

**STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD**

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In the Matter of the Petition of

**Chicago Grade Landfill and Recycling, LLC and Chicago Grade Landfill, Inc.**

For Review of Revised Monitoring and Reporting Program R3-2009-0001, Issued by  
Staff of the California Regional Water Quality Control Board, Central Coast Region, on  
July 29, 2011

*SWRCB/OCC FILE [ \_\_\_\_\_ ]*

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**TO THE BOARD:**

**I. SUMMARY OF CONTENTIONS AND REQUEST FOR RELIEF**

**1. Introduction**

The Chicago Grade Class III Landfill (hereafter "Landfill") is located approximately two miles east of the City of Atascadero, at 2290 Homestead Road, in San Luis Obispo County. Chicago Grade Landfill and Recycling, LLC owns the property upon which the Landfill is located. Chicago Grade Landfill, Inc. operates the Landfill. Chicago Grade Landfill and Recycling, LLC and Chicago Grade Landfill, Inc. are hereafter collectively referred to as "Petitioner."

On July 29, 2011, staff of the California Regional Water Quality Control Board, Central Coast Region (hereafter "Regional Board") revised Monitoring and Reporting Program Order No. R3-2009-0001 (hereafter "Revised MRP") applicable to the Chicago Grade Landfill. Petitioner was notified of the changes to the monitoring and reporting program by letter dated July 29, 2011.<sup>1</sup> The letter and accompanying Revised MRP were executed by staff on behalf of the Executive Officer. According to the July 29, 2011 letter, changes to the monitoring and reporting program were necessary to clarify requirements for sampling discharges of leachate and leachate-impacted stormwater. Staff's letter indicated the Revised MRP was to take effect immediately.

**2. Petitioner's Contentions**

(a) The Additional Monitoring Requirements Do Not Comply With Water Code § 13267(b)(1). The Revised MRP adds new monitoring requirements significantly increasing the frequency, locations, and testing parameters for sampling of leachate and leachate-impacted stormwater at the Landfill. Petitioner objects to the additional

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<sup>1</sup> A true and correct copy of staff's July 29, 2011 letter and Revised MRP Order No. R3-2009-0001 are attached hereto as Exhibit "A".

monitoring requirements on the grounds they are unnecessary, duplicative, and not reasonably related to protecting beneficial uses of State waters. Petitioner further objects on the grounds the new monitoring requirements were imposed without any demonstration by staff, as required by Water Code §13267(b)(1), that the burden of the additional sampling, including costs, bears a reasonable relationship to the need for the sampling and the benefits to be obtained from it. Staff did not make any findings or identify any evidence supporting the need for the additional sampling, or demonstrating how the sampling would benefit State waters. The only written explanation staff provided justifying the additional sampling was the following unsupported and conclusory statement in its July 29, 2011 letter:

“The [R]evised MRP . . . is intended to ensure landfill surface water discharges containing leachate do not impact water quality. The previous MRP did not adequately address the discharge of leachate and leachate-impacted stormwater to surface waters.” (See Exhibit “A” attached.)

This statement, in the absence of findings and evidence justifying the need for the additional sampling, and demonstrating how the additional sampling will in fact ensure landfill surface water discharges containing leachate do not impact water quality, is insufficient to satisfy the requirements of Water Code §13267(b)(1).

(b) Petitioner Was Not Afforded Adequate Procedural Due Process. The new monitoring requirements were imposed by staff without a hearing before the Regional Board, and without Petitioner being afforded adequate notice or an adequate opportunity to comment. State and Regional Board policy and procedures allow staff in appropriate circumstances to make minor modifications to MRPs without a hearing. Notwithstanding this flexibility, when proposed modifications to MRPs are expansive in nature, or when they implicate matters of regional or state-wide significance, due process considerations demand that affected dischargers be provided adequate notice and an opportunity to be heard. In the case of Revised MRP Order No. R3-2009-0001, the additional monitoring requirements are sufficiently expansive, involving matters potentially affecting not just Petitioner but the entire regulated landfill community, that they should have been imposed only after formal notice and a hearing before the Regional Board. Petitioner, industry representatives, and the public should have had an opportunity to comment upon and present testimony and evidence regarding the new requirements.

Importantly, the changes made to the Revised MRP were not made pursuant to the standard five year review process which Petitioner is required to undergo as a condition of Waste Discharge Requirements (WDR) Order No. R3-2009-0001. Petitioner’s five year review was completed most recently on February 6, 2009, following several months of work with staff to develop acceptable monitoring protocols for leachate containment and stormwater discharges. The process resulted in dozens of new stormwater inspections being incorporated into Petitioner’s MRP, over and above the inspections required by State Board Water Quality Order No. 97-03-DWQ and National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 (hereafter “General Stormwater Permit”). These new stormwater monitoring requirements were

ultimately approved by the Regional Board, and Petitioner accepted them as being reasonable for the purpose of protecting beneficial uses of State waters.

In contrast, the additional new sampling requirements for leachate and leachate-impacted stormwater, imposed on Petitioner pursuant to the July 29, 2011 Revised MRP, were made informally, without the opportunity for meaningful discussion, workshops, or Board meetings, enabling either Petitioner or the public the opportunity to comment on the new requirements. Given the expansive nature of the requirements, and the fact they implicate matters of region-wide if not state-wide importance, Petitioner's procedural due process rights under State and Federal constitutions have been violated.

(c) Petitioner's Equal Protection Rights Have Been Violated. Staff has indicated on several occasions its intention to apply similar leachate and leachate impacted-stormwater monitoring requirements across the board to all Class III landfills located within the Central Coast Region. In this regard, the July 29, 2011 letter from staff, which notified Petitioner of the additional new leachate sampling requirements, states that the new language in the Revised MRP is consistent with changes to other landfill MRPs within the Central Coast Region. Petitioner, however, has confirmed that similar monitoring requirements have not been imposed on its two primary competitors in San Luis Obispo County, i.e. Cold Canyon Landfill and the Paso Robles Landfill.<sup>2</sup> The result is that Petitioner is being singled out and treated differently from other landfill operators in the area who are similarly situated, thus placing Petitioner at a competitive disadvantage.

Petitioner suspects most other landfills located in the Central Coast Region are not subject to similar leachate and leachate-impacted stormwater sampling requirements. On August 4, 2011, Petitioner submitted a Public Records Act ("PRA") request to the State and Regional Board for purposes of investigating the subject further. While records responsive to the request have yet to be produced, and Petitioner's investigation of the matter is ongoing, the fact remains that Petitioner has been singled out and treated differently from other similarly situated landfill operators in its immediate area of competition. Petitioner has a clean operating record, and there are no circumstances unique to Chicago Grade which justify the discriminatory treatment. Nor has staff provided any explanation or evidence supporting its actions. As a consequence, Petitioner's rights to equal protection have been violated.

(d) Additional Stormwater Monitoring is a Matter of Region-Wide Significance. Petitioner and other landfills are already subject to General Stormwater Permit and Federal Subchapter N sampling requirements. Furthermore, Petitioner, in February 2009, accepted additional stormwater inspection and sampling requirements that other landfills are not subject to pursuant to its five year update and adoption of MRP Order No. R3-2009-0001 (approved February 6, 2009). If Regional Board staff now

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<sup>2</sup> Petitioner is informed that Cold Canyon Landfill voluntarily assumed responsibility for new stormwater sampling in response to a situation which arose during the winter of 2010/2011, involving solid waste at the landfill being submerged in a stormwater basin. However, no formal modifications, similar to those made to Petitioner's Revised MRP, have been incorporated into Cold Canyon's MRP to address leachate and leachate-impacted stormwater.

intends to, as it has indicated, impose additional leachate and leachate-impacted stormwater sampling requirements across the board to all Class III landfills situated within the Central Coast Region, then the subject is a matter of region-wide if not state-wide importance and must be handled with a commensurate level of respect for the rights of regulated industry and the public. As it stands, staff has approached the subject piecemeal, applying the additional sampling requirements selectively to certain landfills on an ad hoc basis. Petitioner contends that prior to the imposition of any new leachate and leachate-impacted stormwater requirements, including the imposition of any new sampling requirements on Petitioner, the Regional Board must hold public workshops or meetings to invite and facilitate an open discussion of the subject, including testimony and comments from industry and the public. In the absence of such a formal, open process, staff and the Regional Board will continue to be acting in excess of their authority under the due process and equal protection provisions of the State and Federal constitutions.

In light of the foregoing deficiencies, the Regional Board, acting via a delegation of its authority to staff, has: (1) failed to proceed in a manner required by law; (2) acted in excess of its jurisdiction; and/or (3) abused its discretion.

### **3. Relief Requested**

Petitioner respectfully requests all of the following relief:

(1) An order directing staff to set aside Revised MRP Order No. R3-2009-0001, dated July 29, 2011, based on the arguments, facts and evidence presented herewith, together with the complete files and records of the Regional Board concerning Chicago Grade Landfill;

(2) In the alternative, an order directing the Regional Board to conduct a hearing regarding application of the additional leachate and leachate-impacted stormwater requirements set forth in Revised MRP Order No. R3-2009-0001 to all landfills situated within the Central Coast Region;

(3) An order for the immediate stay of Revised MRP Order No. R3-2009-0001 pending the resolution of this Petition, and/or any hearing and final decision by the Regional Board regarding application of the additional leachate and leachate-impacted stormwater requirements set forth in Revised MRP Order No. R3-2009-0001 to all landfills situated within the Central Coast Region; and

(4) Leave to amend this Petition and the accompanying Points and Authorities after Petitioner receives and has a reasonable opportunity to review the records which are the subject of its August 4, 2011 PRA request submitted to the State and Regional Board.

## **II. BACKGROUND**

### **1. Landfill Description and History**

The Chicago Grade Class III Landfill is located in the hills on the east side of the Salinas River Valley approximately two miles east of the City of Atascadero. The Landfill began operations in 1970. The method of discharge is canyon excavation, followed by area fill and cover. The Landfill meets the criteria of Title 27 of the California Code Regulations and 40 Code of Federal Regulations (CFR) Parts 257 and 258 for a Class III landfill suitable to receive non-hazardous solid waste. The Landfill receives non-hazardous residential curbside waste, commercial and industrial waste, demolition /construction debris, and used tires, suitable for disposal at a Class III landfill. Located in the northeast corner of the waste management facility is a 4.5-acre recycle area which includes tire shredding, metals processing, and wood-waste grinding.

The Landfill's property boundary encompasses approximately 188-acres. The current waste footprint covers an area of approximately 38 acres. Existing waste management Modules 1, 2, 3 and 4, and proposed future waste management Modules 6 and 7 (no Module 5 is proposed) will cover approximately 76.4 acres. In April 2008, the Landfill held an estimated total amount of waste of approximately 1.27 million tons (1.8 million cubic yards, at 0.7 tons per cubic yard) in then-existing waste management Modules 1, 2, and 3.

Approximately 22 acres of the facility (Module 1) are unlined (pre-Subtitle D regulations). Module 2 is a Subtitle D-composite-lined, 2.5-acre expansion west of Module 1. During construction of Module 2, the Discharger placed a plastic liner and leachate collection and removal system (LCRS) over the top of 3 acres of existing waste in Module 1. In March 2006, Regional Board staff approved the completed construction of composite-lined Module 3. In June 2011, staff approved use of Module 4, which began receiving waste shortly thereafter. A proposed 37.8-acre lateral expansion of the permitted disposal area (Modules 6 and 7) will extend the estimated remaining life of the Landfill by 35 years to 2042. The expansion will increase the Landfill's waste capacity by 5.6 million cubic yards (3.9 million tons), for a total remaining capacity of 8.8 million cubic yards (as of April 2008).

### **2. Groundwater, Surface Water and Stormwater**

The Landfill is sited on the east side of a small north-south trending canyon, which merges immediately north of the Landfill with a larger east-west trending unnamed canyon. Drainage from the unnamed canyon is westerly to the Salinas River, located approximately one mile west of the Landfill. The average annual precipitation is about 19.8 inches, based on rainfall data collected at the Landfill from January 1995 to April 2008. Most precipitation occurs from November to April of each year.

In areas surrounding the Landfill, the main groundwater-producing stratigraphic units are the alluvium and the Paso Robles Formation; however, these units are generally unsaturated beneath the Landfill. Rather, first encountered groundwater occurs in the

Monterey Formation (under confined conditions) beneath the site. First encountered groundwater is between 40 and greater than 200 feet below ground surface beneath the facility. Groundwater quality from the Monterey Formation is generally poor because of its marine origin and associated salt content.

Surface water runoff in the general vicinity of the Landfill is predominantly toward the west to southwest. Drainage from the Landfill enters an unnamed ephemeral creek located immediately north of the waste burial area, which flows west toward the Salinas River. The Landfill incorporates three sediment retention basins for purposes of controlling sediment loading from stormwater runoff. Runoff upstream of the waste burial area is diverted away from waste by "V" ditches and corrugated metal pipes and directed toward sedimentation/retention Basin No. 2, and combined Basin Nos. 3/4. Surface water runoff from the active landfill area is directed to a single sedimentation/retention Basin No. 1, located immediately west of Module 2. The overflow from each of the sedimentation basins flows to the unnamed ephemeral creek. The basins are designed to retain the first 0.5 inches of rainfall from a storm before discharging to the ephemeral creek. Overflow of sedimentation/retention Basin No. 1 occurs only occasionally and for brief periods during significant wet years, due to the 350,000 gallon capacity of the retention basin, which receives all runoff from the solid waste disposal area.

### **III. REGULATORY SETTING**

#### **1. Waste Discharge Requirements Order No. R3-2009-0001**

Landfill operations are currently regulated by Waste Discharge Requirements (WDR) Order No. R3-2009-0001, adopted by the Regional Board on February 6, 2009. WDR Order No. R3-2009-0001 prohibits the discharge of leachate directly to groundwater or surface waters of the State. Compliance is achieved through operation of the "Prescriptive Containment System" consisting of a composite liner and leachate collection and removal system (LCRS). In addition, sedimentation Basin No. 1 acts to intercept, process, dilute and contain surface water runoff generated from the active landfill area.

#### **2. The General Stormwater Permit**

WDR Order No. R3-2009-0001 requires Petitioner to comply with all requirements contained in State Water Resources Control Board Water Quality Order No. 97-03-DWQ and National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 (the "General Stormwater Permit"). The General Stormwater Permit, among other things, requires development and implementation of a monitoring program. Facility operators are required to perform visual observations and collect and analyze samples of storm water discharges. Analysis must include pH, total suspended solids (TSS), total organic carbon (TOC), specific conductance, toxic chemicals, and other pollutants which are likely to be present in storm water discharges in significant quantities. In addition, analysis must include those parameters listed in Table D of the General Permit. The Table D parameters are those identified in the U.S. EPA Multi-

Sector General Permit. The Table D parameters applicable to landfills require sampling of total suspended solids (TSS) and iron (Fe).

In addition, the General Stormwater Permit requires that stormwater discharges meet all applicable provisions of Sections 301 and 402 of the Clean Water Act. Subchapter N of Title 40 Code of Federal Regulations (CFR) establishes effluent guidelines and standards for stormwater discharges from landfills. If stormwater comes in direct contact with landfill wastes (e.g., stormwater in contact with open active face, stormwater in contact with leachate or gas collection condensate, stormwater in direct contact with truck washwater or water that was in direct contact with solid waste at the landfill facility), the discharger must collect and analyze stormwater samples for the Subchapter N monitoring parameters. The Subchapter N monitoring parameters for landfills are biological oxygen demand (BOD), total suspended solids (TSS), Ammonia (as N), a-Terpineol, Benzoic Acid, p-Cresol, Phenol, Zinc and pH.

The General Stormwater Permit does not require facility operators to collect and analyze samples of stormwater that are contained on site but not discharged to receiving waters of the State. Section B, Subpart 5, of the General Permit sets forth the requirements for sampling and analysis. Section B, Subpart 5 requires facility operators to collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations must be sampled. Importantly, sampling of stored or contained storm water shall occur only at the time the stored or contained storm water is released. The General Stormwater Permit does not require sampling and analysis under circumstances where storm water is not released, nor does it require sampling of stormwater upstream of the sedimentation/retention basins.

### **3. Monitoring and Reporting Program Order No. R3-2009-0001**

In conjunction with WDR Order No. R3-2009-0001, the Regional Board adopted MRP Order No. R3-2009-0001 for the Chicago Grade Landfill on February 6, 2009. The purpose of MRP Order No. R3-2009-0001 is to set forth monitoring requirements for purposes of implementing WDR Order No. R3-2009-0001 and the terms of the General Stormwater Permit. In furtherance of these objectives, MRP Order No. R3-2009-0001 requires monitoring and reporting on: groundwater; vadose zone; leachate collection and removal; landfill gas; stormwater drainage; waste intake; rainfall data; and physical site observations. The MRP establishes groundwater monitoring points; monitoring frequency; monitoring parameters; constituents of concern; criteria for sample collection and analyses; methods for analyzing data both statistically and non-statistically; minimum monitoring report content; and, definition of terms. The monitoring requirements set forth in the General Stormwater Permit have been incorporated into MRP Order No. R3-2009-0001.

#### IV. INSPECTION AND SAMPLING REQUIREMENTS FOR LEACHATE AND LEACHATE IMPACTED STORMWATER

##### 1. Stormwater Inspection and Sampling Required by MRP Order No. R3-2009-0001 (Prior to July 29, 2011)

Section I.F.6 of MRP Order No. R3-2009-0001 sets forth surface water monitoring requirements. Pursuant to Section I.F.6, Petitioner is required to:

Annually, collect two stormwater samples pursuant to State Water Board Order No. 97- 03-DWQ, General Permit No. CAS000001, as follows:

- Within one hour of the first storm event of the wet season (October 1 through April 30) and within normal business hours.
- During at least one other storm event of the wet season, following a minimum of three working days without a stormwater discharge from the first storm event.

MRP Order No. R3-2009-0001 defines a “storm event” as an event that produces discharge from the sediment retention basin(s) to waters of the state. Petitioner is required to collect (unfiltered) samples when there is a discharge from the stormwater sediment basins at the locations specified under Part I F.3.c of the MRP (i.e. the outfall of each overflowing retention/sedimentation basin). Petitioner is required to analyze for constituents listed in Table 4, which include all standard stormwater and Table D constituents identified in the General Stormwater Permit.<sup>3</sup> In addition, in the event stormwater comes in contact with landfill wastes, including leachate, Petitioner is required to collect and analyze samples of stormwater discharges for the Subchapter N monitoring parameters applicable to landfills.<sup>4</sup>

In addition, MRP Order No. R3-2009-0001 requires Petitioner to conduct comprehensive drainage system inspections after every precipitation event that produces onsite runoff capable of creating significant ponding, erosion, or other water quality problems. (See Section I.A.1.a.) These inspections total 20 to 40 per year in wet years. Furthermore, Petitioner is required to conduct leachate system inspections bi-weekly during the wet season from October 1 to April 30 of each year. (See Section 1.C.1.)

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<sup>3</sup> To recap, the standard stormwater and Table D constituents identified in the General Stormwater Permit are the following: specific conductance; Nitrate & Nitrite as Nitrogen; pH; total organic carbon (TOC); total suspended solids (TSS); and iron (Fe).

<sup>4</sup> To recap, the Subchapter N monitoring parameters for landfills are: BOD; TSS; Ammonia (as N); a-Terpineol; Benzoic Acid; p-Cresol; Phenol; Zinc; and pH.

**2. Additional Stormwater Sampling Requirements Imposed by Revised MRP No. R3-2009-0001 (Effective July 29, 2011)**

Revised MRP Order No. R3-2009-0001, dated July 29, 2011, established additional stormwater sampling requirements. In Section I.F.6, entitled “Surface Water Monitoring,” the following paragraph was added:

*“Additional Stormwater Monitoring: If stormwater comes in contact with leachate from spills or seeps, the Discharger shall sample all impacted onsite/offsite stormwater locations for the monitoring parameters included in Table 1. These sampling requirements are independent of the two stormwater samples that are collected for the General Stormwater Permit and must be collected whether the facility discharges stormwater offsite or not.”*

The foregoing additional stormwater monitoring requirements increase both the frequency and parameters of monitoring required. The frequency has been increased by requiring sampling whenever stormwater comes in contact with leachate from spills or seeps, regardless of whether stormwater is discharged offsite. Previously, sampling was only required twice annually during overflow events. In addition, the parameters have been increased by requiring monitoring of all pollutants set forth in Table 1. By doing so, staff has significantly expanded the number of pollutants that must be tested, beyond those required previously under Table 4 and Subchapter N.

**3. Leachate Inspection and Sampling Required by MRP Order No. R3-2009-0001 (Prior to July 29, 2011)**

As indicated previously, MRP Order No. R3-2009-0001 requires Petitioner to conduct leachate system inspections bi-weekly during the wet season from October 1 to April 30 of each year. These inspections occur monthly during the dry season between May 1 and September 30 of each year. (See Section I.C.1 and 2.) In addition, Petitioner is required to conduct monthly leachate pumping system inspections from October 1 to April 30 of each year (See Section I.C.3.) Finally, on an annual basis, Petitioner is required to test and demonstrate the integrity of the leachate collection and removal system as required by 27 CCR § 20340(d). (See Section I.C.4.)

Section I.F.3.d of MRP Order No. R3-2009-0001 requires Petitioner to sample liquids collected from the leachate collection tanks once per year. Petitioner is required to analyze the samples for the parameters listed in Table 1. In addition, Section IV.C.1 of MRP Order No. R3-2009-0001 sets forth a contingency response plan in the event a leachate seep occurs. Pursuant to Section IV.C.1, in the event a seep is discovered, Petitioner is required to report the seep by telephone within 24 hours of discovery. In addition, Petitioner is required to file a written report with the RWQCB within seven days, containing at least the following information:

- a. A map showing the location(s) of seepage along with photographic documentation;
- b. An estimate of the flow rate;
- c. Location of sample(s) collected for laboratory analyses, as appropriate;
- d. A description of the nature of the discharge (e.g. pertinent observations and analysis); and
- e. A summary of corrective measures both taken and proposed.

Because all stormwater generated within the active waste disposal area is directed to sedimentation/retention Basin No.1, if stormwater happens to come in contact with a leachate seep, the inspection, sampling and reporting requirements previously discussed in Section IV.1 above apply.

**4. Additional Leachate Sampling Requirements Imposed by Revised MRP Order No. R3-2009-0001 (Effective July 29, 2011)**

Revised MRP Order No. R3-2009-0001, dated July 29, 2011, establishes additional leachate sampling requirements, by replacing subpart “c” of the contingency response plan set forth in of Section IV.C.1 with an entirely new subpart “c”. Revised subpart “c” of Section IV.C.1 now reads as follows:

*“Location of sample(s) collected for laboratory analyses. Unless otherwise directed by Water Board staff, the Discharger shall sample all leachate seeps and spills for the monitoring parameters in Table 1. In the event multiple seeps occur in a similar localized area (slope or bench), the Discharger may use professional judgment to reduce the number of leachate seep or spill samples provided the Discharger collects a representative sample. The Discharger shall photo document sample location, all observed seeps, and document the sample location(s) on a map or diagram. The Discharger is also required to sample stormwater in accordance with Part I.F.6;”*

The foregoing additional sampling requirements increase both the frequency and location of leachate monitoring that Petitioner is required to conduct. The frequency of leachate monitoring has been increased from once annually to any time a leachate seep occurs. In addition, new sampling locations have been added. Whereas previously, Petitioner was only required to sample liquids collected from each leachate tank, now Petitioner must sample any location where a seep might occur, irrespective of the fact the seep might occur at a location interior to the Point of Compliance established by WDR Order No. R3-2009-0001.

**V. PETITIONER'S CONTENTIONS REGARDING THE ADDITIONAL SAMPLING REQUIREMENTS FOR LEACHATE AND LEACHATE IMPACTED STORMWATER**

**1. Petitioner's Contentions Regarding the Additional Stormwater Sampling Requirements**

The stormwater inspection and sampling requirements in effect under MRP Order No. R3-2009-0001 (prior to July 29, 2011) adequately addressed the discharge of leachate impacted stormwater to surface water. Sampling of stormwater was required twice annually during overflow events for Table 4 and Subchapter N pollutants.<sup>5</sup> Because sampling was required only during overflow events, the sampling was reasonably related to determining whether effluent guidelines or receiving water quality standards had been violated. If violations occurred, corrective action would follow.

The revised MRP Order No. R3-2009-0001 increases the frequency of sampling by requiring additional sampling anytime stormwater comes in contact with leachate from spills or seeps, regardless of whether the stormwater remains contained or stored in sedimentation/retention Basin No. 1. This increased sampling is unnecessary, duplicative, and not reasonably related to protecting beneficial use of State waters. The chemical quality of the stormwater being discharged from Basin No. 1 is the important factor, not the quality of water entering the basin as influent or being stored or contained onsite. Petitioner cannot be in violation of effluent limitations or receiving water quality standards absent an overflow event. For this reason, the General Stormwater Permit does not require sampling of stored or contained water, only water that is discharged during overflow events. Nor has staff provided any justification, findings or evidence supporting the need for the additional sampling as a mechanism to protect the receiving water quality of the State.

Furthermore, the Table 4 and Subchapter N sampling required by MRP Order No. R3-2009-0001 and the General Stormwater Permit adequately addressed the type of pollutants likely to be found in leachate and leachate impacted stormwater. By requiring monitoring of the additional parameters set forth in Table 1 of Revised MRP Order No. R3-2009-0001, staff has significantly expanded the sampling requirements imposed on Petitioner. The Table 1 parameters are those typically monitored in groundwater, not surface water runoff. Staff has not indicated how or why any of the additional Table 1 parameters (i.e. those not already set forth in Table 4 and Subchapter N) are likely to be found in the Landfill's leachate and leachate impacted stormwater. Staff has provided no justification, findings or evidence supporting the need for sampling these additional parameters as a means to protect the receiving water quality of the State.

Notably, prior sampling of discharge from Petitioner's sedimentation/retention Basin No. 1 during the wet season of 2010/2011 indicates that discharge from this Basin meets established EPA benchmarks for constituents likely to be found in leachate and

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<sup>5</sup> Subchapter N pollutants must be sampled only if storm water is suspected to have come in direct contact with landfill wastes.

leachate-impacted stormwater. Discharge from Basin No. 1 was sampled on March 28, 2011. The results demonstrated that levels of benzoic acid, methylphenol, phenol and alpha-terpineol were either non-detect or below established EPA benchmarks. Testing for specific conductance demonstrated that spill water from the Basin contained a lower mineral content (approximately 400 ppm TDS) than local groundwater,<sup>6</sup> and pH was within normal limits for local groundwater. Ammonia, nitrate, suspended solids, organic carbon and BOD were all within established benchmarks as well. Given Petitioner's clean operating record at the Landfill, and evidence in the record demonstrating that discharges from Basin No. 1 are within established benchmarks for constituents likely to be found in leachate and leachate-impacted stormwater, there is no basis supporting staff's July 29, 2011 action imposing the additional sampling requirements.

**2. Petitioner's Contentions Regarding the Additional Leachate Sampling Requirements**

Pursuant to MRP Order No. R3-2009-0001 (in effect prior to July 29, 2011), Petitioner is required to sample liquids collected from each leachate tank once per year and test for Table 1 parameters. (See MRP Order No. R3-2009-0001 F.3.d.) As a result, Petitioner and the Regional Board are well aware of the chemical character of both winter and summer leachate generated by the Landfill. Additional sampling of seeps occurring within the active waste management area, as required by the Revised MRP, is not necessary to further delineate the character of the Landfill's leachate. Nor has staff provided any justification, findings or evidence supporting the need for the additional sampling frequency as a means to protect the quality of receiving waters of the State.

In addition to increasing the frequency of leachate sampling, the Revised MRP also adds new sampling locations for leachate. Whereas previously, under MRP No. R3-2009-0001 (in effect prior to July 29, 2011), Petitioner was required to sample liquids at the location of each leachate collection tank, now under Revised MRP No. R3-2009-0001 Petitioner must also sample any location where a seep occurs, irrespective of whether the location of the seep is interior to the established Point of Compliance.

Pursuant to 27 CCR § 20405, WDR Order No. R3-2009-0001 defines the Point of Compliance as the vertical surface located at the hydraulically downgradient limit of a waste management unit that extends through the uppermost aquifer underlying the waste management unit. WDR Order No. R3-2009-0001 prohibits the discharge of waste that causes a statistically significant difference in water quality over background concentrations at the Point of Compliance. Because of this, the chemical composition of any given seep is immaterial, provided the seep is not allowed to escape beyond the Point of Compliance. As such, sampling of seeps simply to determine their chemical makeup without regard to their location vis a vis the Point of Compliance is unnecessary and duplicative. Staff has not provided any justification, findings or evidence supporting the need for additional sampling of leachate seeps at points interior to the established Point of Compliance as a means of protecting the receiving water quality of the State.

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<sup>6</sup> Atascadero Mutual Water Company annual report indicates typical TDS levels of 671 ppm.

**3. Due Process and Equal Protection Require Notice, Hearing, and Uniform Application**

The new monitoring requirements imposed by the Revised MRP are expansive. Moreover, staff has indicated that it intends to apply them across the board to all landfills located within the Central Coast Region. Thus far, however, staff's approach has been to apply the requirements selectively and ad hoc, which places landfills like Chicago Grade at a competitive disadvantage. If staff's intention, as it has indicated, is to impose additional leachate and leachate-impacted stormwater sampling requirements across the board to all landfills situated within the Central Coast Region, then the subject must be handled appropriately in light of due process and equal protection considerations. Petitioner contends that prior to the imposition of any new leachate and leachate-impacted stormwater requirements, including the imposition of any new requirements on Petitioner, the Regional Board must hold public workshops or meetings to invite and facilitate an open dialogue on the subject, including testimony and comments from industry and the public. In the absence of such a formal, open process, staff and the Regional Board will continue to be acting in excess of their authority under the due process and equal protection provisions of the State and Federal constitutions.

**VI. STAFF FAILED TO COMPLY WITH WATER CODE SECTION 13267(b) AND OTHER IMPORTANT LEGAL MANDATES WHEN IMPOSING ADDITIONAL SAMPLING REQUIREMENTS FOR LEACHATE AND LEACHATE IMPACTED STORMWATER**

**1. Staff Failed to Make Findings Required By Law**

Water Code Section 13267(b)(1), in pertinent part, provides:

“[T]he regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”

The foregoing excerpt from Water Code Section 13267(b)(1) clearly contemplates a fact-finding determination regional boards must undertake prior to imposing monitoring requirements on existing or prospective dischargers. The statute requires regional boards to disclose the basis for their monitoring determinations by providing dischargers a written explanation together with the evidence the board relied upon in support. Ultimately, the explanation and evidence must demonstrate that the burden of any required monitoring bears a reasonable relationship to the need for the monitoring and the

benefits to be obtained from it. This statutory requirement is effectively a codification of the well established legal principal that administrative agencies must make findings in support of their adjudicatory decisions.

The requirement of findings derives from two principal sources: (1) provisions of the Administrative Adjudication Bill of Rights (Govt. Code §§11425.10-11425.60) set forth in the Administrative Procedure Act (“APA”), and (2) case law, based on a requirement implicit in CCP § 1094.5 and procedural due process. The failure of an agency to make sufficient findings can lead to reversal and remand of the agency’s decision. *Usher v. County of Monterey* (1998) 65 Cal.App.4th 210, 220. (See Cal. Administrative Mandamus (Cont.Ed.Bar , 3rd ed. Feb. 2011 Update) § 6.106, pp. 244-245.)

In 1974, the California Supreme Court recognizing an implicit requirement for factual and legal findings based on the language of CCP § 1094.5 and procedural due process in *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515. The “*Topanga Rule*” as it came to be known requires that an agency rendering an adjudicatory decision (as opposed to a legislative or quasi-legislative decision) reviewable under Code of Civil Procedure § 1094.5 must, in order to satisfy due process and to facilitate judicial review, set forth findings that “bridge the analytic gap between raw evidence and the decision or order.” The *Topanga* court held that such a requirement serves to: (1) facilitate orderly analysis by the agency; (2) enable a reviewing court to trace and examine the agency’s analysis; (3) enable the parties to the decision to determine whether and on what basis to seek judicial review; and (4) serve a public relations function by demonstrating that administrative decision making is careful, reasoned, and equitable. (*Id.*, at p. 515-516.)

Government Code § 11425.50 is a provision of the APA that applies to adjudicatory decisions. It requires, among other things, that an agency’s decision “shall be in writing and shall include a statement of the factual and legal basis for the decision.” The Law Revision Comments to Government Code § 11425.50 make it clear that the section is intended to incorporate previously existing case law regarding findings...” i.e., the *Topanga* case and its progeny. (See Cal. Administrative Mandamus, *supra*, § 6.107, p. 245.)

When findings are required to be made by an agency’s statute, the agency must satisfy the requirements of its statute. (See, Cal. Administrative Mandamus, *supra*, § 6.116, p. 253 and cases cited therein; see also, *Woodland Hills Residents Ass’n. v. City Council* (1975) 44 Cal.App.3d 825, 837-839.) Regional boards are required by statute to make findings with respect to their monitoring determinations, by providing dischargers a written explanation together with the evidence the board relied upon in support. (Water Code § 13267(b)(1).) The explanation and evidence must ultimately demonstrate that the burden of any required monitoring bears a reasonable relationship to the need for the monitoring and the benefits to be obtained from it.

Staff of the Regional Board provided the following statement in its July 29, 2011 letter to Petitioner, presumably to justify imposition of the new monitoring requirements:

“The revised MRP . . . is intended to ensure landfill surface water discharges containing leachate do not impact water quality. The previous MRP did not adequately address the discharge of leachate and leachate-impacted stormwater to surface waters.” (See Exhibit “A” attached.)

This statement, in the absence of specific findings and evidence justifying the need for the additional sampling, is insufficient to satisfy the requirements of Water Code §13267(b)(1). The statement does not explain how the new reporting requirements rectify prior deficiencies, nor has the Board identified the evidence it relied upon to draw its conclusion. The statement by itself and without supporting evidence does not “bridge the analytical gap between the raw evidence and the ultimate decision or order.” (*Topanga*, supra, at p. 515.) The Regional Board has not provided any explanation or evidence demonstrating how the additional sampling will in fact ensure landfill surface water discharges containing leachate do not impact water quality.

## **2. Staff Failed to Afford Petitioner Adequate Due Process**

The Fourteenth Amendment states in part: “No state shall deprive any person of life, liberty, or property, without due process of law.” (U.S. Const., amend. XIV, 1.) This is the primary source of constitutional due process restrictions on California administrative agencies. Another source is the California Constitution, which provides that “[a] person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.” (Cal. Const., art. I, 7.) This provision has been held to be identical in scope and purpose to the due process provision of the Fourteenth Amendment to the United States Constitution as to state action. (*Kruger v. Wells Fargo Bank* (1974) 11 Cal. 3d 352, 366.)

The procedural requirements necessary to satisfy due process vary according to the competing interests of the government and private party involved and do not necessarily mandate a hearing in every case. In general, however, due process minimally requires notice and an opportunity for a hearing in connection with the deprivation of a property interest or liberty interest. (See e.g. *Kash Enterprises v. City of Los Angeles* (1977) 19 Cal 3d 294, 307; *Menefee & Son v. Department of Food & Agriculture* (1988) 199 Cal App 3d 774, 781.)

A significant property interest exists in a license, permit, or other entitlement to engage in a particular business, profession, occupation, or other activity. *Barry v. Barchi* (1979) 443 US 55, 64 L. Ed. 2d 365, 375, 99 S. Ct. 2642. Liberty interests include the right to contract, to practice in a profession, to establish a home, and generally to enjoy those privileges long recognized as essential to the orderly pursuit of happiness. *Board of Regents v. Roth* (1972) 408 US 564, 572 L. Ed. 2d 548, 558, 92 S. Ct. 2701. Under California law, freedom from arbitrary adjudicative procedures is also expressly recognized as an independent liberty interest protected under the due process clause.

The new monitoring requirements for leachate and leachate impacted stormwater set forth in Revised MRP Order No. R3-2009-0001 were imposed by staff without a hearing and without Petitioner being afforded adequate notice or an opportunity to be

heard. They were imposed by staff without discussion, workshops, or a Board meeting enabling either Petitioner or the public the opportunity to comment or provide testimony regarding the new requirements. The net effect of the new requirements could potentially deprive Petitioner of a significant property interest. Compliance will be burdensome and costly on Petitioner, not to mention have the effect of placing Petitioner at a competitive disadvantage. Furthermore, failure to comply with the new requirements could subject Petitioner to an enforcement action, including civil and criminal liability, pursuant to Water Code § 13268. The new requirements appear to have been imposed without reasonable justification, thus arbitrarily infringing on Petitioner's significant property and liberty interests. As a result, Petitioner's procedural due process rights under State and Federal constitutions have been violated.

### **3. Staff Failed to Afford Petitioner Equal Protection of the Law**

The Equal Protection Clause guarantees that no person or class of persons shall be denied the same protection of law that is enjoyed by other persons or classes in similar circumstances. (*Hawn v. County of Ventura* (1977) 73 Cal. App. 3d 1009, 1018.) Environmental regulations necessarily entail some limitation on land or an owner's rights, and almost always adversely affect some level of property interest. When there is no suspect classification or fundamental right, however, and the discrimination complained of is purely economic, a regulation is valid under the equal protection clause provided it bears a rational relationship to a legitimate state purpose. (*Hale v. Morgan* (1978) 22 Cal. 3d 388, 395; *College Area Renters & Landlord Assn. v. City of San Diego* (1996) 43 Cal. App. 4th 677, 686.) Government agencies have the burden of demonstrating that the effect of their regulations which treat private parties differently bear a rational relationship to a legitimate state purpose.

Petitioner has confirmed that similar leachate and leachate impacted stormwater sampling requirements have not been imposed on the two other Class III landfills located in its immediate area of competition. Petitioner suspects most other landfills in the Central Coast Region are not subject to similar requirements.<sup>7</sup> Regardless, it is clear that Petitioner is being treated differently, a situation which places Petitioner at a competitive disadvantage. Petitioner has a clean operating record, and there are no circumstances unique to Chicago Grade which justify the discriminatory treatment. Nor has staff provided any explanation or evidence supporting its actions. Staff must demonstrate that it has a rational basis for regulating Chicago Grade differently than the other landfills under its jurisdiction. Staff must show that circumstances involving leachate and leachate-impacted stormwater at Chicago Grade are sufficiently different from these circumstances at other Class III landfill locations, such that the difference in treatment is justified. In the absence of such a demonstration, Petitioner's right to equal protection under the State and Federal constitutions has been violated.

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<sup>7</sup> On August 4, 2011, Petitioner submitted a PRA request to the State and Regional Board for purposes of investigating the extent to which similar leachate and leachate impacted-stormwater monitoring requirements have been imposed region-wide. Records responsive to the request have yet to be produced.

## **VII. AN IMMEDIATE STAY OF REVISED MRP ORDER NO. R3-2009-0001 IS NECESSARY TO AVOID SUBSTANTIAL HARM TO PETITIONER**

As discussed above, the Revised MRP adds new monitoring requirements significantly increasing the frequency, locations, and testing parameters for sampling of leachate and leachate impacted-stormwater at the Landfill. These additional monitoring requirements were imposed arbitrarily, without any demonstration by staff, as required by Water Code §13267(b)(1), that the burden of the additional sampling, including costs, bears a reasonable relationship to the need for the sampling and the benefits to be obtained from it. In addition, the new requirements were imposed without Petitioner being afforded adequate due process or equal protection of the law.

Compliance with the new requirements will be burdensome and costly on Petitioner. Compliance will place Petitioner at a competitive disadvantage. Moreover, Petitioner's failure to comply with the additional monitoring requirements could subject Petitioner to an enforcement action, including civil and criminal liability, pursuant to Water Code § 13268. For the foregoing reasons, a stay is necessary to avoid substantial harm to Petitioner. Because adequate monitoring protocols for leachate and leachate-impacted stormwater already exist under MRP Order No. R3-2009-0001 (in effect prior to July 29, 2011), and these protocols are sufficiently protective of beneficial uses of State waters, there is no risk that substantial harm will result to other interested persons, the public, or the environment if Petitioner's request for a stay is granted. The stay will simply restore the regulatory status quo that was in effect prior to July 29, 2011.

## **VIII. REQUEST FOR RELIEF**

Petitioner respectfully requests all of the following relief:

(1) An order directing staff to set aside Revised MRP Order No. R3-2009-0001, dated July 29, 2011, based on the arguments, facts and evidence presented herewith, together with the complete files and records of the Regional Board concerning Chicago Grade Landfill;

(2) In the alternative, an order directing the Regional Board to conduct a hearing regarding application of the additional leachate and leachate-impacted stormwater requirements set forth in Revised MRP Order No. R3-2009-0001 to all landfills situated within the Central Coast Region;

(3) An order for the immediate stay of Revised MRP Order No. R3-2009-0001 pending the resolution of this Petition, and/or any hearing and final decision by the Regional Board regarding application of the additional leachate and leachate-impacted stormwater requirements set forth in Revised MRP Order No. R3-2009-0001 to all landfills situated within the Central Coast Region; and

(4) Leave to amend this Petition and the accompanying Points and Authorities after Petitioner receives and has a reasonable opportunity to review the records which are the subject of its August 4, 2011 PRA request submitted to the State and Regional Board.

Dated: August 29, 2011

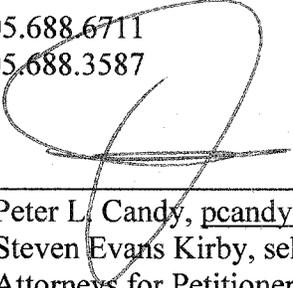
Respectfully submitted,

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Attorneys for Petitioners

cc: Roger Briggs  
Executive Officer  
Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-0397

**JULY 29, 2011 LETTER**

**AND**

**REVISED MRP ORDER NO. R3-2009-0001**

**EXHIBIT "A"**



# California Regional Water Quality Control Board Central Coast Region



Linda S. Adams  
Acting Secretary for  
Environmental Protection

895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906  
(805) 549-3147 • Fax (805) 543-0397  
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Edmund G. Brown Jr.  
Governor

July 29, 2011

Mr. Michael Hoover  
[mhoover@chicagogradelandfill.com](mailto:mhoover@chicagogradelandfill.com)  
Chicago Grade Landfill  
2290 Homestead Road  
Templeton, CA 93465

Dear Mr. Hoover:

## **LAND DISPOSAL PROGRAM: CHICAGO GRADE CLASS III LANDFILL, SAN LUIS OBISPO COUNTY – REVISED MONITORING AND REPORTING PROGRAM**

Central Coast Water Quality Control Board (Water Board) staff revised the Chicago Grade Landfill Monitoring and Reporting Program R3-2009-0001 (MRP). The revised MRP includes language clarifying requirements for sampling discharges of leachate and leachate impacted stormwater. This revised language is consistent with changes to other landfill MRPs within the Central Coast Region. The revised language is included in MRP section I.F.6 and section IV.C.1.c and reads as follows:

In the stormwater section I.F.6:

*Additional Stormwater Monitoring: If stormwater comes in contact with leachate from spills or seeps, the Discharger shall sample all impacted onsite/offsite stormwater locations for the monitoring parameters included in Table 1. These sampling requirements are independent of the two stormwater samples that are collected for the General Stormwater Permit and must be collected whether the facility discharges stormwater offsite or not.*

In the Contingency Response Section IV.C.1.c:

*Location of sample(s) collected for laboratory analyses. Unless otherwise directed by Water Board staff, the Discharger shall sample all leachate seeps and spills for the monitoring parameters in Table 1. In the event multiple seeps occur in a similar localized area (slope or bench), the Discharger may use professional judgment to reduce the number of leachate seep or spill samples provided the Discharger collects a representative sample. The Discharger shall photo document sample location, all observed seeps, and document the sample location(s) on a map or diagram. The Discharger is also required to sample stormwater in accordance with Part I.F.6;*

The revised MRP is effective immediately and is intended to ensure landfill surface water discharges containing leachate do not impact water quality. The previous MRP

**California Environmental Protection Agency**



did not adequately address the discharge of leachate and leachate-impacted stormwater to surface waters.

Any person aggrieved by this action of the Water Board may petition the State Water Board to review the action in accordance with Section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The State Water Board, Office of Chief Counsel, P.O. Box 100 Sacramento, 95812 must receive the petition by 5:00 p.m., 30 days after the date of the order, except if the thirtieth day following the date of the order falls on a Saturday, Sunday, or state holiday, the petition must be received by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the internet at [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

If you have any questions or comments regarding this letter, please contact **Ryan Lodge at (805) 549-3506** or Thea Tryon at (805) 542-4776.

Sincerely,



for Roger Briggs  
Executive Officer

Attachment: Revised Monitoring and Reporting Program No. R3-2009-0001 dated July 29, 2011.

cc: Jeff Hackett  
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**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION  
895 Aerovista Place, Suite 101  
San Luis Obispo, California 93401-7906**

**MONITORING AND REPORTING PROGRAM NO. R3-2009-0001  
Waste Discharge Identification No. 3400300001  
Revised on July 29, 2011**

**FOR  
CHICAGO GRADE CLASS III LANDFILL  
SAN LUIS OBISPO COUNTY**

This Monitoring and Reporting Program No. R3-2009-0001 (MRP) is issued by the Regional Water Quality Control Board, Central Coast Region pursuant to California Water Code section 13267. Chicago Grade Landfill and Recycling, LLC owns the Chicago Grade Class III Landfill (hereafter "Landfill"). Chicago Grade Landfill, Inc. operates the Landfill. Chicago Grade Landfill and Recycling, LLC and Chicago Grade Landfill, Inc. are collectively referred to as "Discharger." The Discharger is subject to this MRP because it owns and operates the Landfill. The MRP is required to assure compliance with the Water Code, the applicable state and federal regulations, and the associated Waste Discharge Requirements Order No. R3-2009-0001. Failure to comply with this MRP could subject the Discharger to enforcement actions, including pursuant to California Water Code section 13268.

**PART I: MONITORING AND OBSERVATION SCHEDULE**

Unless otherwise indicated, the Discharger shall report all monitoring and observations as outlined in **Part IV**.

**A. SITE INSPECTIONS**

The Discharger shall inspect the Chicago Grade Class III Landfill (Landfill), in accordance with the following schedule, and record (including photographs, when appropriate) at a minimum, the Standard Observations listed below:

**1. Site Inspection Schedule:**

- a. During the wet season (**October 1 through April 30**), following each storm event that produces onsite stormwater runoff, with inspections performed at least monthly. For purposes of this MRP, a storm event is defined as precipitation producing onsite runoff (surface water flow) capable of creating significant ponding, erosion or other water quality problem. A significant storm event will generally result in greater than 1-inch of rain within a 24-hour period, and be separated by a minimum of three days of dry weather.
- b. During the dry season (**May 1 through September 30**), a minimum of one inspection each **three month period**.

## 2. Standard Observations

- a. For the Landfill, this includes inspections at the Waste Management Units (WMUs), along the perimeter of the WMUs and the Recycle Area.
  - i. Whether stormwater drainage ditches and sediment/retention basins contain liquids.
  - ii. Evidence of liquid leaving or entering the Landfill, estimated size of affected area, and estimated flow rate (show affected area on map).
  - iii. Presence of odors; characterization, source, and distance from source.
  - iv. Evidence of ponding over the WMUs (show affected area on map).
  - v. Evidence of erosion or exposed waste.
  - vi. Evidence of waste in the drainage system (e.g., ditches and stormwater sediment basins).
  - vii. Inspection of stormwater discharge locations for evidence of non-stormwater discharges during dry season.
  - viii. Integrity of drainage systems during wet season.
- b. For Receiving Waters
  - i. Floating and suspended materials of waste origin; presence or absence, source, and size of affected area.
  - ii. Discoloration and turbidity – description of color, source, and size of affected area.
  - iii. Presence of odors; characterization, source, and distance from source.
  - iv. Evidence of beneficial use – presence of water-associated wildlife.
  - v. Estimated flow rate to the receiving water.
  - vi. Weather Conditions – wind direction and estimated velocity, total precipitation during the previous five days and on the day of observation.

## B. ADDITIONAL DRAINAGE SYSTEMS INSPECTIONS

1. The Discharger shall inspect all drainage control systems following each onsite runoff-producing storm event and record the following:
  - a. General conditions of the stormwater facilities; and
  - b. Any apparent seepage from the stormwater sediment/retention basins;
  - c. To insure that the terms of the State Water Resources Control Board (State Water Board) Order No. 97-03-DWQ, General Permit No. CAS000001 are properly implemented, document compliance with Storm Water Pollution Prevention Plan;
  - d. Steps taken to correct any problems found during the inspections, as required under Part I of this Monitoring and Reporting Program, and date(s) when corrective action was taken. Include photographic documentation
  - e. Confirm that the Discharger has capped the leachate/stormwater cross-connection between Module 3 and 4 and the leachate line is reconnected once waste has reached the level of the cross-connections.

## C. LEACHATE COLLECTION AND REMOVAL SYSTEMS INSPECTIONS

The Discharger shall inspect all leachate collection and removal systems and record the following information:

1. **Bi-weekly (between October 1 and April 30 of each year)** - leachate containment and collection system integrity, record volume of leachate collected (in gallons) and disposal method used.
2. **Monthly (between May 1 and September 30 of each year)** – after emptying the leachate tank by **May 1 of each year**, leachate containment and collection system integrity, record volume of leachate collected (in gallons) and disposal method used.
3. **Monthly (between October 1 and April 30 of each year)** - pumping system operational check.
4. **Annually** - Leachate collection and removal system testing and demonstration, as required by Title 27 §20340(d). Report results in the Annual Summary Report required by Monitoring and Reporting Program No. R3-2009-0001 (hereafter “MRP R3-2009-0001”), Part IV.B. The Discharger shall develop results of annual testing in a manner that makes one year’s test comparable to previous and subsequent test. The absence or presence of biofouling shall be specifically addressed in the inspection report.
5. All lined Modules will have the location of their respective liners surveyed and markers placed at readily observable locations (e.g., observable by landfill operations staff discharging leachate back to lined modules and by state inspectors).

#### D. RAINFALL DATA

The Discharger shall record the following information from the nearest monitoring station:

1. Total precipitation, in inches, during each **three month period (October through December, January through March, April through June and July through September)**; and.
2. Precipitation, in inches, during the most intense twenty-four hour rainfall event occurring within each contiguous **three month period (October through December, January through March, April through June and July through September)**.
3. Number and date of storms (greater than or equal to one (1) inch in 24-hours) received during the **three month period**.

#### E. DEWATERED SLUDGE MONITORING

The Discharger shall record the following information for all dewatered sewage and water treatment sludge discharged at the Landfill:

- a. Source and type of sludge [e.g., primary (at least 20% solids by weight) or secondary (at least 15% solids by weight) wastewater, water treatment].
- b. Volume and weight.
- c. Percent moisture.
- d. Location where sludge was discharged (buried) at the Landfill and the waste solids to sludge ratio (at least 5 to 1 waste to sludge) by weight.

## F. ANALYTICAL MONITORING AND MONITORING LOCATIONS

The Discharger shall monitor the Landfill in accordance with the following schedule(s). Monitoring locations are shown on **Figure A-1**. Discharger shall comply with the sampling, analyses, and reporting requirements discussed in Parts II, III, and IV of this monitoring and reporting program.

### 1. Semiannual monitoring periods

The Discharger must measure groundwater levels and collect samples semiannually from the landfill monitoring points during the first quarter (**January 1-March 31**) and third quarter (**July 1-September 30**) of each year. The Discharger shall include the results of the first quarter monitoring event with the first semiannual monitoring report due **April 30**. The Discharger shall include the results of the third quarter monitoring event in the second semiannual monitoring report due **October 31**. The Annual Report is due **April 30**. See "Monitoring Period" defined under "Definition of Terms."

### 2. Monitoring Parameters

The Discharger shall analyze all samples from the Monitoring Points specified in this Monitoring and Reporting Program for the Monitoring Parameters listed in **Table 1**, except as noted.

**Table 1 Monitoring Parameters**

Parameter	USEPA Method <sup>1</sup>	Units <sup>2</sup>
Chloride	300.0	mg/L
Total Alkalinity	SM 2320B	mg/L
Dissolved Oxygen <sup>3</sup>	Field	mg/L
Electrical Conductivity <sup>3</sup>	Field	µmhos/cm
Manganese <sup>4</sup>	6010B	mg/L
Iron <sup>4</sup>	6010B	mg/L
Chromium <sup>4,5</sup>	6010B	mg/L
Nickel <sup>4,5</sup>	6010B	mg/L
Cadmium <sup>4,5</sup>	6010B	mg/L
Selenium <sup>4,5</sup>	7740	mg/L
Nitrate as Nitrogen	300.0	mg/L
Perchlorate <sup>6</sup>	314.0	µg/L
pH <sup>3</sup>	Field	pH Units
Sodium <sup>4</sup>	6010B	mg/L
Sulfate	300.0	mg/L
Temperature <sup>3</sup>	Field	°F/C
Total Dissolved Solids	160.1	mg/L

Total Petroleum Hydrocarbons	8015 CA Modified	mg/L
Turbidity <sup>3</sup>	Field	NTU
VOC <sub>water</sub> <sup>7</sup>	8260B	µg/L

## Footnotes:

- <sup>1</sup> USEPA – United States Environmental Protection Agency. Upon receiving prior acceptance by the Central Coast Water Board Executive Officer, equivalent analytical method can be used
- <sup>2</sup> mg/L – milligrams per liter; µmhos/cm – micromillihos per centimeter; °F/C – degrees Fahrenheit/Centigrade; NTU – nephelometric turbidity units; µg/L – micrograms per liter
- <sup>3</sup> These are field parameters as defined by California Code of Regulations (CCR) Title 27 §20415(e) 13. These must be tracked in a summary table in the monitoring report but development of concentration limits per CCR Title 27 §20390 and §20400 et al is not required.
- <sup>4</sup> Field filter before conducting metal analyses.
- <sup>5</sup> These may be discontinued after determining background concentrations/source to satisfaction of Executive Officer.
- <sup>6</sup> For MW-10 only. Discharger may request discontinuing analysis if this parameter is not detected in at least three consecutive monitoring events.
- <sup>7</sup> The VOC<sub>water</sub> Monitoring Parameter includes all volatile organic compounds (VOCs) detectable using USEPA Method 8260B, including at least all 47 organic constituents listed in Appendix I to 40 CFR, 258 (Subtitle D), methyl tertiary butyl ether (MTBE), and all unidentified peaks.

For purposes of evaluating landfill hydrogeologic conditions, monitoring locations must have samples collected from a minimum of two seasonally different monitoring events analyzed for general minerals and metals (to include, at a minimum: chloride, total alkalinity, sulfate, nitrate, sodium, potassium, magnesium, and calcium).

### 3. Description of Monitoring Points

- a. **Groundwater:** Groundwater Detection Monitoring Points (hereafter “**DMP**”) for this Landfill are described as follows (see Figure 1):
  - Wells MW-4, -7, and -10 shall serve as DMPs.
  - Well MW-9b and a new monitoring well for proposed Modules 6 and 7 shall serve as background monitoring points (the new well only until Modules 6 and 7 are operational).
  - Domestic/irrigation supply well (Office Well) shall serve as a downgradient monitoring point.
  - The Module 3 underdrain shall serve as a DMP monitoring location.
- b. **Vadose Zone:** The Discharger shall monitor the vadose zone using soil gas monitoring probes MW-1, MW-2, and MW-11 (See Analytical Monitoring and Monitoring Locations F.7 below).
- c. **Surface Water:** At the outfall of each retention/sediment basin (SW-1, SW-2, SW-3, and SW-4 [Figure A-1]), or where stormwater exits the facility boundary.

- d. **Landfill Gas:** The Discharger shall perform landfill gas monitoring from perimeter soil-gas probes MW-1, -2 and -11. See Analytical Monitoring and Monitoring Locations F.7 below for landfill gas monitoring period and monitoring parameters.
- e. **Landfill Leachate:** Annually, the Discharger shall collect samples from each leachate tank.

#### 4. Monitoring Frequency

The Discharger must conduct sampling and analyses of all DMPs at least once during each Monitoring Period listed in **Table 2**.

**Table 2 Monitoring Points and Frequencies** <sup>(a)</sup>

Detection Monitoring Point	Monitoring Purpose and Frequency <sup>(b)</sup>			
	Stormwater Parameters	Monitoring Parameters	Water Levels	COCs <sup>(c)</sup>
DMP No.				
MW-4	NA	Semiannual	Semiannual	Every 5 years
MW-7	NA	Semiannual	Semiannual	Every 5 years
MW-9b	NA	Semiannual	Semiannual	Every 5 years
MW-10	NA	Semiannual	Semiannual	Every 5 years
Office Well	NA	Every 5 years	Semiannual	Every 5 years
Module 3 Underdrain	NA	Semiannual	NA	Every 5 years
Module 6&7 Monitoring Well	NA	Semiannual	Semiannual	Every 5 years
Leachate	NA	Annual	NA	Every 5 years
Stormwater <sup>(d)</sup>	Annual	NA	NA	NA

Footnotes for Table 2:

- (a) For all **new** Monitoring Points, the Discharger shall conduct quarterly monitoring for four consecutive quarters starting from the date first sampled. After completing the initial quarterly samples, monitor semiannually, except as provided under Part III C.
- (b) Monitoring Frequency: NA - not applicable. See "Monitoring Period" under Part V-Definition of Terms, except as provided under Part III C.
- (c) COCs are sampled once every five years as discussed in Part I F.5, except as provided under Part III C.
- (d) The Discharger must collect and analyze samples as specified Part I F.6 of this Monitoring and Reporting Program.

#### 5. Constituents of Concern Monitoring

Constituents of Concern (COC) are listed in **Table 3**, and either directly include or include by reference all constituents listed in Appendix II in 40 CFR, Part 258. The Discharger shall collect and analyze samples for COCs **once every five years** at each of the site's DMPs. If there is an indication of release (**Part IV.C.4**), then the Discharger is also required to monitor for COCs. The Discharger shall monitor for COCs every five years, alternating between sampling in the spring of one year and the fall of the fifth year. The next COC sampling event is **in the fall of 2011**. Within three months of installing a DMP, the Discharger shall collect and analyze samples for COCs from that DMP.

**Table 3 Constituents of Concern <sup>(1)</sup>**

<b>Constituents</b>	<b>USEPA Method</b>	<b>Units</b>
Antimony	6010B	µg/L
Arsenic	6010B	µg/L
Barium	6010B	µg/L
Beryllium	6010B	µg/L
Cadmium	6010B	µg/L
Chromium	6010B	µg/L
Cobalt	6010B	µg/L
Copper	6010B	µg/L
Cyanide	335.4	µg/L
Lead	6010B	µg/L
Mercury	7470A	µg/L
Nickel	6010B	µg/L
Selenium	7740	µg/L
Silver	6010B	µg/L
Sulfide	376.2	µg/L
Thallium	6010B	µg/L
Tin	6010B	µg/L
Vanadium	6010B	µg/L
Zinc	6010B	µg/L
Chlorophenoxy Herbicides	8150	µg/L
Nonhalogenated Volatiles	8015	µg/L
Organochlorine Pesticides and PCBs	8080	µg/L
Organophosphorous Pesticides	8041A	µg/L
Chlorinated Herbicides	8151A	µg/L
Phthalate Esters	8060	µg/L
Perchlorate	314.0	µg/L
Phenols	8040	µg/L
Semi-Volatile Organic Compounds	8270C	µg/L
Volatile Organic Compounds	8260B	µg/L

<sup>(1)</sup> The Discharger shall analyze for all constituents using the USEPA analytical methods indicated above, including MTBE and all constituents listed in Appendix II to 40 CFR, Part 258 (Subtitle D). Metals shall be field filtered before laboratory analysis.

## 6. Surface Water Monitoring

Annually, collect two stormwater samples pursuant to State Water Board Order No. 97-03-DWQ, General Permit No. CAS000001, as follows:

- Within one hour of the first storm event of the wet season (October 1 through April 30) and within normal business hours.
- During at least one other storm event of the wet season, following a minimum of three working days without a stormwater discharge from the first storm event.

A storm event is an event that produces discharge from the sediment retention basin(s) to waters of the state. Collect (unfiltered) samples when there is a discharge from the stormwater sediment basins at the locations specified under Part I F.3.c of this Monitoring and Reporting Program, and analyze for constituents listed in **Table 4**.

**Table 4 Stormwater Monitoring Parameters**

Parameter	USEPA Method	Units
Specific Conductance	120.1	μS/cm
Nitrate & Nitrite as Nitrogen (30-day holding time)	300.0	mg/L
pH	Field	pH Units
Total Organic Carbon	9060	mg/L
Total Suspended Solids	160.2	mg/L
Iron (filtered and unfiltered)	6010B	mg/L

Additional Stormwater Monitoring: If stormwater comes in contact with leachate from spills or seeps, the Discharger shall sample all impacted onsite/offsite stormwater locations for the monitoring parameters included in **Table 1**. These sampling requirements are independent of the two stormwater samples that are collected for the General Stormwater Permit and must be collected whether the facility discharges stormwater offsite or not.

Annually, collect a sediment sample from within each of the stormwater sediment basins, and analyze for the metals listed in §64431, CCR Title 22, Division 4, Chapter 15, Article 4. Sediment sampling is not required if the Discharger removes each basins' accumulated sediments prior to October 1 of each year and discharges the sediments into the Landfill's lined waste management units.

#### 7. Landfill Gas Collection System

Monitor gas monitoring probes MW-1, MW-2 and MW-11 semiannually for methane, carbon dioxide, oxygen, and volatile organic constituents using field meters per California Integrated Waste Management Board requirements for perimeter monitoring. Test for volatile organic compounds annually using method Toxic Organic Compound-14 method (TO-14) or equivalent. Submit monitoring results to the Central Coast Water Board in semiannual reports and include information specified in Title 27, §20934.

#### 8. Groundwater Flow Rate and Direction

The Discharger shall measure the depth to water in each DMP groundwater well at least semiannually as indicated in Table 2, including the times of expected highest and lowest elevations of the water level. The Discharger shall also determine horizontal gradients, groundwater flow rate, and flow direction for each respective groundwater body.

## 9. Sample Procurement Limitation

For any given monitored medium, the Discharger shall collect samples from Monitoring Points within a span not exceeding 30 days within a given Monitoring Period and collect samples in a manner that ensures sample independence to the greatest extent feasible.

## **PART II: SAMPLE COLLECTION AND ANALYSIS**

### **A. SAMPLING AND ANALYTICAL METHODS**

The Discharger shall collect, store, and analyze samples according to the most recent version of Standard USEPA methods (USEPA publication "SW-846"), and in accordance with a sampling and analysis plan approved by the Central Coast Water Board's Executive Officer. A laboratory certified for these analyses by the State of California Environmental Laboratory Program shall perform all water analyses and they must identify the specific methods of analysis. The director of the laboratory whose name appears in the certification shall supervise all analytical work in his/her laboratory and shall sign reports of such work submitted to the Central Coast Water Board. In addition, the Discharger is responsible for seeing that the laboratory analysis of samples from Monitoring Points meets the following restrictions:

1. The methods of analysis and the detection limits used must be appropriate for the expected concentrations. For detection monitoring of any constituent or parameter that is found in concentrations which produce more than 90% non-numerical determinations (i.e., trace) in historical data for that medium, the analytical method having the lowest Method Detection Limit (MDL) shall be selected.
2. Trace results (results falling between the MDL and the Practical Quantitation Limit [PQL]) shall be reported as such.
3. The laboratory shall derive MDLs and PQLs for each analytical procedure, according to State of California laboratory accreditation procedures. Both limits are defined in Part V and shall reflect the detection and quantitation capabilities of the specific analytical procedure and equipment used by the laboratory. If the laboratory suspects that, due to a change in matrix or their effects, the true detection limit or quantitation limit for a particular analytical run differs significantly from the laboratory-derived values, the results shall be flagged accordingly, and an estimate of the limit actually achieved shall be included.
4. Report Quality Assurance and Quality Control (QA/QC) data along with the sample results to which it applies. Also report sample results that are unadjusted for blank results or spike recovery. The QA/QC data submittal shall include:
  - a. Method, equipment, and analytical detection limits;
  - b. Recovery rates, an explanation for any recovery rate that is outside the USEPA-specified recovery rate;

- c. Results of equipment and method blanks;
  - d. Results of spiked and surrogate samples;
  - e. Frequency of quality control analysis;
  - f. Chain of custody logs, and;
  - g. Name and qualifications of the person(s) performing the analyses.
5. Report and flag (for easy reference) QA/QC analytical results involving detection of common laboratory contaminants in associated samples.
  6. Identify, quantify, and report, to a reasonable extent, non-targeted chromatographic peaks. Perform second column or second method confirmation procedures when significant unknown peaks are encountered in attempt to identify and more accurately quantify the unknown analyte(s).

## **B. CONCENTRATION LIMIT DETERMINATION**

1. For the purpose of establishing Concentration Limits for COC and Monitoring Parameters detected in greater than ten percent of a medium's samples, the Discharger shall:
  - a. Statistically analyze existing monitoring data (Part III), and propose, to the Executive Officer, statistically derived Concentration Limits for each COC and each Monitoring Parameter at each Monitoring Point for which sufficient data exist;
  - b. In cases where sufficient data for statistically determining Concentration Limits do not exist the Discharger shall collect samples and analyze for COC and Monitoring Parameter(s) which require additional data. Once sufficient data are obtained the Discharger shall submit proposed Concentration Limit(s) to the Executive Officer for approval. This procedure shall take no longer than two calendar years;
  - c. Sample and analyze new Monitoring Points, including any added by this Order, until sufficient data are available to establish a proposed Concentration Limit for all COC and Monitoring Parameters. Once sufficient data are obtained the Discharger shall submit the proposed Concentration Limit(s) to the Executive Officer for approval. This procedure shall take no longer than two calendar years.
2. Once established, review concentration limits a minimum of annually. Propose new concentration limits, when appropriate.

## **C. RECORD MAINTENANCE**

The Discharger shall maintain records in accordance with CCR Title 27 §21720(f) and 40 CFR 258.29, including maintenance and retention of analytical records for a minimum of five years by the Discharger or laboratory. The Discharger shall extend the period of retention during the course of any unresolved litigation or when requested by the Executive Officer. Such records shall show the following of each sample:

1. Identification of sample, Monitoring Point from which sample was taken, and individual who obtained the sample;
2. Date and time of sampling;

3. Date and time that analyses were started and completed, and the name of personnel performing each analysis;
4. Complete procedure used, including method of preserving the sample, and the identity and volumes of reagents used;
5. Results of analyses, and MDL and PQL for each analysis; and
6. A complete chain of custody log.

### **PART III: STATISTICAL AND NON-STATISTICAL ANALYSIS OF DATA**

#### **A. STATISTICAL ANALYSIS**

For Detection Monitoring, the Discharger shall use statistical methods to analyze COC and Monitoring Parameters that exhibit concentrations that equal or exceed their respective MDL in at least ten percent of applicable historical samples. The Discharger may propose and use any statistical method that meets the requirements of CFR Title 27, §20415(e)(7). All statistical methods and programs proposed by the Discharger are subject to Executive Officer approval.

#### **B. NON-STATISTICAL METHOD**

For Detection Monitoring, the Discharger shall use the following non-statistical method for analyzing constituents which are detected in less than 10% of applicable historical samples. This method involves a two-step process:

1. For constituents that this method applies, compile a specific list of those constituents, which exceed their respective MDL. The Discharger shall compile the list of constituents based on either data from a single sample, or in cases of multiple independent samples, from the sample which contains the largest number of constituents.
2. Evaluate whether the listed constituents meet either of two possible triggering conditions. Either the list from a single well contains two or more constituents, or contains one constituent, which equals or exceeds its PQL. If either condition is met, the Discharger shall conclude that a release is tentatively indicated and shall immediately implement the appropriate re-test procedure under Part III.C.

#### **C. RE-TEST PROCEDURE**

1. In the event that the Discharger concludes that a release has been tentatively indicated, the Discharger shall carry out the reporting requirements of Part IV.C.2 and, within 30 days of receipt of analytical results, collect two new suites of samples for the indicated COC or Monitoring Parameter(s) at each indicating Monitoring Point, collecting at least as many samples per Monitoring Point as were used for the initial test.

2. Analyze each of the two suites of re-test analytical results using the same statistical method (or non-statistical comparison) that provided the tentative indication of a release. If the test results of either (or both) of the re-tested data suites confirm the original indication, the Discharger shall conclude that a release has been discovered and shall carry out the requirements of Part IV.C.
3. Re-tests shall be carried out only for the Monitoring Point(s) for which a release is tentatively indicated, and only for the COC or Monitoring Parameter(s) which triggered the indication. When an analyte of the VOC composite parameter is re-tested, report the results of the entire VOC composite.

## PART IV: REPORTING

### A. MONITORING REPORT

The Discharger shall submit a Monitoring Report semiannually by **April 30 and October 31** of each year. Submit the Monitoring Reports in an electronic format, with transmittal letter, text, tables, figures, laboratory analytical data, and appendices in PDF format (one PDF for the entire report). The Discharger is required to upload the full Monitoring Report into Geotracker, as stipulated by California State law. The Monitoring Report shall address all facts of the Landfill's monitoring. The Monitoring Report shall include, but should not be limited to the following:

1. Letter of Transmittal

A letter transmitting the essential points shall accompany each report. The letter shall include a discussion of violations caused by the Landfill since submittal of the last such report. If the Discharger has not observed any new violations since the last submittal, the Discharger shall state this in the transmittal letter. Both the Monitoring Report and the transmittal letter shall be signed by: for private facilities, a principal executive officer at the level of vice president; for public agencies, the director of the agency. Upon Water Board Executive Officer approval, the cited signature can be by a California Registered Civil Engineer or Certified Engineering Geologist who has been given signing authority by the cited signatories. The transmittal letter shall contain a statement by the official, under penalty of perjury, that to the best of the signer's knowledge the report is true, complete, and correct.

2. Compliance Summary

The Summary shall contain at least:

- a. Discussion of compliance with concentration limits. Release indications and any corrective actions taken.
- b. For each monitored groundwater body, calculate groundwater velocity.

3. Graphical Presentation of Data

For each Monitoring Point in each medium, submit, in graphical format, the complete history of laboratory analytical data. Graphs shall effectively illustrate trends and/or variations in the laboratory analytical data. Each graph shall plot a single constituent concentration over time at one (for intra-well comparison) or more (for inter-well

comparisons) monitoring points in a single medium. Where applicable, include Maximum Contaminant Levels (MCLs) and/or concentration limits along with graphs of constituent concentrations. When multiple samples are taken, graphs shall plot each datum, rather than plotting mean values.

The Discharger shall also determine horizontal gradients, groundwater flow rate, and flow direction for each respective groundwater body. Present this data on a figure that depicts groundwater contours and flow directions as well as gradient. Include one figure for each water level measuring period with the semiannual monitoring report.

4. Corrective Action Summary

Discuss significant aspects of any corrective action measures conducted during the Monitoring Period and the status of any ongoing corrective action efforts, including constituent trend analysis. Calculate pollutant load removed from the sites impacted media by mass (water, gas, leachate) removal system(s). Base the mass removal calculations on actual analytical data as required by Part I.E. Present discussion and indications, relating mass removal data to the violation the corrective action is addressing.

5. Laboratory Results

Summarize and report laboratory results and statements demonstrating compliance with Part II. Include results of analyses performed at the landfill that are outside of the requirements of this Monitoring and Reporting Program.

6. Sampling Summary

- a. For each Monitoring Point addressed by the report, a description of: 1) the method and time of water level measurement; 2) the method of purging and purge rate and well recovery time; and 3) field parameter readings.
- b. For each Monitoring Point addressed by the report, a description of the type of sampling device used, its placement for sampling, and a description of the sampling procedure (number of samples, field blanks, travel blanks, and duplicate samples taken; the date and time of sampling; the name and qualification of the person actually taking the samples; description of any anomalies).

7. Leachate Collection and Detection Systems

A summary of the total volume of leachate collected each month since the previous Monitoring Report for both the leachate collection and leachate detection systems. Also include fluid level measurements in leachate collection and recovery system (LCRS) along with transducer calibration records. Tabulate and graph the LCRS fluid level measurements and fluid volumes in the semiannual reports.

8. Standard Observations

A summary of Standard Observations (Part V) made during the Monitoring Period.

9. Map(s)

The base map for the Monitoring Report shall consist of a current aerial photograph or include relative topographical features, along with Monitoring Points and features of the landfill facility.

## B. ANNUAL SUMMARY REPORT

The Discharger shall submit an annual report to the Central Coast Water Board covering the previous monitoring year. The annual Monitoring Period ends on December 31 each year. Submit this Annual Summary Report no later than April 30 of each year. The Discharger may combine the Annual Summary Report with the Second Semiannual Monitoring Report of the year. The annual report must include the information outlined above and the following:

1. Discussion

Include a comprehensive discussion of the compliance record as it relates to Waste Discharge Requirements Order No. R3-2009-0001, a review of the past year's significant monitoring system and operational changes, a summary of corrective action results and milestones, and a review of construction projects, with water quality significance, completed or commenced in the past year or planned for the up-coming year.

2. Statistical Limit Review

The Discharger shall review the statistically derived concentration limits a minimum of annually and revise them as necessary. The Discharger shall discuss data collected during the past year and consider for inclusion in, and determination of, proposed limits for the coming year. For statistical limits that are changed from the previous year, include a comprehensive discussion of the proposed limit for Executive Officer review and consideration.

3. Analytical Data

Complete historical analytical data presented in tabular form in Excel™ format or in another file format acceptable to the Executive Officer.

4. Leachate Collection and Detection System

The Discharger shall submit the results of the annual leachate collection and leachate detection system testing, as required by Part I.F. Submit annually testing that shows the leachate is non-hazardous, if leachate is used for dust control.

5. Map(s)

A map, or set of maps, that indicate(s) the type of cover material in place (final, long-term intermediate, or intermediate) over inactive and completed areas.

## C. CONTINGENCY RESPONSE

1. Leachate Seep

The Discharger shall, within 24 hours, report by telephone concerning the discovery of previously unreported seepage from the disposal area. File a written report with the Water Board within seven days, containing at least the following information:

- a. A map showing the location(s) of seepage along with photographic documentation;
- b. An estimate of the flow rate;
- c. Location of sample(s) collected for laboratory analyses. Unless otherwise directed by Water Board staff, the Discharger shall sample all leachate seeps and spills for

the monitoring parameters in **Table 1**. In the event multiple seeps occur in a similar localized area (slope or bench), the Discharger may use professional judgment to reduce the number of leachate seep or spill samples provided the Discharger collects a representative sample. The Discharger shall photo document sample location, all observed seeps, and document the sample location(s) on a map or diagram. The Discharger is also required to sample stormwater in accordance with **Part I.F.6**;

- d. A description of the nature of the discharge (e.g. pertinent observations and analysis); and
- e. A summary of corrective measures both taken and proposed.

## 2. Initial Release Indication Response

Should the initial statistical or non-statistical comparison (under Part III. A or B) indicate that a new release is tentatively identified, the Discharger shall:

- a. Within 24 hours, notify the Central Coast Water Board verbally or by email as to the Monitoring Point(s) and constituent(s) or parameter(s) involved;
- b. Provide written notification by certified mail within seven days of such determination; and,
- c. Either of the following:
  - i. Carry out a discrete re-test in accordance with Part III.C. If the re-test confirms the existence of a release or the Discharger fails to perform the re-test, the Discharger shall carry out the requirements of Part IV.C.4. In any case, the Discharger shall inform the Central Coast Water Board of the re-test outcome within 24 hours of results becoming available, following up with written results submitted by certified mail within seven days, or;
  - ii. Make a determination, in accordance with Title 27, §20420(k)(7), that a source other than the waste management unit caused the release or that the evidence is an artifact caused by an error in sampling, analysis, or statistical evaluation or by natural variation in the groundwater, surface water, or the unsaturated zone.

## 3. Physical Evidence of a Release

If either the Discharger or the Executive Officer determines that there is significant physical evidence of a new release pursuant to Title 27, §20385(a)(3), the Discharger shall conclude that a release has been discovered and shall:

- a. Within seven days notify the Executive Officer of this fact by certified mail (or acknowledge the Executive Officer's determination);
- b. Carry out the requirements of Part IV.C.4. for potentially-affected medium; and
- c. Carry out any additional investigations stipulated in writing by the Executive Officer for the purpose of identifying the cause of the indication.

## 4. Release Discovery Response

If the Discharger concludes that a new release has been discovered the following steps shall be carried out:

- a. If this conclusion is not based upon monitoring for COC, the Discharger shall sample for COC at Monitoring Points in the affected medium. Within seven days of receiving the laboratory analytical results, the Discharger shall notify the Executive Officer, by certified mail, of the concentration of COC at each Monitoring Point. This notification shall include a synopsis showing, for each Monitoring Point, those constituents that exhibit an unusually high concentration;

- b. The Discharger shall, within 90 days of discovering the release, submit to the Executive Officer a Revised Report of Waste Discharge proposing an Evaluation Monitoring and Reporting Program that:
    - (1) meets the requirements of Title 27, §20420 and §20425; and
    - (2) satisfies the requirements of 40 CFR §258.55(g)(1)(ii) by committing to install at least one monitoring well directly downgradient of the center of the release;
  - c. The Discharger shall, within 180 days of discovering the release, submit to the Executive Officer a preliminary engineering feasibility study meeting the requirements of Title 27, §20420; and
  - d. The Discharger shall immediately begin delineating the nature and extent of the release by installing and monitoring assessment wells as necessary to assure that the Discharger can meet the requirements of Title 27, §20425 to submit a delineation report within 90 days of when the Executive Officer directs the Discharger to begin the Evaluation Monitoring Program.
5. Release Beyond Facility Boundary
- Any time the Discharger or the Executive Officer concludes that a release from the Landfill has proceeded beyond the facility boundary, the Discharger shall notify persons who either own or reside upon the land that directly overlies any part of the plume and are immediately downgradient of the plume (Affected Persons).
- a. Initial notification to Affected Persons shall be accomplished within 14 days of making this conclusion and shall include a description of the Discharger's current knowledge of the nature and extent of the release.
  - b. Subsequent to initial notification, the Discharger shall provide updates to Affected Persons, including any persons newly affected by a change in the boundary of the release, within 14 days of concluding there has been any material change in the nature or extent of the release.
  - c. Each time the Discharger sends a notification to Affected Persons (under a. or b. above), the Discharger shall, within seven days of sending such notification, provide the Executive Officer with both a copy of the notification and a current mailing list of Affected Persons.

## **PART V: DEFINITION OF TERMS**

### **A. AFFECTED PERSONS**

Individuals who either own or reside upon the land which directly overlies any part of that portion of a gas or liquid phase release that may have migrated beyond the facility boundary.

### **B. CONCENTRATION LIMITS**

The Concentration Limit for any given COC or Monitoring Parameter in a given monitored medium shall be either:

1. The constituent's statistically determined background value or interval limit, established using an Executive Officer approved method (Part III); or
2. In cases where the constituent's MDL is exceeded in less than 10% of historical samples, the MDL is the concentration limit defined in **Part II. A.1.**

### **C. CONSTITUENTS OF CONCERN (COC)**

An extensive list of constituents likely to be present in a typical municipal solid waste landfill. The COC for this landfill are listed in **Table 3**.

#### **D. MATRIX EFFECT**

Any increase in the MDL or PQL for a given constituent as a result of the presence of other constituents, either of natural origin or introduced through a release, that are present in the sample being analyzed.

#### **E. METHOD DETECTION LIMIT (MDL)**

The lowest concentration at which a given laboratory, using a given analytical method to detect a given constituent, can differentiate with 99% reliability, between a sample which contains the constituent and one which does not. The MDL shall reflect the detection capabilities of the specific analytical procedure and equipment used by the laboratory.

#### **F. MONITORED MEDIUM**

Those media that are monitored pursuant to this Monitoring and Reporting Program (groundwater, surface water, liquid, leachate, gas condensate, and other as specified).

#### **G. MONITORING PARAMETERS**

A short list of constituents and parameters used for the majority of monitoring activities. The Monitoring Parameters for this Landfill are listed in **Part I. F**.

#### **H. MONITORING PERIOD (frequency)**

The duration of time, during which a sampling event must occur. The Monitoring Period for the various media and programs is specified in **Part I.F**. The due date for any given report will be 30 days after the end of its Monitoring Period, unless otherwise stated.

#### **I. PRACTICAL QUANTITATION LIMIT (PQL)**

The lowest acceptable calibration standard (acceptable as defined for a linear response or by actual curve fitting) times the sample extract dilution factor times any additional factors to account for Matrix Effect. The PQL shall reflect the quantitation capabilities of the specific analytical procedure and equipment used by the laboratory. PQLs reported by the laboratory shall not simply be restated from USEPA analytical method manuals. Laboratory derived PQLs are expected to closely agree with published USEPA estimated quantitation limits (EQL).

#### **J. RECEIVING WATERS**

Any surface water, which actually or potentially receives surface or groundwater, which pass over, through, or under waste materials or contaminated soils.

#### **K. STANDARD OBSERVATIONS**

##### **1. For Receiving Waters:**

- a. Floating and suspended materials of waste origin; presence or absence, source, and size of affected area.
- b. Discoloration and turbidity - description of color, source, and size of affected area.
- c. Presence of odors; characterization, source, and distance of travel from source.
- d. Evidence of beneficial use – presence of water-associated wildlife; and
- e. Flow rate to the receiving water.

f. Weather Conditions – wind direction and estimated velocity, total precipitation during the previous five days and on the day of observation.

2. For the Landfill:

- a. Whether stormwater drainage ditches and stormwater sediment basins contain liquids;
- b. Evidence of liquid leaving or entering the Landfill, estimated size of affected area, and estimated flow rate (show affected area on map).;
- c. Presence of odors; characterization, source and distance from source;
- d. Evidence of ponding over the WMUs (show affected area on map);
- e. Evidence of erosion or of exposed waste;
- f. Evidence of waste in the drainage system (e.g., ditches and stormwater sediment basins);
- g. Inspection of stormwater discharge locations for evidence of non-stormwater discharges during dry season; and
- h. Integrity of drainage systems during wet season.

**L. VOLATILE ORGANIC COMPOUND (VOC) COMPOSITE MONITORING PARAMETER (VOC composite)**

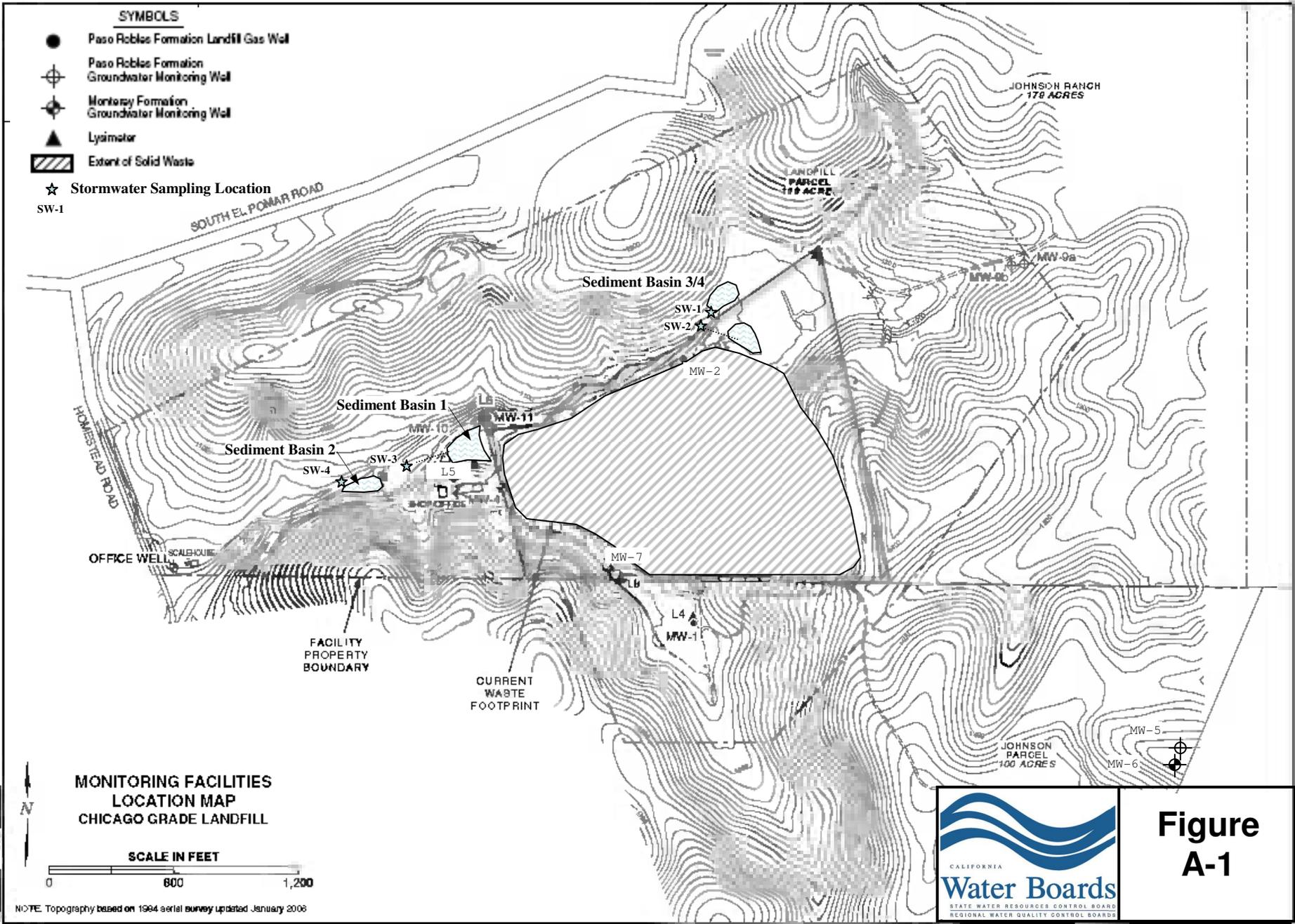
VOC composite is a composite parameter that encompasses a variety of VOCs. The constituents addressed by the VOC composite Monitoring Parameter includes all VOCs detectable using USEPA Methods 8260B (water) and TO-14 (gas) or equivalent.



ORDERED BY: \_\_\_\_\_  
for Roger Briggs, Executive Officer

Date: July 29, 2011

Figure: Figure A-1 Monitoring Point Location Map



**Figure A-1**

**DECLARATION OF MICHAEL F. HOOVER IN SUPPORT OF REQUEST  
FOR IMMEDIATE STAY OF REVISED MRP ORDER NO. R3-2009-0001**

I, Michael F. Hoover, have personal knowledge of the following facts, and if called upon to testify to these facts, I could and would do so competently:

1. I am the acting General Manager of the Chicago Grade Landfill, located at 2290 Homestead Road, in San Luis Obispo County. Chicago Grade Landfill and Recycling, LLC owns the property on which the Landfill is located. Chicago Grade Landfill, Inc. operates the Landfill. I am 51% owner of both Chicago Grade Landfill and Recycling, LLC and Chicago Grade Landfill, Inc. (hereafter collectively "Petitioner"). I submit this declaration in support of an immediate stay of Revised MRP Order No. R3-2009-0001 in compliance with Section 2053 of Title 23 of the California Code of Regulations.
2. As discussed in the Petition and accompanying Points and Authorities, Revised MRP Order No. R3-2009-0001 adds new monitoring requirements significantly increasing the frequency, locations, and testing parameters for sampling of leachate and leachate-impacted stormwater at the Landfill. These additional monitoring requirements were imposed without any demonstration by staff, as required by Water Code §13267(b)(1), that the burden of the additional sampling, including costs, bears a reasonable relationship to the need for the sampling and the benefits to be obtained from it. In addition, the new requirements were imposed without Petitioner being afforded adequate due process or equal protection of the law.
3. Compliance with the new requirements will be burdensome and costly on Petitioner. Compliance will place Petitioner at a competitive disadvantage. Moreover, Petitioner's failure to comply with the additional monitoring requirements could subject Petitioner to an enforcement action, including civil and criminal liability, pursuant to Water Code § 13268. For the foregoing reasons, a stay is necessary to avoid substantial harm to Petitioner.
4. Because adequate monitoring protocols for leachate and leachate-impacted stormwater already exist under MRP Order No. R3-2009-0001 (in effect prior to July 29, 2011), and these protocols are sufficiently protective of beneficial uses of State waters, there is no risk that substantial harm will result to other interested persons, the public, or the environment if Petitioner's request for a stay is granted. The stay will simply restore the regulatory status quo that was in effect prior to July 29, 2011.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 29, 2011

  
MICHAEL F. HOOVER