

ORDINANCE NO. 4423

AN ORDINANCE OF THE VENTURA COUNTY BOARD OF SUPERVISORS AMENDING PROVISIONS OF THE VENTURA COUNTY ORDINANCE CODE PERTAINING TO THE REGULATION OF SOLID WASTE

The Board of Supervisors of the County of Ventura ordains as follows:

Sections 4700 through 4705, inclusive, Sections 4719 through 4727, inclusive, and Section 4730, as amended herein, are hereby enacted to be a part of Article 1 of Chapter 7 of Division 4 of the Ventura County Ordinance Code.

ARTICLE 1 - REGULATION OF THE DISPOSAL AND HANDLING OF SOLID WASTE AND RECYCLABLE MATERIAL, HEALTH PERMITS AND RELATED FEES

Section 4700 - REGULATION OF SOLID WASTE GENERALLY

This Article provides for the regulation of the storage, collection, transportation, transfer, processing, composting, recycling and disposal of solid waste, for fees related thereto and for the enforcement of state and local laws, regulations and standards that are or may become applicable thereto.

Section 4700-1 Authorization

This Article is enacted pursuant to the police power of the County of Ventura and pursuant to the authority conferred by the California Integrated Waste Management Act of 1989 (commencing with Section 40000 of the Public Resources Code), as amended, (referred to in this Article as the "Act"). Sections of this Article that apply to the incorporated areas of Ventura County are enacted pursuant to the authority conferred by the Act, which specifically authorizes the Environmental Health Division of the Resource Management Agency of the County of Ventura, as the certified enforcement agency (referred to in this Article as "Division"), to implement an enforcement program under the Act applicable throughout the incorporated and unincorporated areas of Ventura County and to collect fees applicable thereto. Fees provided in this Article are also adopted pursuant to the Act and Health and Safety Code Section 101280, as amended.

Section 4700-2 Civil Administration and Enforcement

The Division and its Director are hereby authorized to administer and enforce this Article in Ventura County. Except with respect to the matters that are specifically

provided for within Article 3 and Article 4 of Chapter 7 of Division 4 (commencing with Section 4740 of the Ventura County Ordinance Code), as amended, the Division is hereby designated as the enforcement agency to administer and enforce the Act in Ventura County. The Division shall have full authority to enforce the Act and this Article in all areas of Ventura County where applicable. Unless otherwise provided, the Division is also authorized to enforce all other regulatory state laws, regulations and standards that are or that may become applicable to solid waste.

Section 4700-3 Criminal Administration and Enforcement

The Director of the Division and the Director's designees are hereby designated as enforcing agents for this Article and, as such, are also authorized to enforce the criminal provisions of this Article.

- (a) Pursuant to the authority vested in the Board of Supervisors of the County of Ventura by California Penal Code Section 836.5, the Director and the Director's designees shall have the power to arrest without warrant whenever he or she has reasonable cause to believe that the person to be arrested has committed in his or her presence a criminal violation of this Article.
- (b) In any case in which a person is arrested for violating criminal provisions of this Article and the person arrested does not demand to be taken before a magistrate, the arresting officer, including without limitation those officers designated by the Director, shall prepare a written notice to appear, deliver one copy of the notice to appear to the arrested person, and release the person on his promise to appear, as prescribed by Chapter 5C of Title 3 of Part 2 of the California Penal Code (commencing with Section 853.5), as amended. The provisions of that Chapter shall thereafter apply with reference to any proceedings based upon the issuance of a written notice to appear pursuant to this Article.

Section 4700-4 Applicable Procedures and Other Laws and Remedies

Both the Act and this Article include civil enforcement procedures. If the Division is enforcing provisions of this Article, it shall proceed in accordance with the procedures in this Article or any other applicable provisions of the Ventura County Ordinance Code. If the Division is enforcing the Act or regulations and standards adopted by the California Department of Resource Recycling and Recovery (CalRecycle) pursuant to the Act or any solid waste permit issued thereunder, the Division shall proceed in accordance with the procedures in the Act. If the Division has issued an enforcement order pursuant to the enforcement procedures under the Act which has become final under the Act, the Division

may also enforce the order by implementing all provisions of this Article with respect to abatement of violations or conditions resulting therefrom, as provided in this Article or, as provided in the general abatement procedures found in Division 13 of the Ventura County Ordinance Code (commencing with Section 13000 et seq.).

Section 4701 **DEFINITIONS**

Unless the context provides otherwise, the terms of this Article shall be construed in accordance with the following definitions. Terms not defined shall be construed in accordance with the usage and definition of terms provided in those laws affecting solid waste that are subject to enforcement by the Division, including without limitation the Act.

Section 4701-1 **Act**

"Act" shall mean the California Integrated Waste Management Act of 1989 (commencing with Section 40000 of the Public Resources Code), as amended.

Section 4701-2 **Agricultural Land**

"Agricultural land" shall mean property with a zoning designation of Agricultural Exclusive (AE) or Coastal Agricultural (CA). Parcels designated Open Space (OS) may be considered "Agricultural land" under this section upon written evaluation and approval of the Agricultural Commissioner that the mulch is being appropriately used on-site as part of a legitimate agricultural operation.

Section 4701-3 **Application**

"Application" or "land application" shall mean the spreading of compostable material, compost, or mulch on agricultural land.

Section 4701-4 **Approved Disposal Area**

"Approved disposal area" shall mean any property for which an applicable solid waste permit, authorized pursuant to the Act, and a health permit, authorized pursuant to this Article, have been issued that allow such property to be used for the disposal of solid waste.

Section 4701-5 **Board**

“Board” shall mean the Board of Supervisors of the County of Ventura.

Sec. 4701-6 **Business of Collection of Solid Waste**

“Business of collection of solid waste” shall mean a business enterprise in any form, which obtains or receives solid waste from the generator and removes, hauls, or transports such material for ultimate disposal or recycling and includes, without limitation, solid waste hauling services.

Section 4701-7 **Chipping and Grinding Operation**

“Chipping and grinding operation(s)” shall mean any activity where compostable material is mechanically reduced (chipped or ground) and where such activity is subject to regulatory compliance by any regulation or standard, whether or not a solid waste permit is required.

Section 4701-8 **Collector**

“Collector” shall mean any person who engages in the business of collection of solid waste generated at any property, whether commercial or residential, located in the incorporated or unincorporated areas of Ventura County, or generated at property located outside of Ventura County if such person transports such waste to any location within the incorporated or unincorporated areas of Ventura County for solid waste processing, composting, transfer or disposal. For purposes hereof, “collector” shall include the owner or owners of, and all persons in control of, such collector.

Section 4701-9 **Compostable Material**

“Compostable Material” shall mean any organic material that when accumulated is capable of rapid decomposition and generating temperatures of at least 122 degrees Fahrenheit.

Section 4701-10 **Contaminants**

“Contaminants” shall mean pieces of non-compostable solid waste that include, but are not limited to plastics, metals, glass, clothing, wood containing lead-based paint or wood preservatives, and other similar materials.

Section 4701-11 **County**

“County” shall mean the County of Ventura, a political subdivision of the State of California.

Section 4701-12 **Director**

“Director” shall mean the Director of the Environmental Health Division of the Resource Management Agency of the County of Ventura, or such other official the Director may designate.

Section 4701-13 **Disposal**

“Disposal” shall mean the final deposition of solid waste onto property. Disposal includes but is not limited to the following activities:

- (a) Application of mulch exceeding an average of 12 inches in total depth, except as provided for in Section 4704(d)(2).
- (b) Application of mulch in which the mulch contains contaminants that exceed 0.1% of the total volume of mulch at the time of application.
- (c) Storing or stockpiling of compostable material onto land for a combined period of time greater than six months, or agricultural and green material for twelve months on prime agricultural land as defined in Government Code Section 51201, unless the Regional Water Quality Control Board, in consultation with the Resource Management Agency Environmental Health Division, makes a written finding that the material may remain within the operations area for a period of time greater than specified.

Section 4701-14 **Dispose**

“Dispose” or its derivations shall mean to throw away, leave, discard, or abandon, including without limitation, accomplishing the same by dumping, depositing, spilling, leaking, emitting, emptying, discharging, or releasing.

Section 4701-15 **Division**

“Division” shall mean the Environmental Health Division of the Resource Management Agency of the County of Ventura or its successor agency.

Section 4701-16 **Enforcement Order**

“Enforcement order” shall mean a corrective action order (also commonly referred to as notice and order), a cease and desist order or any other enforcement order that has been issued under the authority of and pursuant to the enforcement procedures set forth in the Act, found in Part 5 of the Act (commencing with section 45000 of the Public Resources Code, as amended) or as may be authorized by any regulation or standard adopted pursuant to the Act.

Section 4701-17 Gardening or Landscaping Services

“Gardening or landscaping services” shall mean the provision of such services to residential or commercial customers for which the collection and transport of solid waste is limited to trimmings and other landscape-related material generated by and through these services.

Section 4701-18 General Abatement Procedure

“General abatement procedure” shall mean the nuisance abatement provisions found in Division 13 of the Ventura County Ordinance Code (commencing with Section 13000 et. seq.), as amended.

Section 4701-19 Hearing Officer

“Hearing officer” shall mean the person designated by the Director to conduct hearings in accordance with section 4730 et seq. The hearing officer may include any employee of the County other than the investigating officer involved in the particular proceeding or such officer’s supervisor. Where the general abatement procedure is applicable, hearing officer shall mean the hearing officer appointed to implement such procedure.

Section 4701-20 Inert Waste

“Inert waste” shall mean solid waste that does not chemically decompose by natural processes, such as concrete, sand, gravel, rock, soil or brick and that is not mixed with decomposable waste required to be disposed at a Class 1, 2 or 3 disposal facility unless such decomposable material is insignificant and is only included incidentally or inadvertently. Inert waste shall not include any hazardous waste or any soluble pollutants at concentrations in excess of the applicable water quality objectives.

Section 4701-21 Land Clearing Services

“Land clearing services” shall mean the periodic cleanup and removal from property of inert, organic, construction or demolition waste for which the collection and transportation of such material is limited to the material cleared and removed from such property. Land clearing services shall not include services related to the cleanup of litter or dump sites.

Section 4701-22 Liquid Waste

“Liquid waste” shall mean any waste material that is not spadeable.

Section 4701-23 **Mulch**

“Mulch” shall mean compostable material limited to landscape waste and crop production byproducts consisting of leaves, grass clippings, weeds, yard trimmings, wood waste, branches and stumps, and whole plants/trees, that have been mechanically reduced in size, whether composted or not.

Section 4701-24 **Person**

“Person” or “persons” shall mean and include any individual, group of individuals acting together, firm, sole proprietorship, partnership, association, corporation, limited liability company, public entity, government, municipality, district, or any other entity or group, public or private.

Section 4701-25 **Property**

“Property” shall mean any site, location, tract or land, body of water, area, or surrounding atmosphere, including without limitation any building, structure, or premise, whether or not residential or commercial, privately or publicly owned.

Section 4701-26 **Recyclable Material**

“Recyclable material” shall mean any type of material that would otherwise become solid waste but, instead, is or may be recycled, as defined in the Public Resources Code Section 40180 as “recycle”, and shall include material that is commingled or source separated, including compostable materials.

Section 4701-27 **Regulation or Standard**

“Regulation(s)” or “standard(s)” shall mean the regulations or standards, as amended, adopted by CalRecycle under the Act.

Section 4701-28 **Remedial and Abatement Action**

“Remedial and abatement action” shall mean all work or activities to remedy or abate the presence or effect of any solid waste, its constituents or decomposed elements, whether or not hazardous, at any property, and shall include, without limitation, the removal, control, containment, alteration, modification, handling, treatment, conversion, elimination, reduction, enclosing or monitoring of such material, in whole or in part.

Section 4701-29 **Remedial Costs**

“Remedial costs” shall mean all costs, direct or indirect, incurred by the Division or the County, associated with preparing or conducting any site characterization study or preparing or implementing any remedial or abatement action. Such costs shall be included as abatement costs, as defined in subdivisions d. and e. of Section 13050, as amended, of the general abatement procedure, where such procedure is applicable.

Section 4701-30 **Service or Serve**

“Service” or “serve” when used in connection with providing notification to any person including the Division shall mean the delivery or mailing of those documents required by this Article to certain designated persons by personal delivery to such person or by mailing such documents, via registered or certified mail, postage prepaid, to such person’s home or business address. Such service shall be deemed complete on the date of delivery or mailing, whichever is earlier. Where a person upon whom service is made may appeal to the hearing officer, such notice shall disclose the person’s right to such appeal, the method by which appeal may be initiated and the time limits that apply to a request for appeal. Where service is required as to the owner of any real property, the owner shall mean each person currently listed as owner on the most recent County tax assessment rolls with respect to such property.

Section 4701-31 **Site Characterization Study**

“Site characterization study” shall mean those activities and resulting analysis and reports related to one or more of the following pertaining to any property:

- (a) the nature and composition of any solid waste, its elements and its decomposed constituents, whether or not hazardous;
- (b) the physical boundaries of any solid waste, its elements and its decomposed constituents, including the area affected by any contaminants originating from such material;
- (c) the nature and extent of any gases generated from solid waste, its elements or its decomposed constituents, including the extent to which such gases have spread and the potential health hazard associated therewith;
- (d) the nature and extent of any actual or potential contamination of groundwater or surface water caused by solid waste, its elements or its decomposed constituents, including the concentration and identification of the contaminants; and,

- (e) the nature and extent of any actual or potential impact on buildings, landfill covers or any other type of structure or physical configuration of property, including without limitation, those related to the containment and maintenance of sites where solid waste is located.

Section 4701-32 Solid Waste

“Solid waste” shall mean solid waste, as defined under the Act, including without limitation recyclable material.

Section 4701-33 Solid Waste Facility

“Solid waste facility” shall mean any solid waste activity for which a solid waste permit, notification, or other authorization is required.

Section 4701-34 Solid Waste Permit

“Solid waste permit” shall mean a solid waste permit or solid waste facility permit or any other permit or permission to operate issued pursuant to the Act or any regulation or standard adopted thereunder, including without limitation any notification, registration or standardized permit or any other authorization.

Section 4701-35 CalRecycle

“CalRecycle” shall mean the California Department of Resources Recycling and Recovery or its successor agency.

Section 4702 HEALTH PERMIT

- (a) Except as provided in Section 4702-4, no person shall engage in any of the following activities in the incorporated or unincorporated areas of Ventura County without having a current valid health permit issued by the Division with respect to such activity:
 - (1) operate any solid waste facility;
 - (2) be a collector of solid waste; or
 - (3) perform any chipping and grinding operations.
- (b) No person who is the owner, lessee or person in control of property located in the incorporated or unincorporated areas of Ventura County shall permit, consent, approve or allow any person at any time to violate subdivision (a) of this Section on or at such property.

- (c) No person who is the owner of, or who controls the operations of, any collector, solid waste facility, or any chipping and grinding operation shall permit, consent, approve or allow any such activity to be conducted in violation of subdivision (a) of this Section.

Section 4702-1 Application, Issuance, and Renewal

The health permit shall be in addition to any other permit required by law, including any solid waste permit, whether or not any such permit is required. Application for a health permit shall be made to the Division in a form prescribed by the Director. Such permit shall be issued by the Division after any solid waste permit, if required, has been issued. A health permit issued pursuant to this Section shall be valid for a period of twelve (12) months from the date of issuance, subject to renewal each year thereafter. Failure to satisfy any of the conditions set forth in Section 4702-2 shall be grounds for the Division to deny or refuse to renew the health permit.

Section 4702-2 Health Permit Conditions

The health permit shall be issued in a form prescribed by the Director. The issuance and effectiveness of such health permit shall be conditioned upon and shall require each of the following:

- (a) that the permittee or any person on the permittee's behalf pay all applicable fees prescribed by Section 4703 and its Subsections or any Board resolution adopted thereunder that are due and payable in accordance therewith; and,
- (b) that the permittee maintain in effect any solid waste permit, if applicable.

Section 4702-3 Revocation, Suspension, and Reinstatement of Health Permits

The Division may revoke or suspend a health permit if there is a failure to satisfy at any time any of the conditions of the health permit, as set forth in Section 4702-2. The Division's action to revoke or suspend a health permit shall be effective immediately upon service of notice on the permittee if the action is based on the revocation or suspension of any applicable solid waste permit, or shall be effective fifteen (15) days after service of notice to the permittee if the action is based on the failure to pay fees, unless within such period the permittee or other person pays the fees, including any delinquency charges to the Division. The Division shall promptly reinstate a health permit that has been revoked or suspended if, as the case may be, the applicable solid waste permit is reinstated or obtained or if all applicable fees, including any delinquencies, are paid in full to the Division.

Section 4702-4 **Exemptions from Health Permit**

Notwithstanding the provisions of Section 4702, no person shall be required to have a health permit for the following activities, provided however that this exemption shall not apply if CalRecycle issues at any time any regulations or standards applicable to such activity:

(a) **Inert Waste**

The collection and transport of inert waste;

(b) **Liquid Waste**

The collection and transport of liquid waste;

(c) **Gardening or Landscaping Services**

The collection and transport of solid waste obtained solely through the provision of gardening or landscaping services; or,

(d) **Land Clearing Services**

The collection and transport of solid waste obtained solely through the provision of land clearing services.

Section 4702-5 **Disputes as to Health Permits**

Any disputes as to issuance, renewal, revocation, suspension, or reinstatement of health permits shall be resolved by writ of mandate brought by the permittee pursuant to Code of Civil Procedure Section 1085.

Section 4703 **FEES FOR ADMINISTRATION AND ENFORCEMENT**

The following fees are authorized by this Article. The Board shall by resolution prescribe the specific circumstances and terms for the assessment and collection of such fees. Such fees shall be applicable in the incorporated and unincorporated areas of Ventura County.

Section 4703-1 **Fees for Health Permits**

In addition to any other fee prescribed by this Article or any other law, each applicant for a health permit shall pay a health permit fee as a condition for issuance of such permit and shall pay a health permit fee each year thereafter as a condition for renewal of such permit. The health permit fee shall be used to pay the Division's costs, including personnel costs, associated with administering health permits during each year.

The Board shall establish by resolution the schedule of such fees, which shall be based upon the Division's costs to perform such activities.

Section 4703-2 Solid Waste Control Fee

In addition to any other fee prescribed by this Article or any other law, each permittee under a health permit issued in accordance with Section 4702 and any other person to whom the following fee is applicable shall pay a solid waste control fee to be used to pay the Division's costs, including attorney's fees, associated with administration and enforcement in Ventura County of this Article and the Act, or any regulation or standard adopted thereunder. The Board shall establish by resolution the schedule of such fees, which shall be based upon the Division's associated costs. In such resolution the Board may assess the fee based upon weight, volume or type of solid waste, may exempt certain permittees or types of solid waste and may limit the application of the fee to particular permittees and to particular circumstances. The Board by resolution may also require that the solid waste control fee be paid monthly, quarterly, semi-annually or annually depending upon the type of operation or type of solid waste.

Section 4703-3 Fees for Services

In addition to any other fee prescribed by this Article or any other law, any person who requests that the Division provide the following services or, as the case may be, makes application for a solid waste permit or for an exemption from such permit under the Act, or any regulation or standard promulgated thereunder, shall pay at the time of such application or request for such services a fee to the Division for the costs incurred or expected to be incurred by the Division for such services, as provided further below. Such services are:

- (a) processing applications for solid waste permits and exemptions therefrom;
- (b) pre-application review of proposed solid waste facilities, operations and projects;
- (c) preparation of a site characterization study or plan of remediation and abatement, or remediation work, including without limitation, such work performed with respect to any unpermitted, closed, illegal or abandoned solid waste disposal site or solid waste facility, or review and approval by the Division of such activities conducted by other persons;
- (d) evaluation, review or approval of alternative technology proposals for solid waste handling, processing, or disposal with respect to any type of solid waste;

- (e) evaluation, review or approval of closure and post-closure maintenance plans for any solid waste site or solid waste facility;
 - (f) recordation of any release of a notice of noncompliance;
 - (g) inspection of a collector's trucks or equipment by the Division's personnel to be paid by the collector in circumstances where the collector or its authorized representative failed to be present or to provide the trucks or equipment for inspection at the appointed time and place and where the Division's personnel were present at the inspection site at the appointed time, with such fee calculated by multiplying the number of hours the Division's personnel take to travel to and from the location of the inspection and their regular business offices in Ventura, California, multiplied by the approved contract hourly rate of such personnel;
- and,
- (h) any other requested service pertaining directly or indirectly to the Division's regulation of solid waste pursuant to the Act or this Article.

The Board shall establish by resolution the contract hourly rate for the personnel associated with providing such services. The actual fees charged shall be based on this contract hourly rate multiplied by the number of hours to provide such services. The Director may require that a deposit to cover such fees be made prior to commencing such work. In the event that the deposit paid in advance of such service exceeds the actual costs of such service, the Division shall repay such excess to the person paying the fee after such service is completed or the request for such service is withdrawn. In the event that the deposit paid in advance of such service is insufficient to pay all of the Division's fees, the person requesting such service shall pay to the Division additional fees to reimburse the Division for the deficiency. The Division may require that the applicant pay such additional fees in advance of the Division's completion of such service.

Section 4703-4 Enforcement of Fees

With respect to all fees provided in this Article, the Division may withhold associated services or take whatever action is authorized by Section 4702 with respect to health permits, if any of the required fees are not paid on a timely basis. Any person required to pay fees pursuant to this Article shall maintain records sufficient to verify the appropriate amount of the fees, including records for fees that the Board determines by resolution are necessary. In the case of solid waste control fees, the permittee shall report any information to the Division in a form prescribed by the Director to determine and verify the amount of the

fee. The information shall be reported at regular intervals as determined by resolution of the Board. Submission of the report shall be signed under penalty of perjury by the permittee. All fees that are not paid within thirty (30) days of the due date or invoice date shall be deemed delinquent and shall be subject to a five (5) percent late charge for the first thirty (30) day period following delinquency and an additional two (2) percent late charge compounded monthly for each month thereafter. All solid waste control fees shall be subject to an additional five (5) percent late charge if any report of information required by the Director to verify solid waste control fees is not served on the Division within thirty (30) days of its due date, and an additional two (2) percent late charged compounded monthly for each delinquent month thereafter.

Section 4704 **LAND APPLICATION AND STORAGE OF MULCH**

- (a) Except as provided in subsection (d), an owner, lessee, or person in control of land located in the unincorporated areas of Ventura County shall not permit, consent to, approve, allow or engage in any of the following on such land:
 - 1) Land application of mulch exceeding an average of 12 inches in total depth;
 - 2) Land application or storage of mulch that contains contaminants that exceed 0.1% of the total volume of the mulch.
- (b) This ordinance does not affect any obligation to comply with applicable requirements of the Ventura County Fire Protection District, including but not limited to more restrictive mulch application depths in Hazardous Fire Areas as determined by the Ventura County Fire Protection District.
- (c) This ordinance does not affect any obligation to comply with applicable requirements of the Ventura County Agricultural Commissioner's Office, including but not limited to quarantine areas.
- (d) Exceptions:
 - 1) The provisions of this ordinance do not apply to excluded activities related to application or storage of mulch as described in State minimum standards, Title 14, California Code of Regulations.
 - 2) The application of mulch on Agricultural Land may exceed average depths specified in paragraph (a)(1) upon receipt of prior written approval from the Ventura County Fire Protection District and the Ventura County Agricultural Commissioner's Office. Such approval shall be based on review of the mulch applicator's documentation demonstrating that the site specific application of mulch proposed at the alternate depth poses no public safety risk and is agronomically beneficial to restore or improve crop production.

- 3) The storage of mulch in quantities of less than 200 cubic yards per parcel shall not be subject to the provisions of this ordinance.
- 4) The annual land application of mulch in a quantity of less than 200 cubic yards per parcel shall not be subject to the provisions of this ordinance.

Section 4704-1 Application of Compostable Material other than Mulch

The land application of compostable material, other than Mulch as defined at Section 4701-23, is expressly prohibited and constitutes a violation of Sec. 4705. Exception: the application of compostable material on Agricultural Land will be considered on a case by case basis provided a written request and justification based upon site-specific conditions prepared by a qualified expert acceptable to the County Agricultural Commissioner's Office, is submitted to and approved in writing by, the County Agricultural Commissioner's Office prior to application. Such written requests shall be made by both the property owner of record and the purchaser or user of the compostable material, if separate.

Section 4705 ILLEGAL DISPOSAL OF SOLID WASTE

- (a) No person shall at any time dispose of any solid waste on or at any property located in the unincorporated areas of Ventura County, unless such property is an approved disposal area.
- (b) No person who is the owner, lessee or person in control of property located in the unincorporated areas of Ventura County shall permit, consent, approve or allow any person at any time to violate subdivision (a) of this Section on or at such property.
- (c) No person who is the owner of, or who controls the operations of, any collector, solid waste facility or any chipping and grinding operation shall permit, consent, approve or allow any such activity to be conducted in violation of subdivision (a) of this Section.

Section 4706 **FAILURE TO MAINTAIN CONTROL OF SOLID WASTE**

No person, including, without limitation, any person who is the owner, lessee or person in the control of any property located in the unincorporated area of Ventura County, shall in the unincorporated area of Ventura County maintain, handle, retain or store, or shall permit, consent, or allow any other person to maintain, handle, retain or store, any solid waste in any manner or under any circumstance where said material or any element, constituent, part or portion thereof, whether or not hazardous:

- (a) is carried or deposited by the natural elements, such as wind or rain, onto or into any public street, sidewalk, waterway, or other public property;
- (b) is carried or deposited by the natural elements, such as wind or rain, onto or into any private property owned, leased or controlled by another person;
- (c) harbors or breeds any vectors including rats, other rodents, flies or harmful insects; or,
- (d) pollutes surface or groundwater.

Notwithstanding the definition of solid waste in the Act, which limits such material to waste that has been discarded, for purposes of this Section, solid waste shall also include any waste whether or not such waste has yet to be discarded, intentionally or otherwise, by its owner.

(Sections 4707 through 4718 intentionally omitted, reserved for future use.)

Section 4719 **NUISANCES WITH RESPECT TO SOLID WASTE**

No person, including, without limitation, any person who is the owner, lessee or person in the control of any property in the unincorporated area of Ventura County or who is the owner or person in the control of the operations of any collector, solid waste facility or any chipping and grinding operation located in the unincorporated area of Ventura County, shall maintain, retain, handle, or store, or shall permit, consent or allow any other person to maintain, retain, handle or store, any solid waste or any element, constituent or part thereof, whether or not hazardous, in any manner or under any circumstance that constitutes a public nuisance. For purposes of this Section, "public nuisance" means in a manner that:

- (a) is injurious to human health or safety or that poses or threatens to pose any danger to health and safety of the public, the environment or any flora or fauna, or that is offensive or annoying to any of the human senses and interferes with the comfortable enjoyment of any property, and,
- (b) affects an entire community or neighborhood or any significant number of persons, although the adverse affect inflicted upon such persons may be unequal.

Any violation of Sections 4704 or 4705 shall constitute a nuisance per se. Notwithstanding the definition of solid waste in the Act, which limits such material to waste that has been discarded, for purposes of this Section, solid waste shall also include any waste whether or not such waste has yet to be discarded, intentionally or otherwise, by its owner.

Section 4720 CRIMINAL SANCTIONS

Any person who violates Sections 4702, 4705, 4706, or 4719, or any provision thereof is guilty of a misdemeanor/infraction as specified in Section 13-1 of the Ventura County Ordinance Code, and upon conviction thereof shall be punishable in accordance with Section 13-2 of the Ventura County Ordinance Code. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of Section 4702, 4705, 4706, or 4719 is committed, continued, or permitted by such person and shall be punishable thereof as provided in Section 13-2 of the Ventura County Ordinance Code.

Section 4721 LIABILITY FOR REMEDIATION AND REMEDIAL COSTS GENERALLY

Any person who violates any provision of this Article, or who violates or fails to satisfy an enforcement order which has become final in accordance with the Act, shall with respect to any property affected thereby, pay the County's remedial costs, if any, and shall be further obligated, if ordered by the Division or hearing officer, to:

- (a) prepare and pay for the preparation of a site characterization study to determine the scope and type of any damage;
- (b) prepare and pay for the preparation of a plan for remedial and abatement action as to any damage;
- (c) implement and pay for the implementation of such plan for remedial and abatement action as to any damage; and,
- (d) reimburse the Division or County for remedial costs, if any, including those incurred for review or preparation of a site characterization study, review or preparation of a plan for remedial and abatement action and the review and implementation of a plan for remedial and abatement action as to any damage.

Section 4722 PROCEDURES FOR CIVIL ENFORCEMENT GENERALLY

- (a) In addition to any criminal sanctions that may be applicable, the Division may enforce this Article, including Section 4721, or may enforce an enforcement order which has become final under the Act, in the following ways:
 - (1) The Division may file an action in superior court against any person who has violated this Article or who has violated or failed to comply with a final enforcement order. The action may seek, without limitation, injunctive or any other form of equitable relief to stop the violation, enforce the order, remediate any damage, and recover the Division's or County's remedial costs or fees.
 - (2) The Division may commence an abatement proceeding in accordance with Section 4724 against any person who has violated this Article or who has violated or failed to comply with a final enforcement order, provided however, that if the Division seeks to assess a lien against the property for reimbursement of remedial costs, the Division shall proceed in accordance with the general abatement procedure found in Division 13 of the Ventura County Ordinance Code (commencing with Section 13000 et. seq.).
- (b) Notwithstanding subdivision (a) (1) of this Section, if an abatement proceeding is commenced under subdivision (a) (2) of this Section, the Division shall not thereafter file an action in the superior court with respect to the abatement until the abatement proceeding is terminated or a final abatement order has been issued.
- (c) Notwithstanding subdivision (b) of this Section, if the Director finds there is an imminent threat to the public health and safety, the Division may file an action in superior court to obtain injunctive or equitable relief with respect thereto at any time. In such case the court may issue injunctive or other equitable relief pending or in lieu of the hearing officer's determination in any abatement proceeding.

Section 4723 INSPECTION

The Division may enter upon and inspect any property to enforce this Article or to enforce the Act. The Division may enter upon property open to the general public by way of any route normally accessible to visitors, tradespeople, or other persons having legitimate business with the owners or occupants thereof, in order to seek consent for the inspection. The Division shall conduct such inspection with either the consent of the owner or other person in possession of such property, or with an inspection warrant or search warrant.

Section 4724 **ABATEMENT ORDERS**

In addition to any other remedies at law, the Division may issue an abatement order pursuant to this Article to any person who is violating or has violated any provision of this Article, or who violates or fails to satisfy any enforcement order which has become final in accordance with the Act. The Division shall serve the abatement order on the person to whom the order is directed and, if property is to be abated, on the owner and, if known, the person in possession of such property.

Section 4724-1 **General Contents of Order**

In addition to identifying the persons to be served, an abatement order shall describe the time, place and nature of the wrongful actions or failure to act and shall state the ordinance, applicable law or order that is at issue. An abatement order may contain a specified time for corrective action. The Division may amend any abatement order at any time the Director deems appropriate.

Section 4724-2 **Studies and Plans**

In accordance with Section 4721, an abatement order may also require other specific terms for abatement, including without limitation that the responsible persons submit to the Division by a specified date a proposed site characterization study or plan for remedial and abatement action, or both. If such information is submitted and if the Director determines the study or plan is satisfactory, the Director shall approve the same and the Division shall provide service of notice of approval to all persons who were served with the abatement order. If the Director disapproves of the study or plan, the Division shall provide service of notice of disapproval to all persons who were served the abatement order. In such case the persons who were served the abatement order shall submit a new study or plan consistent with the requirements of the Director.

Section 4724-3 **Remediation**

An abatement order may also specify a schedule for implementation of a plan for remedial and abatement action. If, following implementation, the Director determines the plan has been satisfactorily implemented, the Director shall approve the same and the Division shall provide service of notice of such approval to the persons who were served with the abatement order. If the Director determines the plan has not been satisfactorily implemented, the Division shall provide service of notice of disapproval to all persons who were served with the abatement order. In such case the persons who were served with the abatement order shall provide additional remediation consistent with the requirements of the Director.

Section 4724-4 **Appeal**

If any person upon whom the Division served an abatement order seeks to contest such order for any reason, or seeks to contest the scope of an abatement order including any required site characterization study or plan for remedial or abatement action, or the Director's decision to disapprove a site characterization study, plan for remedial or abatement action or the implementation of a remedial or abatement action, such person shall appeal the order or action by service of a petition for hearing with the Division in accordance with Section 4730. Service of such petition on the Division shall be made no later than fifteen (15) days after service on such person of the contested abatement order or notice of the Director's determination. If a petition for a hearing is timely served, the abatement order shall be stayed until the hearing officer issues a final ruling in accordance with Section 4730-12, provided however, that pursuant to Section 4722 (c) a court may issue injunctive or equitable relief to prevent an imminent threat to the public health and safety pending a final ruling from the hearing officer. The failure of such person to serve the petition for hearing on a timely basis shall constitute a failure to exhaust administrative remedies and a waiver of any objection and shall preclude the person from further contesting such action and in such case the Division or Director's action, including the abatement order or any other determination by the Director, shall be final upon the expiration of the fifteen day period within which a petition for hearing could have been served. As to any enforcement order that has become final under the Act, such order shall be conclusively presumed to be valid, enforceable and binding in any subsequent hearing pursuant to Section 4730.

Section 4725 **ABATEMENT BY THE DIVISION**

The Division may abate the conditions of any property that result from any violation of this Article or the Act or any regulation or standard adopted thereunder or any violation or failure to satisfy an enforcement order. As a part of such abatement, whether summary abatement or otherwise, the Division may prepare or cause to be prepared a site characterization study, a plan of remedial and abatement action and implement or cause to be implemented such plan.

Section 4725-1 **Abatement Generally**

If an enforcement order has become final in accordance with the Act, or if an abatement order has become final in accordance with this Article, and if the person to whom such order was issued has failed to obey the enforcement order or abatement order within the time specified therein, the Division may take or cause to be taken whatever abatement action is necessary. In such case, prior to commencement of abatement at the subject property, the Division shall provide service of notice of its intention to abate the conditions to each person identified in Section 4724.

Section 4725-2 **Summary Abatement**

Notwithstanding any other provision of this Article, if at any time the Director determines that the condition of solid waste on any property poses or threatens to pose an imminent danger to the public health and safety, the Director may order that the Division proceed with summary abatement. In such case the Division may take or cause to be taken whatever action is necessary to abate such conditions without any prior hearing before a court of law or the hearing officer unless a court should order otherwise. Prior to commencing summary abatement, the Division shall, if practical, serve on the persons identified in Section 4724 notice of its intention to proceed with summary abatement.

Section 4725-3 **Appeal as to Remedial Costs**

The Division may recover its remedial costs associated with its abatement from any person liable under Section 4721 by service of notice of its claim for such costs on each such person and if such person does not timely appeal the matter to the hearing officer in accordance herewith, the Division may file an action in the superior court to obtain a money judgment for such costs against such person. Any person upon whom the Division served such claim may contest the reasonableness of the remedial costs in court or, in the alternative, may appeal the claim to the hearing officer by providing service of a petition for hearing upon the Division within fifteen (15) days after the Division's service of the claim on such person. If appealed to the hearing officer, the hearing officer's ruling shall become binding upon the Division and the person who served a petition for hearing in an amount determined by the hearing officer, subject to court review of the ruling in accordance with Section 4730-13. Once the hearing officer's ruling is final or, if appealed, the court has affirmed the hearing officer's ruling in any amount, the Division may obtain a judgment from the superior court in the amount affirmed.

Section 4726 **NOTICE OF VIOLATION**

In addition to any other remedies, the Division may issue a notice of violation to any person who is violating any provision of this Article, or who violates or fails to satisfy any enforcement order which has become final in accordance with the Act. A notice of violation shall identify the person, if known, committing the wrongful actions or failure to act; describe the time, place and nature of the pertinent activities; state the ordinance, applicable law or order that has been violated; and, identify the owner and, if known, the person in possession of the property, if any, where the violation is occurring or has occurred. The Division may issue a notice of violation by service of the notice on the persons identified in the notice. A notice of violation may contain a specified time for corrective action. A notice of violation shall not be appealable.

Section 4727 NOTICE OF NONCOMPLIANCE

If at any time the Division determines that on or at any property there is an ongoing violation of any provision of this Article, or there is an ongoing violation or failure to satisfy an enforcement order, or an abatement order issued by the Division has not been implemented, the Division may serve notice thereof on the owner and, if known, the person in the possession of the property that the Division intends to identify in recording with the Office of the County Recorder a notice of noncompliance as to the property, provided the violation is not corrected or the remediation is not implemented within the time specified in such notification.

Section 4727-1 Contents of Notice of Noncompliance

The notice of noncompliance shall identify the Office of the County Recorder, provide the legal description of the property, summarize the nature of the violation or failure to act and specify the laws, regulations, standards or ordinances that has been violated. The Division shall serve the notice of noncompliance on each person identified in Section 4727.

Section 4727-2 Release of Notice

The Division shall record a release of notice of noncompliance with the County Recorder when it is determined that the violation has been corrected.

Section 4727-3 Appeal

Any person who was served with the notice of noncompliance or who may subsequently be an owner or be in possession of property that is subject to a recorded notice of noncompliance may appeal the Division's action to record the notice of noncompliance or to refuse the recording of a release of notice of noncompliance by service on the Division of a petition for hearing in accordance with Section 4730. Said service may be made at any time that such notice of noncompliance remains recorded. Any such person shall only be entitled to one hearing before the hearing officer unless it is shown that there are changed circumstances.

(Section 4728 and 4729 intentionally omitted, reserved for future use.)

Section 4730 HEARING OFFICER AUTHORITY AND HEARING PROCEDURE

Any hearing conducted before the hearing officer pursuant to this Article shall be conducted in accordance with this Section and its Subsections.

Section 4730-1 Scope of Hearing Officer Authority

The hearing officer shall have the authority to determine any issue for which appeal to the hearing officer is allowed by any section of this Article. The hearing officer may provide whatever remedy the hearing officer deems appropriate, including without limitation to affirm actions of the Division or Director, modify such actions or reverse such actions.

Section 4730-2 Petition for Hearing

Any person who is entitled to a hearing under this Article and who seeks to appeal shall request a hearing by service of a petition for hearing on the Division within the time required by the pertinent section of this Article. The Division shall prepare a form for such petition and shall make such form available to anyone on request. The petition shall state the name and address of petitioner and shall further state the name and address of any other person whose rights will be or may be affected by the proceedings, including without limitation the owner and operator of any solid waste facility, collector, chipping and grinding operation or property affected thereby. The petition shall briefly state the material facts at issue, the remedy sought and shall have attached any notice of noncompliance, abatement order, remedial cost claim or any other notification by the Division that is at issue.

Section 4730-3 Notice of Hearing

After a timely petition for hearing is served, the Division shall serve notice of the hearing which shall be scheduled to commence no later than 120 days after service of the petition for hearing on the Division. The notice of hearing shall state: (a) the nature of the proceeding; (b) the date, time and place of the hearing; and, (c) the name of the hearing officer.

Section 4730-4 Service of Notice of Hearing

The Division shall serve notice of the hearing, a copy of the petition for hearing, and a copy of this Section on all persons named in the petition that are affected thereby, on any person that requests such notice, and on any other person whose rights the Division believes may be affected thereby, including without limitation any person who is owner of record of any facility or property affected by the proceedings. The Division shall complete such service of notice upon all such persons no later than thirty (30) days prior to the date scheduled for commencement of the hearing. The Division shall also cause the notice of the hearing to be published in a newspaper of general circulation at least one time not less than twenty (20) days before commencement of the hearing. The published notice shall state that copies of the petition for hearing and this Section are available for public review at the Division. Attendance at the hearing by any person shall constitute a waiver of any defective notice with respect to such

person. Failure of any person who was properly served with notice to appear at the hearing shall constitute a waiver of such person's right to be heard.

Section 4730-5 Hearing Generally

The hearing shall be public and shall be held before the hearing officer at the date, time and place stated in the notice of hearing or at such other date, time and place as may be ordered by the hearing officer at the time of the hearing. The hearing officer may continue any hearing as may be reasonably necessary for the convenience of the hearing officer, witnesses, the Division or any other person entitled to receive notice of the hearing. Any new time and place for the hearing shall be publicly announced at the time and place of the noticed hearing. No further notice need be published or served upon anyone as to such continuances. Any person affected by the proceedings may be heard and be represented by counsel. The hearing officer may consolidate several petitions for a hearing into one hearing if the petitions relate to the same factual issues, the same collector, the same solid waste facility, the same chipping and grinding operation or the same property.

Section 4730-6 Evidence

The hearing officer shall require that all live testimony at the hearing be taken under oath if requested by the Division or any affected person. The hearing officer shall have the power to administer oaths or affirmations and to certify official acts. The hearing officer may permit testimony by affidavit or declaration if the person providing such testimony is made available by subpoena or otherwise for cross examination where requested by any affected person. The hearing officer may allow any testimony to be given in informal narrative style. The Division and any affected person shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses on any relevant issue, even though such matter was not covered on direct examination, and to impeach any witness, regardless of whether that person first called the witness to testify. Any relevant evidence shall be admissible if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule, which would make improper the admission of such evidence in a civil action. Hearsay evidence, including without limitation any report by the Division, shall be admissible for any purpose but shall not be sufficient itself to support a finding on a material issue if there is conflicting evidence unless, in light of that evidence, the hearing officer determines that the hearsay evidence is trustworthy. Either before or after submission of the case for decision, the hearing officer may take official notice of any generally accepted technical or scientific matter and of any fact which may be judicially noticed by the courts of this state. The Division and any affected person at the hearing shall be informed of any matters to be officially noticed. Upon request, the Division and any affected person at the hearing shall be given reasonable opportunity on request to refute any officially noticed matters.

Section 4730-7 Subpoena Power

At the request of the Division or any affected person, the hearing officer shall issue subpoenas and subpoenas duces tecum for attendance of witnesses and production of documents at the hearing. Compliance with the provisions of Section 1985 of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena duces tecum. Either before or after the hearing has commenced, the hearing officer may also issue subpoenas and subpoenas duces tecum as the hearing officer deems appropriate.

Section 4730-8 Contempt

If any person disobeys or refuses to respond to a subpoena or subpoena duces tecum, or refuses to take the oath or affirmation of a witness, or thereafter refuses to be examined, or is guilty of misconduct during the hearing, the hearing officer may certify the facts to the superior court for a contempt proceeding. The court shall thereupon issue an order directing the person to appear before the court and show cause why he should not be punished for contempt. The order and a copy of the certified statement shall be personally served on the person against whom contempt has been charged. The same proceeding shall be held, the same penalties may be imposed and the person charged may purge himself of the contempt in the same way as in the case of a person who has committed a contempt in a trial of a civil action before the superior court.

Section 4730-9 Record

The Division shall record the hearing either on a recording device or by use of a certified court reporter and shall make the recording or transcript available to any person upon request. The Division shall provide a certified copy of the transcript or recording, or a transcript prepared therefrom, to any person who requests it and who pays to the Division the cost of making and certifying copy and, in addition, the cost of preparing and certifying the transcript, if the transcript has not already been prepared.

Section 4730-10 Ruling

At the conclusion of the hearing or within a reasonable time thereafter, the hearing officer shall issue a written ruling on the factual and legal issues presented. The ruling shall be supported by the weight of the evidence presented at the hearing. The hearing officer may decide the issues based upon the Division's written report standing alone if the person that petitioned for a hearing fails to appear at the time of the hearing and no other affected person appears to present evidence. The ruling shall include the remedy, if any, that is ordered by the hearing officer.

Section 4730-11 Service of Ruling

The Division shall promptly serve the hearing officer's ruling on each person who was entitled to be served with notice of the hearing and any person requesting a copy in writing. Said findings and ruling need not be published.

Section 4730-12 Finality of Ruling

The hearing officer's ruling shall be final upon the date of service of the ruling and, subject to judicial review in accordance with Section 4730-13, shall be binding on the parties. If the ruling is a monetary award that has been properly appealed to superior court in accordance with Section 4730-13, the award shall not be enforced pending appeal. All other rulings by the hearing officer may be enforced immediately after they become final unless the superior court grants a stay or injunctive relief that prevents or limits enforcement thereof.

Section 4730-13 Appeal

Any affected person may appeal the ruling of the hearing officer by filing in the superior court a petition for writ of mandate pursuant to section 1094.5 of the Code of Civil Procedure. Any such petition shall be filed with the court no later than thirty (30) days after the hearing officer's ruling has become final or the appeal shall be barred. A writ of mandate proceeding shall be the aggrieved person's exclusive appellate remedy.

This ordinance shall take effect 30 days after adoption and shall become operative on January 6, 2011, except Section 4704(a)(2), which shall take effect on July 1, 2011.

PASSED AND ADOPTED this 7TH Day of December, 2010, by the following vote:

AYES: Supervisors BENNETT, PARKS, FOY, ZARAGOZA AND LONG.
NOES: NONE
ABSENT: NONE

Kathy I. Long
Kathy I. Long, Chair
Board of Supervisors

Attest: MARTY ROBINSON,
Clerk of the Board of Supervisors
County of Ventura, State of California

By: [Signature]
Deputy Clerk of the Board

