



# California Regional Water Quality Control Board

## San Diego Region



Winston H. Hickox  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov/~rwqcb9/>  
9771 Clairemont Mesa Boulevard, Suite A, San Diego, California 92124-1324  
Phone (619) 467-2952 • FAX (619) 571-6972

Gray Davis  
Governor

April 20, 2000

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

Dear Mr. Koller:

### NOTIFICATION TO ADD BRADLEY PARK (OLD SAN MARCOS LANDFILL) TO ORDER NO. 97-11

Our records indicate you are the owner of the Bradley Park (a.k.a Old San Marcos Landfill or Linda Vista Landfill), which ceased disposal of refuse prior to November 1984. However, as the site owner you continue to be responsible for site maintenance and water quality monitoring in accordance with California Code of Regulations Title 27. This Regional Board has post-closure maintenance requirements for similar landfills in Order No. 97-11, *General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Nonhazardous Waste Landfills within the San Diego Region*. A copy of the Order is attached.

The purpose of this letter is to inform you the Regional Board staff is considering adding Bradley Park to its' list of landfills subject to Order No. 97-11.

If the Bradley Park is added to Order No. 97-11, you will be required to comply with its requirements, which include performing inspections and depending on the threat posed by the landfill, performing water quality monitoring to determine potential impacts to waters of the State. You will be required to submit the water quality monitoring results and inspection reports to the Regional Board on a periodic basis. In addition, you will be required to pay an annual fee to the State Water Resources Control Board. The annual fee is based on the threat to water quality of Bradley Park and can range from \$750 per year for burn ash sites to \$7500 for municipal solid waste landfills.

We anticipate the Regional Board will consider the tentative Addendum No. 1 to Order No. 97-11 at its' June 14, 2000 Board meeting. We will send you a copy of tentative Addendum No. 1 to Order for your review no later than May 12, 2000.

California Environmental Protection Agency

File: 06-0022.02

Mr. Koller

- 2 -

April 20, 2000

If you have any questions, please contact Ms. Carol Tamaki at (858) 467 - 2982.

Sincerely,

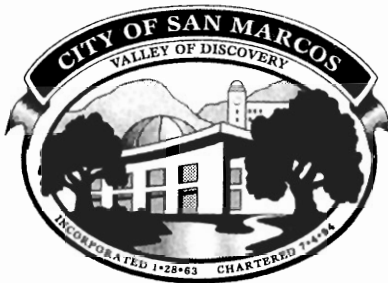


**JOHN H. ROBERTUS**  
Executive Officer

Enclosure

File No. 06-0022.02

cc: Jon Rollin, Inactive Waste Site Management, County of San Diego  
Michele Stress, Department of Environmental Health, County of San Diego



*JML 4/27*  
*Mark Alpert*

1 Civic Center Drive  
San Marcos, CA 92069-2918

Telephone  
(760) 744-1050

April 26, 2000

John H. Robertus, Executive Officer  
Regional Water Quality Control Board  
9771 Clairemont Mesa Blvd., Suite A  
San Diego, CA 92124-1324

Re: Addition of Bradley Park (Old San Marcos Landfill) To Order No. 97-11

Dear Mr. Robertus:

We are in receipt of your Notice dated April 20 concerning the above. Pursuant to Recital #1 of the attached Joint Exercise of Powers dated August 12, 1986, the County of Diego, as former operator of the Old San Marcos Landfill ("Landfill"), has retained "liability for all landfill-related incidents and responsibility for testing and/or remedial activity required pursuant to existing law and any other subsequent legislation." Pursuant to that same provision, the County has further agreed to defend and indemnify the City against landfill-related incidents.

Pursuant to this agreement, the City has, since 1986, tendered all notices concerning post-closure maintenance to the County. RWQCB has heretofore acknowledged and respected this arrangement and the County has, so far as we know, met its contractual obligations. We assume, since you have copied the County on this notice that you, as do we, expect them to comply with Order No. 97-11 should the Board elect to subject the Landfill to those requirements.

As legal owner of the Landfill, we appreciate the need to notice the City on such matters. Pursuant to the above, however, we would refer your staff to County Inactive Waste Site Manager Jon Rollin for details as to how the County intends to meet the requirements of Order No. 97-11, should the need arise.

Please feel free to give me a call at 760/744-1050, extension 3115 if you should have any questions concerning the above.

Sincerely,

Paul Malone  
Assistant City Manager

attachment

cc: City Manager  
Carol Tamaki, RWQCB  
Jon Rollin, County of San Diego  
Michelle Stress, County DOEH  
Jerry Backoff, Planning Division Director  
Garth Koller, Principal Planner

760 744 1050  
TOD APR 27 AM 11:09

0022  
File in 100-0000-117

A JOINT EXERCISE OF POWERS  
AGREEMENT BETWEEN THE CITY OF  
SAN MARCOS AND THE COUNTY OF SAN DIEGO

This Agreement dated for convenience as of August 12 1986 by and between the City of San Marcos, hereinafter referred to as "City", and the County of San Diego, a political subdivision of the State of California, hereinafter referred to as "County".

WITNESSETH:

Whereas, from 1956 to 1968, County operated the San Marcos Landfill now commonly known as "Old San Marcos Landfill" adjacent to Rancho Santa Fe Road; and

Whereas, in August 1968 County closed said landfill; and

Whereas, on December 30, 1968, County quitclaimed to City said Old San Marcos Landfill site; and

Whereas, it has since been determined that responsibility for Closed Landfill maintenance in compliance with local, State and Federal regulation rests with the agency which operated the landfill; and

Whereas, City is now planning the development of a park on the site, in accordance with the terms of the quitclaim executed by County; and


Whereas in order for County to exercise its responsibility for the Closed Landfill it must install additional monitoring systems, and thereafter be permitted free access to the site for maintenance and monitoring of said systems;


Now, therefore


The parties hereto agree as follows:

1. County will continue to retain liability for landfill-related incidents and responsibility for testing and/or remedial activity required pursuant to existing law, and any other subsequent legislation. County will defend and indemnify City and its employees against landfill-related incidents.
2. County will retain right of entry to install, monitor and maintain monitoring and methane gas control systems as required for Closed Landfills.
3. The City will assume liability and maintenance responsibility for park-related incidents and improvement and will defend and indemnify County and its employees against such incidents/improvements.

ATTEST:

  
SHEILA A. KENNEDY, CITY CLERK

By:   
City of San Marcos

By:   
County of San Diego



# California Regional Water Quality Control Board

## San Diego Region



**Justin H. Hickox**  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov/~rwqcb9/>  
9771 Clairemont Mesa Boulevard, Suite A, San Diego, California 92124-1324  
Phone (619) 467-2952 • FAX (619) 571-6972

**Gray Davis**  
Governor

May 4, 2000

Mr. Paul Malone  
Assistant City Manager  
City of San Marcos  
1 Civic Center Drive  
San Marcos, CA 92069-2949

Dear Mr. Malone:

File No. 06-0022.02

### RESPONSIBILITY FOR OLD SAN MARCOS LANDFILL

We have reviewed your letter dated April 26, 2000 that asserts the City of San Marcos is not responsible for the maintenance of Old San Marcos Landfill. As your letter points out, the County of San Diego operated the Old San Marcos Landfill from 1956 to 1968, and under an agreement with the City of San Marcos, the County of San Diego continues to take responsibility for maintenance and monitoring of the landfill.

You should be aware of a recent decision by the Fourth Appellate District, Division One (Case Nos. D032097 consolidated with D031660) regarding landfill operator liability for the Duck Pond Landfill. The Court found that the landfill operator (County of San Diego) is exempt from liability under Water Code Section 13304(f) for discharges which occurred prior to 1981 (the effective date of this Water Code Section). This determination was based on a lack of evidence in the record to establish that discharges to ground water were occurring prior to 1981, or that the County of San Diego engaged in acts that were illegal after 1981 that led to discharges of contaminants into waters of the State. A copy of the Court decision is attached.

The circumstances of the Old San Marcos Landfill are very similar to those in the Duck Pond Landfill ruling. Based on the Appellate Court decision, this Regional Board will not pursue naming the County of San Diego on Order No. 97-11 as a responsible party for the Old San Marcos Landfill. However, naming the City of San Marcos, the owner of the land underlying the waste, as responsible for ongoing maintenance, monitoring, and corrective action is consistent with state regulations and Order No. 97-11. Therefore, we will recommend that the Regional Board name the City of San Marcos as a responsible party subject to Order No. 97-11. As an alternative to adding the City of San Marcos to Order No. 97-11 the Regional Board could issue a Cleanup and Abatement Order naming the City of San Marcos as the responsible party to perform landfill maintenance as a preventative measure to pollution.

**California Environmental Protection Agency**

Recycled Paper



If you have evidence to establish that pre-1981 landfill discharges were illegal at that time, or that the County of San Diego engaged in acts that were illegal since 1981 that led to discharges of contaminants into waters of the State, the Regional Board will reconsider naming the County of San Diego on Order No. 97-11.

If you have any questions, please contact Ms. Carol Tamaki at (858) 467 – 2982.

Sincerely,



JOHN H. ROBERTUS  
Executive Officer

Enclosure

JHR:mja:cat

File:bradleyrp9711.doc

cc: Jon Rollin, Inactive Waste Site Management, County of San Diego

Michele Stress, Department of Environmental Health, County of San Diego