



California Regional Water Quality Control Board San Diego Region

RF



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Environmental Protection

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(619) 467-2952 • Fax (619) 571-6972
<http://www.waterboards.ca.gov/sandiego>

September 26, 2008

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
7007 1490 0003 8753 5469

Mr. Mike Mercereau
Director of Public Works
City of San Marcos
201 Mata Way
San Marcos, CA 92069-2949

Dear Mr. Mercereau:

NOTICE OF HEARING AND ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2008-0080 TO THE CITY OF SAN MARCOS FOR FAILURE TO SUBMIT INFORMATION REQUIRED PURSUANT TO ORDER NO. R9-2006-0044

Enclosed please find Administrative Civil Liability Complaint (Complaint) No. R9-2008-0080 against the City of San Marcos (City) for failure to submit information required by Water Quality Investigative Order No. R9-2006-0044, as amended. The Complaint recommends the California Regional Water Quality Control Board, San Diego Region (Regional Board), impose a civil liability of \$59,975 for these violations.

Waiver of Hearing

Pursuant to Water Code section 13323, the Regional Board will hold a hearing on the Complaint no later than 90 days after it is served. The City may elect to waive its right to a hearing before the Regional Board and agree to pay the proposed liability. Waiver of the hearing constitutes admission of the validity of the allegations of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$59,975 as set forth in the Complaint. If the City wishes to exercise this option, it must complete the following:

1. **By 5:00 p.m., October 10, 2008**, an authorized agent must sign the enclosed waiver and submit it to the Regional Board, along with a cashier's check in the amount of \$59,975 made payable to the "State Water Pollution Cleanup and Abatement Account";

2. **By October 14, 2008**, the City must publish the enclosed public notice in the San Diego Union Tribune, and the San Diego Union Tribune North County edition newspaper; and
3. **By 5:00 p.m., October 21, 2008**, the City must submit verification to the Regional Board that the enclosed public notice has been published.

*Please note that the City's waiver and agreement to pay the proposed liability constitutes a proposed settlement that will not become final until after a 30-day public comment period, as provided by the State Water Resources Control Board Water Quality Enforcement Policy (version dated February 12, 2002). As described in the enclosed waiver, the Regional Board Assistant Executive Officer may withdraw the Complaint, return payment and issue a new complaint should new information be received during the comment period. If no information is received which causes to the Assistant Executive Officer to withdraw the Complaint, then the settlement will be brought before the full Regional Board for approval at a future meeting. **The settlement will not be effective until approved by the Regional Board.**

Public Hearing


Alternatively, if the City elects to proceed to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on December 10, 2008. The meeting is scheduled to convene at 9:00 a.m. at the Regional Board Office, 9174 Sky Park Court, Suite 100, San Diego, CA. At that time, the Regional Board will accept testimony and public comment and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed you will also find a draft of the procedures I am recommending that the Regional Board follow in conducting the hearing. Please note that comments on the proposed procedures are **due by October 3, 2008** to the Regional Board's advisory attorney, Catherine George.

Please contact State Water Resources Control Board Office of Enforcement Attorney David Boyers at (916) 341-5276 or Ms. Amy Grove at (858) 637-7136 or via e-mail at agrove@waterboards.ca.gov if you have any questions concerning this matter.

Respectfully,



 Michael P. McCann
Assistant Executive Officer

Enclosures: 1. Complaint No. R9-2008-0080
2. Waiver of Public Hearing Form
3. Public Notice of Waiver
4. Notice of Public Hearing

cc: Mr. Richard Opper, Esq. Opper and Varco, LLP, 225 Broadway, Suite 1900, San Diego, CA 92101

Mr. James O'Day, Esq. County of San Diego, County Administration Center, 1600 Pacific Highway, Room 355, San Diego, CA 92101

Mr. Garth Koller, City of San Marcos, 1 Civic Center Drive, San Marcos, CA 92069-2949

Ms. Rebecca Lafreniere, County of San Diego Local Enforcement Agency, 9325 Hazard Way, San Diego, CA 92123

Ms. Vicki Gallagher, County of San Diego, Department of Public Works, 5201 Ruffin Road, Suite D, San Diego, CA 92123

Mr. David Boyers, Senior Staff Counsel, State Water Resources Control Board Office of Enforcement, 1001 I Street, 16th Floor, Sacramento, CA 95814

Ms. Catherine George, Senior Staff Counsel, Regional Water Quality Control Board, San Diego Region, 9174 Sky Park Court, Suite 100, San Diego, CA 92123-4353

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

IN THE MATTER OF:

**CITY OF SAN MARCOS
BRADLEY PARK LANDFILL
NONCOMPLIANCE WITH
CALIFORNIA WATER CODE
SECTION 13267
ORDER NO. R9-2006-0044**

**COMPLAINT NO. R9-2008-0080
FOR
ADMINISTRATIVE CIVIL LIABILITY**

September 26, 2008

THE CITY OF SAN MARCOS IS HEREBY NOTIFIED THAT:

1. The City of San Marcos is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) may impose civil liability under section 13268 of the California Water Code.
2. The City of San Marcos owns the Bradley Park Landfill, and is responsible for managing and maintaining the Landfill under Waste Discharge Requirements Order No. 97-11, general waste discharge requirements for inactive landfills.
3. On April 17, 2006 the Regional Board issued Water Quality Investigative Order No. R9-2006-0044 to the City of San Marcos, requiring the City to submit a Report of Waste Discharge by May 18, 2007.

ALLEGATION


4. The City of San Marcos failed to submit an adequate Report of Waste Discharge (RoWD) that satisfied the requirements of the Investigative Order in this matter (R9-2006-0044, as amended). An adequate RoWD was due to the Regional Board on May 18, 2007, and was not received by that date. On January 30, 2008 the City of San Marcos submitted an incomplete technical RoWD, which fails to meet the directives outlined in the investigative Order No. R9-2006-0044.
5. Pursuant to Water Code section 13268, the maximum liability that the Regional Board may assess is one thousand dollars (\$1,000) for each day

in which any person failed or refused to furnish technical or monitoring program reports as required by Water Code section 13267(b). Therefore, the maximum liability for this violation is \$492,000 for four hundred ninety-two days of violation.

PROPOSED CIVIL LIABILITY

6. Considering the factors listed in section 13327 of the Water Code, as described in Technical Analysis, Proposed Administrative Civil Liability Contained in Complaint No. R9-2008-0080, a civil liability should be imposed on the City of San Marcos, by the Regional Board, in the amount of \$59,975.

Dated this 26th day of September, 2008


Ben

MICHAEL P. McCANN
Assistant Executive Officer
San Diego Regional Water Quality
Control Board

Signed pursuant to the authority
delegated by the Executive Officer to
the Assistant Executive Officer

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the City of San Marcos (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R9-2008-0080 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of fifty nine thousand nine hundred seventy five dollars (\$59,975.00) by check, which contains a reference to "ACL Complaint No. R9-2008-0080" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Regional Water Board by October 17, 2008, or this matter will be placed on the Regional Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period, as provided by the State Water Resources Control Board Water Quality Enforcement Policy (version dated February 19, 2002) and subsequent approval by the Regional Board at a future board meeting. Should the Regional Water Board receive new information or comments during the comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time)** I certify that the Discharger will promptly engage the Regional Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is not waiving its right to a hearing on this matter. I understand that this waiver is a request to delay the hearing so the Discharger and Regional Water Board staff can discuss settlement. It does not constitute the Regional Water Board's agreement to delay the hearing. A hearing on the matter may be held before the Regional Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Regional Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

(Print Name and Title)

(Signature)

(Date)

NOTICE OF WAIVER OF PUBLIC HEARING

**California Regional Water Quality Control Board, San Diego Region
Issuance of Administrative Civil Liability (ACL) Order
Against
The City of San Marcos
Bradley Park Landfill
City of San Marcos, California**

On September 26, 2008 the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued Complaint No. R9-2008-0080 to the City of San Marcos (Discharger) in the amount of \$59,975 for alleged violations of Water Quality Investigative Order No. R9-2006-0044. The Discharger has elected to waive its right to a public hearing in this matter. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$59,975 as set forth in the Complaint. The Regional Board will consider accepting the Discharger's waiver at its December 10, 2008 meeting.

Written comments regarding the allegations contained in Complaint No. R9-2008-0080, and/or acceptance of the waiver, will be accepted through Friday November 14, 2008.

The Regional Board's December 10, 2008 meeting will be held at the Regional Board office located at 9174 Sky Park Court, San Diego, California. The meeting will begin at 9:00 a.m. Oral comments for this item may be made during the meeting upon receipt of a request to speak slip. For more information regarding this matter, please call Ms. Amy Grove at (858) 637-7136 or visit the Regional Board web site at www.waterboards.ca.gov/sandiego/

Michael P. McCann
Assistant Executive Officer

NOTICE OF PUBLIC HEARING
TO CONSIDER ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

NO. R9-2008-0080
ISSUED TO

City of San Marcos

NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD
BEFORE THE REGIONAL WATER QUALITY CONTROL BOARD,
SAN DIEGO REGION, ON DECEMBER 10, 2008

Background

The Assistant Executive Officer of the Regional Water Quality Control Board, San Diego Region (Regional Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code section 13268 (CWC) to the City of San Marcos (City) alleging that it has violated Water Code section 13267 by failing to provide a complete and adequate Report of Waste Discharge, as required by Water Quality investigative Order No. R9-2006-0040, as amended. The Complaint proposes that administrative civil liability in the amount of \$59,975 be imposed as authorized by Water Code section 13268(b)(1). Unless the City waives its right to a hearing and pays the proposed liability, a hearing will be held before the Regional Board during its meeting of December 10, 2008, in San Diego.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Regional Board will consider whether to adopt, modify, or reject the proposed assessment, or whether to refer the matter to the Attorney General's Office to seek recovery of judicial civil liability. If it adopts an assessment, the Regional Board will issue an Administrative Civil Liability Order.

The public hearing on December 10, 2008, will commence as announced in our Regional Board meeting agenda. The meeting will be held at the Regional Board Office at 9174 Sky Park Court, Suite 100, in San Diego. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Regional Board's web page at: www.waterboards.ca.gov/sandiego.

Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the Regional Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Regional Board. This Notice provides additional requirements and deadlines related to the proceeding. THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY FROM THE HEARING.

Hearing Participation

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Board.

The following participants are hereby designated as parties in this proceeding:

- (1) San Diego Regional Water Board Prosecution Staff
- (2) City of San Marcos

Contacts

Advisory Staff:

Catherine George, Esq.
Senior Staff Counsel
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100, Office 1
San Diego, CA 92123-4353
CGeorge@Waterboards.ca.gov

John Robertus
Executive Officer
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100, Office 28
San Diego, CA 92123-4353

Prosecution Staff:

David Boyers
Senior Staff Counsel
State Water Resources Control Board
Office of Enforcement
P.O. Box 100
Sacramento, CA 95812

Michael McCann
Assistant Executive Officer
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100, Office 27
San Diego, CA 92123-4353

Mark Alpert
Pollution Prevention Section Manager
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100, Office 5A
San Diego, CA 92123-4353

Bob Morris
Senior Water Resources Control Engineer
Orange and Riverside Co. Ground water Protection Branch
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Julie Chan
Supervising Engineering Geologist
Groundwater Protection Branch
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Amy Grove
Engineering Geologist
Orange and Riverside Co. Ground water Protection Branch
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Discharger:

Mr. Mike Mercereau
Director of Public Works

City of San Marcos
201 Mata Way
San Marcos, CA 92069-2949

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Board (Prosecution Staff) have been separated from those who will provide advice to the Board (Advisory Staff). Members of the Advisory Staff are: Catherine George, Senior Staff Counsel, and John Robertus, Executive Officer. Members of the Prosecution Staff are: David Boyers, Senior Staff Counsel, Michael McCann, Assistant Executive Officer, Mark Alpert, Pollution Prevention Section Manager, Bob Morris Senior Water Resources Control Engineer, Amy Grove Engineering Geologist and Julie Chan Supervising Engineering Geologist. **Unless the City objects to and/or comments on this notice to Advisory Staff Member Catherine George by October 3, 2008, or the Advisory Staff issues an alternative Notice of Hearing Procedure, the procedures set forth herein will govern the December 10, 2008 ACL Complaint Hearing.**

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the Regional Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a Regional Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and not already listed above, shall request party status by submitting a request in writing (with copies to the designated parties) no later than 5 p.m. on **October 10, 2008**, to Catherine George, Senior Staff Counsel, at the address set forth above. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person) and a statement explaining why the party or parties designated above do not adequately represent the person's interest.

Any opposition to the request must be submitted by 5 p.m. on **October 17, 2008**. The parties will be notified by 5 p.m. on **October 22, 2008**, as to whether the request has been granted or denied.

Hearing Time limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have 30 minutes to testify, present evidence, and cross-examine witnesses, and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Additional time may be provided at the discretion of the hearing officer upon a showing that additional time is necessary.

Written Evidence, Exhibits and Policy Statements

Designated parties shall submit in writing 20 copies of the following information to Catherine George at the above-referenced address no later than 5 p.m. on **November 21, 2008**.

1. All documentary evidence and exhibits proposed to be offered at the hearing.
2. All legal and technical arguments or analysis.

In addition to the foregoing, each designated party shall send (1) one copy of the above written materials to each of the other designated parties at the address or addresses provided above by 5 p.m. on **November 21, 2008**.

Interested persons may submit one (1) copy of non-evidentiary policy statements by the close of the hearing.

Evidentiary Objections

A designated party objecting to evidence proposed by another party must submit a written objection by 5 p.m. on **December 1, 2008**, to Catherine George, Senior Staff Counsel, at the above-referenced address, with a copy to all other designated parties. The Advisory Staff will notify the parties about further action to be taken on such objections.

Questions

Questions concerning this proceeding may be addressed to Catherine George, Senior Staff Counsel, Regional Water Quality Control Board, San Diego Region, 9174 Sky Park Court, Suite 100, San Diego, CA 92123-4353.

IMPORTANT DEADLINES

September 26, 2008 ACL Complaint issued to Discharger by Prosecution Team; Prosecution Team Sends draft Hearing Notice to Discharger and Advisory Team.

October 3, 2008 Comments due on draft Hearing Notice

October 10, 2008 Deadline for submission of request for designated party status.

October 17, 2008 Deadline for opposition to request for designated party status.

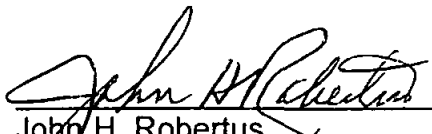
October 23, 2008 Decision issued on request for designated party status, if any.

November 21, 2008 Deadline for submission of evidence and legal argument.

December 1, 2008 Deadline for submission of evidentiary objections.

December 8, 2008 Rulings on evidentiary objections, if any.

December 10, 2008 Hearing Date



John H. Robertus
Executive Officer

09/23/2008

DATE

**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
Amy L. Grove
Engineering Geologist
Orange and Riverside County Ground Water Protection Unit**

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).

Attachment No. 1
Water Quality Investigative Order
No. R9-2006-0044
With Addenda No.1 and No. 2

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

WATER QUALITY INVESTIGATION ORDER NO. R9-2006-0044

CITY OF SAN MARCOS
BRADLEY PARK/OLD LINDA VISTA LANDFILL
SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) finds that:

REGULATORY AND FACTUAL BACKGROUND

1. **UNAUTHORIZED RELEASE OF WASTE:** The City of San Marcos owns and maintains a closed municipal solid waste landfill known as the Bradley Park/Old Linda Vista Landfill at a property located southeast of the intersection of Rancho Sante Fe Road and Linda Vista Drive in the City of San Marcos, California. The City of San Marcos caused or permitted an unauthorized release of waste constituents, including volatile organic chemical and inorganic mineral waste constituents, from the waste management unit (the "*Unit*") into both ground water underlying the landfill and a municipal separate storm water conveyance system (MS4) where it probably will be discharged to San Marcos Creek. The City of San Marcos has caused and threatens to cause conditions of pollution and nuisance, and violated requirements prescribed the Regional Board by discharging waste beyond the limits of the Unit to ground water and into a MS4 tributary to San Marcos Creek that exceeds applicable water quality objectives for the groundwater and toxic pollutants in the creek.
2. **PERSONS RESPONSIBLE:** Between the years 1948 to 1968, the County of San Diego owned, operated, and discharged wastes into the Bradley Park/Old Linda Vista Landfill. Upon completion or waste disposal activities, the County of San Diego covered the wastes with soil, and subsequently, sold the property to the City of San Marcos who redeveloped the landfill into a park and recreation area. The City of San Marcos is responsible for its management and maintenance under the Regional Board's waste discharge requirements (Order 97-11) for inactive landfills. The City of San Marcos is referred to as "Discharger" in this Order.
3. **BENEFICIAL USES:** The Water Quality Control Plan for the San Diego Region ("Basin Plan") designates the following beneficial uses and water quality objectives for the water resources in the San Marcos Creek watershed:

a. Surface waters of San Marcos Creek (HU 4.52):

- Agricultural supply (AGR)
- Contact Water Recreation (REC1)
- Non-contact Water recreation (REC2)
- Warm Freshwater habitat (WARM)
- Wildlife habitat (WILD)

| Constituent | Water Quality Objectives (mg/L) |
|------------------------------|---------------------------------|
| Total Dissolved Solids (TDS) | 500 |
| Chloride (Cl) | 250 |
| Sulfate (SO ₄) | 250 |

b. Groundwater of San Marcos Creek (HU 4.50): the Basin Plan currently exempts the area from designated beneficial uses and water quality objectives for groundwater.

4. **WASTE DISCHARGE REQUIRMENTS (WDR):** The Bradley Park/Old Linda Vista Landfill is currently regulated under Order No. 97-11, and addenda thereto: "General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Landfills Containing Hazardous and Nonhazardous Waste within the San Diego Region."

WASTE DISCHARGES

5. **WASTE RELEASE TO GROUNDWATER:** Monitoring reports submitted by the County of San Diego since January 2000 indicate that waste containing volatile organic chemicals and inorganic mineral waste constituents has migrated from the landfill into the ground water underlying the Unit summarized below Failure to adequately contain past discharges of solid wastes within the waste management threatens to create a condition of pollution in surface waters located adjacent to the Unit. Results from monitoring reported from January 2000 to present include the following range of concentrations for waste constituents in groundwater:

| Constituent | Concentration Ranges (2000 to 2004) |
|------------------------|-------------------------------------|
| 1,4-Dichlorobenzene | ND (0.2) to 3.2 µg/L |
| Cis-1,2-Dichloroethene | ND (0.3) to 9.8 µg/L |
| Vinyl Chloride | ND (0.3) to 3.1 µg/L |
| Chlorobenzene | ND (0.3) to 0.53 µg/L |

| | |
|------------------------|---------------------|
| Total Dissolved Solids | 3,480 to 4,330 mg/L |
| Chloride | 920 to 2,000 mg/L |
| Sulfate | 210 to 700 mg/L |
| Calcium | 330 to 980 mg/L |
| Magnesium | 105 to 3,410 mg/L |
| Sodium | 670 to 2,100 mg/L |

6. **DISCHARGE TO SURFACE WATER:** During November 2004, the California Regional Board was informed by, the County of San Diego Department of Public Works (DPW), that a groundwater seep had been discovered at the Bradley Park/Old Linda Vista Landfill. The DPW staff provided the Regional Board with analytical results in a Seep Investigation Report on January 20, 2005. The sample results indicated that the discharge contains the following constituents:

| Constituent | Concentration |
|-------------------------|---------------|
| Benzene | 0.53 µg/l |
| 1,4-Dichlorobenzene | 0.47 µg/l |
| Dichlorodifluoromethane | 0.31 µg/l |
| Cis-1,2-Dichloroethene | 1.6 µg/l |
| Total Dissolved Solids | 6,600 mg/l |
| Chloride | 1,500 mg/l |
| Sulfate | 2,300 mg/l |

On January 26, 2005, the Regional Board staff conducted a compliance inspection and determined that the seep of polluted water was leaking into the storm water conveyance system at the site. The current waste containment unit fails to adequately contain waste constituents in the Bradley Park/Old Linda Vista Landfill. As a result, there are continuing releases of waste constituents into groundwater and into the surface water drainage, located at the north side of the Unit, in violation of Prohibitions B.4, B.5, and Maintenance Specification C.4 in Order No. 97-11.

On March 29, 2006, via telephone an environmental consultant for the City of San Marcos reported another discharge ("seep") of liquid wastes, from the Bradley Park/Old Linda Vista Landfill, into an unnamed tributary to San Marcos Creek. The seep was reportedly observed after several rainstorm events had occurred at the Unit. The verbal report from the consultant indicated that a technical report, concerning the observed seep/release, would be submitted to the Regional Board.

7. **LEGAL AND REGULATORY AUTHORITY:** This Order is based on (1) section 13267 of the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000); (2) applicable state and federal regulations; (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board and the Water Quality Control Plan for the San Diego Basin (Basin Plan) adopted by the Regional

Board including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board policies, including State Water Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*) Resolution No. 88-63 (*Sources of Drinking Water*); California Code of Regulations (CCR) Title 27 [§20090(g) and §20385(a)(3)]; and (5) relevant standards, criteria, and advisories adopted by other state and federal agencies.

8. **CEQA EXEMPTION:** This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*) in accordance with CCR Title 14, Chapter 3, section 15321.

ORDER DIRECTIVES

IT IS HEREBY ORDERED, pursuant to sections 13267 of the California Water Code, the City of San Marcos (hereinafter the Discharger) shall report results from a field investigation of effects of the discharge and complies with the following Directives:

A. INVESTIGATION OF DISCHARGES

1. **Duty to Comply** - The Discharger shall take all actions¹ necessary to:
 - a. Investigate and delineate impairment of water resources by discharges of waste constituents into groundwater, surface water (including volatile organic chemicals and inorganic waste constituents), and the vadose zone (via landfill gas/soil vapors) from the Unit [pursuant to CCR Title 27, § 20080(g), §20385(a)(3), and §20425];
 - b. Achieve compliance with applicable requirements for an Evaluation Monitoring Program (EMP) pursuant to section 20425 of California Code of Regulations, Title 27 (CCR Title 27).
 - c. Report results from an investigation and technical evaluation of illicit waste discharges to the waters of the State in violation of the terms and conditions of Order No. 97-11 and addenda thereto: "*General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Landfills Containing Hazardous and Nonhazardous Waste within the San Diego Region.*"

B. EVALUATION MONITORING PROGRAM (EMP)

1. **Evaluation Monitoring Program Workplan:** The Discharger shall develop and submit to the Regional Board by **July 17, 2006** a workplan for implementation of

¹ Actions include the following surface and subsurface investigation methods including but not limited to: geological borings, groundwater monitoring wells, in-situ groundwater sampling methods, soil vapor survey methods, and geophysical methods.

an evaluation monitoring program, as required by CCR Title 27, §20385 and §20425, to assess the nature and extent of the release from the Unit and to design a corrective action program meeting the requirements of CCR Title 27, §20430. The workplan shall include relevant data collection that will address all the information called for in CCR Title 27, §20425, including:

- (1) *Extent and Characterization of Waste Discharge*--The workplan shall provide for the collection and analysis of all data, necessary to assess the spatial distribution and concentration of solid wastes at the site and each waste constituent throughout the zone affected by the release in soil and ground water to background concentrations.
- (2) *Monitoring Parameters*--The Discharger shall propose a list of Monitoring Parameters for each medium (ground water, surface water, and the unsaturated zone) to be monitored pursuant to §20415. The list for each medium shall include all wastes that have been detected in that medium and those physical parameters, waste constituents, and reaction products that provide a reliable indication of changes in water quality resulting from any release from the Unit to that medium.
- (3) *Monitoring Parameter Analyses*--the Discharger shall propose data analysis methods and frequencies for collecting samples and for conducting data analyses that comply with CCR, Title 27, §20415(e)(7) for evaluating changes in water quality due to the release from the Unit.
- (4) *Geological Characterization*--The workplan shall provide for the collection of data to characterize site geology using vertical cross sections that identify soil types, aquifer heterogeneities, and preferential pathways to waste migration;
- (5) *Hydrogeological Characterization*--Collection of data to document the rate(s) and direction(s) of local ground water flow, in both the horizontal and vertical direction for all water bearing units potentially affected by the waste constituents from the Unit;
- (6) *Field Methodologies*--The workplan shall describe the field methodologies to be used for drilling, soil sampling, ground and surface water sampling, and other activities,

- (7) *Conceptual Site Model*--The workplan shall include an initial conceptual site model (CSM)² based on available data on the occurrence of defects in the waste containment features of the Bradley Park/Old Linda Vista Landfill. The workplan shall identify chemical characteristics of the waste, transport mechanism, points of exposures, exposure routes, and receptors. The CSM shall describe or show the physical characteristics and properties of the subsurface and identify the environmental issues that need to be investigated (as well as those issues that do not need to be addressed). The initial CSM shall include a discussion of the level of uncertainty of conclusions, outline data gaps remaining in the conceptual model, and describe the additional work needed to fill identified data gaps.
- (8) *Report Completion Schedule*--The workplan shall include a schedule for completion of all activities and submission of a final Evaluation Monitoring Program Report described in Directive B.2 of this Order.
- (9) *Regional Board Notification* - The workplan shall provide for Regional Board notification at least two weeks before the start of fieldwork.
- (10) *Presumptive Remedies*--Presumptive remedies³ shall be considered during the development of the workplan so that data needed for selection and design of remedial alternatives may be collected during site characterization.

² Development of a Conceptual Site Model (CSM) is an important first step in planning and scoping any site assessment designed to determine the potential impacts of discharges of wastes creating a condition of pollution or threatened condition of pollution upon beneficial uses of water resources and the environment. In documenting current site conditions, CSMs are used as a planning tool during the environmental site investigation phase to allocate finite financial and personnel resources to address data gaps, identify sources of contamination, release mechanisms, exposure pathways, and human or ecological receptors. The CSM is a narrative and graphical description of the characteristics of the site that may affect the distribution and migration of waste constituents.

³ Presumptive remedies are preferred technologies based on USEPA's scientific and engineering evaluation of performance data on remedial technology implementation in the Superfund Program. The five types of sites for which there is USEPA presumptive remedy guidance are: Volatile Organic Compounds (VOCs) in Soils, Municipal Landfills, Metals in Soils, Wood Treaters, and Contaminated Ground Water. The objective of USEPA's presumptive remedies initiative is to use the experience gained by USEPA in the Superfund Program to streamline site investigation and speedup selection of cleanup actions. Additional information on presumptive remedies can be obtained from USEPA's website at [Presumptive Remedies: Policy and Procedures, Superfund, US EPA](#).

- (11) *Workplan* Modification--The Discharger shall modify the workplan as requested by the Regional Board.
- (12) Implementation--The Discharger shall implement the workplan ninety (90) days after submission of the workplan, unless otherwise directed in writing by the Regional Board. Before beginning these activities the Discharger shall:
 - (a) Notify the Regional Board of the intent to initiate the proposed actions included in the workplan submitted; and
 - (b) Comply with any conditions set by the Regional Board, including mitigation of adverse consequences from investigation activities.

2. *Evaluation Monitoring Program Report*--The Discharger shall complete and submit to the Regional Board an Evaluation Monitoring Report based on the final workplan submitted pursuant to B.1. The Evaluation Monitoring Report shall be submitted on a schedule to be established by the Regional Board in a subsequent amendment to this Order. The Evaluation Monitoring Report shall:

- a. Contain a complete analysis of the source, nature, and extent of the solid wastes and waste constituents discharge to water resources, background concentrations, and a hydrogeological characterization of the Site with sufficient detail to provide the basis
 - (1) To design a corrective action program meeting the requirements of CCR Title 27, §20430.
 - (2) For decisions regarding feasible and effective cleanup and abatement technologies and development of preferred cleanup and abatement alternatives.
- b. *Conceptual Site Model* --Contain an updated CSM based on the results of implementation of the Evaluation Monitoring program study;

C. Amended Report of Waste Discharge

1. By **December 18, 2006**, the Discharger shall submit to the Regional Board an updated Report of Waste Discharge (ROWD) to amend this Order to establish a corrective action program meeting the requirements of CCR Title 27, §20430. The ROWD shall contain the following information:
 - a. *Delineation of Release*--a detailed assessment of the nature and extent of the release/discharge of waste constituents from the Unit into surface waters.

groundwater, and the vadose zone (via landfill gas/soil vapors). The Discharger may append the Evaluation Monitoring Report required under Directive 2 to the ROWD to satisfy this requirement.

- b. *Constituents of Concern* - A proposed Constituents of Concern (COC) List (under CCR, Title 27, §20395) including waste constituents, reaction products and hazardous constituents that are reasonably expected to be present in or derived from waste contained in the Landfill Site. The initial COC list shall include all constituents listed in Appendix II to the Code of Federal Regulations Title 40 (40 CFR) Part 258. The COC list may be narrowed to include only those constituents that are detected, in water and/or soil vapor samples, above practical quantitative limits (PQLs);
- c. *Water Standard*--a proposed Water Quality Protection Standard⁴ under Title 27 CCR, §20390, for each proposed Constituent of Concern, including any proposed (Concentration Limits Greater than Background) (CLGBs) under Title 27 CCR §20400, and all data necessary to justify each such limit. The Discharger shall propose one the following for each medium
 - (1) *Background Value*--a concentration limit not to exceed the background value of that constituent as determined pursuant to §20415(e)(10)(A);
 - (2) *Concentration Limits Greater Than Background (CLGB)* A CLGB established pursuant to CCR, Title 27, §20400. The Discharger shall include information for each proposed CLGB demonstrating that it is technologically or economically infeasible to achieve the background value for that constituent and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the CLGB is not exceeded.
 - (a) The Discharger shall consider the factors set forth in §20400(d), the results of the engineering feasibility study required under Directive C.1.d. below, data contained in the Evaluation Monitoring Report submitted pursuant to Directive B.2. above; and comments on the proposal.
 - (b) The Discharger shall include a demonstration that the aggregate of hazardous constituents in the environment will not result in excessive exposure to a sensitive biological receptor. In the absence of scientifically valid data to the contrary, theoretical risks from chemicals associated with the release from the Unit shall be considered

⁴ A Water Standard is a water quality protection standard consisting of a list of constituents of concern (under CCR, Title 27, §20395), their respective concentration limits (under CCR, Title 27 §20400) and the Point of Compliance and all monitoring points (under CCR, Title 27 §20405).

additive across all media of exposure, and shall be considered additive for all chemicals having similar toxicological effects or having carcinogenic effects.

- (c) CLGBs shall not unreasonably affect present and anticipated beneficial uses of waters;
 - (d) CLGBs shall not result in water quality less than that prescribed in (1) the Water Quality Control Plans adopted by the State and Regional Board, including beneficial uses, water quality objectives, and implementation plans; (2) State Water Board policies, including State Water Resolution Nos. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*), No. 88-63 (Sources of Drinking Water); and 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*); or (3) other relevant standards, criteria, and advisories adopted by other state and federal agencies “
- d. *Engineering Feasibility Study*--An engineering feasibility study of remedial action alternatives, including the cost, implementation schedule and effectiveness of each alternative, to attain the Water Standard proposed for each Constituent of Concern as described in Directives C.1.b. and C.1.c. throughout the zone affected by the release, including any portions thereof that extend beyond the facility boundary, by removing the waste constituents or treating them in place. At a minimum, the feasibility study shall contain a detailed description of the corrective action measures that could be taken to accomplish the following objectives:
- (1) terminate the illicit discharges of liquid from the unit into the surface waters,
 - (2) remove or contain exposed wastes located in the unnamed tributary to San Marcos Creek crossing the northern portion of Bradley Park,
 - (3) abate any adverse effects, threats of pollution and/or nuisance created by the discharge of landfill gas/soil vapors from the Unit,
 - (4) cleanup and abatement of effects from discharges of waste constituents/ degradation products into groundwater and achieve background concentrations⁵ for all Constituents of Concern.

⁵ “Background” means the concentrations or measures of constituents or indicator parameters in water or soil that has not been affected by waste constituents or leachate from the waste management unit being monitored.

- e. *Recommended Corrective Action Program*--A detailed description of a recommended Corrective Action Program describing the proposed corrective action measures that will be taken to achieve compliance with each proposed Water Standard
- (1) *Scope of Action*--The corrective measures shall ensure that COCs achieve their respective concentration limits at all Monitoring Points and throughout the zone affected by the release, including any portions thereof that extend beyond the facility boundary, by removing the waste constituents or treating them in place.
 - (2) *Source Containment*--The corrective action measures must result in effective control of the source(s) of soluble groundwater pollutants, and control of conditions that contribute to the migration of soluble pollutants from wastes.
 - (3) *Protection of human health*--The corrective action measures must result in a cumulative carcinogenic risk level of no greater than 1×10^{-6} , including all exposure pathways for residual waste constituents. The non-carcinogenic effects from exposure to waste constituents shall be quantified as the hazard index (HI), derived from summation of hazard quotients (HQ) for individual residual waste constituents, and shall be less than 1 ($HI < 1$). Examples and methods used to quantify carcinogenic risk and non-carcinogenic hazards may be found in USEPA Risk Assessment Guidance for Superfund (1989, Chapter 8, see http://www.epa.gov/oswer/riskassessment/risk_superfund.htm).
 - (4) *Public Participation Plan*. The Discharger shall develop a plan for public participation in the corrective action process. Public participation shall be consistent with all applicable State and local requirements. The plan shall be submitted to the Regional Board as part of the updated ROWD, and the Discharger shall modify the plan as requested by the Regional Board.
- f. *Monitoring Plan*--A plan for a water quality-monitoring program that will demonstrate the effectiveness of the proposed corrective action measures. This ground water monitoring program shall include
- (1) a sufficient number of Background Monitoring Points (as defined in CCR Title 27 §20164) installed at appropriate locations and depths to yield ground water samples from the uppermost aquifer that represent the quality of ground water that has not been affected by a release from the Unit;
 - (2) a sufficient number of Monitoring Points installed at appropriate locations and depths to yield ground water samples from the uppermost aquifer that

represent the quality of ground water passing the Point of Compliance and at other locations in the uppermost aquifer to provide the data needed to evaluate the effectiveness of the corrective action program

- (3) a sufficient number of Monitoring Points and Background Monitoring Points installed at appropriate locations and depths to yield ground water samples from zones of perched water to provide the data needed to evaluate the effectiveness of the corrective action program
- (4) *Monitoring Parameters*--the Discharger shall propose a list of Monitoring Parameters for each medium (ground water, surface water, and the unsaturated zone) to be monitored pursuant to §20415. The list for each medium shall include all hazardous constituents that have been detected in that medium and those physical parameters, waste constituents, and reaction products that provide a reliable indication of changes in water quality resulting from any release from the Unit to that medium.
- (5) *Monitoring Parameter Analyses*--the Discharger shall propose data analysis methods and frequencies for collecting samples and for conducting data analyses that comply with CCR, Title 27, §20415(e)(7) to evaluate changes in water quality due to the release from the Unit.

D. INTERIM REMEDIAL ACTIONS

1. *Take Interim Remedial Actions* - The Discharger shall take interim remedial actions as necessary to abate or correct the actual or potential effects of the waste discharges described in this Order. Interim remedial actions can occur concurrently with any phase of the site investigation or remedial action.
2. *Interim Remedial Actions* - Interim remedial actions include but are not limited to:
 - a. Excavation and disposal of contaminated soil: Excavation and treatment of contaminated soil.
 - b. Pumping and treatment of ground water to remove dissolved constituents; and
 - c. Vacuum extraction of waste constituents from soil and ground water.
3. *Regional Board Notification* -, The Discharger shall notify the Regional Board before taking any proposed interim remedial action, and comply with any additional requirement that the Regional Board sets.

E. WATER QUALITY MONITORING

1. *Monitoring Provisions*

- (a) Unless otherwise allowed by the Regional Board, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. Specific methods of analysis for water and soils must be identified if the discharger proposes to use methods other than those included in the most current version of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846" (U.S. Environmental Protection Agency), the exact methodology must be submitted for review and must be approved by the Regional Board prior to use. Samples of landfill gas/soil vapors must be analyzed using the appropriate methods (e.g., U.S. EPA methods TO-14, TO-15, or TO-17). The director of the laboratory whose name appears on the certification shall supervise all analytical work in his/her laboratory and shall sign all reports of such work submitted to the Regional Board.
 - (b) If the Discharger monitors any pollutants more frequently than required by this Order, using the most recent version of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846" for soil or water, or appropriate method(s) for analysis of vapor samples; the results of this monitoring shall be included in the calculation and reporting of the data submitted in the discharger's monitoring reports. The increased frequency in monitoring shall also be reported.
 - (c) All monitored instruments and equipment used by the Discharger to fulfill the prescribed monitoring program shall be properly calibrated and maintained as necessary to ensure their continued accuracy.
 - (d) Records of monitoring information shall include all information required to comply with WDR Order No. 97-11, "General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Landfills Containing Hazardous and Nonhazardous Waste within the San Diego Region", and addenda thereto.
2. **Groundwater Quality Monitoring** - The Discharger shall follow the requirements of the groundwater monitoring program specified by Order No. 97-11, "General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Landfills Containing Hazardous and Nonhazardous Waste within the San Diego Region", and addenda thereto.

All additional groundwater-monitoring wells shall be properly developed after construction and prior to collecting samples for the purpose of complying with the water quality monitoring requirements in this Order. The Discharger shall provide a technical report that describes the new well construction details in the "development method(s)" employed at each new monitoring well in an appendix to the next available semi-annual report.

3. **Environmental Sampling and Analysis** - By December 18, 2006, the Discharger shall submit a plan for sampling and analysis of groundwater for the purpose of executing an effective Evaluation Monitoring Program (EMP) as required pursuant to CCR Title 27 §20425. The first round of samples collected from all sampling points (*i.e.*, groundwater wells, soil vapor monitoring probes, and surface water samples/seeps) shall contain analytical results for all constituents listed in Appendix II to the Code of Federal Regulations, Title 40 (40 CFR) Part 258. The Discharger shall continue to regularly monitor those constituents found in concentrations above designated water quality objectives and report results in subsequent water quality monitoring reports in compliance with this Order.
4. All monitoring reports shall be signed by an authorized person(s) as required by **Report Declaration, Directive G** of this Order.

F. REPORTS TO BE FILED WITH THE REGIONAL BOARD

Reports shall be comprised of at least the following, in addition to the specific contents, listed for each respective report type:

1. **Transmittal Letter** - A letter summarizing the essential points shall be submitted with each report. The transmittal letter shall include:
 - (a) A discussion of any violations of Order 97-11 found since the last such report was submitted and shall describe actions taken or planned for correcting the violations. If the Discharger has previously submitted a detailed time schedule for correcting the violations, a reference to the correspondence transmitting such schedule will be satisfactory. If violations have not occurred since the last submittal, this shall be stated in the transmittal letter.
 - (b) **Identify Documents Using Code Number** – In order to assist the Regional Board in the processing of correspondence and reports submitted in compliance with this Order, the Discharger shall include the following code number in the header or subject line portion of all correspondence or reports submitted to the Regional Board: LDU:06-0022.05.
2. **Groundwater Summary Reports** -
 - (a) The Discharger shall continue to submit semi-annual reports to the Regional Board in compliance with Order No. 97-11, “*General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Landfills Containing Hazardous and Nonhazardous Waste within the San Diego Region*”, and addenda thereto.
 - (b) The Discharger shall continue to submit annual reports to the Regional Board in compliance with Order No. 97-11, “*General Waste Discharge*”

Requirements for Post-Closure Maintenance of Inactive Landfills Containing Hazardous and Nonhazardous Waste within the San Diego Region", and addenda thereto.

(c) The Discharger shall amend the groundwater reports required by Order No. 97-11, and addenda thereto, with additional separate appendices containing any additional information collected/reported during the execution of the Evaluation Monitoring Program (EMP: pursuant to CCR Title 27, §20425) as required by this Order.

3. **Schedule for Monitoring Reports** – After July 1, 2005, all reports shall be submitted as full paper copies to the Regional Board and electronically (per **Directive F.6** of this Order) by the due dates specified in this Order. The semi-annual Report Periods end on September 30 and March 31. The annual Report Period ends March 31 of each year. Monitoring reports shall be submitted to the Regional Board in accordance with the schedule included in Order No. 97-11, and addenda thereto:

| Reporting Frequency | Report Period | Report Due |
|---------------------|-------------------|------------|
| Semiannually | October – March | April 30 |
| | April – September | October 30 |
| Annually | April - March | April 30 |

4. **Notification of Emergency Conditions**- The Discharger shall notify the Regional Board by telephone or facsimile **within 24-hours** of any condition that is created by the discharge of wastes to land or water resources resulting from corrective actions taken at this site. The initial notification must be followed by a detailed written description of the discharge, an explanation of the conditions that resulted in the discharge of wastes, and the emergency remedial actions taken to mitigate the effects of the discharge. The written notification shall be sent to the Regional Board by certified mail.
5. **Notification of Off-site Discharge** - If the Discharger determines that a release has crossed the facility boundary; the discharger shall, within 30 days of such determination, provide the Regional Board with a written list of the names and addresses of all "affected parties" [all persons who currently own or reside upon land that overlies the release]. The Regional Board may invite these affected parties to a Regional Board meeting at which time the potential corrective measures are discussed and either chosen or revised.
6. **Electronic Reporting Requirements** - Beginning **January 1, 2005**, all reports submitted to the Regional Board by the Discharger, pursuant to Sections 13304 and 13268 of the California Water Code, must be submitted in an electronic format. This includes all workplans, technical reports, and monitoring reports. The Discharger

shall comply with electronic reporting requirements of CCR Title 23, Division 3, §3893, including the provision that complete copies of all reports be submitted in PDF format, and include the signed transmittal letter and professional certification. In addition to these requirements, the Discharger shall also submit paper copies of the all submittals to the Regional Board. All paper copies shall include a properly signed transmittal letter (per **Directives F.1 and G** of this Order) to the Regional Board. The Discharger shall submit both electronic and paper copies of all reports required under this Order.

G. REPORT DECLARATIONS AND SIGNATURES

All applications, reports, or information submitted to the Regional Board shall be signed and certified as follows:

1. ***Use of Registered Professionals*** - The Discharger shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. California Business and Professions Code Sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. A statement of qualifications and registration numbers of the responsible lead professional shall be included in all plans and reports submitted by the Discharger. The lead professional shall sign and affix their registration stamp to the report, plan or document.
2. ***Signatory Requirements*** – All reports required under this Order shall be signed and certified by either a principal executive officer or ranking elected official or the person with overall responsibility for environmental matters for that municipality.

(a) ***Changes to Authorization*** – If an authorized signer is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this provision must be submitted to the Regional Board prior to or together with any reports or information to be signed by an authorized representative.

(b) ***Certification Statement*** – Any person signing a document under this provision shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

H. REPORTING TO THE REGIONAL BOARD

All monitoring and technical reports shall be submitted to:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
Attn: Supervisor Land Discharge Unit

I. PROVISIONS

1. **Waste Management**--The Discharger shall properly manage, store, treat, and dispose of contaminated soils, ground water, and solid wastes in accordance with applicable federal, state, and local laws and regulations. The storage, handling, treatment, or disposal of all wastes shall not create conditions of pollution, contamination or nuisance as defined in California Water Code section 13050. The Discharger shall, as required by the Regional Board, obtain, or apply for coverage under, waste discharge requirements or a conditional waiver of waste discharge requirements for the management of wastes.
2. **Request to Provide Information**--The Discharger may present characterization data, preliminary interpretations and conclusions as they become available, rather than waiting until a final report is prepared. This type of on-going reporting can facilitate a consensus being reached between the Discharger and the Regional Board and may result in overall reduction of the time necessary for regulatory approval.
3. **Waste Constituent Analysis**--Unless otherwise allowed by the Regional Board, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. Specific methods of analysis must be identified. If the Discharger proposes to use methods or test procedures for water or soil other than those included in the most current version of "*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846*" (U.S. Environmental Protection Agency) or 40 CFR 136, "*Guidelines Establishing Test Procedures for the Analysis of Pollutants; Procedures for Detection and Quantification*", the exact methodology must be submitted for review and must be approved by the Regional Board prior to use. The Discharger shall use appropriate test methods (*e.g.*, U.S. EPA methods TO-14, TO-15, or TO-17) to analyze vapor samples for constituents of concern at the site. The director of the laboratory whose name appears on the certification shall supervise all analytical work in his/her laboratory and shall sign all reports submitted to the Regional Board.

4. **Monitoring Points**--The Discharger shall install water quality and landfill gas/soil vapor monitoring systems that are appropriate for evaluation monitoring and that comply with the provisions of CCR Title 27 §20415. These water quality monitoring systems can include all or part of existing monitoring systems
5. **Duty to Operate and Maintain**--The Discharger shall, at all times, properly operate and maintain all facilities and systems of treatment, control, storage, disposal and monitoring (and related appurtenances) which are installed or used by the Discharger to achieve compliance with this Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities, which are installed by the Discharger only when the operation is necessary to achieve compliance the conditions of this Order.
6. **Duty to Submit Other Information**--When the Discharger becomes aware that it failed to submit any relevant facts in any report required under this Order, or submitted incorrect information in any such report, the Discharger shall promptly submit such facts or information to the Regional Board.

J. NOTIFICATIONS

1. **Enforcement Discretion**--The Regional Board reserves its right to take any enforcement action authorized by law for violations of the terms and conditions of this Order.
2. **Enforcement Notification**--The Porter-Cologne Water Quality Control Act commencing with Chapter 4, Regional Water Quality Control, section 13268(a)(1) provides that any person failing or refusing to furnish technical or monitoring report information as required by subdivision b of section 13267, or falsifying any information provided therein is guilty of a misdemeanor and may be liable civilly for an administratively imposed liability of up to \$1,000 per day for each day compliance is not achieved with an Order issued in accordance with subdivision 13267(b). Chapter 5, Enforcement and Implementation, section 13304, provides that any person who has discharged waste in violation of any waste discharge requirement, or other order or prohibition issued by a Regional Board or the State Board, or who has caused or permitted, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance shall cleanup the waste or abate the effects of the waste or take other necessary remedial action upon issuance of a cleanup and abatement Order by the regional Board. Section 13308, provides that if there is a threatened or continuing violation of a cleanup and abatement Order the Regional Board may issue a Time Schedule Order prescribing a civil penalty in an amount not to exceed \$10,000 per day for each day compliance is not achieved in accordance with that time schedule. Section 13350 provides that any person may be assessed administrative civil liability by the Regional Board for violating a cleanup

April 17, 2006

and abatement order in an amount not to exceed \$5,000 for each day the violation occurs, or on a per gallon basis, not to exceed \$10 for each gallon of waste discharged. Alternatively the court may impose civil liability in an amount not to exceed \$15,000 for each day the violation occurs, or on a per gallon basis, not exceed \$20 for each gallon of waste discharged. Section 13383 provides that any person may be assessed administrative civil liability by the Regional Board for violating a cleanup and abatement order for an activity subject to regulation under Division 7, Chapter 5.5 of the California Water Code, in an amount not to exceed the sum of both of the following: (1) \$10,000 for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed \$10 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. Alternatively the civil liability may be imposed by the court in an amount not to exceed the sum of both of the following: (1) \$25,000 for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed \$25 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

I, John H. Robertus, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of a Water Quality Investigation Order issued on April 17, 2006.

Ordered By:

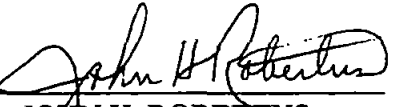

JOHN H. ROBERTUS
Executive Officer
April 17, 2006

TABLE 1:

**SUMMARY OF COMPLIANCE DATES
FOR INVESTIGATION ORDER NO. R9-2006-0044
CITY OF SAN MARCOS
BRADLEY PARK/OLD LINDA VISTA LANDFILL**

| DIRECTIVE NO. | SUBMITTAL TO REGIONAL BOARD | DUE DATE |
|----------------------|--|-------------------------|
| B.1 | Evaluation Monitoring Program Workplan | July 17, 2006 |
| C.1 | Updated Report of Waste Discharge | December 18, 2006 |
| E.3 | Groundwater Sampling and Analysis Plan - Evaluation Monitoring Program | December 18, 2006 |
| F.3 | Semi-Annual Monitoring Reports | April 30, October 30 |
| F.3 | Annual Monitoring Reports | April 30 |



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

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(858) 467-2952 • Fax (858) 571-6972
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

September 28, 2006

CERTIFIED MAIL – RECEIPT REQUESTED
7006 0100 0002 8367 7076

Mr. Michael Mercereau, Director of Public Works
City of San Marcos
201 Mata Way
San Marcos, CA 92069-2949

In Reply Refer to:
LDU:06-0022.02:agrove

Dear Mr. Mercereau:

RE: ADDENDUM 1 TO WATER QUALITY INVESTIGATION ORDER NO. R9-2006-0044 FOR DISCHARGES OF WASTE FROM THE BRADLEY PARK/OLD LINDA VISTA LANDFILL, SAN MARCOS, CA

Enclosed is Addendum No. 1 to Investigative Order (Order) No. R9-2006-0044 issued under authority of section 13267 of the California Water Code (CWC). Addendum No. 1 to the Order modifies the original due date, for a workplan required in Directive B.1, to October 31, 2006. By that revised date, the City must provide the Regional Board with a workplan to implement an Evaluation Monitoring Program (EMP) in compliance with the applicable provisions of California Code of Regulations (CCR) Title 27 §20090(g), §20385(a)(3), and §20425. All the other requirements and provisions of Order R9-2006-0044 remain in effect.

Failure to comply with the directives of Order R9-2006-0044 and addenda thereto may subject you to further enforcement actions by the Regional Board, including referral to the State Attorney General for injunctive relief; and/or referral to the District Attorney for criminal prosecution.

I strongly urge a complete and prompt response to each directive in Order No. R9-2006-0044. If you or your staff has any questions regarding this matter, please contact either of the following staff:

Mr. John Odermatt
Senior Engineering Geologist
Land Discharge Unit
Phone: (858) 637-5595
e-mail: jodermatt@waterboards.ca.gov

Mrs. Amy Grove
Engineering Geologist
Land Discharge Unit
Phone: (858) 637-7136
e-mail: agrove@waterboards.ca.gov

California Environmental Protection Agency



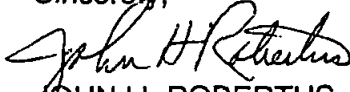
800-000-0000

Mr. Michael Mercereau, City of San Marcos - 2 -
Addendum No. 1 to Order No. R9-2006-0044:
Bradley Park/Old Linda Vista Landfill

September 28, 2006

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Sincerely,


JOHN H. ROBERTUS
Executive Officer

Enclosures: Addendum No. 1 to Investigative Order No. R9-2006-0044

cc: Mr. Garth Koller, City of San Marcos, 1 Civic Center Drive, San Marcos, CA 92069-2949

Ms. Candace Gibson, County of San Diego, Landfill Management, 5201 Ruffin Road,
MS 0383, San Diego, CA 92123 (w/attachment)


Ms. Kerry McNeill, County of San Diego Local Enforcement Agency, 9325 Hazard Way,
San Diego, CA 92123 (w/attachment)

Mr. Richard Opper, Esq. Opper and Varco, LLP, 225 Broadway, Suite 1900, San Diego,
CA 92101 (w/attachment)

Mr. James O'Day, Esq. County of San Diego, County Administration Center, 1600
Pacific Highway, Room 355, San Diego, Ca 92101 (w/attachment)

Mr. Joe Mello, Division of Clean Water Programs, State Water Resources Control
Board, P.O. Box 944212, Sacramento, CA 94244-2120 (w/attachment)

California Environmental Protection Agency

 Recycled Paper

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADDENDUM NO. 1 TO
WATER QUALITY INVESTIGATION ORDER NO. R9-2006-0044

CITY OF SAN MARCOS
BRADLEY PARK/OLD LINDA VISTA LANDFILL
SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) finds that:

REGULATORY AND FACTUAL BACKGROUND

1. **ENFORCEMENT ACTION:** The City of San Marcos is responsible for its management and maintenance under the Regional Board's waste discharge requirements (Order 97-11) for inactive landfills. The City of San Marcos is referred to as "Discharger" in this Order. On April 17, 2006, the Regional Board issued Water Quality Investigation Order R9-2006-0044 to the City of San Marcos. Order No. R9-2006-0044 requires the City to develop and implement an Evaluation Monitoring Program (EMP) in compliance with the applicable provisions of California Code of Regulations (CCR) Title 27 §20090(g), §20385(a)(3), and §20425.
2. **DISCHARGER'S REQUEST:** On September 15, 2006, the Regional Board received a letter, from the Discharger's legal counsel, requesting the Regional Board to extend the due date for the Evaluation Monitoring Program (EMP) workplan to October 31, 2006. The request was based upon the Discharger's anticipation of potential participation by the County of San Diego in the investigation process, and the time necessary to complete a mutual exchange of information between the Discharger and County. In addition, the Regional Board has scheduled a meeting with the interested parties, including representatives from the City of San Marcos, County of San Diego, and the Regional Board staff. The purpose of the meeting is to determine if the parties can develop a joint stipulation agreement on responsibility for the Bradley Park/Old Linda Vista Landfill. The Regional Board agrees to the limited time extension proposed by the Discharger.
3. **CEQA EXEMPTION:** This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*) in accordance with CCR Title 14, Chapter 3, section 15321.

September 28, 2006

ORDER DIRECTIVES


IT IS HEREBY ORDERED, pursuant to sections 13267 of the California Water Code, Order R9-2006-0044 is hereby amended as follows:

1. Change the compliance date in Directive B.1 of Order R9-2006-0044, for the Evaluation Monitoring Program Workplan, as follows:

" B. EVALUATION MONITORING PROGRAM (EMP)

1. ***Evaluation Monitoring Program Workplan:*** The Discharger shall develop and submit to the Regional Board by **October 31, 2006** a workplan for implementation of an evaluation monitoring program, as required by CCR Title 27, §20385 and §20425, to assess the nature and extent of the release from the Unit and to design a corrective action program meeting the requirements of CCR Title 27, §20430. The workplan shall include relevant data collection that will address all the information called for in CCR Title 27, §20425, including:.... "
2. All other directives and provisions of Order R9-2006-0044 remain in effect.

I, John H. Robertus, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of an Addendum to Water Quality Investigation Order R9-2006-0044 as issued on September 28, 2006.

Ordered By 
JOHN H. ROBERTUS
Executive Officer
September 28, 2006



California Regional Water Quality Control Board San Diego Region



Linda S. Adams
Secretary for
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[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

January 5, 2007

CERTIFIED MAIL – RECEIPT REQUESTED
7006 0810 0000 6389 0695

Mr. Michael Mercereau, Director of Public Works
City of San Marcos
201 Mata Way
San Marcos, CA 92069-2949

In Reply Refer to:
LDU:06-0022.02:agrove

Dear Mr. Mercereau:

RE: ADDENDUM 2 TO WATER QUALITY INVESTIGATION ORDER NO. R9-2006-0044 FOR DISCHARGES OF WASTE FROM THE BRADLEY PARK/OLD LINDA VISTA LANDFILL, SAN MARCOS, CA

Enclosed is Addendum No. 2 to Investigative Order (Order) No. R9-2006-0044 issued under authority of section 13267 of the California Water Code (CWC). Addendum No. 2 to the Order modifies the original due dates, for the following technical submittals:

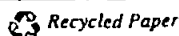
| Directive | Submittal | Revised Due Date |
|-----------|--|------------------|
| C.1 | Amended Report of Waste Discharge (ROWD) | May 18, 2007 |
| E.3 | Groundwater Sampling and Analysis Plan - Evaluation Monitoring Program | May 18, 2007 |

By those revised dates, the City must provide the Regional Board with the required technical reports associated with implementation of an Evaluation Monitoring Program (EMP), in compliance with the applicable provisions of California Code of Regulations (CCR) Title 27 §20090(g), §20385(a)(3), and §20425. All the other requirements and provisions of Order R9-2006-0044 remain in effect.

Failure to comply with the directives of Order R9-2006-0044 and addenda thereto may subject you to further enforcement actions by the Regional Board, including referral to the State Attorney General for injunctive relief; and/or referral to the District Attorney for criminal prosecution.

I strongly urge a complete and prompt response to each directive in Order No. R9-2006-0044. If you or your staff has any questions regarding this matter, please contact either of the following staff:

California Environmental Protection Agency



Mr. Michael Mercereau, City of San Marcos - 2 -
Addendum No. 2 to Order No. R9-2006-0044:
Bradley Park/Old Linda Vista Landfill

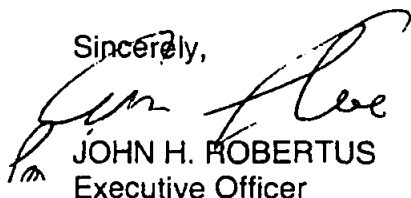
January 5, 2007

Mr. John Odermatt
Senior Engineering Geologist
Land Discharge Unit
Phone: (858) 637-5595
e-mail: jodermatt@waterboards.ca.gov

Mrs. Amy Grove
Engineering Geologist
Land Discharge Unit
Phone: (858) 637-7136
e-mail: agrove@waterboards.ca.gov

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to." In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Sincerely,



JOHN H. ROBERTUS
Executive Officer

Enclosures: Addendum No. 2 to Investigative Order No. R9-2006-0044

cc: Mr. Garth Koller, City of San Marcos, 1 Civic Center Drive, San Marcos, CA 92069-2949

Ms. Candace Gibson, County of San Diego, Landfill Management, 5201 Ruffin Road,
MS 0383, San Diego, CA 92123 (w/attachment)

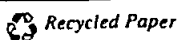
Ms. Rebecca Lafreniere, County of San Diego Local Enforcement Agency, 9325 Hazard
Way, San Diego, CA 92123 (w/attachment)

Mr. Richard Opper, Esq. Opper and Varco, LLP, 225 Broadway, Suite 1900, San Diego,
CA 92101 (w/attachment)

Mr. James O'Day, Esq. County of San Diego, County Administration Center, 1600
Pacific Highway, Room 355, San Diego, Ca 92101 (w/attachment)

Mr. Joe Mello, Division of Clean Water Programs, State Water Resources Control
Board, P.O. Box 944212, Sacramento, CA 94244-2120 (w/attachment)

California Environmental Protection Agency



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADDENDUM NO. 2 TO
WATER QUALITY INVESTIGATION ORDER NO. R9-2006-0044

CITY OF SAN MARCOS
BRADLEY PARK/OLD LINDA VISTA LANDFILL
SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) finds that:

REGULATORY AND FACTUAL BACKGROUND

1. **ENFORCEMENT ACTION:** The City of San Marcos is responsible for its management and maintenance under the Regional Board's waste discharge requirements (Order 97-11) for inactive landfills. The City of San Marcos is referred to as "Discharger" in this Order. On April 17, 2006, the Regional Board issued Water Quality Investigation Order R9-2006-0044 to the City of San Marcos. Order No. R9-2006-0044 requires the City to develop and implement an Evaluation Monitoring Program (EMP) in compliance with the applicable provisions of California Code of Regulations (CCR) Title 27 §20090(g), §20385(a)(3), and §20425.
2. **DISCHARGER'S REQUEST AND REGIONAL BOARD RESPONSE:** On September 15, 2006, the Regional Board received a letter, from the Discharger's legal counsel, requesting that the Regional Board extend the due date to October 31, 2006 for the Evaluation Monitoring Program (EMP) workplan. The request was based upon the Discharger's anticipation of potential participation by the County of San Diego in the investigation process, and the time necessary to complete a mutual exchange of information between the Discharger and County. On October 10, 2006, the Regional Board convened a meeting with the interested parties, including representatives from the City of San Marcos, County of San Diego, and the Regional Board staff. The parties were unable to develop a joint stipulation agreement on responsibility for the Bradley Park/Old Linda Vista Landfill. However, the Regional Board agrees to the limited time extension proposed by the Discharger.
3. **ADDENDUM 1:** On September 28, 2006, the Executive Officer issued Addendum 1 to Order R9-2006-0044, extending the due date for the EMP workplan to October 31, 2006. It is reasonable to extend the due date for the Amended Report of Waste Discharge and Groundwater Sampling and Analysis Plan, because the preparation of these submittals necessarily depends upon the completion of the work in the EMP workplan.

4. **CEQA EXEMPTION:** This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*) in accordance with CCR Title 14, Chapter 3, section 15321.

ORDER DIRECTIVES

IT IS HEREBY ORDERED, pursuant to sections 13267 of the California Water Code, Order R9-2006-0044 is hereby amended as follows:

1. Change the compliance date in Directive C.1 of Order R9-2006-0044, for the Amended Report of Waste Discharge, as follows:

“ C. Amended Report of Waste Discharge

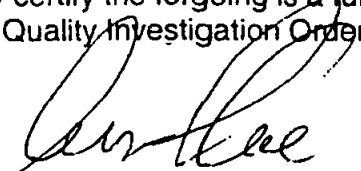
1. By **May 18, 2007**, the Discharger shall submit to the Regional Board an updated Report of Waste Discharge (ROWD) to amend this Order to establish a corrective action program meeting the requirements of CCR Title 27, §20430. The ROWD shall contain the following information:”
2. Change the compliance date in Directive E.3 of Order R9-2006-0044, for the Groundwater Sampling and Analysis Plan - Evaluation Monitoring Program, as follows:
 - “3. ***Environmental Sampling and Analysis*** - By **May 18, 2007**, the Discharger shall submit a plan for sampling and analysis of groundwater for the purpose of executing an effective Evaluation Monitoring Program (EMP) as required pursuant to CCR Title 27 §20425. The first round of samples collected from all sampling points (*i.e.*, groundwater wells, soil vapor monitoring probes, and surface water samples/seeps) shall contain analytical results for all constituents listed in Appendix II to the Code of Federal Regulations, Title 40 (40 CFR) Part 258. The Discharger shall continue to regularly monitor those constituents found in concentrations above designated water quality objectives and report results in subsequent water quality monitoring reports in compliance with this Order.”
3. All other directives and provisions of Order R9-2006-0044 remain in effect.

Addendum 2 to Order No. R9-2006-0044:
Investigation Order for Discharges of Waste
Constituents from Bradley Park/Old Linda Vista Landfill

January 5, 2006

I, John H. Robertus, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of an Addendum to Water Quality Investigation Order R9-2006-0044 as issued on January 5, 2007.

Ordered By



JOHN H. ROBERTUS
Executive Officer
January 5, 2007

Attachment No. 2
Notice of Violation No. R9-2007-0196



**California Regional Water Quality Control Board
San Diego Region**



Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from U.S. EPA

Arnold Schwarzenegger
Governor

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(858) 467-2952 • Fax (8) 571-6972
<http://www.waterboards.ca.gov/sandiego>

CERTIFIED MAIL
7006 2760 0000 1615 5697

IN THE MATTER OF)

Mr. Mike Mercereau)
Director of Public Works)
City of San Marcos)
201 Mata Way)
San Marcos, CA 92069-2949)

NOTICE OF VIOLATION
R9-2007-0196

September 21, 2007

Subject Site: Bradley Park / Old Linda Vista Landfill
San Marcos, CA

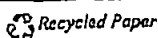
YOU ARE HEREBY NOTIFIED THAT:

The City of San Marcos is in violation of Order R9-2006-0044. The City of San Marcos failed to submit a complete Report of Waste Discharge (ROWD) by May 18, 2007 as required by Directive C.1 of Order No. R9-2006-0044.

This conclusion is based upon the following facts:

1. On April 17, 2006 the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued Water Quality Investigation Order R9-2006-0044 to the City of San Marcos. Order No. R9-2006-0044 requires the City of San Marcos to submit an amended Report of Waste Discharge (ROWD) in compliance with the applicable provisions of California Code of Regulations (CCR) Title 27 § 20430 by December 18, 2006.
2. The City of San Marcos requested additional time to comply with Directives B. 2 and C. 1 of Order R9-2006-0044. The Regional Board responded by issuing addenda Nos. 1 and 2 to Order R9-2006-0044 on September 18, 2006 and January 5, 2007, respectively. Pursuant to Addendum No. 2 of Order R9-2006-0044, the ROWD was due to the Regional Board on May 18, 2007.
3. To fulfill the requirements of Directive B.2 of Order R9-2006-0044, the City submitted a report entitled "Evaluation Monitoring Program Report: San Marcos I Landfill" on May 18, 2007. The City of San Marcos submitted the Evaluation Monitoring Program Report in response to both Directive B.2 and C.1 of Order R9-2006-0044. The Regional Board does not consider submittal of the Evaluation Monitoring Program as acceptable because it fails to include the technical

California Environmental Protection Agency



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September 21, 2007

information required by Directives C.1.a, C.1.b, C.1.c(1) – (2), C.1.d, and C.1.e of Order No. R9-2006-0044.

The violations cited above are serious and may result in further enforcement action against your agency, including a civil liability being administratively implemented by the Regional Board under authority of Section 13350 and 13268 of the California Water Code. The California Water Code provides that any person who violates any waste discharge requirements issued, reissued, or amended by this Regional Board may be subject to administrative civil liability up to 1,000 dollars per day of the violation. The Superior Court may impose civil liability of up to 5,000 dollars per of the violation.

If you have any questions pertaining to the issuance of this Notice of Violation, please contact Ms. Amy Grove at (858) 637-7136, or via e-mail at agrove@waterboards.ca.gov. If you feel you have received this Notice in error, or need clarification on any of the above violations, please contact our office immediately. Written correspondence pertaining to this Notice should be directed to the following address:

Executive Officer
California regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
Attn: Mr. Bob Morris, Supervisor, Land Discharge Unit



DAVID T. BARKER
Supervising Water Resource Control Engineer
California Regional Water Quality Control Board

Sept 21, 2007
Date

cc: Ms. Rebecca Lafrenlere, County of San Diego Local Enforcement Agency, 9325 Hazard Way, San Diego, CA 92123

Ms. Vicki Gallagher, County of San Diego, Department of Public Works, 5201 Ruffin Road, Suite D, San Diego, CA 92123

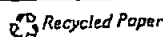
Mr. Richard Opper, Esq. Opper and Varco, LLP, 225 Broadway, Suite 1900, San Diego, CA 92101

Mr. James O'Day, Esq. County of San Diego, County Administration Center, 1600 Pacific Highway, Room 355, San Diego, CA 92101

Mr. Joe Mello, Division of Clean Water Programs, State Water Resources Control Board, P.O. Box 944212, Sacramento, CA 94244-2120

Mr. Garth Koller, City of San Marcos, 1 Civic Center Drive, San Marcos, CA 92069-2949

California Environmental Protection Agency



NON-SOLUBLE

NON-SOLUBLE

Attachment No. 3

E-mail Correspondence between the
San Diego Regional Board and the
City of San Marcos

From: Bob Morris
To: Mike Sowinski
CC: Amy Grove; David Barker; Mark Alpert; Richard Opper
Date: 11/16/2007 9:37 AM
Subject: RE: Bradley Park Landfill - Corrective Action Work Plan

Mike,

Thanks for your email. It helps clarify the current status of the project. We have the following general comments:

1. You stated "the City has performed all necessary fieldwork that it and it's consultants believe are necessary in order to perform the feasibility study and corrective action evaluation (as well as the other items) that the ROWD requires."

It seems the County of San Diego disagrees with this conclusion, because the County submitted a *workplan for additional site assessment and field work to supplement the data previously obtained by the City.* Is the City objecting to this additional work?

2. We also noted that the title of the work plan is, "County of San Diego's Revised Corrective Action Work Plan pertaining to Bradley Park Landfill, City of San Marcos" However, the work plan itself is for supplemental site assessment activities and not for implementation of corrective action. Perhaps the title should be revised. With the understanding that conducting this assessment by itself will not complete the RoWD, we have no objections to additional assessment activities. Keep in mind that we have deferred further enforcement action until Jan. 30, 2008 for violation of the May 18, 2007 deadline for submittal of a complete RoWD. Consideration will then be given to the quality and completeness of the RoWD that would include specific site information, the engineering feasibility study, and a corrective action plan (including remedial alternatives) that may or may not be developed as a result of the field investigation the County is planning to perform.

Here are some specific comments on the status that you provided:

a. Delineation of the release You stated *completed and documented in prior submitted EMP report.* **We disagree.** The delineation of the release and the delineation of the waste at the Bradley Park Landfill are two different things. The EMP report identifies the boundaries of the waste, based on past studies and their most recent field investigations. However, we do not have a plume delineation study, or map referring to the extent of groundwater contamination at the site. We know that contaminants are present in down-gradient monitoring wells, but not if ground water beyond those points has been impacted. This should be included as part of the delineation of the release. As noted above, additional delineation is being proposed by the County.

b. Identification of constituents of concern You noted and **we concur** that this has been completed and documented in prior submitted EMP report).

c. Identification of applicable water quality standards You reported that this has been *completed and documented in prior submitted EMP report.* **We disagree** As we informed the City at the meeting in September, the former background monitoring well (SM-1) is not considered a viable well for establishing background information because it has been influenced by the landfill, and has had contaminants detected in monitoring events in the past. The new well (I believe it is SM-8) may be in a more suitable location and, if contaminants are not found to be present in that well, it will be a viable well for establishing background levels at this site. The City still has the responsibility to propose how many monitoring events, or data points are appropriate for establishing background levels, and then should propose the methods they would use in order to establish background levels. This information needs be included in the report of waste discharge.

d. the engineering feasibility study (in progress, scheduled for Jan. 2008) **No comment**

e. the proposed corrective action program (in progress, scheduled for Jan. 2008) **No comment except**

I will be preparing a written status report for the Board sometime between Dec 3-5. Any new information or updates will be appreciated, especially regarding the status of the feasibility study and the proposed corrective action. If a meeting is necessary I'm available most days during the week of Nov. 26.

Bob Morris
858-467-2962
bmorris@waterboards.ca.gov

>>> "Mike Sowinski" <MikeSowinski@envirolawyer.com> 11/15/2007 2:28 PM >>>
Bob,

The City has performed all necessary fieldwork that it and its consultants believe are necessary in order to perform the feasibility study and corrective action evaluation (as well as the other items) that the ROWD requires. The City continues to target January 2008 for completion and believes this is achievable. For more details, see "specific responses" below.

Pursuant to the authority granted to it under the Polanco Redevelopment Act, the City's Redevelopment Agency asked the County to develop a remedial action plan. In response, the County prepared the CAWP that you refer to below. The RDA possesses the authority to approve the CAWP, and accordingly it has provided contingent approval to the County - contingent upon the RWQCBs satisfaction that the County's efforts, as envisioned by its CAWP, would satisfy the requirements that the RWQCB has set forth in Order R9-2006-0044.

While the County, I understand, has sent the CAWP to you, they do not appear to have otherwise sought the RWQCBs agreement that the efforts they contemplate would result in an acceptable and timely ROWD. However, they are submitting this plan as a result of a Polanco request that requires they satisfy the requirements of the RWQCB, and they expect to rely on data the City generated, as well as develop additional data, in order to accomplish this goal, as they have described in their CAWP. We hope and expect that using this process will result in a timely submission to the RWQCB. The RWQCB has worked cooperatively with our firm on various Polanco projects, throughout the watershed, and this is no different from those. We hope that the participation of the discharger along with the City will bring additional resources to a successful ROWD (which was the document that the RWQCB sought from the County, not the City, when 97-11 was first adopted.

Specific Responses

a. Delineation of the release (completed and documented in prior submitted EMP report)

- b. Identification of constituents of concern (completed and documented in prior submitted EMP report).
- c. Identification of applicable water quality standards (completed and documented in prior submitted EMP report).
- d. the engineering feasibility study (in progress, scheduled for Jan. 2008)
- e. the proposed corrective action program (In progress, scheduled for Jan. 2008)
- f. a proposal for a monitoring program to assess the corrective action program (in progress, scheduled for Jan. 2008)

J. Michael Sowinski Jr.
Opper & Varco LLP
225 Broadway, Suite 1900
San Diego, CA 92101
619-231-5858
619-231-5853 (fax)
msowinski@envirolawyer.com

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-----Original Message-----

From: Bob Morris [<mailto:BMorris@waterboards.ca.gov>]
Sent: Thursday, November 15, 2007 1:31 PM
To: Mike Sowinski
Cc: Amy Grove; David Barker; Mark Alpert
Subject: RE: Bradley Park Landfill - Corrective Action Work Plan

Mike,

Amy and I have discussed the workplan that was submitted by the County and it is not clear what is the purpose of the workplan. It might be reasonable for addressing an element of the Report of Waste Discharge (but certainly not all of the Report of Waste Discharge).

What was the scope of work that was issued to the contractor for development of the workplan? Was it to prepare a workplan for completing the report of waste discharge that would include:

- a. Delineation of the release
- b. Identification of constituents of concern
- c. Identification of applicable water quality standards
- d. the engineering feasibility study
- e. the proposed corrective action program
- f. a proposal for a monitoring program to assess the corrective action program

or was the scope of work just to delineate the release?

If the City's progress for completion of the RoWD is only at the point of delineation, the City is in serious trouble of not having a complete RoWD by Jan. 30, 2008, which is the date that I understand we agreed to postpone further enforcement action.

Would you give me an update of where the City is with completion of each of the above items. I want to give our Board a written status report of the City's progress in the December Executive Officer report, especially if it's likely the City is not going to be submitting a complete RoWD by Jan. 30, 2008.

Bob Morris
858-467-2962
bmorris@waterboards.ca.gov

>>> "Mike Sowinski" <MikeSowinski@envirolawyer.com> 11/15/2007 10:33 AM

>>> >>>

Hello Amy,

Thanks for your time on Tuesday afternoon explaining the RWQCB's process and expectations concerning the submission of a Report of Waste Discharge "ROWD" for Bradley Park. I'm writing to summarize our discussion.

What I understood from our discussion is that the RWQCB does not feel it is appropriate nor do you plan to review and/or approve the County-prepared work plan (referred to in the e-mails below). Rather, the RWQCB will review and approve (assuming it is acceptable) a Report of Waste Discharge (ROWD) when submitted. Finally, you explained that the RWQCB expects to receive the ROWD for Bradley Park in January, 2008 as listed in the City's prior-submitted EMP.

I hope that I have accurately understood our conversation but if I have not, please correct me.

Cordially,

Mike S.

J. Michael Sowinski Jr.
Opper & Varco LLP
225 Broadway, Suite 1900
San Diego, CA 92101
619-231-5858
619-231-5853 (fax)
msowinski@envirolawyer.com

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other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

-----Original Message-----

From: Amy Grove [<mailto:AGrove@waterboards.ca.gov>]
Sent: Friday, November 09, 2007 3:18 PM
To: Mike Sowinski; Richard Opper; hhp@lfap.com;
Barry.Pulver@sdcounty.ca.gov; James.ODay@sdcounty.ca.gov;
Vicky.Gallagher@sdcounty.ca.gov; dsimpson@simpsonlawfirm.com; Bob Morris; Catherine George
Cc: MMercereau@ci.san-marcos.ca.us
Subject: RE: Bradley Park Landfill - Corrective Action Work Plan

Bob and I have looked over the information provided and still aren't sure what the purpose of the workplan is. The table was helpful in pointing out what information is still outstanding with regards to the report of waste discharge, however, the point of completing further field work is still elusive. Please provide further information.

Regards,
Amy

>>> "Mike Sowinski" <MikeSowinski@envirolawyer.com> 11/9/2007 1:24 PM
>>> >>>

Amy,

In your prior e-mail, below, you wrote that "[i]t is the RWQCB's understanding that the only remaining outstanding issues regarding the Order is the submittal of a Report of Waste Discharge (ROWD), and the need to establish a set of background data from the newly constructed up-gradient groundwater monitoring well..." The City of San Marcos agrees with this statement.

You also wrote that the RWQCB could not determine whether the County of San Diego's Revised Corrective Action Work Plan would satisfy Investigative Order R9-2006-0044 requirements to complete a ROWD and/or establish background data because the City of San Marcos had not specifically described which ROWD items has already been completed. To provide specificity, the City prepared the attached table. This table lists each of the ROWD items listed in Order R9-2006-0044 and it notes whether each has been completed by the City. As you will notice, this table references the City's EMP report for further details. The EMP report includes the same information, but perhaps not summarized as concisely as the attached table.

I hope that the attached table enables review of the County's Work Plan, and that you will issue a written notice advising both the City and the County of the fact that the RWQCB approves the County's proposed plan.

Please do not hesitate to contact me if you desire any additional details.

Sincerely,

Mike S.

J. Michael Sowinski Jr.
Opper & Varco LLP
225 Broadway, Suite 1900
San Diego, CA 92101
619-231-5858
619-231-5853 (fax)
msowinski@envirolawyer.com

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-----Original Message-----

From: Amy Grove [<mailto:AGrove@waterboards.ca.gov>]
Sent: Monday, October 29, 2007 2:43 PM
To: Mike Sowinski; Richard Opper; hhp@lfap.com;
Barry.Pulver@sdcounty.ca.gov; James.ODay@sdcounty.ca.gov;
Vicky.Gallagher@sdcounty.ca.gov; dsimpson@simpsonlawfirm.com; Bob
Morris; Catherine George
Subject: RE: Bradley Park Landfill - Corrective Action Work Plan

Bob and I have talked about the work plan and the outstanding issues related to Order R9-2006-0044. The RWQCB has no way of knowing whether or not the proposed work plan will meet the requirements of Order R9-2006-0044 because we don't know exactly what information you have already gathered. The RWQCB received the EMP report in May 2007, and the City of San Marcos indicated that some of the information presented in that report would cover information required in the ROWD, however, no specifics were ever given or indicated. Order R9-2006-0044 and CCR Title 27 Section 20430 and Section 21710 clearly outline what is required for a report of waste discharge. It is up to the Discharger to inform the RWQCB what sections of CCR Title 27 or Order R9-2006-0044 the work plan intends to provide information about, and what sections have already been covered by the EMP report.

I will not begin my review of the proposed work plan until this information has been submitted.

Regards,
Amy

>>> "Richard Opper" <ropp@envirolawyer.com> 10/29/2007 2:38 PM >>>
Dear Ms. Grove -

Although most of the Polanco matters we have worked on (and all of them that the RWQCB has overseen) did come about as a result of "Polanco Agreements" - there is none in this instance. However, the statute

doesn't require an Agreement. The statute contemplates a redevelopment agency making a demand for a cleanup plan by sending a 60 Day Notice, and a recipient of such a demand has the right to submit a plan for the work, instead of entering into an Agreement. That is what has occurred here. The County has responded to the 60 Day Notice with the plan (the CAWP) that has been submitted to you. If, in your view, the CAWP fulfills the remaining requirements of the RWQCB's 13267 Order, then it will be approved by the agency as soon as the RWQCB indicates its own approval (subject, of course, to any modifications the RWQCB may want to suggest.) Does this action require a meeting? Perhaps the you can merely indicate whether the CAWP will satisfy your 13267 Order's requirements?

Richard G. Opper
Opper & Varco LLP
ph. 619.231-5858
fax 619.231-5853

This information is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination, or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

-----Original Message-----

From: Amy Grove [<mailto:AGrove@waterboards.ca.gov>]
Sent: Monday, October 29, 2007 2:26 PM
To: Mike Sowinski; Richard Opper; 'Gallagher, Vicky'; O'Day, James R; Pulver, Barry; dsimpson@simpsonlawfirm.com; Bob Morris; Catherine George
Subject: Bradley Park Landfill - Corrective Action Work Plan

Hello.

On October 17, 2007 the RWQCB received a report entitled "County of San Diego's Revised Corrective Action Work Plan pertaining to Bradley Park Landfill, City of San Marcos." According to the cover letter and Introduction, the County of San Diego proposes to perform additional Investigative work on behalf of the City of San Marcos in response to the Polanco Redevelopment Act. The RWQCB was not aware that there was a Polanco agreement between the City of San Marcos and the County of San Diego, and requests a copy of that agreement be submitted to this office for our records.

The report indicates that the purpose of the work plan is to address the outstanding issues related to Investigative Order R9-2006-0044. It is the RWQCB's understanding that the only remaining outstanding issues regarding the Order is the submittal of a Report of Waste Discharge, and the need to establish a set of background data from the newly constructed up-gradient groundwater monitoring well at the site. The RWQCB already concurred with the proposed site assessment work plan submitted by the City of San Marcos to meet the requirements of Order R9-2006-0044. Furthermore, the report title indicates that the County proposes to implement corrective action at the Bradley Park Landfill. The corrective action alternatives should be presented in the Report of

Waste Discharge so that the RWQCB has the opportunity to comment and respond to all proposed alternatives and participate in the decision-making process. It is inappropriate for the County or the City to propose corrective action measures at the site when clearly all of the information needed to make a decision regarding what measures, if any, would be appropriate for mitigating the release at the site has not been submitted.

Should either the County of San Diego or the City of San Marcos want to discuss this issue, the RWQCB is willing to meet to discuss these issues, providing that everyone is available to meet at the same time.

Regards,

Amy Grove
Engineering Geologist
Land Discharge Unit
California Regional Water Quality Control Board San Diego Region 9
(858) 637-7136
Fax: (858) 571-6972

Phone: (858) 637-7136
Fax: (858) 571-6972

From: "Mike Sowinski" <MikeSowinski@envirolawyer.com>
To: "Bob Morris" <BMorris@waterboards.ca.gov>
CC: "Richard Opper" <ropper@envirolawyer.com>, "Amy Grove" <AGrove@waterboar...>
Date: 11/16/2007 11:54 AM
Subject: RE: Bradley Park Landfill - Corrective Action Work Plan

Bob,

I really appreciated the clarity of your e-mail. I'll try to respond in kind. As you'll notice, I have added the folks from the County who have been on this e-mail chain over the past week or so, but not on the most recent exchanges from yesterday afternoon and this morning (recorded below).

1) Does the City object to the County's proposal for new sampling?

Not necessarily - the City defers to the County. The City simply desires the County's efforts to, when completed, provide a ROWD that you consider acceptable and timely. The City has always recognized that the County has so many years of experience with the landfill (going back to the 1940s) and, in turn, it has developed such good expertise on the site issues. Thus, the City does not disagree with the County's plan for additional sampling - just as long as the County's efforts conclude with a ROWD that you find acceptable and timely under the circumstances.

2) Additional delineation of groundwater contamination.

I appreciate the clarification and I believe that sufficient data exists, from both the pre-existing monitoring wells and the new monitoring wells installed by the City, to complete such maps within the forthcoming ROWD.

3) Upgradient well.

Understood. I believe the ROWD can and will recognize that the new "background" well has not necessarily proved itself as a real background well and that only after additional sampling can it officially qualify as one. The forthcoming ROWD can recognize this and account for it.

4) Future updates prior to Dec. 3.

Will do.

Sincerely,

Mike S.

From: Bob Morris [mailto:BMorris@waterboards.ca.gov]
Sent: Fri 11/16/2007 9:37 AM
To: Mike Sowinski
Cc: Richard Opper; Amy Grove; David Barker; Mark Alpert
Subject: RE: Bradley Park Landfill - Corrective Action Work Plan

Mike,

Thanks for your email. It helps clarify the current status of the project. We have the following general comments:

Attachment No. 4
Regional Board Comment Letter
Dated May 30, 2008



California Regional Water Quality Control Board San Diego Region



RF

Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from U.S. EPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(619) 467-2952 • Fax (619) 571-6972
<http://www.waterboards.ca.gov/sandiego>

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May 30, 2008

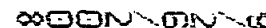
Mr. Mike Mercereau
Director of Public Works
City of San Marcos
201 Mata Way
San Marcos, CA 92069-2949

Dear Mr. Mercereau:

**RE: REGIONAL BOARD COMMENTS: REPORT OF WASTE DISCHARGE FOR THE
BRADLEY PARK / OLD LINDA VISTA LANDFILL: SAN MARCOS, CA**

On January 30, 2008, the California Regional Water Quality Control Board, San Diego Region, (Regional Board) received the subject report of waste discharge (RoWD) from the City of San Marcos in response to Directives in Water Quality Investigative Orders No. R9-2006-0044 and No. R9-2007-0041. The Bradley Park Landfill is regulated under the California Code of Regulations (CCR) Title 27, for monitoring and maintenance. These regulations require that when there is evidence of a release, in this case the presence of landfill-related constituents in ground water and a seep into surface waters, the Discharger must submit an updated RoWD for the purposes of updating site conditions and proposing corrective action alternatives in the event that corrective actions need to be implemented at the site. In a meeting with representatives from the City of San Marcos and the County of San Diego on September 26, 2007, the City requested a time extension so that the reports required under each of the Investigative Orders could be submitted as a single report, in this case, a RoWD. The Regional Board did not agree to the time extension, but agreed that the required information could be submitted in one document, the RoWD. The Regional Board has completed a review of the RoWD. The RoWD is incomplete and does not satisfy the requirements established in the two investigative orders. General and specific comments are provided in the attached document.

Following is a list of deficiencies that need to be corrected by the City of San Marcos to make the RoWD complete and to comply with the Orders:



1. The RoWD must include maps indicating the location and extent of contaminant source zones. Source zones for all Constituents of Potential Concern (COPCs) should be identified on site maps.
2. The RoWD must include a map delineating the lateral extent of each COPC in ground water.
3. The RoWD must include an identification of background levels for all COPCs. The methodology for the determination of background shall be consistent with protocols approved by the Regional Board.
4. The RoWD must include an assessment of the effects of discharge of rock material, used for channel armoring, into the creek on the functions and values of the creek.
5. The RoWD must include an assessment of the effects of the construction of check dams within the creek on the functions and values of the creek.
6. The RoWD must include a map showing areas where vegetation in the area of the creek should be restored and where rock fill has been deposited.
7. References to chemical concentrations must be supported by:
 - a. Identification of the chemical being referred to, and
 - b. The chemical concentration that is being referred to.
8. References to Best Management Practices (BMPs) should identify the BMPs being referred to.
9. The RoWD should be revised to identify the actual period during which check dams were installed.
10. The ground-water migration pathway that includes potential COPC impacts to the creek must be included.
11. Supporting data and rationale must be presented for technical conclusions. The specific conclusions that will require such supporting data and rationale include:
 - a. The RoWD states that, "ground-water recharge occurs along the upper portion of the site."
 - b. The RoWD indicates that there is an increasing trend in ground water elevations in monitoring wells SM-3 and SM-5.

RF

- c. The RoWD includes a discussion of the water balance at the site in which is stated that, "the annual evapotranspiration rate at the landfill far exceeds the precipitation rate, thus inhibiting rainfall infiltration and potential leachate production within the landfill." The rationale should explain why it is meaningful to compare *annual* evapotranspiration with discrete precipitation events that typically occur during periods when evapotranspiration is low. In addition, the statement should be clarified to explain why irrigation inputs are not included.
 - d. The RoWD concludes that there is no NAPL at the site. If the City concludes in the revised RoWD that NAPL is not present at the site based on the 1 percent rule, a discussion that considers the proximity of wells to contaminant source zones should be included.
 - e. The RoWD states that either leachate or landfill gas is the source of ground-water impacts. Such a conclusion will require additional supporting rationale.
 - f. The RoWD includes a determination that, "surface water is not impacted by upgradient sources nor by landfill constituents potentially infiltrating into the creek", but fails to include a rationale or references to specific data to support the claim.
 - g. It is indicated in the RoWD that, flows in the creek "appear to be on the order of 10 gallons per minute." Additional rationale and supporting data is needed if this claim is to be repeated in the revised RoWD.
- 12. The results from appropriate aquifer tests to support ground-water fate and transport calculations should be included.
 - 13. Ground-water cleanup levels that were established at the former BAE cleanup site are not appropriate at Bradley Park. These levels should not be cited in the RoWD.
 - 14. ESLs (Environmental Screening Levels) are not appropriate for use at Bradley Park and should not be included in the revised RoWD.



Mr. Michael Mercereau
Regional Board Comments:
Report of Waste Discharge for the
Bradley Park Landfill

-4-

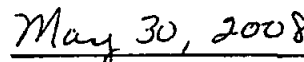
May 30, 2008

Questions pertaining to the attached comments should be directed to Ms. Amy Grove at (858) 637-7136, or via e-mail at agrove@waterboards.ca.gov; or to Mr. Peter Peuron at (858) 637-7137, or via e-mail at Ppeuron@waterboards.ca.gov. Written correspondence should be directed to the following address:

Ms. Julie Chan
Supervising Engineering Geologist
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
Attn: Mr. Peter Peuron and Ms. Amy Grove



Julie Chan
Supervising Engineering Geologist


Date

Attachment: Technical comments for the Report of Waste Discharge

cc: Ms. Rebecca Lafreniere, County of San Diego Local Enforcement Agency, 9325 Hazard Way, San Diego, CA 92123

Ms. Vicki Gallagher, County of San Diego, Department of Public Works, 5201 Ruffin Road, Suite D, San Diego, CA 92123

Mr. Richard Opper, Esq. Opper and Varco, LLP, 225 Broadway, Suite 1900, San Diego, CA 92101

Mr. James O'Day, Esq. County of San Diego, County Administration Center, 1600 Pacific Highway, Room 355, San Diego, CA 92101

Mr. Garth Koller, City of San Marcos, 1 Civic Center Drive, San Marcos, CA 92069-2949

Mr. David Boyers, Senior Staff Counsel, State Water Resources Control Board Office of Enforcement, 1001 I Street, 16th Floor, Sacramento, CA 95814

California Environmental Protection Agency



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RE: REGIONAL BOARD COMMENTS ON THE REPORT OF WASTE DISCHARGE FOR THE BRADLEY PARK/OLD LINDA VISTA LANDFILL, SAN MARCOS, CA

General Comments

1. In many cases, site specific details that are necessary in order to support the substance of a claim or conclusion are not provided (e.g., references to chemicals exceeding particular standards without specifying the chemical or the standard).
2. In addition to omitting relevant necessary factual detail, there are serious omissions of major site issues. For example, the migration pathway for ground-water moving from contaminant source zones (such as the source areas for volatile organic constituents (VOCs)) to the creek was not included in the site conceptual model. This apparently led to the omission of this pathway in the discussion of corrective action alternatives.
3. Supporting rationale is not provided for the use of various methods or criteria including statistical methods, default cleanup standards and assumptions pertaining to risk assessment.
4. In some cases, technical conclusions are made without supporting rationale.
5. Standard regulatory protocols (as described in Title 27 and Resolution 92-49) are not adhered to. Specifically, the report included a proposal for corrective action and cleanup levels even though site assessment has not been completed and the feasibility of cleanup to background has not been addressed.

Specific Comments

1. The RoWD failed to demonstrate compliance with Directive 2.A.11 of Order No. 2007-0041. This directive required the City to perform "an assessment of the effects of discharge of rock material, used for channel armoring, into the creek on the functions and values of the creek and waters downstream of the creek." The table found in Section 1 of the RoWD (pages 1 – 3) list the specific directives covered by the report. The table does not cite any section of the report that addresses Directive 2.A.ii and instead provides a comment to the effect that the rock material was placed in the creek in order to provide protection against erosion. The response does not address the requirement of the directive for an assessment of the effects of the discharge on the functions and values of the creek and downstream areas.
2. The RoWD failed to demonstrate compliance with Directive 2.A.111 of Order No. 2007-0041. This directive required the City to perform "an assessment of the effects of the construction of check dams within the creek on the functions and values of the creek and water downstream of the creek," The table in Section 1 of the RoWD (pages 1 – 3) did not cite any section of the report that addresses this

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directive and instead provides a comment to the effect that the rock material was placed in the creek in order to provide protection against erosion. The response did not address the requirement of the directive for an assessment of the effects of the discharge on the functions and values of the creek and downstream areas.

3. Directive 2.A.iv of Order No. 2007-0041 required the City to provide, "A map showing areas where vegetation should be restored and where rock fill material has been deposited." The RoWD did not include such a map.
4. Section 2 of the RoWD contained a number of statements which lack sufficient detail. Examples of missing information include the actual, specific pollutants that were detected in seeps and identification of the specific BMPs that were employed in the creek.
5. The statement in Section 2.2.2 to the effect that check dams (which were among other BMPs mentioned) were constructed in the fall of 2007 is not consistent with the Regional Board record. On January 5, 2007 Mr. Pete Peuron and Mr. Ben Neill of the Regional Board's Central Watershed Unit inspected Bradley Park and observed five check dams that had been constructed within the creek. A copy of the inspection report, as well as the associated photographs, can be found in the Regional Board file. Therefore, the check dams had to have been constructed well before "the fall of 2007" as stated in the RoWD.
6. The following statement in the RoWD (Section 3.1, page 27) was not supported with data or rationale:

"Observation of ongoing dry season flows from a double culvert located beneath Rancho Santa Fe Road and water data from piezometers installed along the drainage support that ground-water recharge occurs along the upper portion of the site."

The conclusion that recharge occurs in the upper portion of the site (actually referring to the upper portion of the creek) is an important assertion because a discussion of remediation goals included in the Engineering Feasibility Analysis specifies the need to mitigate the pollution caused by such recharge. Such a finding is significant and therefore requires compelling supporting data. Not only is supporting data lacking, but the statement (which is the entirety of the argument presented in the RoWD) fails to even constitute a rationale. No logical connection between "dry season flows from a double culvert" and recharge is offered, nor is there an explanation of the relationship between the unspecified piezometric data and recharge.

7. Section 3.1.1 (page 27) of the RoWD indicated that there are increasing trends in ground-water elevations within ground-water monitoring wells SM-3 and SM-5, though the reason for the trend was not determined.

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8. In Sections 3.2.1 and 3.2.2 (pages 28 and 29) there is a discussion of the consumptive use of water at Bradley Park (i.e., the water balance which is primarily a function of evapotranspiration and the actual supplied water from irrigation and rainfall). Section 3.2.1 (page 29) concluded that, *"the annual evapotranspiration rate at the landfill far exceeds the precipitation rate, thus inhibiting rainfall infiltration and potential leachate production within the landfill."* This statement is not compelling given that,

- The water available for leaching includes both rainfall and irrigation. Therefore, comparing the annual evapotranspiration rate with precipitation does not account for all potential leachate and is, in fact, an incomplete representation of the water balance.
- Leachable water resulting from rainfall cannot be assessed by comparing annual evapotranspiration and annual rainfall. Evapotranspiration occurs in the summer and most rainfall occurs in the winter. Therefore, the total amount of potential evapotranspiration does not balance the actual rainfall amount. Note that without having accounted for the soil's effective water holding capacity and permeability, any given rainfall event has the potential to produce ground-water recharge and leachate simply because the rain event occurs over a short period of time during which only negligible evapotranspiration is occurring. The annual evapotranspiration rate does not account for this.

The analysis in Section 3.2.2 of the balance between applied irrigation water and evapotranspiration is also incomplete because evapotranspiration is compared to irrigation water without including rainfall inputs. Note that the report in which consumptive use is evaluated (included in Appendix A, entitled "Preliminary Irrigation Analysis", dated January, 2007) clearly identifies numerous months during which both rainfall and irrigation are in excess of the water usage that is determined based on evapotranspiration.

9. Section 3.4 (page 30) of the RoWD provided a list of constituents of potential concern for the ground-water at the Site. The number of constituents of concern as well as their concentrations, may be greater than what is provided in the report because several of the wells are not screened at an appropriate interval to collect samples representative of actual ground-water conditions at the Site. The City needs to assess the validity of each monitoring well and provide justification for each assessment, which shall be signed by a Professional Engineer (PE) or Professional Geologist (PG). If the City determines that the monitoring wells are improperly screened, then a work plan for the development of new monitoring wells, as well as the proposed locations, should be provided to the Regional Board.

10. In Section 3.4 (page 31) of the RoWD, the City concluded that:

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"All VOCs detected in ground water samples had concentrations lower than 0.01 percent of their solubility. The percentage of product solubility is used as a possible indicator of the presence of non-aqueous phase liquids (NAPLs) in the vicinity of the monitoring well, with 1 percent considered to be the most conservative threshold indicating potential presence of NAPL (Pankow and Cherry, 1996). These data indicate that NAPLs are not present at the landfill."

The conclusion that there are no NAPLs *anywhere* on the landfill based on the concentrations of contaminants found in the wells and on the 1 percent rule is unfounded. This approach is useful for assessing the presence of NAPL "in the vicinity of the monitoring well." There are locations at the landfill that are impacted or potentially impacted with waste that are located hundreds of feet away from any monitoring well. NAPL-impacted zones can produce ground-water plumes much less than a few hundred feet in length or width, and therefore, the well data cannot be used to conclude that there is no NAPL at the landfill. Furthermore, for compounds such as gasoline, the individual constituents such as benzene should be assessed according to their *effective* solubility (a much lower threshold that indicates the existence of NAPL) rather than the pure phase solubility.

11. Section 3.4 (page 31) stated:

"Geosyntec performed a preliminary analysis of the relationship of chloride concentrations versus total VOC concentrations, which can be used to evaluate the source of VOC impacts at the landfill (Geosyntec, 2004). . . However, while a loose relationship was observed, the correlation coefficient of this relationship was very low and therefore did not warrant further evaluation at this time."

As part of the City's evaluation of the potential sources of impacts to ground-water, as well as delineation of leachate and landfill gas (LFG) impacts to the entire site, and the potential constituents of concern, a comprehensive analysis of the relationship between leachate and landfill gas should have been completed at the Site. The information provided is vague and does not substantiate the source of ground-water impacts or explain the theoretical basis for, or the analytical data used in, the City's determination that either leachate or landfill gas is the source of ground-water impacts at the various ground-water monitoring wells. As the City states in the report, the correlation coefficient is low, indicating that a demonstration of the relationship between landfill gas and leachate versus ground-water impacts cannot be made at this time.

12. Directive C.1.a of Order No. R9-2006-0044 required the City to assess the nature and extent of the discharge of waste from the Site into surface waters, ground-water, and the vadose zone (via landfill gas or soil vapors). According to the RoWD (Section 3.5, page 32), *"The sampling results from off-Site downgradient well SM-8 show that VOC concentrations have not been detected above the laboratory*

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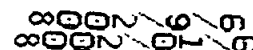
reporting limit and support the downgradient delineation of VOCs." One round of sampling from the new well does not constitute an adequate assessment of the extent of downgradient ground-water impacts. Furthermore, there are no landfill gas wells located downgradient of the Landfill, and therefore, the vadose zone has not been adequately characterized for off-site migration.

Based on the figures provided in the RoWD, the City has not fully delineated the source zone, including the presence of burn ash at the Landfill. Figures 2 through 13 show approximate limits of waste, and do not indicate the presence of waste or burn ash in the Bradley Park Creek. According to the RoWD, as well as inspections conducted by the Regional Board, waste and burn ash are present in the creek.

13. Section 3.6.2 (page 33) considered the surface water pathway, and Section 3.6.3 (page 34) considers the ground-water pathway at the Site. The latter discussion did not account for ground-water as a pathway for pollutants located away from the creek to migrate to the creek. The only reference to migration of pollutants in ground-water in Section 3.6.3 is to the effect that migration might occur to the southeast. Clearly (i.e., as the RoWD demonstrated) ground water recharges the creek and therefore, ground-water pollution is potentially migrating from any given contaminant source zone to the creek. The conceptual site model should be revised to include explicit consideration of migration of pollutants toward and into the creek.
14. Section 3.6.2 (page 34) indicated that based on analysis of surface water samples OSMSP-1 and OSMSP-2, *"surface water is not impacted by upgradient sources nor by the landfill constituents potentially infiltrating into the creek."* This conclusion is not supported by a statistical analysis or rationale. The City should provide a detailed discussion including a reference to the specific sampling data used in the analysis, to support the assertion that surface water has not been affected by upgradient sources or by the landfill. Any use of statistics should include a discussion of the justification for using the chosen statistical methodology.
15. Section 3.6.3 (page 34) of the RoWD stated that:

"Aquifer tests have not been conducted at he landfill to determine the hydraulic properties of the soils beneath the landfill; therefore, data should be collected so that constituent transport rates can be estimated, or estimated based on the hydraulic properties of the subsurface materials that comprise the uppermost aquifer."

Aquifer testing and analysis should have been completed during the updating of the conceptual site model. Comprehensive aquifer testing, including methodologies, and/or analytical methods, as well as the justification and/or rationale for using these test mechanisms should be completed at the Site.



16. The rationale or discussion regarding the observations employed to conclude that flows in the creek during the dry season *"appear to be on the order of 10 gallons per minute"* (Section 3.7.2, page 36) was not included in the RoWD.
17. In a summary of Section 3 (page 38), the following conclusion was presented: *"Background surface water for both dry and wet season flows exceed RWQCB basin standards."* The RoWD did not provide a list of the constituents found to exceed Basin Plan standards, or a reference to the standards themselves.
18. Directive C.1.c of Order No. R9-2006-0044 required the City to propose Water Quality Protection Standards (WQPS) for each proposed Constituent of Concern in accordance with CCR Title 27, section 20390, and provide the data to support each limit. According to Section 4.0 (page 40), WQPS for the Site were developed, in part, using ground-water data collected from background monitoring wells SM-1 and SM-6. The Regional Board previously informed the City that the use of data collected from the aforementioned wells is inappropriate since these wells have shown contamination sporadically since 1991, and are therefore invalid for use as background wells. It was for this reason that the Regional Board informed the City that a new upgradient well was necessary for the purposes of establishing background concentrations at the site. An insufficient number of samples were collected from upgradient well SM-9 to establish a sampling population from which WQPS, representative of upgradient ground-water conditions, can be determined.
19. The RoWD proposed the use of tolerance limits (with 95 percent confidence and 95 percent coverage) for determination of background for inorganic chemicals in ground-water, while using the 95 percent upper confidence level for determination of background for surface water (within the creek). No rationale was presented to support the use of either criterion, and therefore, why either approach provides an appropriate method for determining background levels is unclear. Furthermore, tolerance limits and confidence levels are statistical methods that can only be used when the data are known to be normally distributed. The RoWD includes no demonstration (e.g., normality test results with accompanying rationale) that the data are normally distributed.
20. Table 5 of the RoWD listed the 95 percent upper confidence limits (UCLs) for inorganic chemicals. A total of five samples are used to calculate the 95 percent UCL for total dissolved solids (TDS), chloride, and sulfate, while four samples are used for the other inorganic constituents. There are two problems with such a limited set of data. First, when the number of samples (N) is low, normality testing produces a result in which confidence is low. Second, a low "N" value produces unnecessarily high upper confidence limits. When the 95 percent UCL errs on the high side for a background calculation, the result is less protective of beneficial uses. Moreover, the 95 percent UCL will likely decline with the collection of additional data. Additional upgradient data should be collected and the analysis rerun.

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21. The RoWD, Section 4.4 (page 44), states:

"The WQPS proposed here are generally less (more conservative) than site-specific cleanup levels developed at the neighboring Singer site, a site that is relevant because it is located approximately 800 feet downgradient of the landfill, and VOC levels from that site are relevant for consideration at Sam Marcos I Landfill."

Table 9 of the RoWD is referenced to show that the cleanup levels that were specified for the Singer site (currently known as the BAE site) are generally higher than cleanup levels proposed for Bradley Park. The report noted that the cleanup levels at BAE were based on a risk assessment that considered various possible pathways and receptors. The comparison between the BAE site and Bradley Park is inappropriate for the following reasons:

1. Directive A of Addendum No. 1 to Cleanup and Abatement Order (CAO) No. 88-89, (in which the cleanup levels for the former BAE site were set) stated:

"The California Toxics Rule (CTR) provides water quality criteria that address the bioaccumulation pathway. Cleanup levels specified in Directive A.1 must result in attainment of CTR water quality criteria in Sam Marcos Creek."

The Technical Analysis for the CAO included an explanation of how the CTR was applied. Some of the factors unique to the former BAE site that do not apply at Bradley Park are listed below:

- At the former BAE site, a cleanup level greater than background was appropriate because it had been demonstrated that cleanup to background was demonstrated to not be feasible (in accordance with Resolution No. 92-49). This demonstration included empirical data such as the fact that extensive excavation had been performed in the contaminant source zone and eight years of pumping and treating of ground-water had been performed. That cleanup to background at Bradley Park is infeasible has not yet been demonstrated.
- Source zone impacts at the former BAE site were located about 600 feet from San Marcos Creek. This proved to be a significant factor in the overall risk to the creek. Note that the extent of source zone impacts have not yet been delineated at Bradley Park.
- At the former BAE site, over 12 years of monitoring data had been collected, showing that the contaminant plume was stable and that it had attenuated significantly with distance, away from the source zone. Since the extent of the ground-water plume has not been characterized, plume stability has not been demonstrated.

- At the former BAE site, site-specific modeling was performed to derive risk-based cleanup levels based on the site's unique circumstances (including soil type, ground-water migration rate, location of the contaminant source zone, etc.) to arrive at cleanup levels that were based on that particular environment. For example, determination of vapor risk was based, to a significant degree, on the specific soil type found at the BAE site. These same conditions do not exist at Bradley Park, and therefore, the risk-based cleanup levels do not apply to Bradley Park.
- The discharger at the former BAE site was required to perform fate and transport modeling to demonstrate that the impacts to soil and ground-water *would not result in contaminant concentrations greater than the levels specified in the California Toxics Rule (CTR)*. As such, the only appropriate criteria that can be applied to both sites are the levels from the CTR. Modeling has not been performed at the Bradley Park site to assess whether landfill waste might result in pollutant concentrations in surface water that exceed the CTR criteria.

Based on the above considerations, CTR criteria applies to the surface water in the Bradley Park creek. Applying ground-water cleanup levels from the former BAE site to Bradley Park is not appropriate because the levels that were set at the former BAE site were based on the unique circumstances of that site, including its remediation history, distance from the source zone to receiving water, contaminant attenuation rate, etc.

22. The RoWD proposed to use Environmental Screening Levels (ESLs) as Water Quality Protection Standards for organics. ESLs are screening level values that were developed and are still being developed by the California Regional Water Quality Control Board, San Francisco Region. An Interim Final guidance document entitled, "Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater" (November 2007) discusses the appropriate use of the ESL approach. Page ES-2 of this document notes that,

"The Tier 1 ESLs presented in the lookup tables are NOT regulatory cleanup standards. Use of the ESLs in this document in general is intended to be entirely optional on the part of the regulated facility and subject to approval of the case manager in the overseeing regulatory agency."

On Page ES-3 of the guidance document, a significant limitation of the model is discussed:

"Reliance on only the Tier 1 ESLs to identify potential environmental concerns may not be appropriate for some sites. Examples include sites that require a detailed discussion of potential risks to human health, sites where physical conditions

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substantially differ from those assumed in development of the ESLs (e.g., mine sites, landfills, etc., with high or low pH) and sites where impacts pose heightened threats to sensitive ecological habitats. The latter could include sites that are adjacent to wetlands, streams, rivers, lakes, ponds, marine shorelines, or sites that otherwise contain or border on areas where protected or endangered species may be present."

Some of the conditions found at Bradley Park do in fact warrant a higher level of environmental concern based on heightened sensitivity. Some of the factors listed above that were not accounted for in ESL modeling and which exist at Bradley Park include its proximity to both a stream (the creek) and a sensitive ecological habitat (the wetlands area east of the site). Also, because Bradley Park is a landfill site that is co-located with a stream, attenuation factors that would normally apply in fate and transport modeling (a key assumption in the type of modeling that was performed in deriving ESLs) do not apply. Also important is that the procedure for applying ESLs is still under development. A revised draft version of the ESL approach which includes the use of much more site-specific data is currently being tested. As such, the method proposed (using default ESLs from a lookup table) is deficient in that it does not adequately account for site-specific variables, particularly those site factors discussed above that are not appropriately accounted for in a Tier 1 evaluation. Since the site has not been assessed, to propose either cleanup levels or cleanup for the Bradley Park site is premature. ESLs are not acceptable as cleanup criteria. In addition, establishing that cleanup to background is not feasible prior to proposing cleanup levels that exceed background will be necessary.

23. Section 5.0, et seq., (page 45) presented an engineering feasibility analysis for proposed corrective action alternatives for the Bradley Park landfill. Corrective action alternatives cannot be evaluated at this time, primarily because a comprehensive site assessment must be completed prior to the proposal of corrective action alternatives. Because the site conceptual model must be modified, and proposed cleanup levels re-evaluated, there will be other factors that are currently unknown, which must be taken into account when proposing corrective action alternatives. Note for example, that mitigation of pollutants migrating in ground-water from contaminant source zones to the channel was not considered as a corrective action objective (probably because it was not addressed in the conceptual site model). Also, the City did not propose the use of a landfill gas extraction system, other than passive ventilation. If the City's contention is that landfill gas is impacting ground-water, and possibly surface water (via contact with ground-water), then a more aggressive landfill gas extraction system may be warranted for the Site.
24. In Section 5.2.1 (page 50), the following statement appeared:

"For approximately the same construction and permitting costs, onsite disposal is possible. This would be achieved by removal of landfill cover in the southeastern

portion of the site, placement of excavated waste, and replacement of the existing soil cover."

On-site disposal is not an option for the waste removed under any corrective action alternative. The Bradley Park Landfill is a closed landfill, and therefore, any waste that is excavated as part of the remediation process must be disposed of off-site. The City will be required to perform a waste characterization analysis on all materials excavated at the site in order to determine the type of facility that is appropriate for disposal (i.e., non-hazardous Class III landfill, or a hazardous waste Class I landfill). The Regional Board will require a copy of disposal logs and receipts for all materials removed from the site.

The City will also need to re-compute the costs associated with the various corrective action alternatives in order to account for the waste characterization analysis and off-site disposal of all materials removed during remedial activities.

25. Section 6.0 (page 59) presented the preferred corrective action alternative for the Bradley Park landfill. The pathway wherein polluted ground-water migrates to the creek was not included in the site conceptual model and therefore was not included in the listed corrective action objectives. This corrective action objective should be included along with appropriate corrective action alternatives once a comprehensive site assessment has been completed.

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Mr. Mike Mercereau
 201 Mata Way
 San Marcos, CA 92069-2949

2. Article Number

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 Street, Apt. No., or PO Box No. 201 Mata Way
 City, State, ZIP+4 San Marcos, CA 92069-2949

PS Form 3800, August 2005

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Attachment No. 5
Notice of Violation No. R9-2008-0051



California Regional Water Quality Control Board San Diego Region



12

Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from U.S. EPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (8) 571-6972
<http://www.waterboards.ca.gov/sandiego>

CERTIFIED MAIL – RECEIPT REQUESTED
7007 1490 0003 8753 5193

May 30, 2008

Mr. Mike Mercereau
Director of Public Works
City of San Marcos
201 Mata Way
San Marcos, CA 92069-2949

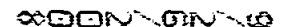
Dear Mr. Mercereau:

**RE: NOTICE OF VIOLATION NO. R9-2008-0051: FAILURE TO COMPLY WITH
DIRECTIVES OF INVESTIGATIVE ORDERS R9-2006-0044 AND R9-2007-0041:
BRADLEY PARK/OLD LINDA VISTA LANDFILL, SAN MARCOS, CA**

The technical report entitled *Report of Waste Discharge: San Marcos 1 Landfill, San Marcos, CA (RoWD)* fails to comply with several directives prescribed in *Water Quality Investigative Order No. R9-2006-0044, City of San Marcos, Bradley Park/Old Linda Vista Landfill*, and in *Investigative Order No. R9-2007-0041 for the City of San Marcos for the Failure to Maintain Adequate Best Management Practices and Discharge of Rock Fill into the Waters of the State Within the City of San Marcos, San Diego County* (Investigative Orders). The RoWD was submitted by the City of San Marcos to comply with several of the directives in the two Orders. In particular, the RoWD lacks a detailed assessment of the nature and extent of the release/discharge of waste constituents from the Bradley Park landfill into surface waters, ground water, and the vadose zone (via landfill gas/soil vapors) and fails to propose Water Quality Protection Standards based on valid and appropriate water quality data. Detailed comments on the RoWD are provided under separate cover.

Because the problems with the RoWD are substantial, the California Regional Water Quality Control Board, San Diego Region (Regional Board) has issued the enclosed Notice of Violation R9-2008-0051 alleging that the City of San Marcos violated a number of directives of the Investigative Orders. These violations subject the City of San Marcos to enforcement action by the Regional Board, including administrative enforcement orders requiring the City of San Marcos to clean up waste and abate proceedings for the assessment of civil liability in amounts of up to \$1,000 per day; referral to the State Attorney General for injunctive relief; and referral to the District Attorney for criminal prosecution.

California Environmental Protection Agency



Questions pertaining to the attached comments and Notice of Violation should be directed to Ms. Amy Grove at (858) 637-7136 or via e-mail at agrove@waterboards.ca.gov ; or Mr. Peter Peuron at (858) 637-7137, or via e-mail at ppeuron@waterboards.ca.gov. If you feel you have received this Notice in error, or need clarification on any of the above violations, please contact our office immediately. Written correspondence should be directed to the following address:

Ms. Julie Chan
Supervising Engineering Geologist
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
Attn: Mr. Peter Peuron and Ms. Amy Grove



Julie Chan
Supervising Engineering Geologist

May 30, 2008
Date

Attachments: Notice of Violation R9-2008-0051

cc: Ms. Rebecca Lafreniere, County of San Diego Local Enforcement Agency, 9325 Hazard Way, San Diego, CA 92123

Ms. Vicki Gallagher, County of San Diego, Department of Public Works, 5201 Ruffin Road, Suite D, San Diego, CA 92123

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Mr. James O'Day, Esq. County of San Diego, County Administration Center, 1600 Pacific Highway, Room 355, San Diego, CA 92101

Mr. Garth Koller, City of San Marcos, 1 Civic Center Drive, San Marcos, CA 92069-2949

Mr. David Boyers, Senior Staff Counsel, State Water Resources Control Board Office of Enforcement, 1001 I Street, 16th Floor, Sacramento, CA 95814

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IN THE MATTER OF)
)
Mr. Mike Mercereau)
Director of Public Works)
City of San Marcos)
201 Mata Way)
San Marcos, CA 92069-2949)

NOTICE OF VIOLATION
R9-2008-0051
May 30, 2008

Subject Site: Bradley Park / Old Linda Vista Landfill
San Marcos, CA

YOU ARE HEREBY NOTIFIED THAT:

The City of San Marcos is in violation of *Water Quality Investigative Order No. R9-2006-0044, City of San Marcos, Bradley Park/Old Linda Vista Landfill, San Diego County, and Investigative Order No. R9-2007-0041 for the City of San Marcos for the Failure to Maintain Adequate Best Management Practices and Discharge of Rock Fill into the Waters of the State Within the City of San Marcos, San Diego County.*

These Orders were issued pursuant to California Water Code section 13267, requiring the City to submit several technical reports and a Report of Waste Discharge (RoWD). The Orders required information to establish a corrective action program for the landfill that complied with the requirements of the California Code of Regulations (CCR) Title 27, section 20430.¹ Specifically, the Orders required the City of San Marcos to submit a Report of Waste Discharge (RoWD) to update site conditions and to propose corrective action alternatives to mitigate the release at the site. The Orders also required information on the timing and extent of water quality impacts from the unauthorized discharge of waste into the Bradley Park Creek, located adjacent to the landfill. The City of San Marcos made a request to submit all of the required information in a single report, in the form of a single RoWD.¹

Description Of Alleged Violations

A. ORDER NO. R9-2006-0044

1. Directive C.1.a. Delineation of Release

Directive C.1.a states that the RoWD shall contain a detailed assessment of the nature and extent of the release/discharge of waste constituents from the Unit into surface waters, ground water, and the vadose zone (via landfill gas/soil vapors).

Finding: The RoWD fails to provide a plume delineation map or a determination of the downgradient extent of constituents in ground water, surface waters, or the vadose zone.

¹ CCR Title 27 section 20430 outlines the requirements for a Corrective Action program and requires submission of a RoWD to propose corrective action alternatives.

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2. Directive C.1.b. Constituents of Concern

Directive C.1.b states that the RoWD shall propose a list of Constituents of Concern (COC), including waste constituents, reaction products, and hazardous constituents that are reasonably expected to be present in or derived from waste contained in the Landfill Site.

Finding: The proposed list of COCs is based upon incomplete and questionable data because the impairment of the ground water, surface water, and vadose zone is not well-defined, and monitoring results from some wells may not adequately represent actual site conditions.

3. Directive C.1.c. Water Standard

Directive C.1.c states that the RoWD shall propose Water Quality Protection Standards pursuant to CCR Title 27, section 20390 for each constituent of concern.

Finding: The Water Quality Protection Standards (WQPS) proposed in the RoWD are derived from data collected from existing background monitoring wells that have been influenced by waste constituents from the landfill and have contained waste constituents historically since 1991. The presence of waste constituents in wells SM-1 and SM-6 invalidate these wells as "background" wells to be used in the calculation of WQPS. Therefore, the WQPS proposed in the RoWD are invalid and inappropriate for use at the Site. The selection of appropriate background wells was discussed during a meeting between the Regional Board and representatives of the City of San Marcos on September 26, 2007, where the Regional Board explained that WQPS for the Bradley Park Landfill can only utilize data from "clean" background monitoring wells (i.e., those wells not influenced by the landfill).

4. Directive C.1.d. Engineering Feasibility Study

Directive C.1.d states that the RoWD shall present an engineering feasibility study of remedial alternatives, including the cost, implementation schedule and effectiveness of each alternative, to attain the Water Standard proposed for each constituent of concern.

Finding: Impairment of the ground water, surface water, and vadose zone is not well-defined, and, therefore, corrective action alternatives cannot be evaluated at this time. The City should not propose remedial alternatives for the Bradley Park Landfill until a comprehensive site delineation has been completed.

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5. Directive C.1.e. Recommended Corrective Action Program

Directive C.1.e states that the RoWD shall provide a detailed description of a recommended corrective action program describing the proposed corrective action measures necessary to achieve compliance with each proposed Water Standard.

Finding: The City's proposal for corrective actions is based upon an incomplete site assessment and evaluation of water quality data and, therefore, invalidates the proposed corrective action alternatives.

B. ORDER R9-2007-0041

1. Directive 2.A.ii. Assessment of Rock Materials

Directive 2.A.ii states that the technical report shall include an assessment of the effects of the discharge of rock material, used for channel armoring, into the creek on the functions and values of the creek and waters downstream of the creek.

Finding: The RoWD does not provide an adequate assessment of the effects of the discharge on the functions and values of the creek and downstream areas.

2. Directive 2.A.iii. Assessment of Check Dams

Directive 2.A.iii states that the technical report shall include an assessment of the effects of the construction of check dams within the creek on the functions and values of the creek and waters downstream of the creek.

Finding: The RoWD does not provide an adequate assessment of the effects of the discharge on the functions and values of the creek and downstream areas.

3. Directive 2.A.iv. Map of Vegetation

Directive 2.A.iv states that the technical report shall include a map showing areas where vegetation should be restored and where rock fill material has been deposited.

Finding: The required map was not included in the report submittal.

The above violations subject the City of San Marcos to possible enforcement action by the Regional Board, including administrative enforcement orders requiring the City of San Marcos to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative or judicial proceedings for the assessment of civil liability in

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amounts of up to \$1,000 per day; referral to the State Attorney General for injunctive relief;
and, referral to the District Attorney for criminal prosecution.

Julie Chan

Julie Chan
Supervising Engineering Geologist
California Regional Water Quality Control Board

May 30, 2008

Date

22

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1. Article Addressed to:
 Mr. Mike Mercereau
 201 Mataway
 San Marcos, CA 92069-2949

2. Article Number
 (Transfer from service label)

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PS Form 3811, February 2004

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 Addressee
 X

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 Registered Return Receipt for Merchandise
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4. Restricted Delivery? (Extra Fee) Yes

Domestic Return Receipt

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| Return Receipt Fee (Endorsement Required) | 2.15 |
| Restricted Delivery Fee (Endorsement Required) | |
| Total Postage & Fees | \$ 5.39 |

Postmark Here

Sent To
 Mr. Mike Mercereau
 Street, Apt. No. or PO Box No. 201 Mata Way
 City, State, ZIP+4 San Marcos, CA 92069-2949

PS Form 3800, August 2006

See Reverse for Instructions

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Attachment No. 6

City of San Marcos Correspondence with
The San Diego Regional Board
Dated June 19, 2008

ATTORNEYS AT LAW
225 BROADWAY, SUITE 1900
SAN DIEGO, CALIFORNIA 92101
TELEPHONE: (619) 231-5858
FACSIMILE: (619) 231-5853

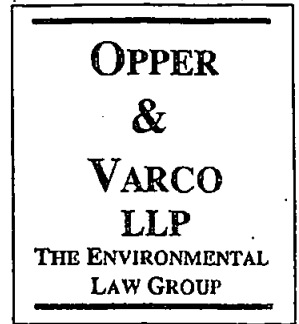
SUZANNE R. VARCO
svarco@envirolawyer.com

RICHARD G. OPPER
ropper@envirolawyer.com

LINDA C. BERESFORD
lindab@envirolawyer.com

www.envirolawyer.com

2008 JUN 23 June 19, 2008



Ms. Julie Chan
Supervising Engineering Geologist
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-43530

Re: Bradley Park Landfill Notice of Violation No. R9-2008-0051

Dear Ms. Chan,

The City of San Marcos recently received Notice of Violation No. R9-2008-0051 as well as the Regional Board's comments to the City's Report of Waste Discharge for Bradley Park, both of which you signed on May 30, 2008. The City appreciates that, as the RWQCB comments suggest, additional information and rationale could improve the City's RoWD and, therefore, enable the RWQCB to engage in a more informed consideration of the City's corrective action proposals. With this in mind, the City has undertaken a close review of the RWQCB's comments and is currently fashioning its strategy for responding.

At the same time, the City and County of San Diego have engaged in meaningful settlement discussions concerning their lawsuit over Bradley Park landfill issues. We realize that the RWQCB identified the City as the "discharger" and, therefore, does not feel directly concerned with the City and County legal dispute. But as a practical matter, a City and County settlement could directly impact the City's efforts to respond to the RWQCB's demands. If the parties do reach a settlement, it is extremely likely that the County will participate and cooperate with the City's efforts to respond to the NOV, to update the City's RoWD as necessary, and to propose corrective action measures.

The City and County set July 1, 2008 as a target date for settlement agreement. Given this potentiality, it seems reasonable, and we hope you agree, that the City should wait until after July 1, 2008 before completing its strategy for responding to the RWQCB's comments. Procedurally, we envision the response will first draft a letter describing the additional efforts that the City believes would be necessary to address the RWQCB's comments. Next, we envision an in-person meeting to clarify any issues or the scope of anticipated efforts. Finally, we envision additional field investigation efforts, if necessary, and the preparation of an updated RoWD.

Even though the City fully intends to satisfy the concerns expressed by the RWQCB's comments, the City does not admit that these concerns qualify as

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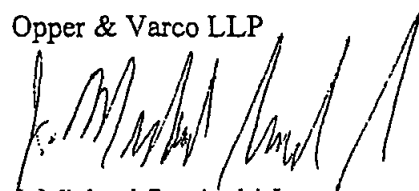
Ms. Julie Chan
Page 2
June 19, 2008

violations that would subject the City to enforcement action. For example, Cal. Water Code § 13268 authorizes administratively-imposed civil liability for "failing or refusing to furnish technical or monitoring program reports...." Cal. Water Code § 13268(a)-(b). The City did not fail to provide a RoWD, nor do any shortcomings of the City's RoWD qualify as substantial problems. Nearly all technical reports can be improved with additional information and rationale. While the concerns noted by the RWQCB could improve the RoWD, the City's RoWD provides a detailed environmental assessment and well-reasoned corrective action proposals.

The City truly felt surprised by the RWQCB's comments, given the magnitude of effort that went into its RoWD. Nonetheless, the City appreciates the position of the RWQCB, its mission, and its comments. We feel encouraged that we have come as far as we have, and we remain anxious to both settle upon and implement corrective action measures at Bradley Park. We also feel very encouraged by the prospect of County participation in this regard. We truly look forward to a continued and healthy dialogue with the RWQCB, as we move forward towards the improved environmental management of Bradley Park.

Sincerely,

Opper & Varco LLP



J. Michael Sowinski Jr.

/jms

cc: Helen Peak, Esq.
Mr. Paul Malone
Mr. Michael Mercereau
Douglas Simpson, Esq.
James O'Day, Esq.
Ms. Amy Grove
Mr. Pete Peuron

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Attachment No. 7
Excerpt from City of San Marcos' Budget for
Fiscal Year 2008-2009

**CITY OF SAN MARCOS
EXPENDITURES**

| Department | Current | Projected 6/30/2008 | Current | | |
|--------------------------------------|----------------------|------------------------|----------------------|----------------------|----------------------|
| | Budget FY 07/08* | | FY 08/09 | Proposed FY 09/10 | FY 10/11 |
| GENERAL FUND | | | | | |
| GENERAL GOVERNMENT: | | | | | |
| Administrative | \$ 820,685 | \$ 746,541 | \$ 819,334 | \$ 870,002 | \$ 918,481 |
| Legislative | 321,886 | 278,546 | 296,128 | 284,880 | 292,274 |
| City Attorney | 590,200 | 711,565 | 560,200 | 574,100 | 588,200 |
| City Clerk | 414,000 | 342,441 | 446,680 | 416,221 | 489,711 |
| City Hall - Administration | 1,318,883 | 1,381,947 | 1,303,248 | 1,408,478 | 1,592,067 |
| Human Resources | 521,345 | 522,800 | 385,697 | 412,596 | 433,613 |
| Finance | 815,905 | 782,240 | 827,502 | 862,406 | 902,362 |
| Information Technology | 1,150,866 | 931,617 | 1,158,389 | 874,274 | 906,147 |
| Real Property Services | 2,384,905 | 2,237,192 | 2,797,281 | 2,874,998 | 3,149,762 |
| Personnel Services | 10,369,667 | 9,637,160 | 10,646,135 | 11,263,665 | 12,070,462 |
| Total General Government | 18,708,342 | 17,572,049 | 19,240,594 | 19,841,620 | 21,343,079 |
| PUBLIC WORKS: | | | | | |
| Administration | 1,549,825 | 1,332,100 | 1,380,869 | 1,452,199 | 1,533,425 |
| Streets | 591,180 | 569,480 | 556,874 | 580,056 | 608,311 |
| Garage | 2,084,926 | 2,186,236 | 2,158,999 | 2,078,553 | 2,201,241 |
| Flood Control/ Storm Water Utilities | 927,730 | 857,570 | 955,891 | 1,001,386 | 1,228,686 |
| Parks | 3,413,680 | 3,280,080 | 3,717,066 | 3,922,712 | 4,137,715 |
| Total Public Works | 8,567,341 | 8,225,466 | 8,769,699 | 9,034,906 | 9,709,378 |
| DEVELOPMENT SERVICES: | | | | | |
| Developmental Services | 3,363,130 | 3,152,185 | 3,238,650 | 3,436,395 | 3,582,727 |
| Landscape Maintenance | 1,808,210 | 1,779,500 | 1,878,095 | 1,999,092 | 2,124,166 |
| Total Development Services | 5,171,340 | 4,931,685 | 5,116,745 | 5,435,487 | 5,706,893 |
| PUBLIC SAFETY: | | | | | |
| Law Enforcement | 14,607,570 | 14,523,919 | 15,217,605 | 16,039,195 | 16,905,975 |
| Emergency Preparedness | 190,221 | 190,221 | 160,830 | 166,957 | 169,995 |
| Fire Department | 9,072,002 | 9,829,251 | 9,612,549 | 10,321,944 | 10,638,371 |
| Total Public Safety | 23,869,793 | 24,543,391 | 24,990,984 | 26,528,096 | 27,714,341 |
| CULTURE AND RECREATION: | | | | | |
| Community Programs | 437,840 | 391,324 | 473,060 | 501,825 | 508,845 |
| Community Services | 1,538,965 | 1,545,390 | 1,687,455 | 1,753,270 | 1,828,300 |
| Total Culture and Recreation | 1,976,805 | 1,936,714 | 2,160,515 | 2,255,095 | 2,337,145 |
| OTHER FINANCING USES: | | | | | |
| Transfers Out | 4,000,000 | 4,003,281 | 175,000 | - | - |
| Total Other Financing Uses | 4,000,000 | 4,003,281 | 175,000 | - | - |
| TOTAL GENERAL FUND | \$ 62,293,621 | \$ 61,212,586 | \$ 60,453,537 | \$ 63,095,204 | \$ 66,810,836 |

**CITY OF SAN MARCOS
EXPENDITURES**

| Department | Current | Projected 6/30/2008 | Current | | |
|-------------------------------------|----------------------|------------------------|----------------------|----------------------|----------------------|
| | Budget FY 07/08* | | FY 08/09 | Proposed FY 09/10 | FY 10/11 |
| <i>SPECIAL REVENUE FUNDS</i> | | | | | |
| Gas Tax | \$ 1,903,010 | \$ 1,808,460 | \$ 1,545,529 | \$ 1,552,437 | \$ 1,610,713 |
| Traffic Safety | 1,271,000 | 500,000 | 777,800 | 432,650 | 425,000 |
| Street Lighting District | 532,395 | 532,395 | 535,550 | 535,350 | 535,350 |
| City Affordable Housing | 278,118 | 258,613 | 287,771 | 297,324 | 307,347 |
| CFD 98-02 Lighting & Landscape | 3,354,750 | 3,354,750 | 3,550,000 | 3,750,000 | 4,000,000 |
| Nutrition Program | 148,500 | 144,000 | 144,000 | 144,000 | 144,000 |
| CDBG Fund | 1,354,011 | 221,738 | 1,703,750 | 662,815 | 636,300 |
| State Traffic Congestion Relief | 419,970 | 509,419 | 787,954 | 790,000 | 790,000 |
| Home Fund | 1,065,081 | 85,508 | 1,197,393 | 202,930 | 194,825 |
| TOTAL SPECIAL REVENUE FUNDS | \$ 10,326,835 | \$ 7,414,883 | \$ 10,529,547 | \$ 8,367,526 | \$ 8,643,535 |
| <i>DEBT SERVICE FUND</i> | | | | | |
| Lease Revenue Bonds | \$ 472,887 | \$ 472,887 | \$ 475,509 | \$ 472,728 | \$ 469,490 |
| <i>ENTERPRISE FUND</i> | | | | | |
| Creekside Marketplace | \$ 3,608,497 | \$ 2,108,497 | \$ 2,531,231 | \$ 5,747,531 | \$ 8,179,626 |
| <i>INTERNAL SERVICE FUND</i> | | | | | |
| Equipment Replacement Fund | \$ 2,954,846 | \$ 2,908,196 | \$ 1,434,884 | \$ 1,158,859 | \$ 954,732 |
| TOTAL - ALL FUNDS | \$ 79,656,686 | \$ 74,117,049 | \$ 75,424,708 | \$ 78,841,848 | \$ 85,058,219 |

* Adjusted to include carryovers from FY 06/07 and other adjustments in accordance with Council resolution.

| SENDER: COMPLETE THIS SECTION | COMPLETE THIS SECTION ON DELIVERY |
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| <p>1. Article Addressed to:</p> <p>Mike Mercereau Director of Public Works City of San Marcos 201 Mata way San Marcos, CA 92069-2949</p> | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> |
| <p>2. Article Number (Transfer from service label)</p> | <p>7007 1490 0003 8753 5469</p> |

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 Street, Apt. No., or PO Box No. 201 Mata way
 City, State, ZIP+4 San Marcos CA 92069-2949

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 PS Form 3800, August 2006 See Reverse for Instructions