Section 45005(a)(1)

The CDO cites PRC section 45005(a)(1) in support of its order to immediately stop the acceptance and disposal of IDTA. Section 45005(a)(1) authorizes an LEA to issue a cease and desist order to a person who is disposing of solid waste either: 1) in violation of a solid waste permit; or, 2) in violation of Waste Management Law.

The CDO does not find that Appellants violated the Permit. Rather, the CDO contends that Appellants' Permit Application is incomplete and cannot be accepted because the Site is not listed in the CSE. In other words, the CDO concludes that the Permit is void and no

---

<sup>2</sup> 'This division' refers to Division 30 of the Public Resources Code, Waste Management. Division 30 and the regulations adopted pursuant to Division 30 will be referred to as 'Waste Management Law'.

longer authorizes Appellants' disposal activities, not that Appellants acted in conflict with Permit terms.

Nor does the CDO find that Appellants have violated Waste Management Law<sup>3</sup>. However, in its written statement to CalRecycle, OCLEA clarified that Appellants' "operation was ... specifically in violation of 14 CCR 18104.1, subdivision (e)(2). Therefore, the LEA's explicit reference to PRC 45005, subdivision (a)(1) was properly asserted and constituted the LEA's authority for issuing the Cease and Desist (sic) Order." (OCLEA Written Statement to CalRecycle page 10)

14 CCR section 18104.1 describes information that shall be included in a registration permit application. Subdivision (e)(2) provides the following:

"After a countywide or regional agency integrated waste management plan has been approved by the Department, the application shall include a statement that: the facility is identified in either the countywide siting element, the nondisposal facility element, or in the Source Reduction and Recycling Element for the jurisdiction to be identified in any of these elements pursuant to Public Resources Code section 50001." (14 CCR §18104.1(e)(2))

Appellants' Application met PRC section 18104.1(e)(2)'s requirement as it included the requisite statement that the Site was identified in either the CSE, the NDFE, or in the Source Reduction and Recycling Element. After OCLEA accepted the Application and issued the Permit, it learned that the Site was required to be listed in the CSE and not the NDFE. At hearing, OCLEA characterized Appellants' siting element conformance statement as a 'material misrepresentation'<sup>4</sup>. However, section 18104.1, subdivision (e)(2) is satisfied when the requisite statement is included in a registration permit application, even if that statement ultimately proves to be incorrect.

OCLEA has neither alleged nor established a violation of the Permit, nor has it established a violation of section 18104.1. Therefore, the CDO is not authorized pursuant to PRC section 45005(a)(1).

## **2. The CDO is not Authorized Pursuant to PRC Section 45005(a)**

Beginning at hearing, and continuing through this appeal, OCLEA contends that the CDO is further authorized by PRC section 45005(a). PRC section 45005 states that an LEA may issue a cease and desist order to "a person who is operating, has operated, or

---

<sup>3</sup> The CDO generally finds that the "Registration Permit for this Site remains incomplete and in violation of PRC, Division 30 and the regulations adopted thereunder...", but it does not include a description of the violation as required by 14 CCR 18304(b)(4). As explained in this Decision and Order, OCLEA does not have the power to retroactively deem Appellants' Application to be incomplete after the Permit issued.

<sup>4</sup> 'material misrepresentation' in obtaining a registration permit is an enumerated ground for revocation pursuant to PRC section 44306(a). It is not listed as grounds for issuing a cease and desist order pursuant to PRC section 45005.



proposes to operate a solid waste facility or operates a disposal site *in an unauthorized manner...*” (emphasis added)

While the CDO itself does not specifically cite section 45005(a) as its authorizing statute, OCLEA explained its reliance on section 45005(a) at hearing and in its written statement to CalRecycle:

“Here, the LEA issued a Registration Permit for the Facility on the basis of finding the application to be “complete and correct,” as required under 14 C.C.R. § 18104.2(d) and (f). The issuance of the Registration Permit *authorized* the Facility operator and the landowner to operate the Inert Debris Type A disposal activities at the Facility. However, after learning that the planning document identification still remains outstanding, the LEA determined that the application Rio Santiago and Milan submitted to the LEA for this Registration Permit was not complete and correct with respect to that element. Therefore, the LEA determined that the operation at the Facility was not authorized, and after giving Rio Santiago and Milan the opportunity to resolve the matter informally, issue the [CDO] to demand that the unauthorized operation must stop.”<sup>5</sup>

As the CDO acknowledges, OCLEA issued the Permit pursuant to 14 CCR section 18104.2. Section 18104.2 requires that an LEA review the application to determine whether: 1) it contains all required information; and 2) is complete and correct, before accepting an application and issuing a permit.

Here, OCLEA seeks to undo its acceptance of the Application and issuance of the Permit by retroactively deeming the Application incomplete- a de facto revocation. OCLEA cites no authority in support of this action. Indeed, retroactively deeming an accepted application to be incomplete conflicts with applicable statutes. PRC section 44306 provides that an LEA must provide a hearing before it can revoke a permit<sup>6</sup>:

“The enforcement agency may, *after holding a hearing* in accordance with the procedures set forth in section 44310, revoke a solid waste facilities permit if the enforcement agency determines any of the following...” (PRC § 44310) (emphasis added)

By retroactively deeming Appellants’ accepted application to be incomplete, OCLEA in effect revoked Appellants’ Permit without providing the hearing required by section 44306.

An LEA may not determine an application to be incomplete after it has already determined that it is complete and correct and issued a permit. Therefore, at the time the CDO issued,

---

<sup>5</sup> OCLEA Pre-Hearing Brief (LEA-RIO 0821-0824). See also Hearing Transcript Volume 1, page 50; OCLEA Written Closing Argument page 4; OCLEA Written Statement to CalRecycle page 11.

<sup>6</sup> 14 CCR section 18307 adds that an LEA may revoke a permit if a hearing has not been requested within 15 days of receipt of a Notice of Intent to Revoke.

Appellants held a facially valid registration permit. Appellants' activities under the Permit were expressly authorized, and section 45005(a) does not apply.

**B. Orange Park Association did not have Standing to Participate at Hearing below Pursuant to Public Resources Code Section 44307**

On July 22, 2020, Orange Park Association (OPA) requested a hearing pursuant PRC section 44307. Specifically, OPA contends that: 1) OCLEA must revoke the Permit; and, 2) OCLEA must issue a cease and desist order to stop Appellants' disposal activity<sup>7</sup>. PRC section 44307 provides in pertinent part:

"The enforcement agency shall also hold a hearing upon a petition to the enforcement agency from any person requesting the enforcement agency to review an alleged failure of the agency to act as required ..."

Both issues raised by OPA in its hearing request were moot at the time of the hearing because the CDO had been issued and the Permit had been revoked<sup>8</sup>. Therefore, there was no failure to act on the part of OCLEA, and OPA did not have standing to participate at hearing Pursuant to PRC section 44307. Nevertheless, OPA did participate at hearing over the objections of Appellants- making an opening argument, submitting exhibits, cross-examining witnesses, and submitting written closing arguments.

Hearing Officer Blum determined in his Decision that Appellants were not disadvantaged or prejudiced by OPA's participation at hearing. However, OPA's participation was substantial and adverse to Appellants. As OPA lacked standing to participate in hearing pursuant to PRC section 44307, its contributions at hearing have not been considered here.

**V. CONCLUSIONS**

Substantial evidence supports the finding that the CDO was inconsistent with Waste Management Law. The CDO is neither authorized by PRC section 45005(a)(1) nor by section 45005(a) because there is no allegation that Appellants violated their Permit, and Appellants' activities under the Permit were expressly authorized at the time the CDO was issued. Here, OCLEA sought to address deficiencies in Appellants' registration permit application by retroactively deeming Appellants' application to be incomplete after the Permit was issued—a de facto revocation. Such action is inconsistent with PRC section 44306, which provides that an LEA may only revoke a permit after providing notice and holding a hearing.

---

<sup>7</sup> Blum correctly determined that OPA did not have standing to assert other grounds for a hearing pursuant to 14 CCR section 18104.4 and PRC section 44306.

<sup>8</sup> Blum ordered the Permit revoked at the outset of hearing.



OCLEA has indicated that it will issue additional enforcement orders against Appellants' operations at the Site<sup>9</sup>. While this CDO is overturned, nothing in this Decision and Order curtails OCLEA's authority to issue further enforcement orders pertaining to the Site and consistent with Waste Management Law.

### ORDER

CalRecycle hereby determines that OCLEA's Notice and Order of Cease and Desist for Registration Permit for Rio Santiago Facility, SWIS No. 30-AB-0472 (CDO), for the site located at 6145 E. Santiago Canyon Road in the city of Orange, California (Site) is inconsistent with Waste Management Law and is overturned.

Dated: February 26, 2021

A handwritten signature in blue ink, appearing to read 'Douglas C. Jensen', is written over a horizontal line.

Douglas C. Jensen, Attorney IV  
Hearing Officer  
California Department of Resources Recycling and Recovery

---

<sup>9</sup> In its written closing arguments to Hearing Officer Blum, OCLEA requested that Hearing Officer Blum modify the language of the CDO, which he declined to do. OCLEA states "[a]s a practical matter, too, if Your Honor does not issue the [modified] order, the LEA will be compelled to issue another enforcement order to seek the removal of the current stockpiles at the Facility and go through another hearing pursuant to PRC \* 44310 only to seek the very order the LEA is seeking herein." (LEA Closing Argument page 6)