

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**Technical Report
Bradley Park/Old Linda Vista Landfill
City of San Marcos**

For

**Proposed Administrative Civil Liability
Contained in Complaint No. R9-2008-0080
City of San Marcos**

Noncompliance with

**California Water Code Section 13267, and
Water Quality Investigative Order
No. 2006-0044, as Amended**

September 26, 2008

**by
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1. INTRODUCTION

On September 26, 2008 Assistant Executive Officer Mike McCann of the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued Administrative Civil Liability (ACL) complaint No. R9-2008-0080 to the City of San Marcos pursuant to California Water Code (Water Code) section 13323.

This report provides a summary of factual and analytical evidence supporting Complaint No. R9-2008-0080 for administrative assessment of civil liability in the amount of \$59,975 against the City of San Marcos for violation of Water Code section 13267, as implemented under Water Quality Investigative Order No. R9-2006-0044 (Attachment No. 2).

2. BACKGROUND

Between the years of 1948 and 1968, the County of San Diego owned, operated and discharged wastes into the landfill, located southeast of the intersection of Ranch Santa Fe Road and Linda Vista Drive in the City of San Marcos.

The Regional Board did not issue waste discharge requirements to the County for the landfill during its years of operation. According to Regional Board files, there were no complaints or violations issued against the landfill during its operational history.

Upon completion of landfill activities, the County covered the wastes with soil, and subsequently transferred the property to the City of San Marcos. In the following years, the City redeveloped the site and converted the landfill surface into an irrigated grass park and recreation area. Since the time of redevelopment, the Regional Board has referred to the inactive landfill as the Bradley Park Landfill.

The County of San Diego and the City of San Marcos entered into a Joint Exercise Powers Agreement (JPA) on August 12, 1968. The JPA apparently established and/or allocated responsibility among the two entities in regards to maintenance and monitoring of the former Landfill. The Regional Board was not privy to, or part of, the JPA.

The Regional Board adopted General Waste Discharge Requirements (WDR) Order No. 97-11 on April 9, 1997. Order No. 97-11 prescribes maintenance and monitoring requirements for owners of landfills in the region that ceased operation prior to 1984, the date of enactment of the current regulations

governing landfill activities. On June 14, 2000 the Regional Board added the City of San Marcos and the Bradley Park Landfill to the Order (Addendum No. 1 to Order No. 97-11). As the owner of the Bradley Park Landfill, the City of San Marcos was named as the Discharger, responsible for maintaining the cover of the landfill, as well as conducting and reporting the results of ground-water monitoring. At the time of adoption of Addendum No. 1, the City of San Marcos did not contest being added to the Order and did not file a petition with the State Water Resources Control Board (SWRCB) to overturn the Regional Board's decision to name the City as the entity responsible for implementation of Order No. 97-11.

In November 2004, the County of San Diego, Department of Public Works (DPW) informed the Regional Board that during a routine inspection (as part of the JPA), the County observed what it referred to as a ground-water seep on the north-facing slope adjacent to a drainage course that bisects the Bradley Park Landfill. The County provided the Regional Board with a copy of the inspection report, photographs, and analytical results from samples taken from the seep in a report entitled "Seep Investigation Report", dated January 20, 2005.

On January 26, 2005, in response to the referral from the County, the Regional Board conducted a compliance inspection at the Landfill. The Regional Board observations made during the inspection concurred with the County's judgment that a liquid seep was leaking into the drainage course that runs along the northern edge of the Bradley Park Landfill, and which is a tributary to San Marcos Creek. Consequently, Notice of Violation (NOV) No. R9-2005-0046 was issued to the City of San Marcos by the Regional Board on February 1, 2005 for the unauthorized discharge of wastes into surface waters. The NOV alleged that the landfill failed to fully contain waste constituents in the Bradley Park Landfill. The failure of the landfill to fully contain waste constituents has resulted in the continuing discharges of waste constituents into ground water, and likely surface waters, and the vadose (unsaturated) zone.

On March 29, 2006 the City of San Marcos reported that another seep of liquid wastes had been observed emanating from the Bradley Park Landfill into the creek that bisects the site. The seep was reportedly observed after several rainstorm events that had occurred at the site:

Investigative Order No. R9-2006-0044 was issued on April 17, 2006 pursuant to Water Code section 13267, which authorizes the Regional Board to require dischargers to provide the Regional Board with technical or monitoring reports necessary to investigate the quality of waters within the region. The Investigative Order requires the City of San Marcos to submit an Evaluation Monitoring Program work plan, an Evaluation Monitoring Program Report (based upon

completion of the work plan), and a comprehensive site assessment report for an evaluation of alternative methods to implement corrective action at the site.

3. ALLEGATIONS

The City of San Marcos failed to submit an adequate technical report (in the form of a Report of Waste Discharge (RoWD)) that satisfied the requirements of the investigative Order in this matter (No. R9-2006-0044, as amended). The RoWD was due to the Regional Board on May 18, 2007. On January 30, 2008 the City submitted an inadequate report that is significantly incomplete and failed to meet the directives outlined in the investigative Order No. R9-2006-0044.

4. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

The Administrative Civil Liability (ACL) Complaint is issued pursuant to the procedures outlined in Water Code section 13323. The Complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

Persons or entities that fail to provide the Regional Board with required information pursuant to Water Code section 13267 are subject to an ACL pursuant to Water Code section 13268, in an amount not to exceed one thousand dollars (\$1,000) for each day of violation. The statutory maximum ACL amount for the alleged violations is \$492,000 for 492 days of violation.

Water Code section 13267 (a) and (b) states, in part:

- (a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of waters of the state within its region.
- (b)(1) In conducting an investigation specified in subdivision (a), the 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, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters 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.

Water Code section 13268 (a) and (b) state, in part:

- (a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
- (b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day the violation occurs.

In determining the amount of the liability, the Regional Board shall consider all the following factors, as required by Water Code section 13327:

4.a Nature, Circumstance, Extent, and Gravity of the Violation

The Bradley Park Landfill is located in the San Marcos Creek watershed (904.50). The designated beneficial uses for surface waters in the San Marcos Creek watershed include agricultural supply, contact water recreation, non-contact water recreation, warm freshwater habitat, and wildlife habitat. There are no designated beneficial uses for ground water in this hydrologic area. Though the Basin Plan exempts ground water in the San Marcos Creek Hydrologic Unit from designated beneficial uses, the Regional Board is obligated to implement State Water Resources Control Board Resolution 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*. Furthermore, the hydrological relationship between ground water and surface waters within the Bradley Park Landfill area has not been adequately characterized, and although ground water is not designated for a beneficial use, ground water may be contributing to the degradation of surface water quality.

Investigative Order No. R9-2006-0044 was issued to the City of San Marcos on April 17, 2006 in response to the observance of an ongoing discharge of liquid wastes from the side of the landfill into surface waters. The technical report required pursuant to this Order is necessary to provide information to the

Regional Board to evaluate and determine if corrective action measures are appropriate for the Bradley Park Landfill. The deadline for submittal was extended twice (by addenda to the Investigative Order) to May 18, 2007.

Directive No. C.1 of the Investigative Order requires the City of San Marcos to:

- a. Delineate the nature and extent of the release;
- b. Propose a list of constituents of concern;
- c. Propose Water Quality Protection Standards for each constituent of concern;
- d. Submit an engineering feasibility study to assess remedial action alternatives;
- e. Propose corrective action measures for the site.

The RoWD submitted on January 30, 2008 failed to fully delineate the nature and extent of the release of waste constituents in and around the site. Consequently, Water Quality Protection Standards for the constituents of concern could not be determined; and corrective action measures, as well as the engineering feasibility study assessing each corrective action alternative, was not completed. A comprehensive site assessment as well as defining the hydrologic relationship between ground water and surface water must be completed in order for the City to meet the requirements of the Investigative Orders.

Addendum No. 2 (to Order No. R9-2006-0044) revised the due date for the Evaluation Monitoring Program Report and the Report of Waste Discharge to May 18, 2007. To date, a comprehensive report containing the required information has not been received by the Regional Board. The City's failure to submit a complete technical report impedes the Regional Board's ability to evaluate the site conditions and determine to what extent the seep causes, or contributes to, a condition of nuisance or pollution.

4.b Whether the Discharge is Susceptible to Cleanup or Abatement

The RoWD must be complete before the Regional Board can determine whether the release is susceptible to Cleanup or Abatement.

4.c The Degree of Toxicity of the Discharge

The RoWD must be complete before the Regional Board can assess the full extent of impacts to surface waters associated with the illicit release from the Bradley Park Landfill.

4.d Degree of Culpability

The City of San Marcos is fully culpable for failing to complete an adequate investigation of the potential effects on surface and ground-water quality by the Landfill. After the Investigative Order was issued, the City of San Marcos twice requested extensions for submittal of information required under the Investigative Order, resulting in amendments No. 1 and No. 2 to the original Order. The City of San Marcos was fully aware of the requirements in the investigative Order. Clearly, the City of San Marcos was aware of the May 18, 2007 deadline and knowingly failed to meet the required due date. Furthermore, in the City of San Marcos' last correspondence, (see Attachment 6) the City said it would not submit the required information until a legal settlement could be made between the City of San Marcos and the County of San Diego. As a result, the City of San Marcos' degree of culpability is high.

4.e Prior History of Violations

After being enrolled under WDR Order No. 97-11, the Regional Board issued several Notices of Violation over the years regarding the City's lack of maintenance or monitoring.

January 2003 – Notice of Violation No. R9-2003-0049 was issued to the City of San Marcos for violations of waste discharge requirements observed during a site inspection on December 23, 2002. Violations include a failure to perform adequate site maintenance and implement best management practices (BMPs).

February 2005 – The Regional Board issued Notice of Violation No. R9-2005-0046 for violations of waste discharge requirements regarding discharges of wastes to land, discharge of waste to surface drainage courses, and a failure to maintain the integrity of containment structures.

May 2005 – The Regional Board issued Notice of Violation No. R9-2005-0172 for violations observed during the follow-up site inspection on May 5, 2005. Violations of waste discharge requirements included the discharge of waste to surface waters, the discharge of waste to waters of the state (CWC section 13050); the failure to implement BMPs in accordance with the NPDES permit for the County of San Diego.

September 2007 – The Regional Board issued Notice of Violation No. R9-2007-0196 (Attachment No. 2) to the City of San Marcos for failure to submit the required technical information in the form of a Report of Waste Discharge, and for deficiencies with the Evaluation Monitoring Program Report (submitted

May 17, 2007). At this point in time, the report of waste discharge was 121 days late.

May 30, 2008 – The Regional Board issued Notice of Violation No. R9-2008-0051 (Attachment No. 5) to the City of San Marcos for failure to submit the required information in the form of a Report of Waste Discharge.

The history of violations and subsequent enforcement actions taken by the Regional Board against the City of San Marcos for the Bradley Park Landfill demonstrates that the City of San Marcos has consistently violated regulatory requirements. The allegation presented here results from the City of San Marcos' refusal to submit timely and complete information.

4.f Voluntary Cleanup Efforts Undertaken

In the three and a half year period since the Regional Board became aware of the seep and exposed waste at the Bradley Park landfill, no voluntary cleanup efforts have been made by the City of San Marcos. The following interim actions have been made under the direction of the Regional Board:

- May 9, 2005 – The City of San Marcos informed the Regional Board that the sub-drain, located beneath the soccer field, has been capped. The City believes that the subdrain is the cause of the seep into the creek. The City also stated that rock had been placed on the north-facing slopes of the landfill to serve as erosion control measures. This was later confirmed by Regional Board staff.

Though the City of San Marcos has taken steps to implement interim corrective actions in accordance with Investigative Order No. R9-2006-0044, their efforts were delayed, and actions were undertaken only under the direction of the Regional Board; there have been no voluntary cleanup efforts made at the site to date. It took the City of San Marcos seven months from the date of issuance of Investigative Order No. R9-2006-0044 to cover the exposed waste within the creek. A total of twenty three months passed from the time the waste was first documented by the Regional Board (January 2005) until covering the materials was complete (November 2006).

4.g Economic Savings

At this time, the Regional Board does not have the information necessary to determine the specific amount of economic benefit or savings associated with the delay in conducting a complete site assessment and submitting a comprehensive Report of Waste Discharge. The Regional Board is uncertain as to the amount of

work the City of San Marcos would need to complete in order to fulfill the requirements of the Investigative Order, and therefore, cannot estimate whether there is an economic benefit associated with the delay.

4.h Other Matters as Justice May Require

To date, the Regional Board has spent an estimated 88 hours to investigate, review submitted information, and consider actions regarding this matter. To date, staff costs are no less than \$12,270.

4.i Ability to Pay and Ability to continue in Business

According to the City of San Marcos' website, the annual budget for Fiscal Year 2008-2009 is seventy-five million, four hundred twenty-four thousand, seven hundred and eight dollars (\$75,424,708). The proposed liability for Complaint No. R9-2008-0080 is fifty-nine thousand, nine hundred and seventy-five dollars (\$59,975). The proposed liability constitutes only 0.08% of the City of San Marcos' annual budget.

5. ADMINISTRATIVE CIVIL LIABILITY

5.a Maximum Civil Liability

Pursuant to Water Code section 13268, the maximum civil liability that the Regional Board may assess for failure to submit an adequate technical report to delineate the extent of waste migration and to propose feasible alternatives to correct the problem, to the Regional Board by the due date of May 18, 2007 is one thousand dollars (\$1,000) per day of the violation.

The total number of days of violation for this allegation is four hundred and eighty-five days. Therefore, the maximum civil liability that could be imposed for this allegation is four hundred ninety-two thousand dollars (\$492,000).

5.b Proposed Civil Liability

The total amount of civil liability attributed to the failure to submit an adequate technical report was determined by taking into consideration the factors discussed in Section 4 above, as well as the maximum civil liability that the Regional Board may assess to the City of San Marcos.

The City of San Marcos failed to comply with Directive C.1 of Investigative Order No. R9-2006-0044 by failing to submit a Report of Waste Discharge by May 18,

The City of San Marcos failed to comply with Directive C.1 of Investigative Order No. R9-2006-0044 by failing to submit a Report of Waste Discharge by May 18, 2007. The City of San Marcos has not yet submitted an adequate Report of Waste Discharge, resulting in four hundred and ninety-two days of violation. The recommend liability for four hundred ninety-two days of violation is fifty-nine thousand, nine hundred and seventy-five dollars (\$59,975).