



**COUNTY OF SAN LUIS OBISPO
BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Health Agency	(2) MEETING DATE 12/15/2020	(3) CONTACT/PHONE Liz Pozzebon, 805-781-5544	
(4) SUBJECT Adoption of an ordinance amending Chapter 8.13 of the San Luis Obispo County Code to extend the interim moratorium on the land application of treated sewage sludge/biosolids to from March 31, 2021 to March 31, 2026 or until adoption of a permanent ordinance, whichever occurs first; find the ordinance exempt from the California Environmental Quality Act (Public Resources Code Section 21000 et seq.); and instruct the Clerk of the Board to publish the previously prepared summary of the ordinance in a newspaper of general circulation within 15 days after adoption of the ordinance, as required by Government Code Section 25124; and post the full text of the ordinance in the Clerk of the Board's Office (or on the County website) with the names of those Supervisors voting for and against the ordinance. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board: <ol style="list-style-type: none"> 1. Waive reading and adopt the attached ordinance amending Chapter 8.13 of the San Luis Obispo County Code to extend the interim moratorium on the land application of treated sewage sludge/biosolids from March 31, 2021 to March 31, 2026 or until adoption of a permanent ordinance, whichever occurs first. 2. Find that adoption of the ordinance is exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines Section 15061(b)(3) for the reasons described in the attached Notice of General Rule / Common Sense Exemption. 3. Instruct the Clerk of the Board to publish the previously prepared summary of the ordinance in a newspaper of general circulation within 15 days after adoption of the ordinance, as required by Government Code Section 25124; and post the full text of the ordinance in the Clerk of the Board's Office (or on the County website) with the names of those Supervisors voting for and against the ordinance. 			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT { } Consent { } Presentation {x} Hearing (Time Est. <u>15 min</u>) { } Board Business (Time Est. <u> </u>)			
(11) EXECUTED DOCUMENTS { } Resolutions { } Contracts {x} Ordinances { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: { } 4/5th's Vote Required {x} N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? N/A	(16) AGENDA ITEM HISTORY { } N/A Date <u>November 17, 2020</u>	
(17) ADMINISTRATIVE OFFICE REVIEW Morgan Torell			
(18) SUPERVISOR DISTRICT(S) All Districts			



COUNTY OF SAN LUIS OBISPO

TO: Board of Supervisors

FROM: Michael Hill, Health Agency Director
Penny Borenstein, MD Health Officer/Public Health Administrator

DATE: 12/15/2020

SUBJECT: Adoption of an ordinance amending Chapter 8.13 of the San Luis Obispo County Code to extend the interim moratorium on the land application of treated sewage sludge/biosolids to from March 31, 2021 to March 31, 2026 or until adoption of a permanent ordinance, whichever occurs first; find the ordinance exempt from the California Environmental Quality Act (Public Resources Code Section 21000 et seq.); and instruct the Clerk of the Board to publish the previously prepared summary of the ordinance in a newspaper of general circulation within 15 days after adoption of the ordinance, as required by Government Code Section 25124; and post the full text of the ordinance in the Clerk of the Board's Office (or on the County website) with the names of those Supervisors voting for and against the ordinance. All Districts.

RECOMMENDATION

It is recommended that the Board:

1. Waive reading and adopt the attached ordinance amending Chapter 8.13 of the San Luis Obispo County Code to extend the interim moratorium on the land application of treated sewage sludge/biosolids from March 31, 2021 to March 31, 2026 or until adoption of a permanent ordinance, whichever occurs first.
2. Find that adoption of the ordinance is exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines Section 15061(b)(3) for the reasons described in the attached Notice of General Rule / Common Sense Exemption.
3. Instruct the Clerk of the Board to publish the previously prepared summary of the ordinance in a newspaper of general circulation within 15 days after adoption of the ordinance, as required by Government Code Section 25124; and post the full text of the ordinance in the Clerk of the Board's Office (or on the County website) with the names of those Supervisors voting for and against the ordinance.

DISCUSSION

In November 2016, the Board amended Chapter 8.13 to extend the moratorium on the land application of treated sewage sludge/biosolids (hereafter referred to as the "interim ordinance"). The moratorium is currently in effect until a permanent ordinance is enacted, or until March 31, 2021, whichever occurs first. This proposed amendment to Chapter 8.13 would extend the moratorium through March 31, 2026.

During 2015, Public Health's Environmental Health Services Division ("EHS") drafted a permanent ordinance and a California Environmental Quality Act ("CEQA") review process was initiated with issuance of an Environmental Impact Report ("EIR") Notice of Preparation ("NOP"). During the EIR/NOP process, the Planning and Building Department received comments from stakeholders that the scope of the proposed draft ordinance was inadequate because the draft failed to conform to prior Board directives and task force recommendations. Respecting that there are diverse perspectives on the regulation of treated sewage sludge/biosolids (collectively, "biosolids"), County staff disagreed that the Board directives and task force recommendations were not followed. Subsequently, the Board asked for an update on the proposed draft land application of biosolids ordinance and EIR/NOP process after the comment period ended on December 18, 2015.

On January 12, 2016, an update on the proposed ordinance and EIR/NOP was presented to the Board of Supervisors. After stakeholder testimony and discussion about the potential cost of the EIR, the Board decided that the permanent land application of biosolids ordinance as presented in the hearing was not ready for adoption. Staff was directed to stop proceeding with the EIR and to continue with the interim ordinance. This was followed by continuance of the interim ordinance on November 8, 2016.

Today's proposal to further extend the interim ordinance expiration date to March 31, 2026 (in the absence of earlier enactment of a permanent ordinance) will provide time for the County to further assess and consider the ongoing scientific work being conducted by the State Water Resources Control Board ("SWRCB"). On July 9, 2020, pursuant to Water Code Sections 13267 and 13383, ORDER WQ 2020-0015-DWQ was issued to publicly owned treatment works ("POTWs"), or wastewater treatment plants, statewide. This order requires these POTWs test for per- and polyfluoroalkyl substances (PFAS) as they are potentially significant receivers of these substances and, in turn, may be potential dischargers via biosolids. According to the CDC, PFAS are a group of chemicals used to make fluoropolymer coatings and products that resist heat, oil, stains, grease, and water. Fluoropolymer coatings can be used in such varied products as clothing, furniture, adhesives, food packaging, heat-resistant non-stick cooking surfaces, and the insulation of electrical wire. Many chemicals in this group, including perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), have been a concern because they do not break down in the environment, can move through soils and contaminate drinking water sources, and they build up (bioaccumulate) in fish and wildlife. It would be prudent to await the results of the state's research at POTWs, particularly because of the County's reliance on groundwater. In addition to this pending research, the SWRCB has indicated that they plan to consider updating the State General Order standards for land application of biosolids. The pending State research may also further inform this effort.

Extending the interim ordinance also provides time for the County to consider pending biosolid updates at the U.S. Environmental Protection Agency ("USEPA"). The USEPA Office of the Inspector General ("OIG") evaluated the federal biosolids controls over the land application of sewage sludge and issued Report No. 19-P-0002 *EPA Unable to Assess the Impact of Hundreds of Unregulated Pollutants in Land-Applied Biosolids on Human Health and the Environment* on November 15, 2018. Corrective actions from this report are pending with the USEPA Office of Water (OW), including assessing risks of pollutants that can be found in biosolids.

Also, extending the interim ordinance as proposed will permit EHS to consider and take into account regulations promulgated by the California Department of Resources, Recycling and Recovery in accordance with SB 1383 (2016) which codifies the California Air Resources Board's Short-Lived Climate Pollutant Strategy and sets specified targets for reducing organic waste in landfills. Like other relevant state laws (e.g. the California Integrated Waste Management Act), the targets require the promotion of recycling (over disposal) whenever feasible.

Lastly, it bears noting that though labelled "Interim Ordinance", there has been no utilization of the Ordinance since its original passage in 2004 such that the protective measures built into the existing ordinance have served the County well to date.

Background - Long-Term

Since 1998, the issue of the land application of biosolids has been the subject of two separate efforts to guide public policy in the County. Both efforts included public and local agency participation in working groups. Concern over a proposal in 1998 to apply biosolids to ranch property near San Miguel led to the first effort, namely the County Health Commission's formation of a task force. The Health Commission Task Force explored wastewater treatment and disposal issues as they related to federal, State and local regulations, with specific interest in the land application of biosolids.

On February 8, 2000, in a second effort, the Board directed EHS to convene a public working group to consider options for managing the land application of biosolids. Pursuant to the Board's direction, EHS convened a working group that was referred to as the San Luis Obispo County Treated Sewage Sludge/Biosolids Land Application Task Force ("EHS Task Force"). The EHS Task Force recommended creation of a local ordinance establishing more stringent requirements for the quality of land applied biosolids, as well as local control and oversight of how, when and where such material could be applied. The EHS Task Force completed its recommendations on October 26, 2001. Presentations were made to the Health Commission on December 10, 2001, and the Planning Commission on December 13, 2001 and January 24, 2002.

On March 12, 2002, the Board directed EHS to draft a local ordinance regulating the land application of biosolids based on the recommendations contained in the EHS Task Force report. In order to comply with Board direction, the EHS Task Force reconvened to draft an interim ordinance that would, among other things, limit the acceptance or processing of new land application projects beyond historical amounts of Exceptional Quality ("EQ") biosolids until a local permanent ordinance could be completed.

EQ biosolids are the highest quality of biosolids as defined under the 40 CFR Part 503 Federal Regulations. Because EQ biosolids are highly treated and have very low levels of pathogens, trace elements and vector attraction, the U.S. EPA generally regards this material safe enough to be land applied like any other manure-type fertilizer.

On March 12, 2003, an interim ordinance was completed and sent to the Environmental Division of the Planning

Department for CEQA review. The CEQA review process was completed on August 29, 2003, where it was determined the ordinance could not have a significant adverse effect on the environment and a Negative Declaration was issued.

The proposed interim ordinance was then introduced to the Board for approval in February of 2004. It was subsequently adopted on March 2, 2004 and codified in Chapter 8.13 of the County Code. In April of 2004, EHS informed the Board that it was discontinuing development of a permanent land application of biosolids ordinance in order to address higher priority public health issues, including the impending arrival of West Nile Virus into the County.

EHS updated the County Health Commission on February 14, 2005 and January 9, 2006, regarding the performance of the interim ordinance since its enactment.

With the March 2, 2004 interim ordinance set to expire on March 2, 2006, Chapter 8.13 was amended to extend the moratorium for 48 months or until a permanent ordinance could be developed. On April 21, 2009, the Board voted to table the proposed permanent ordinance process due to concerns regarding the estimated cost of environmental review associated with the CEQA process. The cost of an environmental review at that time was estimated to be \$200,000. As a result, the Board decided to extend the moratorium to March of 2014, or until a permanent ordinance was enacted. The Board directed EHS to work with the County's local governmental entities that operate wastewater treatment plant facilities to determine if those entities would be willing to share in the cost of the permanent ordinance environmental review. It was determined that local governments were not interested in sharing such costs.

In May of 2014, the Board again extended the interim moratorium until March 31, 2018, or until a permanent ordinance was enacted whichever occurred first; and, most recently (on November 8, 2016) and for the same reasons, the Board extended the interim moratorium until March 31, 2021 or until a permanent ordinance is enacted.

Although there have been discussions about adoption of a "permanent moratorium" or indefinite extension of the moratorium on the land application of biosolids, staff has advised against any such action on the basis that it would be (and continues to be based on our current understanding) inconsistent with state law, as discussed by multiple courts analyzing a ban imposed in neighboring Kern County.

Interim Ordinance

The main premise of the interim ordinance is to temporarily limit the amount of land applied biosolids to historic levels and to only allow EQ biosolids to be used until more scientific data is available. Consistent with the availability of commercially bagged composted biosolids, the ordinance exempts the land application of biosolids used in compost. Composted biosolids in forty (40)-pound bags are currently available at most retail nurseries and large hardware stores with nursery sections. This composted material is comprised of biosolids mixed with green waste and can be applied by anyone without regulatory oversight. State law requires that laboratory tests be conducted on composted biosolids to demonstrate the material to be significantly below the Federal 503 Regulation limits, including levels for heavy metals.

As more specifically set forth below, if the recommendation to adopt the ordinance is approved, it would result in the continuation of a regulation that allows for the recycling of a natural resource at amounts that do not exceed historic levels of land application, protects public health and the environment until additional information is known, allows for the notification of EHS when biosolids are proposed to be applied to land, and provides flexibility to EHS in response to statutory and regulatory changes.

Summary of Chapter 8.13 as Amended:

- Remains in effect until March 31, 2026, or until a permanent ordinance is adopted, whichever occurs first.
- Notes that it does not prohibit or otherwise render unlawful, the distribution or application of biosolids in a manner inconsistent with any applicable Federal or State law or regulation.

And as previously approved:

- Defines biosolids, exceptional quality biosolids and persons regulated by the ordinance. Persons include any individual firm, association, partnership, political subdivision, government agency, municipality, public or private corporation, or any other entity whatsoever.
- Requires notification of EHS 30 days prior to the land application of biosolids equaling or exceeding 5 cubic yards.
- Places a cap of 1,500 cubic yards on the cumulative total of exceptional quality biosolids that can be land applied in any 12-month period.
- Allows unused capacity to be carried over from the previous 12-month period.
- "Biosolids" excludes biosolids composted with other organic products such as green waste and sold in bulk form that meets EQ requirements.

As discussed above, when Chapter 8.13 was first adopted, it was sent to the Environmental Division of the Planning Department for California CEQA review. The CEQA review process was completed, and it was determined that Chapter 8.13 could not have a significant adverse effect on the environment and a Negative Declaration was issued. There are no changes proposed to the interim ordinance at this time other than to extend the sunset date and to add clarifying language related to applicable controlling laws and regulations. Because there are no proposed substantive changes, and due to the age of the approved Negative Declaration and consistent with past extensions, the Department of Planning and Building/Environmental Coordinator has prepared an exemption from CEQA based on the general rule that CEQA is applicable to projects that may have a significant impact on the environment. The proposed extension of Chapter 8.13 cannot have a significant effect because there is no change to the environmental baseline.

In summary, the staff recommendation is to adopt an ordinance amending Chapter 8.13 to extend the moratorium on the land application of biosolids from March 31, 2021 to March 31, 2026 (in the absence of a permanent ordinance), and find the ordinance exempt from the provisions of CEQA.

OTHER AGENCY INVOLVEMENT/IMPACT

County Counsel has reviewed and approved the proposed ordinance for form and legal effect.

Numerous State and local agencies, as well as private citizens, non-profit agencies and other interested parties were involved in the development of the original ordinance. They include the Agricultural Liaison Advisory Board, Air Pollution Control District, Agricultural Commissioner's Office, Cal Poly, ECOSLO, Environmental Division of County Planning Department, Regional Water Quality Control Board, San Luis Obispo County Farm Bureau, Morro Bay-Cayucos Wastewater Treatment Plant, City of San Luis Obispo Wastewater Treatment Plant, South San Luis Obispo County Sanitation District, City of Paso Robles Wastewater Treatment Plant, California Association of Sanitation Agencies, Synagro, University of California Cooperative Extension, San Luis Obispo County Health Commission, Sierra Club, Center for Sludge Information, San Luis Obispo County Water Resources Advisory Committee, San Luis Obispo County Integrated Waste Management Authority, CA Farm Bureau, Cornell University, U.S. EPA, and other interested parties.

FINANCIAL CONSIDERATIONS

Since enactment of Chapter 8.13 in 2004, there has been no land application projects submitted to the EHS. Consequently, continuation of the moratorium is expected to have a minor impact to funding and staffing resources. As before, EHS anticipates using existing staff to administer the ordinance. An hourly rate will be used to cover the costs of administering the project review process and to conduct land application project oversight. Since EHS may not receive land application project submittals, and therefore no fees for services will be collected, the existing staff time funded through the general fund will cover the costs of ongoing staff research about the safety of land application and innovative strategies to best utilize biosolids as a recyclable resource. No additional General Fund Support will be required.

RESULTS

The mission of EHS is to contribute to a better everyday life through the implementation of environmental public health protection programs that prevent the transmission of disease and exposure to harmful levels of environmental contaminants.

Since the enactment of Chapter 8.13, no land application projects utilizing biosolids equal to or exceeding five cubic yards have occurred in the unincorporated area of the County. In addition, no complaints have been received associated with land applied biosolids.

Approval of the recommendation would result in the continuation of the interim moratorium that allows for the recycling of a natural resource at amounts that do not exceed historic levels of land application, protects public health and the environment, and allows for the notification of EHS when biosolids are proposed to be applied to land. This supports the County's vision of A Healthy Community, which helps to ensure that all people in our community enjoy healthy, successful and productive lives.

ATTACHMENTS

1. Ordinance Clean
2. Ordinance Markup
3. General Exemption
4. Powerpoint Presentation