

Beneficial Reuse/Clean Soil: February 20th Order Addressing Los Angeles County Department of Public Works Solid Waste Fee Determination



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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A February 20th Order was issued by a Los Angeles County Department of Public Works (“PW”) Hearing Officer addressing the appeal of an enforcement order/administrative penalty (“Order”) alleging that the Chiquita Canyon Landfill (“CCL”) failed to comply with reporting requirements regarding the quantity of beneficial reuse materials being received, processed, and disposed.

The Order considers the Los Angeles County Department of Public Works (“PW”) contention that CCL underreported the amount of Solid Waste Management Fees (“Fee”) that should have been collected because of classification of certain waste as beneficial reuse materials/clean soil.

The Order assessed a penalty of \$2,701,121.24 and fee owed of \$2,434,910.82. These amounts were based on an alleged failure to report 772,133 tons of clean soil. The alleged underreporting was determined by an audit by PW.

PW contended that the beneficially reused material (i.e., clean soil) was inappropriately classified by CCL as such and should have in fact paid the fee. PW reclassified as solid waste 75 percent of materials originally classified as beneficial reuse. This was based on a ratio of 4:1 total disposal material to beneficial reuse materials. In a September 15, 2016, letter PW informed CCL that it planned on reclassifying approximately 1.6 million tons of purported beneficial use material as disposed.

CCL appealed the Order and a Hearing Officer was appointed.

The Hearing Officer in the February 20th hearing decision focused on whether the material CCL classified as clean soil was beneficially reused (in which case a fee would not be owed) or solid waste (in which case a fee would be owed).

The definition of Solid Waste in the Los Angeles County Code includes:

. . . all putrescible and nonputrescible solid, semisolid and liquid wastes, such as trash, refuse, garbage, rubbish, paper, ashes, industrial waste, 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.

The definition of clean soil was noted to have not been explicitly included in the definition of solid waste. However, if the soil was disposed, the fee would apply. If soil is used in a beneficial way, the February

20th decision notes that it is exempt. An example provided was when it is used for daily, intermediate and final cover.

PW agreed that CCL did not dispose of soil. Therefore the Hearing Officer stated:

. . . there is no other conclusion than that the Fee is not for clean soil that is not disposed of as solid waste.

PW is stated to have acknowledged that materials accepted at CCL for beneficial reuse are exempt from the fee. However, it contended that this is true only to the extent necessary to meet minimal requirements as appropriate for operational uses. It further argued that CCL's use of the unreported clean soil diminished its need for beneficial reuse material, and CCL failed to provide evidence for its use – leading to the reclassification of 75 percent of inbound material as waste based on a 4:1 ratio of total disposable material to beneficial reuse.

The Hearing Officer concluded that PW failed to demonstrate its independent legal authority to reclassify clean soil as excessive beneficial reuse material. There was also a determination that there was no evidence or testimony that the previously referenced ratio is anything but arbitrary. It was concluded that:

The Hearing Officer recognizes that the operation of a landfill is dynamic and that ways 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.

The Order was therefore rescinded.

A copy of the February 20th letter can be found [here](#).