



USA WASTE OF CALIFORNIA, INC.
Waste Management of South Bay
15999 Guadalupe Mines Road
San Jose, CA 95120

August 31, 2022

Rob Hilton, Executive Director
West Valley Solid Waste Management Authority
C/O HF&H Consultants, LLC
201 N. Civic Dr., Suite 230
Walnut Creek, CA 94596

RE: West Valley's Notice and Assessment of Liquidated Damages for Late Reports and Disposal of Mixed Organic Materials

Dear Mr. Hilton,

Waste Management of South Bay ("WM") is in receipt of a letter dated August 4, 2022 (the "Letter"), from West Valley Solid Waste Management Authority ("West Valley"). The Letter gives notice of West Valley's intent to recommend assessment of liquidated damages against WM based on WM's alleged breaches of obligations relating to timely reporting and proper disposition of Targeted Diversion Materials pursuant to the Agreement for Disposal of Solid Waste, and Transport and Processing of Mixed Organic Waste, Source-Separated Yard Trimmings, and Construction and Demolition Debris entered into between the parties on January 14, 2021 ("Agreement"). For the reasons set forth below, WM objects to West Valley's proposed liquidated damages assessment as untimely and otherwise lacking in merit.

1. West Valley's Notice is Untimely.

Section 10.6(E) of the Agreement provides that "[c]laims for Liquidated Damages must be made within ninety (90) days of the Authority becoming aware of the underlying event." West Valley's attempt to assess liquidated damages for alleged violations occurring from January through June of 2022 is therefore untimely, except as to alleged events occurring within 90 days of the Letter. West Valley cannot reasonably claim it was not aware of the events giving rise to the proposed assessments prior to August 4, 2022. As such, West Valley is barred from seeking liquidated damages for any underlying events occurring prior to May 7, 2022.

Furthermore, the Letter violates section 1.3(B) of the Agreement, which requires West Valley to "provide *timely* notice . . . of a failure or perceived failure to perform any obligations under [the] Agreement . . ." (Emphasis added.) Especially in light of the 90-day limitation period for liquidated damages claims set forth in Section 10.6(E), a five month delay in notifying WM of alleged violations can not reasonably be considered timely.

2. WM Has Not Disposed of Targeted Diversion Materials.

The Letter also states West Valley's intent to recommend assessment of liquidated damages for the "Disposal of Targeted Diversion Materials" pursuant to section 10.6.C.2, That

section refers specifically to the “Disposal of Delivered *Mixed Organic Waste* without Processing” (Emphasis added.) “Mixed Organic Waste” is defined under the agreement as residential material only. Specifically, “Mixed Organic Waste” means “those discarded organic materials that are Collected from a residential customer that includes a mixture of food scraps and Yard Trimmings. Mixed Organic Waste does not include items defined as Excluded Waste, and contaminants such as glass, plastic (including Compostable Plastics), ceramics, metal, waxed paper, animal waste, restaurant or commercially Collected post – consumer food waste, dirt, treated or painted wood, concrete, or tree stumps, subject to Contamination standards described in Section 4.2(E).”

The material at issue is not Mixed Organic Waste. WM has not rejected one Mixed Organic Waste load since the inception of the agreement, and therefore has not violated any of its obligations relating thereto. The loads in question delivered by the Franchise Hauler were not Mixed Organic Waste, they were identified by the Franchise Hauler as loads containing commercial food waste not Mixed Organic Waste, and all of the loads were delivered in a front end loader not a residential collection truck. In conformance with standard operating procedures for any mis-classified load, WM segregated the loads, notified the Franchise Hauler of the mis-classification, and recorded and disposed of every load as MSW with full knowledge and approval of the Franchise Hauler.

WM looks forward to a continued partnership with the Authority and to resolving these issues with you. Please let us know if you have any questions regarding the above.

Sincerely,

USA Waste of California, Inc.,
Waste Management of South Bay



By: _____
Barry Skolnick, President