

Chicago Grade Landfill, Inc.

2290 Homestead Road ♦ Templeton, CA 93465
Phone 805 466 -2985 ♦ Fax 805 466-6155

March 11, 2004

California Regional Water Quality Control Board
81 Higuera Street, Suite 200
San Luis Obispo, CA 93401

Attention: Mr. John Robinson
Mr. Frank Demarco

Subject: Comments Concerning
Revised Waste Discharge Requirements Order No. R3-2004-002 and
Monitoring & Reporting Program No. R3-2004-002



Dear Mr. Robinson and Mr. Demarco:

INTRODUCTION

This letter responds to your February 24, 2004 request for comments on the above cited Draft Waste Discharge Order and Monitoring & Reporting Program.

ISSUES

WASTE DISCHARGE REQUIREMENTS

Property Acreage

Title 27 §20164 defines the "Waste Management Facility" as the entire parcel of property at which discharge operations are conducted. The operator owns 188 acres, yet #10 on page 2 of the Draft Order indicates that the Waste Management Facility is 142.6 acres. As shown in the Report of Waste Discharge dated October 2003, the landfill property is comprised of two assessor's parcels: APN 034-212-06 (45.4 acres), and APN 034-212-05 (142.6 acres) which total 188 acres. Item #10 on page 2 of the Draft Order, page 3 of the Order and portions of the Staff Report should be changed to reflect a Waste Management Facility size of 188 acres.

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Geologic Materials

Under "General Findings" #31, the Draft Order states that "the Landfill does not meet the geologic settling requirements of Title 27 §20250(b)(1) regarding preventing waste from posing a threat to water quality". Title 27 §20250(b)(1) refers to a requirement for new landfills (not existing facilities) that requires them to overlie earth materials with a permeability of 1×10^{-6} cm/sec. Even though this regulation does not apply to Chicago Grade Landfill, Staff's statement is not correct, and is not supported by documents previously submitted to the Board. Specifically, Table 2 of the Report of Waste Discharge dated October 2003 indicates that 34 soil samples taken at this site exhibit a permeability of 10^{-6} cm/sec or less, which is the standard in §20250(b)(1). In fact, only three soil samples have ever been found at this site that do not meet the 10^{-6} cm/sec standard. These three soils, tested in 1986, were surficial, uncompacted samples that were not in contact with the waste (i.e. outside the permitted area). All properly sampled and tested soils that underlie the current waste disposal area and the future expansion area have been found to have a permeability of 10^{-7} to 10^{-9} cm/sec. Since there is no reliable data to support Finding #31, and since it is not relevant to existing facilities, we request that it be deleted.

Access

Provision #8 of the Draft Order allows the Regional Board Staff access to this site at any time. This provision differs from previous access requirements in that it allows staff onsite after normal business hours when no one else is present. It further allows staff to access company offices and files at any time of the day or night. This provision is problematic in that there is extensive security at this site, including: locked gate, locked scale house, locked offices, a perimeter security system at the shop office and an armed guard. In short, if staff cuts the lock and accesses this site and/or penetrates the company security system there is a good chance staff will be arrested by the Sheriff. All other enforcement agencies include the wording: "during normal business hours". At a

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minimum, and for Staff's own safety, the wording "at any time", should be followed by the phrase "when Landfill staff is on site". If Staff really believes that some sort of illegal activity is going on at a regulated facility they can always get a search warrant and break down the doors. We recognize that other facilities have this new provision in their Order, but this facility is different in that the owner's residence is integrated into the landfill office.

Financial Assurance-Reporting

The State's annual review of the Operator's compliance with Financial Assurance has historically fallen under the authority of the California Integrated Waste Management Board pursuant to Assembly Bill 1220 and Title 27. Assembly Bill 1220, Chapter 1.5; "The Solid Waste Disposal Regulatory Reform Act of 1993" Section 43101(c)(1) states "As provided by Sections 40054 and 4055, the Board, the State Water Board, and the Regional Water Boards shall retain their appropriate statutory authority over solid waste disposal facilities and sites. A clear and concise division of authority shall be maintained in both statute and regulation to remove all areas of overlap, duplication, and conflict between the Board and the State Water Board and Regional Water Boards, or between the Board and any other State agency, as appropriate" (emphasis added).

To that end, certain sections of California Code of Regulations Title 27 were written to segregate the regulatory duties between the Waste Board and Water Board as they pertain to financial assurance. Title 27 CCR Chapter 6, Article 4 §22215 et. seq. directs the Waste Board to require and evaluate requirements for Financial Assurance. The Regional Board's authority with respect to financial assurance is limited to §22222 which authorizes the Regional Board to require the operator to provide financial assurances for Corrective Action only when the Waste Board does not require financial assurances for corrective action, to review closure and post closure plans (§21769) and to review and approve the corrective action cost estimates (§22221). While §20380(b) also

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allows the Regional Board to add a requirement for Corrective Action to the Waste Discharge Requirements, there is no authorization in Title 27 for the Regional Board to evaluate or be notified of the mechanism; that burden rests solely with the Waste Board. Conversations with Financial Assurance Staff at the Waste Board confirm our position on this issue.

We request Staff strike Reporting requirement #32. In addition, the extensive discussion of Financial Assurance in the staff report should be deleted both because it is beyond the scope of the Regional Board's authority and because it clearly leaves the Board members and the Public with the impression that Chicago Grade Landfill does not have the proper Financial Assurance mechanisms in place ("it is unclear if the Discharger has a Financial Assurance mechanism in place for corrective action" – Staff Report, page 5). What is omitted from the Staff Report is the fact that we currently have and have had for many years a Pollution Insurance policy that provides 10 times the required coverage (10 million dollars) for Corrective Action. Further, there is no mention in the Staff Report that our insurance policy was provided to Staff, or that our facility was re-permitted by the Waste Board in 2001 and 2003, at which time Waste Board Staff made a finding that Chicago Grade Landfill was in compliance with all Financial Assurance mechanisms. Regional Board Staff (in the Staff Report) refers to an update of Financial Assurance for Corrective Action in calendar year 2000. What the Staff Report does not state is that while we had a Financial Assurance mechanism in place for the last 10 years, the new form (Form 106) now used by the Waste Board was apparently not signed by our insurance company. The reason that it was not signed is because no one from the State requested that they sign it. The facts in this matter indicate a minor bureaucratic snafu, which is far from Regional Board Staff's implication in the Staff Report that we do not have (and have not had) a Financial Assurance mechanisms in place for the past three (3) years.

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Therefore, in light of the Legislature's intent with respect to AB 1220, the fact that California Integrated Waste Management Board Staff are directed by regulation to oversee Financial Assurance compliance, and Staff's inflammatory and misleading discussion of Financial Assurance in the Staff Report, we request that the entire discussion of Financial Assurance be deleted from the Staff Report and Draft Order except for the request for an updated corrective action cost estimate.

MONITORING & REPORTING PROGRAM

Leachate and Drainage Systems Inspections

Year-round bi-weekly leachate containment inspection and reports seems like gross overkill since our facility generates leachate only a few days a year, and always in winter. A bi-weekly leachate containment inspection and reporting requirement seems appropriate in winter months; the Monitoring & Reporting Program should reflect that change.

Monthly leachate pump testing, as required in the Draft Monitoring & Reporting Program also seems like a waste of time during the dry season. Title 27 requires an annual test, which should be sufficient.

The draft Monitoring & Reporting Program requires inspections of and reporting of drainage system condition after each storm event. We request documentation from Board Staff that other competing landfills in Region 3 are required to record drainage inspections after each storm event. This new requirement increases our inspection costs dramatically and serves no tangible purpose, since the simple recordation of a problem by an inspector is not the same as landfill personnel addressing the problem. Landfill Staff are already required to maintain drainage throughout the winter months. We request relief from reporting of drainage system condition after each storm.

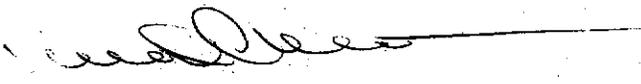
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Analytical Monitoring and Monitoring Locations

There is a new requirement in the Draft Monitoring & Reporting Program that Chicago Grade Landfill analyze VOC's in gas wells GW-2 through GW-22. These wells are used for landfill gas extraction and are located inside the point of compliance. The landfill gas monitoring wells are actually MW-1, MW-2 and MW-11. We believe that annual TO-14 tests of MW-1, MW-2 and MW-11 are appropriate, and that all chemical tests of gas extraction wells vapor GW-2 through GW-22 be deleted. Keep in mind that some testing of GW-2 through GW-22 (methane and oxygen) is also required by the APCD, and that AB 1220 directs the Water Board to limit duplication of regulatory oversight.

Sincerely,

CHICAGO GRADE LANDFILL, INC.



Michael F. Hoover
General Manager

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