

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION**

---

**CEASE AND DESIST NO. R5-2014-XXXX**

**RECOLOGY HAY ROAD  
JEPSON PRAIRIE ORGANICS AS A DBA OF RECOLOGY HAY ROAD  
RECOLOGY HAY ROAD LANDFILL  
SOLONO COUNTY**

**PROSECUTION TEAM'S REBUTTAL ARGUMENT – LEGAL AND TECHNICAL ANALYSIS  
CEASE AND DESIST ORDER NO. R5-2014-XXXX**

## Table of Contents

I.	Introduction.....	1
II.	The Central Valley Water Board is authorized to issue a Cease and Desist Order where discharges of waste are taking place or threatening to take place in violation of waste discharge requirements. ....	1
III.	The Prosecution Team evaluated other enforcement orders pursuant to Water Code sections 13308 and 13300 and continues to assert that a CDO is the most effective order to achieve its goals and therefore the most appropriate enforcement order for the Board to adopt. 1	1
IV.	Specific considerations regarding the enforcement process, the Facility, and the Discharger continue to bolster the Prosecution Team’s continued assertion that a more readily enforceable mechanism is necessary for this matter despite the cooperative nature of the Parties’ interactions. ....	4
	a) The Prosecution Team would not agree to nor recommend the adoption of a TSO at this juncture given the enforceability discussion above, particularly when the Parties continue to disagree over substantive requirements. ....	6
	b) The Discharger’s proposed language to satisfy the Prosecution Team’s concern over the TSO’s enforceability requires further practical and legal clarification.....	6
	c) The stipulation in the proposed 13300 TSO causes the TSO to substantively mirror the Prosecution Team’s proposed CDO in all ways except name. The Prosecution Team respectfully encourages the Board to maintain its transparency rather than engaging in the Discharger’s subterfuge.....	7
V.	Separation to Groundwater .....	7
	a) The WDRs require a specific minimum separation between “wastes or leachate and the highest anticipated elevation of the groundwater.”.....	7
	b) The Prosecution Team asserts that, for some of the units, the Discharger is using the wrong elevation to determine compliance with the specified separation requirements. ....	8
	c) The Discharger’s data and groundwater contour maps do not demonstrate compliance with the separation to groundwater requirement throughout the facility. ....	9
	d) The Prosecution Team continues to have concerns about the Discharger’s manner of data reporting. ....	11
	e) Discussions regarding the slurry wall, depth of groundwater monitoring wells, and installation of new wells will be removed from the CDO.....	12
VI.	Designated Waste .....	12
VII.	Conclusion .....	14

Attachment: Prosecution Team’s Rebuttal Evidence List

## **I. Introduction**

The Central Valley Water Board Prosecution Team continues to recommend that the Central Valley Water Board adopt the proposed Cease and Desist Order (CDO) issued to Recology Hay Road and Jepson Prairie Organics dba Recology Hay Road (hereinafter Discharger) to ensure that the Discharger timely complies with existing Central Valley Water Board and State Water Resources Control Board (State Water Board) Orders pursuant to the time schedule established therein. The proposed CDO requires the Discharger to implement measures and submit technical reports according to an established time schedule. The Prosecution Team continues to contend that a CDO is the appropriate order that allows the Discharger to continue to operate its business in a manner that is protective of water quality while ensuring that the CDO's interim deadlines remain enforceable.

## **II. The Central Valley Water Board is authorized to issue a Cease and Desist Order where discharges of waste are taking place or threatening to take place in violation of waste discharge requirements.**

As the Prosecution Team previously stated in its Legal and Technical Analysis, Water Code section 13301 authorizes the Central Valley Water Board to issue a CDO where it "finds that a discharge of waste is taking place or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board." (Wat. Code, § 13301.) The proposed CDO identifies several categories of noncompliance with WDR requirements, discharges of waste taking place or threatening to take place in violation of WDR and/or NPDES discharge prohibitions, or instances where noncompliance with WDR requirements itself creates a threatened discharge in violation of Central Valley Water Board requirements. Though Water Code section 13301 authorizes the Central Valley Water Board to order compliance immediately, the proposed CDO grants the Discharger time to comply with existing requirements while taking into consideration relevant technical factors and comparable alternatives. During the interim period, the Discharger must take actions to protect water quality.

## **III. The Prosecution Team evaluated other enforcement orders pursuant to Water Code sections 13308 and 13300 and continues to assert that a CDO is the most effective order to achieve its goals and therefore the most appropriate enforcement order for the Board to adopt.**

Prior to issuing the first draft of the proposed CDO, the Prosecution Team considered other potential enforcement options that would achieve the Prosecution Team's goals of allowing the Discharger to continue to operate its business in a manner protective of water quality and being able to hold the Discharger immediately accountable for noncompliance with enforceable backstops and deadlines for the actions required therein. As with any order proposed for the Board's consideration, enforceability of the order ultimately adopted by the Board is an important concern of the Prosecution Team.

In evaluating its enforcement options, the Prosecution Team determined that a CDO was the appropriate enforcement tool to accomplish its goals. Despite the name of the order, it is important to reiterate that the order does not require the Discharger to immediately cease its operations. Rather, the proposed CDO requires the Discharger to implement measures and submit technical reports according to an established time schedule as it continues operations, thus accomplishing the Prosecution Team's first goal. Water Code section 13350 subdivision (a)(1) provides the Board with an effective tool to efficiently proceed with follow-up enforcement where there has been a violation of a CDO. Once the violation of a CDO has been established, regardless of whether that violation constitutes a discharge or non-discharge violation, the Board may impose an administrative civil liability of up to \$5,000 for each day the violation occurs. (Wat. Code, § 13350, subd. (e)(1).) The existence of this remedy to efficiently enforce any type of violation of a CDO upon a mere showing that a violation of a CDO has occurred addresses the Prosecution Team's second goal of accountability and enforceability.

An order pursuant to Water Code section 13308 authorizes the issuance of a Time Schedule Order and a prescribed administrative civil liability which becomes due if compliance is not achieved in accordance with the established time schedule. This option, however, was quickly ruled out as Water Code section 13308 contains a requirement that the Board make a finding that there is a threatened or continuing violation of a preexisting Cleanup and Abatement Order, a CDO, or an order for technical or monitoring reports. None of the prerequisite orders exist in the procedural history of this matter, therefore, the issuance of a 13308 TSO would be neither legal nor enforceable.

An order pursuant to Water Code section 13300 also authorizes the issuance of a Time Schedule Order. A 13300 TSO similarly addresses the Prosecution Team's first goal described above, however, this option hinders swift follow-up enforcement pursuant to Water Code section 13350 when a discharger fails to comply with the order's deadlines.

A 2009 Administrative Civil Liability Order of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board), *In the Matter of the Kissel Company, Inc. (Paradise Cove)*, describes the Los Angeles Water Boards' dilemma when attempting to assess administrative civil liability pursuant to Water Code section 13350 for the discharger's failure to comply with deadlines prescribed in a section 13300 TSO. The Los Angeles Water Board considered the following issue regarding the applicability of Water Code section 13350 subdivision (a)(2) to violations of a section 13300 TSO, "[w]hether Water Code section 13350(a)(2) liability requires that the violation of the relevant order result from a discharge of waste to waters of the state." (Order on Complaint No. R4-2009-0017, p. 6.) The Los Angeles Water Board determined that it lacked the authority to redress the violations of a 13300 TSO with imposition of administrative civil liability penalties under subdivision (a)(2) of section 13350. (*Id.* at 7.) Although the Los Angeles Water Board recognized that a 13300 TSO qualifies as an "order" contemplated by subdivision (a)(2) of section 13350, "not every violation of an order or prohibition gives rise to liability under that subdivision. Specifically, liability only attaches when there has been a discharge or waste in violation of an order. (See *Order WQ 8-10, In the Matter of the Petition of Lake Arrowhead Community Services District.*") (*Id.*) Although the discharger in Paradise Cove violated three different deadlines of the 13300 TSO for a total of 1163 days, the Los Angeles

Water Board found it lacked the authority to assess the penalties proposed by the staff pursuant to Water Code section 13350. Based on this analysis, the Prosecution Team in the current matter similarly determined that a non-discharge violation, such as a failure to timely submit a report, would not be redressable by Water Code section 13350 absent a discharge of waste into waters of the state. This determination makes follow-up enforcement for administrative civil liabilities via section 13350 less efficient and does not coincide with the goal of ensuring enforceability.

Although non-discharge violations of a 13300 TSO may not be directly enforceable pursuant to Water Code section 13350, redress for failing to comply with *some* of the requirements in a 13300 TSO may be possible with follow-up enforcement pursuant to Water Code section 13268. As specified in proposed CDO Revision 2, the CDO requires the submittal of technical reports according to the requirements cited in Water Code section 13267. (Draft CDO Revision 2, p. 10-11.) Failing to furnish technical or monitoring reports as required by section 13267 may be subject to administrative civil liability of \$1,000 for each day in which the violation occurs. (Wat. Code § 13268 subd. (a)(1) and (b)(1).) However, not all of the actions required by the CDO consist of technical report submittal. In lieu of submitting *Compost Ponds Reconfiguration*, *Food Waste In-Vessel Composting*, and *Compost Leachate Dust Control* technical reports, the proposed CDO provides the Discharger with an alternative by requiring the Discharger to submit a report of waste discharge (ROWD) requesting revisions to the existing WDRs based on its current operations. A ROWD is not a “technical or monitoring program report” within the meaning of subdivision (b) of section 13267. Therefore, section 13268 does not authorize the Board to pursue enforcement for deficient, incomplete, or missing ROWDs. These matters would be addressed through the imposition of administrative civil liability via section 13261, but only after the Board has provided the Discharger with notice. (Wat. Code, § 13261, subd. (a).)

Furthermore, provisions in the proposed CDO pertaining to “Separation to Groundwater” require both submission of a technical report/workplan and implementation of the workplan. Similar to the scenario described above, section 13268 does not authorize the Board to pursue enforcement for failing to implement the workplan. Remedies pursuant to sections 13268 and 13350 are unavailable for redressing a failure to implement a workplan. However, as the Los Angeles Water Board noted in *Paradise Cove*, “administrative mechanisms to compel compliance with non-discharge provisions in a section 13300 time schedule order, for instance, can include first issuing either a cease and desist order (Wat. C. §13301) or a cleanup and abatement order (Wat. C. §13304), and then punishing violation of that order with an administrative civil liability complaint pursuant to 13350 subdivision (a)(1).” (Order on Complaint No. R4-2009-0017, p. 7.) The ultimate administrative mechanism to compel compliance with a requirement to implement a workplan would be a CDO, the enforcement order that the Prosecution Team is currently proposing.

Though alternatives for follow-up enforcement for non-discharge violations of a 13300 TSO exist, these alternative result in piecemeal enforcement where remedies are sought based on three separate Water Code authorities; sections 13268, 13261, and the same remedy that the Prosecution Team is proposing pursuant to section 13301. This piecemeal enforcement is the antithesis of the Prosecution Team’s goals of administrative efficiency, accountability, and

enforceability. As stated above, Water Code section 13350 subdivision (a)(1) allows the Board to efficiently proceed with follow-up enforcement where there has been a violation of a CDO. Once the violation of a CDO has been established, regardless of whether that violation constitutes a discharge or non-discharge violation, the Board may seek remedies under one Water Code authority, section 13350, rather than three separate remedies. The Prosecution Team continues to assert that a CDO is the most effective order to achieve its enforcement goals therefore, the most appropriate order for the Board to adopt.

**IV. Specific considerations regarding the enforcement process, the Facility, and the Discharger continue to bolster the Prosecution Team's continued assertion that a more readily enforceable mechanism is necessary for this matter despite the cooperative nature of the Parties' interactions.**

The Discharger states in its 3 September 2014 Response to the Prosecution Team's Legal and Technical Analysis (Response), that the requirements in its proposed TSO are, with one exception related to groundwater separation requirements, the same as the requirements in the Prosecution Team's proposed CDO. (Response, p. 1.) Though it acknowledges substantively similar requirements, the Discharger proceeds to call the Prosecution Team's proposed CDO "unnecessary and unwarranted." (*Id.*) It appears, based on these comments, that the Discharger views the proposed CDO as unnecessary and unwarranted in name only.

As the Discharger's Response points out, the Parties have been actively engaged over this facility since early 2014 to address a wide range of water quality issues at a facility that the Discharger itself describes as a "large, complex, multi-faceted facility." (*Id.*) Since early 2014, the Parties have met on at least half a dozen occasions to discuss Board staff's concerns. Both Parties would likely characterize these meetings as collaborative and productive. However, despite the cooperative nature of the Parties' engagements, the Assistant Executive Officer in his discretion as head of the Prosecution Team determined that an enforcement order should be issued to memorialize important deadlines for deliverables and corrective actions. This resulted in the issuance of a very comprehensive Draft Cleanup and Abatement Order (Draft CAO) on 7 May 2014. (PT Exhibit 29.) The Discharger reiterated previous comments in opposition to the Draft CAO by stating, "WDR revision would offer an appropriate and deliberative regulatory mechanism to specify any additional site investigations and/or corrective actions and establish a schedule for their completion." (Response, p. 1.) The Prosecution Team met with the Discharger on 23 June 2014 to discuss its comments on the Draft CAO. In response, the Prosecution Team issued the first draft of the proposed CDO focusing on a narrower set of issues that allowed the Discharger to continue to operate its business in a manner protective of water quality while working in a stepwise fashion to complete tasks according to an enforceable schedule rather than ordering immediate compliance with nine specific requirements. (see PT Exhibit 29, p. 23-24, para. 1a-1i.) The information required by the tasks in the proposed CDO schedule are foundational elements for the Board's permitting staff to begin drafting revised WDRs, consistent with the Discharger's requests. The proposed CDO effectively bridges the gap between the 2008 WDRs and revised WDRs while holding the Discharger accountable in a meaningful way.

Though the proposed CDO focuses on a narrower set of issues, allows for a reasonable schedule for compliance, and works towards the Discharger's goal of revising the WDRs, the Discharger now seeks adoption of a less enforceable 13300 TSO. For all the reasons previously stated, the Prosecution Team does not agree that a 13300 TSO is the appropriate enforcement mechanism. Furthermore, the discretionary decision to issue a proposed CDO is not made in a vacuum by looking at the Discharger and the specific facility only. Comparisons are often used to gauge the extent of noncompliance among similarly situated dischargers as well as looking at a particular discharger's overall compliance throughout the Central Valley region. The noncompliance issues at the Discharger's facility are extensive compared to similar facilities regulated by the Central Valley Water Board. For example, Western Regional Sanitary Landfill (Western Regional) is a similarly sized facility consisting of Class II and Class III landfills and composting operations. (Board Order No. R5-2007-0047.) During a recent Board inspection, no major issues or specific violations were noted during the inspection. (4 September 2014 *Inspection Report, Western Regional Sanitary Landfill, Placer County.*) The Discharger also owns and operates another landfill and composting facility in the region under current enforcement order due to water quality and general compliance issues. (see Cleanup and Abatement Order R5-2013-0704 and 6 March 2013 *Inspection Report; Recology Yuba-Sutter Landfill, Marysville, Yuba County.*) Furthermore, on Board staff's most recent site inspection on 3 September 2014, staff observed inadequate landfill drainage systems, inadequate interim cover, and improper disposal of pan lysimeter liquids. In addition, the practices of pumping of leachate from the low-flow pond to the high-flow pond and the use of leachate for dust control were continuing, in violation of the WDRs (12 September 2014 *Notice of Violation and Inspection Report, Recology Hay Road, Solano County.*) These observations confirmed the Prosecution Team's belief in the appropriateness of the proposed CDO. These considerations continue to inform the Prosecution Team when evaluating its enforcement options and ultimately bolster the previous discussion above as to our continued assertion that a more readily enforceable mechanism is necessary for this matter.

The Discharger's proposal to modify the enforcement order from a CDO to a section 13300 TSO is more than a mere modification to the nomenclature attached to the legal mechanism. To the Prosecution Team, it substantially alters the enforceability of the order and negates the discretion exercised by the Prosecution Team after its thoughtful consideration of the issues outlines in Sections III and IV in one fell swoop. The Discharger has not raised a persuasive justification for its request. By allowing for a reasonable time schedule in the proposed CDO rather than ordering immediate compliance, the Prosecution Team has substantially reduced the possibility of the Discharger being disqualified from entering into contracts with the State of California so long as the Discharger complies with the order. (Gov. Code, § 4477 and 55 Ops.Cal.Atty.Gen. 312 (1972).) For all of the reasons stated above, the Prosecution Team continues to advocate for the adoption of a more readily enforceable order and continues to recommend that the Board adopt the CDO as proposed.

- a) **The Prosecution Team would not agree to nor recommend the adoption of a TSO at this juncture given the enforceability discussion above, particularly when the Parties continue to disagree over substantive requirements.**

Given the foregoing discussion, the Prosecution Team would not agree to nor recommend the adoption of a TSO at this juncture, particularly where there is continued disagreement over the substantive requirements in the proposed CDO pertaining to Separation to Groundwater (see Draft CDO Revision 2, Dated 25 August 2014, p. 13) and the Prosecution Team's use of the term "designated waste" when describing composite leachate from the Discharger's operations. From the Prosecution Team's perspective, the existence of disagreement over substantive requirements reinforces the need to ensure that noncompliance with those underlying substantive requirements can be efficiently enforced, if needed.

- b) **The Discharger's proposed language to satisfy the Prosecution Team's concern over the TSO's enforceability requires further practical and legal clarification.**

The Discharger proposes the following language to allay the Prosecution Team's concerns over the TSO's enforceability:

"The Discharger agrees through this Order, which it has proposed and submitted for the approval and adoption by the Central Valley Regional Water Quality Control Board, that the requirements set forth in the Order may be enforced under Section 13350 of the Water Code in the same manner as if this Order constituted a Cease & Desist Order. The Discharger hereby waives any future objection, to the extent that such objection is premised on the ground that this Order is entitled a Time Schedule Order, to such future enforcement." (Response, p. 16.)

The Prosecution Team understands that the Discharger is stipulating follow-up enforcement pursuant to Water Code section 13350 for violations of the TSO, regardless of whether those violations constitute discharge or non-discharge violations. It is unclear whether the inclusion of this stipulation is conditional upon the removal of the Separation to Groundwater requirements and "designated waste" references in their entirety.

Additionally, clarification on the legality of the Discharger's stipulation may be required. The Water Code does not specifically authorize the Board to approve such a proposal suggested by the Discharger. An agency's powers are not limited to those expressly granted in the legislation; rather, it is well settled in this state that administrative officials may exercise such additional powers as are necessary for the due and efficient administration of powers expressly granted by statute or as may fairly be implied from the statute granting the powers. (*Rich Vision Centers, Inc. v. Board of Medical Examiners* (1983) 144 Cal.App.3d 110, 114; Gov. Code, § 11415.60.) Though the Central Valley Water Board retains this inherent power, it is the Prosecution Team's understanding that the ability for the agency to order sanctions it would otherwise lack the power to impose resides in the context of a decision by settlement without conducting an adjudicative proceeding.

- c) **The stipulation in the proposed 13300 TSO causes the TSO to substantively mirror the Prosecution Team's proposed CDO in all ways except name. The Prosecution Team respectfully encourages the Board to maintain its transparency rather than engaging in the Discharger's subterfuge.**

The Discharger's stipulation in its proposed 13300 TSO substantively mirrors the Prosecution Team's proposed CDO in the relief sought (i.e. stepwise compliance with the 2008 WDRs until new WDRs are adopted) and potential liability of \$5,000 for each day in which the underlying order is violated. As stated in its Response, "with one exception, the requirements in Recology's Proposed Time Schedule Order are the same as the requirements in the Staff's tentative CDO." (Response, p.1.) Effectively, with the exception of the Separation to Groundwater requirements, the Discharger is agreeing to the Prosecution Team's proposed CDO in all ways except the order's name and asking the Board to engage in its subterfuge labeling the enforcement order a TSO rather than a CDO. The Prosecution Team respectfully encourages the Board to maintain its transparency and adopt the CDO as proposed.

#### **V. Separation to Groundwater**

The Discharger requests that the findings and required actions in the proposed CDO relating to the separation between waste and groundwater be removed. The Prosecution Team disagrees with the wholesale removal of the findings and required actions, but in response to the Discharger's comments will more specifically identify the violations and the necessary remedial actions.

- a) **The WDRs require a specific minimum separation between "wastes or leachate and the highest anticipated elevation of the groundwater."**

Title 27 requires a minimum separation between wastes and groundwater of five feet, unless the Board finds that an "engineered alternative" provides equivalent or better protection. The Discharger previously proposed, and the Board accepted, engineered alternatives to the five feet of groundwater separation for various units at its facility. Construction Specification D.2 of the WDRs states:

"The following minimum separation shall be maintained between the wastes or leachate and the highest anticipated elevation of the groundwater, at each module: three feet at L-2 (DM-2.1), two and one-half feet at DMs 2.2 through 16 and WP-9.1, and five feet at the LTU."

This engineered alternative language in Construction Specification D.2 of the WDRs applies to all of the landfill units except unit DM-1. With regard to unit DM-1, Finding 64 of the WDRs cites section 20240(c) of Title 27 and states that "existing" waste management units are to be operated to maintain at least five feet of separation between the contained wastes and the highest anticipated level of the groundwater table. Finding 65 of the WDRs states that "DM-1 is an existing unit under Title 27 CCR" and because the natural water table would be less than five feet below the base of this unit during the wet season, the Discharger must dewater the unit. Based on these two Findings and the absence of an engineered alternative discussion for unit DM-1 in the WDRs, it is concluded that the required separation for DM-1 is five feet.

In order to determine compliance with the specified minimum separation requirements for each module or unit, the Monitoring and Reporting Program of the WDRs requires that, on a quarterly basis, "The Discharger shall determine the separation of groundwater from the lowest point of each unit and/or module."

**b) The Prosecution Team asserts that, for some of the units, the Discharger is using the wrong elevation to determine compliance with the specified separation requirements.**

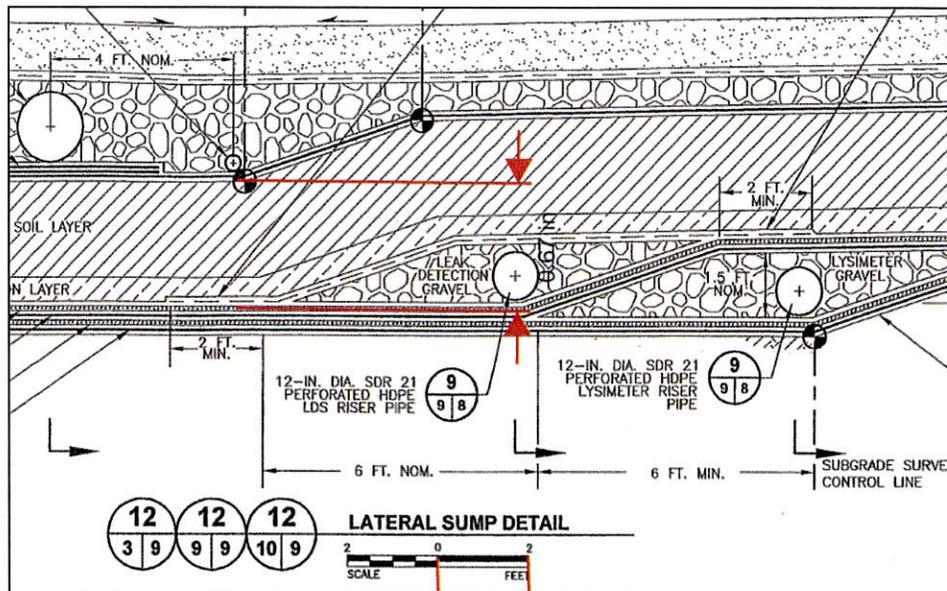
As described above, the Discharger is required to measure the separation to groundwater from the lowest point of each disposal unit, which is also the lowest point at which leachate may be present. The design drawings and Construction Quality Assurance (CQA) reports for the various landfill units contain the surveyed bottom elevation of each unit. Staff has reviewed these documents. For units DM-2.2, 5.1, 9, and 11, it appears that the Discharger is measuring the separation from the bottom of the LCRS, which is the correct location.

However, for units DM-3.1, 3.2, 3.3, 4.1, 5.2 and 6, it appears that the Discharger is measuring from the lowest point of the primary liner system (i.e., the LCRS sump). This is not appropriate, as the lowest point of the unit at which there could be leachate is the secondary liner, which is the elevation of the leak detection sump. For example, at Unit DM-3.3, the Discharger calculates the separation from a point located two feet eight inches (2'8") higher than the lowest point of the unit<sup>1</sup>, as shown in the diagram below. The proposed CDO will be revised to require the Discharger to use the lowest elevation at which leachate could collect (i.e., either the LCRS sump or the bottom of the secondary liner, depending on how the particular unit was constructed) as the point from which the Discharger must measure the separation to groundwater.

---

<sup>1</sup> For DM-3.3 the compacted subgrade is the lowest point of the containment system. However, the start of the liner system (i.e., the secondary liner) overlays the subgrade. For practical purposes, the lowest point of DM-3.3 is bottom of the secondary liner, which is the elevation of the leak detection system (and the pan lysimeter). For DM-3.3, the surveyed elevation at the lowest point of the unit is provided in the construction report, and these measured values are stamped and signed by a licensed land surveyor.

### Lowest Point at DM-3.3: bottom of the unit versus location of the LCRS



Unit DM-1 was the original unlined unit and a CQA report is not available. However, staff has determined the depth of the waste by reviewing the Discharger's 2007 Joint Technical Document, and in particular, Drawing 2.a. Approximately two-thirds of the unit does not have a bottom liner, while about one-third of the newer portion of the unit has a bottom liner. Drawing 2.a shows that the lowest point in the lined section is at the southwest corner (Sump S-1; 6 feet msl), while the lowest point in the unlined section is at the north central side (5 feet msl). The Discharger has been reporting the separation to groundwater from Sump S-1. However, this is not the lowest point of the unit. Therefore, for Unit DM-1, the proposed CDO will be revised to require the Discharger to report the separation between waste and groundwater at the lowest known point in the Unit.

**c) The Discharger's data and groundwater contour maps do not demonstrate compliance with the separation to groundwater requirement throughout the facility.**

The Discharger states that a "review of the last ten years of data shows that there is no evidence suggesting that encroachment of the groundwater separation requirements in the 2008 WDRs represents a realistic ongoing concern." While staff continue to have concerns about the Discharger's reporting of data (see below discussion), it is apparent that the separation to groundwater requirement is not consistently met at modules DM-1 and DM-3.3.

Unit DM-1. Unit DM-1 is the original waste management unit at the facility. Approximately two-thirds of the unit does not have a bottom liner, while about one-third of the newer portion of the unit has a bottom liner. As stated in the Findings of the WDRs, groundwater dewatering is required to lower the groundwater to provide the required five feet of separation for Unit DM-1. The Discharger has been reporting the separation to groundwater at leachate sump S-1, which

is the lowest point of the lined portion of the unit, and has shown that, when operating, the dewatering system appropriately lowers the water table to provide the separation in the area of S-1.

It is understandable that the Discharger would report the data from the sump, as sumps are typically the lowest portion of a unit. However, a review of Drawing 2.a of the 2007 Joint Technical Document shows that waste within the north-central portion of the unlined portion of the unit extends to a depth greater than Sump S-1. A review of groundwater contour maps from the semi-annual monitoring reports shows that there is not five feet of separation within the north-central portion of the unlined unit, and in fact, groundwater rises up within the waste mass. Between 2009 and 2013, groundwater is found approximately 15' above the base of the unit.<sup>2</sup>

The lack of the required separation between waste and groundwater is a violation of Title 27 and the WDRs and therefore the Discharger will need to take corrective actions. The proposed CDO currently requires that the Discharger submit a report proposing a method to "immediately lower the groundwater" in the event that such a violation occurs. The Discharger objects, and states that the term "immediately" is not a practicable. Staff understand the Discharger's concern, and will modify this section to follow the step-wise concepts of Title 27, namely, a delineation of the problem, a study of the options to return to compliance (i.e., an Engineering Feasibility Study), identification/implementation of chosen option, and monitoring to demonstrate effectiveness. This CDO requirement will be revised to be only applicable to Units DM-1 and DM-3.3, and if necessary, the LTU (see below discussions). In addition, the Discharger implies that a lack of separation due to a seasonal fluctuation of the groundwater would not require a corrective action. This is incorrect. Construction Specification D.2 of the WDRs and Section 20240(c) of Title 27 does not allow for any encroachment on the separation requirements due to seasonal fluctuations. However, it may be that the Discharger's corrective action system need only be operational for certain portions of the year.

Unit DM-3.3. Unit DM-3.3 is in the south-east corner of the facility, adjacent to wetland bird sanctuary. Construction of this unit was completed in 2010, and the first separation results were reported in 2011. The WDRs require a separation of 2.5 feet between the lowest elevation of the waste or leachate and the shallow groundwater. As described earlier, the Discharger has erroneously used the bottom of the leachate collection and recovery system (LCRS) to measure separation instead of the bottom of the containment unit. Staff has re-calculated the separation using the surveyed elevation of the bottom of the leak detection system versus the elevation of groundwater at the adjacent monitoring well (G-30). Staff finds that the separation to groundwater has ranged between 0.35 feet and 1.1 feet, which is less than required. As described in the paragraph above, the lack of separation is a violation of the WDRs, and the CDO will be revised to follow the step-wise concepts of Title 27, namely, a delineation of the problem, a study of the options to return to compliance (i.e., an Engineering Feasibility Study), identification/implementation of chosen option, and monitoring to demonstrate effectiveness.

---

<sup>2</sup> As shown on the 2007 JTD Drawing 2.a, the lowest point of waste in unit DM-1 is at boring S-20. Waste is found at 5' msl (mean sea level) at this location. Groundwater contour maps (found in the semiannual monitoring reports) show that groundwater is at approximately 18-20' msl in this location.

LTU Module. In addition, the Discharger did not report the separation to groundwater for the land treatment unit (LTU) until staff undertook this enforcement action. While the two monitoring events recently reported for the LTU show that the groundwater was at six feet- which is one foot greater than the minimum separation requirement of five feet- staff point out that the data was collected in a drought year and that a wet year may result in compliance issues. Therefore, the CDO revision discussed above will also apply to the LTU in the event that groundwater rises to within five feet of the bottom of the unit.

**d) The Prosecution Team continues to have concerns about the Discharger's manner of data reporting.**

The Prosecution Team previously expressed concern about the reporting of data. The Discharger has provided significant rebuttal discussion. The Prosecution Team understands the use of the Surfer software program for contouring groundwater elevation data, and request that the contour interval be modified from 2' to 1' in order to better visually estimate the separation to groundwater at the lowest point of each unit.

The Prosecution Team also understands that for some units, there can be a significant distance between the groundwater monitoring wells and the lowest point of each unit. The Discharger states that installation of monitoring points closer to the units would not "measurably affect the existing level of accuracy." The Discharger also contends that there are significant physical and engineering constraints on how close a groundwater monitoring well can be installed to an LCRS sump. The Prosecution Team agrees with this statement; however the regulations take into account the limitations of unit construction and the placement of monitoring wells. California Code of Regulations Title 27 Section 20405 addresses this limitation by stating: "... The Point of Compliance is a vertical surface located at the hydraulically downgradient limit of the Unit that extends through the uppermost aquifer underlying the Unit." There is no need to puncture a containment system to install these wells, because the regulations require compliance at the downgradient edge of the waste. Given that the Prosecution Team continues to have concerns about the adequacy of the monitoring network at the Recology Hay Road landfill, the requirements pertaining to groundwater monitoring will be removed to allow the Parties more time to fully address these concerns outside of the context of the proposed CDO.

The Prosecution Team continues to be concerned with the Discharger's practice of rounding the sump elevations prior to subtracting the depth to groundwater. Our understanding of the scientific rules for addition and subtraction is that only the final answer is rounded. While this may not have an absolute impact in determining compliance with the separation to groundwater requirements, we would like the data to be as accurate as possible. We will continue to discuss these rounding practices with the Discharger outside of the context of the proposed CDO.

Finally, there is the issue of reporting accuracy as it relates to the separation between waste and groundwater requirements. We understand that the Discharger follows the MRP requirement of measuring depth-to-water in groundwater monitoring wells to 0.01'. We also

understand that the current MRP does not provide a reference as to the number of decimal places to which the separation between groundwater and the lowest point of a unit must be reported. However, because the WDRs list the separation for most of the units to 0.1' (i.e., Construction Specification D.2 requires a minimum separation of 2.5' for a number of units), the Prosecution Team also believes that the results must be reported to 0.1'. However, the Discharger's current practice is to calculate the results to 0.1' but then round to the nearest whole number and report only the whole number. The proposed CDO will be modified to state that the separation to groundwater must be reported to 0.1' without rounding up or down to the nearest whole number, and if desired, the Discharger may also include what it believes, in its professional opinion, is the margin of error for that measurement. The purpose of this modification is for Board staff to obtain more accurate measurements to gain a better understanding of the extent of the Discharger's compliance with the separation to groundwater requirements.

**e) Discussions regarding the slurry wall, depth of groundwater monitoring wells, and installation of new wells will be removed from the CDO.**

The proposed CDO includes Findings regarding staff's concerns that the slurry wall around the eastern portion of the landfill may be impacting groundwater gradient determinations and that monitoring well placement outside the slurry wall may be inappropriate. The Discharger disputes that concern and cites an historical reports and a review of recent groundwater contour maps as evidence that the slurry wall has no effect on the groundwater. The Prosecution Team continues to have concerns about the impact of the slurry wall, but will continue this discussion with the Discharger outside the context of the proposed CDO.

The proposed CDO includes Findings regarding staff's concerns about the various screened intervals of the groundwater monitoring wells in relation to determination of groundwater elevation. The Discharger has presented data comparing shallow and deep wells, and states that the "data show a minimal difference in groundwater elevation (0.09 to 0.23 feet), even though the monitoring wells are screened at different depths." The Prosecution Team as questions about the data presented, but will continue this discussion with the Discharger outside the context of the proposed CDO.

Finally, the proposed CDO would require the installation of groundwater monitoring devices as close as possible to each sump. The Discharger objects to the need for additional monitoring devices. As previous explained above, the Prosecution Team continues to be concerned about the adequacy of the groundwater monitoring network but will engage the Discharger in an ongoing dialog on this issue outside of the context of the proposed CDO.

**VI. Designated Waste**

The Findings of the proposed CDO describe the compost leachate discharged to the low-flow and high-flow ponds as "designated waste." The Discharger objects to the use of this term and states that (a) it is unnecessary to define this waste stream in the context of the CDO, (b) the exact classification of compost leachate should only be made through the State Water Board's

proceedings as it contemplates adoption of a General Order for compost facilities, and (c) staff did not follow the Board's own *Designated Level Methodology*<sup>3</sup> guidance document when describing the compost leachate as designated waste. Section 13173(b) of the Water Code defines designated waste as "Nonhazardous waste that consists of, or contains, pollutants that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the state as contained in the appropriate state water quality control plan."

Whether a waste is considered "designated" or not is a site-specific determination, depending on such factors as the constituents in the waste, the type of waste management unit, depth to groundwater, and whether the waste will enter surface water. The State Water Board's proposed General Order can only determine whether compost leachate is designated waste under certain circumstances (i.e., dependent on the waste management unit and ambient environmental conditions), and not for all compost leachate at all facilities.

The *Designated Level Methodology* was developed by Water Board staff to provide guidance for staff and dischargers in making this determination. For the particular case of compost leachate at the Hay Road Landfill, the *Designated Level Methodology* supports the definition of as designated waste, both in the context of a surface water release and a groundwater release. Because the waste has the ability to enter surface water (through the pipe in the high-flow pond), staff must compare the total constituent concentrations (see Finding 14 of the proposed CDO) with the water quality objectives of the Basin Plan. The discharge of the compost leachate to surface waters is likely to violate the specific conductance, dissolved oxygen, biostimulatory, and chemical constituents water quality objectives. For groundwater considerations, there is little attenuation due to the shallow depth of groundwater at the Hay Road facility, and therefore the discharge of compost leachate would (and has) resulted in an exceedance of water quality objectives for, at a minimum, nitrate. Therefore, it is appropriate to classify the compost leachate at the Hay Road landfill as "designated waste."

However, staff agrees that the classification of this material is not an integral part of the CDO. The proposed CDO requires compliance with the WDRs in that the leachate may not be discharged to surface water, and the Discharger has agreed to modify its system to prevent any such discharge from occurring. The Discharger will also be required, in the forthcoming Cleanup and Abatement Order, to remediate the nitrate plume in groundwater that was partially caused by a release from the lined compost leachate ponds. Because the Board has discretion as to whether or not to use the term "designated waste" in the Findings of this CDO, the Prosecution Team will agree to remove this term and instead refer to the compost leachate as "high strength waste".

---

<sup>3</sup> Central Valley Regional Board staff report *The Designated Level Methodology for Waste Classification and Cleanup Level Determination* (October 1986, updated June 1989).

## VII. Conclusion

The Discharger has not raised a persuasive justification for its request that the proposed CDO be changed to a TSO. Until new WDRs are drafted by staff, and the Board considers whether to approve the Discharger's currently un-permitted changes to its facility, the Discharger must implement interim measures in a timely manner to ensure that its current operations are being conducted in a manner that is protective of water quality. The proposed CDO is the interim mechanism to provide a timeline to assist the Discharger in achieving these goals while continuing to operate its business in an environmentally responsible way. The Prosecution Team, exercising its enforcement discretion, continues to advocate for the adoption of a CDO as the most appropriate enforcement mechanism to achieve its goals and ensure that the underlying order is readily enforceable. For the reasons stated above in the Prosecution Team's Legal and Technical Analysis, the Central Valley Water Board should adopt the Cease and Desist Order as proposed.

For the Prosecution Team:



MAYUMI E. OKAMOTO  
Senior Staff Counsel  
Office of Enforcement

Attachment: Prosecution Team's Rebuttal Evidence List

### Rebuttal Evidence List

Exhibit No.	Document Date	Document	Filename
35	11-Apr-1997	Design Report and Construction Documents. DM-9 and DM-11. B&J Drop Box Sanitary Landfill	Exhibit 35.pdf
36	17-Feb-1999	Design Report and Construction Documents. DM-11.2. B&J Drop Box Sanitary Landfill	Exhibit 36.pdf
37	1-Aug-2000	Design Report and Construction Documents. Disposal Module 5.1. B&J Sanitary Landfill	Exhibit 37.pdf
38	16-May-2003	DM-4.1 Base Liner Design Report and Construction Documents. Norcal Waste Systems Hay Road Landfill	Exhibit 38.pdf
39	24-Feb-2004	DM-5.2 Base Liner Design Report and Construction Documents. Norcal Waste Systems Hay Road Landfill	Exhibit 39.pdf
40	8-Sep-2004	Construction Quality Assurance Report. Disposal Module 5.2 Liner System. Norcal Waste Systems Hay Road Landfill	Exhibit 40.pdf
41	3-Apr-2006	DM4.2 Base Liner Design Report and Construction Documents. Norcal Waste Systems Hay Road Landfill	Exhibit 41.pdf
42	6-Sep-2006	Report of Construction Quality Control Disposal Module 4.2 Liner System. Norcal Waste Systems Hay Road Landfill	Exhibit 42.pdf
43	4-May-2007	Board Order No. R5-2007-0047, Waste Discharge Requirements for Western Placer Waste Management Authority, Western Regional Sanitary Landfill	Exhibit 43.pdf
44	30-Jul-2007	Joint Technical Document. Norcal Waste Systems, Hay Road Landfill	Exhibit 44.pdf
45	3-Mar-2008	DM-3.1 Base Liner Design Report and Construction Documents. Norcal Waste Systems Hay Road Landfill	Exhibit 45.pdf
46	1-Sep-2008	Construction Quality Assurance Report Disposal Module 3.1 Liner System. Norcal Waste Systems Hay Road Landfill	Exhibit 46.pdf
47	27-May-2010	Construction Quality Assurance Plan. Disposal Module 3.2 Liner System. Recology Hay Road Landfill	Exhibit 47.pdf
48	29-Jun-2010	Construction Quality Assurance Plan. Disposal Modules 3.2 & 3.3 Liner System. Recology Hay Road Landfill	Exhibit 48.pdf
49	29-Sep-2010	Construction Quality Assurance Report. Disposal Modules 3.2 & 3.3 Liner System. Recology Hay Road	Exhibit 49.pdf
50	12-Aug-2011	Notice of Violation, Site Inspection of Yuba Sutter Disposal, Inc., Landfill, Yuba County	Exhibit 50.pdf
51	14-Jun-2012	Construction Specifications Disposal Module 6 Base Liner System. Recology Hay Road	Exhibit 51.pdf
52	23-Aug-2012	Construction Quality Assurance Report. Disposal Module 6.1 Liner System. Recology Hay Road	Exhibit 52.pdf
53	6-Mar-2013	Inspection Report, Recology Yuba-Sutter Landfill, Marysville, Yuba County	Exhibit 53.pdf
54	29-Aug-2013	Cleanup and Abatement Order R5-2013-0704, Recology Yuba-Sutter	Exhibit 54.pdf
55	10-Sep-2013	Construction Quality Assurance Report. Disposal Modules 4.3 & 6.2 Liner System. Recology Hay Road	Exhibit 55.pdf
56	4-Sep-2014	Inspection Report, Western Regional Sanitary Landfill, Placer County	Exhibit 56.pdf
57	11-Sep-2014	Notice of Violation and Inspection Report, Recology Hay Road, Solano County	Exhibit 57.pdf
58	11-Sep-2014	Attachment A to 3 September 2014 Inspection Report, Recology Hay Road, Solano County Pursuant to the Hearing Procedures governing this matter, California Code of Regulations, title 23, section 648.3, and the 1 August 2013 Ruling on Objections to the Hearing Procedures, the following Exhibits are hereby submitted by reference:	Exhibit 58.MOV

