

Response to Written Comments March 2013 Comment Letter

In Consideration of Waste Discharge Requirements Order No. R1-2013-0014 for the Closure of the Humboldt Waste Management Authority Cummings Road Class III Solid Waste Disposal Site

Regional Water Board staff had initially planned to schedule a hearing for Board consideration of the Closure Waste Discharge Requirements (WDRs) for the Cummings Road Class III Solid Waste Disposal Site (Site) at the August 23, 2012 Regional Water Quality Control Board Meeting. Staff opted to postpone the item in order to address the public comments received in July 2012 from Barg Coffin Lewis & Trapp LLP on behalf of Recology and from Lawrence & Associates on behalf of the Discharger of the Landfill, HWMA. Response to the July 2012 comment letters is available at http://www.waterboards.ca.gov/northcoast/board_decisions/tentative_orders/.

Staff circulated updated draft WDRs for public comments between February 8 and March 25, 2013, and received comments from Barg Coffin Lewis & Trapp LLP on behalf of Recology. Staff response to those comments follows below. The WDRs are now scheduled to be heard at the May 2, 2013 Regional Water Board Meeting.

Portions of the Barg Coffin Lewis & Trapp LLP comment letter (Letter) are shown in italics to aid in this response to comment document. Please note that staff copied the comment documents optically, which may introduce typographical errors. While we have attempted to correct these errors, some may remain. Anyone who wishes to see the comment letter exactly as received by the Regional Board staff may view it at http://www.waterboards.ca.gov/northcoast/board_decisions/tentative_orders/.

Barg Coffin Lewis & Trapp LLP letter of March 25, 2013

Phased Closure of the Landfill

Because the Burn Ash Site resulted from historical waste disposal operations that took place for many years on property that became the Landfill- property now owned by HWMA - and because the Burn Ash Site is contiguous to the Landfill, any burn ash waste that must be removed from its existing location to protect water quality should be of disposed of in the Landfill, prior to final closure of the Landfill. This would be not only the most cost-effective approach, but also the disposal option resulting in the least potential adverse environmental impacts.

Recology renews its request that a condition be added to the WDRs requiring HWMA to obtain approval from the Regional Board prior to final closure of Landfill and providing that such approval shall be granted only after appropriate disposition of the burn ash waste and closure of the Burn Ash Site.

Response To Comment (RTC) 1: The Regional Water Board cannot mandate construction methods for Waste Discharge Requirements (WDRs) compliance, nor can the Board mandate that one Discharger take another Discharger's waste. However, as explained in the earlier responses to comments and in the WDRs themselves, the WDRs do allow for a phased closure of the WMU, and also allow placement of the Cummings Road Burn Ash Site (Burn Ash Site) waste in the portion of the WMU that has a Subtitle D liner, and which has not yet reached full waste capacity, should the Discharger, Humboldt Waste Management Authority (HWMA), so choose.

Some of the burn ash material at the Burn Ash Site is considered hazardous, as shown through investigation conducted by Recology. However, placement of this material in the Cummings Road Class III Waste Management Unit (WMU), as allowed under the WDRs, constitutes a consolidation of burn ash onto a contiguous parcel that already contains ash, since the footprint of the WMU includes burn ash waste upon which waste was subsequently placed under WDRs. This is a burn ash dump remediation scenario that is exempt from hazardous waste management requirements, per March 3, 1995 correspondence from the California Department of Toxic Substances Control (DTSC) regarding the regulation of burn dump ash. CalRecycle Local Enforcement Advisory #56 also describes this burn ash dump remediation scenario.

Slope Stability Concerns

By letter dated April 15, 2011, Cardno ENTRIX transmitted comments prepared by Kleinfelder raising serious slope stability concerns associated with closure of the Landfill and potential impacts to the Burn Ash Site. These concerns were reiterated in Recology's July 16, 2012 comments on the initial draft WDRs. However, the Regional Board staff states, in its RTC document, that "we do not believe the closure of Class III WMU will have any negative impact on the slope stability of the Burn Ash Site. We will expect the Burn Ash Site Closure Plan to address the issues raised by Kleinfelder." RTC 10. Notwithstanding the factual inaccuracy that, as noted above, the Regional Board staff has not requested a closure plan for the Burn Ash Site, Recology continues to be concerned that Landfill closure construction may cause additional slope instability or failure in the Burn Ash Site. This very real concern could exacerbate the existing unstable condition of the burn ash waste and increase the costs associated with closure of the Burn Ash Site.

RTC 2: Comments by Cardno Entrix and Recology regarding slope stability all related to the Burn Ash Site waste rather than to the WMU. While Regional Water Board staff acknowledge there are slope stability issues on the Burn Ash Site, there is no indication that closure of the WMU would cause a slope stability issue. Closure of the WMU does not pose a threat to this unstable area, and given that the slope stability issues are on both Recology's and HWMA's properties, these issues should be addressed in the cleanup of the Burn Ash Site. To that end, staff have issued a draft Cleanup and Abatement Order (CAO) to both parties addressing the Burn Ash Site, and anticipate finalizing that CAO for Executive Officer issuance on or around May 1, 2013.

Stormwater Concerns

The Regional Board staff also disregarded Recology's concerns with discharge of stormwater from the HWMA's Landfill property into the Burn Ash Site, stating (in RTC 13):

Closure of the Class III WMU itself would not be expected to worsen these historic conditions or preclude any additional storm water improvements identified later by the Burn Ash Site Closure Plan. The need for any additional changes to the storm water and diversion trench system will be directly influenced by the manner and method of closure of the Burn Ash Site. A quick resolution to the issue of closure at the Burn Ash Site will be the most important component of mitigating its environmental damage.

Recology disagrees with this response. The continued discharge of stormwater and groundwater from the diversion trench onto Recology property exacerbates the erosion of burn ash waste located within the drainage, and therefore also exacerbates subsequent impacts to the unnamed tributary to Ryan Creek.

RTC 3: The closure of the WMU will redirect storm water from the WMU away from the Burn Ash Site. There is a sedimentation pond at the Site (the upper sedimentation pond) with an existing discharge point near the Burn Ash Site, and the diversion trench discharge point is nearby. Neither feature will undergo any changes during WMU closure. Sediment pond and diversion trench discharge points and associated impacts at this location represent existing conditions under CEQA. Nothing in the WDRs would prevent these discharge locations from being changed at a later date. We have not required any changes to these discharge points in the proposed WDRs because changes are unnecessary for the closure of the WMU and it will be costly to redirect the drainage due to the terrain. Clean closure of the Burn Ash Site in this area would make relocation of these discharge points unnecessary; this portion of the Burn Ash Site has very steep slopes and it is unlikely that cleanup plans for the Burn Ash Site will leave waste in place near these discharge points.

The Need to Prepare a Subsequent Environmental Document to Comply with CEQA

The Regional Board staff disagreed with Recology's comments that the Mitigated Negative Declaration ("MND") adopted by HWMA in January 2003 is not adequate to meet the Regional Board's obligations to comply with CEQA because there have been substantial changes to both the proposed project and its circumstances since adoption of the MND. The CEQA Guidelines specify when preparation of a subsequent environmental document is required, including: substantial changes in a project; substantial changes in the circumstances under which a project will be undertaken; and new information which was not known at the time the previous environmental document was prepared. 14 C.C.R § 15162(a). As summarized below: each of these conditions is met here.

Substantial Changes in the Project

The Landfill Closure project, as described in the 2003 MND, has been substantially changed to encompass:

- *Placement of burn ash waste onto the top deck of the Landfill*
- *Rebuilding of the lower sedimentation pond.*

RTC 4: We do not believe that there is any additional information regarding the Burn Ash site that impacts the WDRs for the closure of the Class III WMU. Waste from the Burn Ash Site may ultimately be placed in the WMU, as discussed above, but this would not represent a situation/condition for the WMU that differs from its operating state, as described and evaluated in the 1978 environmental impact report for the Site. WMU closure is covered by a mitigated negative declaration adopted in 2003.

While Burn Ash Site cleanup activities may trigger the need for CEQA compliance, and placement of the waste from the Burn Ash Site in the WMU may turn out be the most feasible alternative for the Burn Ash Site cleanup, staff believe that the appropriate timing and mechanism for CEQA compliance associated with Burn Ash Site cleanup activities hinge on the Cleanup and Abatement Order (CAO) and the resulting cleanup plan and schedule developed by the two parties responsible for that effort. Requiring further CEQA for the closure of the WMU is not necessary.

The existing CEQA documentation does address removal of borrow material for closure, and rebuilding the lower sedimentation pond would provide additional sediment control, further mitigating, rather than creating, a new impact for the project.

Substantial New Information

Substantial new information available since 2003 includes:

- *The need to address the contiguous and associated adjacent Burn Ash Site;*
- *Failure of the Landfill drainage system;*

- *The Regional Board's issuance of a Cleanup and Abatement Order in 2005 for erosion control and monitoring at the Landfill;*
- *Geotechnical instability southwest of the Landfill, as evidenced by the 2006 landslide.*

The Regional Board staff claims that one of the only limited changes or new developments since adoption of the 2003 MND is "the discovery that a portion of the Burn Ash Site is on HWMA's property rather than the Burn Ash Site being solely on Recology's property" (RTC 4). Recology agrees that information regarding the ownership of the properties containing burn ash waste is not relevant to the issue of CEQA compliance. However, what is highly relevant is that in 1999, when the Burn Ash Site was first inspected by the Humboldt County Health Department, the inspector recommended no further action or follow-up investigation. As the Regional Board staff acknowledges, it became involved with the Burn Ash Site only after receiving notice, during 2006, of a slope failure at the Burn Ash Site which required further investigation to determine water quality impacts (RTC 17). The apparent need to take regulatory action to address the Burn Ash Site constitutes both substantial new information and a substantial change to the project that was not known at the time HWMA adopted the 2003 MND.

RTC 5: With respect to the first bullet, see RTC 4. The drainage system failure and the resulting 2005 CAO were associated with drainage issues on the front face of the WMU that occurred after the Discharger (HWMA) regraded the WMU and its temporary drainage system. HWMA dealt with immediate issues, and will construct a new drainage system per the closure plan, since closure of the WMU requires placement of soil and geotextiles. The 2006 landslide was determined to have been triggered by storm water discharging from a drainage pipe on the upper Burn Ash Site slope. Shortly after discovery, HWMA extended the pipe to discharge at the drainage beyond the Burn Ash Site waste. This was an emergency issue that has already been remedied.

Significant Environmental Effects Not Analyzed in the 2003 MND

Erosion. *The project site is within the Freshwater Creek watershed. Both the USEPA and Regional Board have listed Freshwater Creek as a sediment-impaired water body under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d). The 2003 MND does not address this issue. The Draft WDRs acknowledge that "[c]losure activities will heighten erosion control concerns" (Finding ¶ 28). The potential for and extent of sediment release, effects on downstream biota, and site-specific mitigation all need to be addressed to comply with CEQA.*

RTC 6: The heightened erosion concerns acknowledged by the WDRs are related to the earthmoving aspects required by closure, and are being addressed through a construction erosion control plan and through the WDRs requiring additional storm and surface water monitoring. The Mitigated Negative Declaration included minimum erosion control mitigations, which the current closure plan meets or exceeds.

Water Quality. *Closure of the Landfill will result in the discharge of stormwater and intercepted groundwater into the Burn Ash Site (tributary to Ryan Creek), increasing potential erosion, transport and migration of ash debris and hazardous constituents further downstream, exacerbating potential landslide instability, which could in turn cause high sediment loading. The MND does not identify or discuss these potential adverse impacts of Landfill Closure.*

RTC 7: As discussed in RTC 3, above, the discharge points of the upper sedimentation pond and the interception trench are existing issues under CEQA. Closure of the WMU will not increase the impacts of these discharges.

Hazards and Hazardous Materials. *The 2003 MND did not address the possible presence of hazardous materials, the potential hazard to the public or environment through the disposal of hazardous materials, or hazards related to upset or accident conditions involving the release of hazardous materials, as specified in the CEQA Initial Study checklist.*

RTC 8: Closure of the WMU does not require movement of any hazardous waste and therefore would cause no such impact.

Energy Consumption. *To assure that energy consumption implications are considered in project decisions, a discussion is needed regarding the potential energy impact of Landfill closure.*

RTC 9: WDR Order No. 93-46 mandated closure of the WMU as part of the corrective action for the WMU, because of a large volatile organic compound plume in groundwater that led to the closure of a water bottling plant and loss of domestic water supply springs that had been the sole water source for the local residences. Humboldt County's decision to not develop a local landfill to replace the WMU and the additional energy consumption required for out of county waste disposal is beyond the scope of the CEQA for closure.

Greenhouse Gases. *The gas collection and flaring system would be shut down during three months of closure activities, resulting in releases of methane, carbon dioxide, and other landfill gases. The CEQA Guidelines currently requires an evaluation of whether a project: (1) would generate greenhouse gas emissions that may have a significant impact on the environment; and (2) conflict with any applicable plan, policy, or regulation of any agency adopted for the purposes of reducing greenhouse gas emissions. These issues were not addressed in the 2003 MND.*

RTC 10: See RTC 9.

Cumulative Impacts. *The 2003 MND concludes that Landfill closure would "not have any significant cumulative impacts." However, in light of the new information and changed circumstances regarding the apparent need to address the Burn Ash Site, the cumulative effects of the closure of both the Landfill and Burn Ash Site must be analyzed under CEQA. The*

Regional Board's staff's approach of envisioning preparation of a new CEQA document solely with respect to closure of the Burn Ash Site (see RTC 4), separately from the closure of the Landfill, amounts to impermissible "piecemealing" in violation of CEQA.

For all of these reasons, Recology continues to believe that preparation of a subsequent environmental document is required to comply with CEQA prior to adoption of the WDRs. 14 C.C.R. § 15162(b).

RTC 11: The use of the WMU for disposal of the Burn Ash Site waste is only one option for the cleanup of the Burn Ash Site and any impacts should be addressed as part of that project. Also, see RTC 9.

Request to Revise Finding ¶ 23 to Correct Factual Inaccuracy

An attachment to Recology's July 16, 2012 comment letter provided detailed comments on and requested revisions to specific findings in the initial draft WDRs. For the most part, the Regional Board staff has incorporated the revisions to the findings requested by Recology or has otherwise responded to Recology's comments. However, in revising former Finding ¶ 18 – now Finding ¶ 23 - but failing to delete a particular sentence as requested by Recology, the Draft WDRs continue to misrepresent the factual circumstances associated with the Burn Ash Site.

Specifically, the eighth sentence of Finding ¶ 23 states: "As noted in Finding ¶ 4, above, during the change in property ownership in 2000, a lot line adjustment was made and the Burn Ash Site lies partly on property owned by the Discharger with the remaining burn dump waste on Recology property." This statement is misleading because it reflects the Regional Board staff's mistaken view that, but for the lot line adjustment, all of the burn ash waste would be located on Recology's property and that it is only because of the lot line adjustment that any burn ash waste is located on HWMA's property. See RTC 4 (Regional Board staff claims that the discovery that a portion of the Burn Ash Site is on HWMA's property is new information).

Attachment A to this letter is a survey map showing boundaries of the subject lot line adjustment. A comparison of this survey map and Figure 1-3 in the January 2011 report prepared by Cardno ENTRIX and Kleinfelder, entitled "Environmental and Geotechnical Investigation Report, Cummings Road Waste disposal Site Burn Ash Area," shows that a portion of the Burn Ash Site was located on HWMA's property prior to the lot line adjustment. In fact, the burn ash waste extends from beneath the Landfill footprint to the southwest and the Burn Ash Site is contiguous to the Landfill. Thus, the lot line adjustment is irrelevant to the matters discussed in Finding ¶ 23.

For all of these reasons, Recology requests that the eighth sentence of Finding ¶ 23 be revised to delete reference to the lot line adjustment and to read as follows:

"The Burn Ash Site lies partly on property owned by the Discharger with the remaining burn dump waste on Recology property."

RTC 12: Comment noted. Accordingly, staff have added a new Sentence 8 in Finding 23, that states “In 1975, Recology acquired property which included the entire Burn Ash Site and SWDS.” Staff have also changed the previous Sentence 8 (now Sentence 9) to reflect the statement in Finding 3 (formerly Finding 4). The sentence you have listed above is now Sentence 10.

Statement of Recology's Intention to Testify at the Regional Board's May 2, 2013 Hearing

Recology intends to testify at the Regional Board's May 2, 2013 meeting in opposition to issuance of the draft WDRs in their present form. Each of the following individuals will testify on Recology's behalf:

- *Mike Leggins, General Manager, Recology*
- *Drew Lehman, Director, Environment & Planning, Recology*
- *Sally Schoemann, P.E., Cardno ENTRIX (Recology Consultant)*
- *William McComlck, C.E.G., Kleinfelder (Recology Consultant)*
- *Marc Zeppetello, Barg Coffin Lewis & Trapp, LLP (Counsel for Recology)*

The scope of Recology's testimony will summarize and explain the Company's position on and concerns with the Draft WDRs as set forth in this letter. Recology requests that each of these individuals be allowed a full opportunity to present non-repetitive testimony as an interested party. Recology does not presently intend to submit additional evidence at the hearing, but reserves the right to do so.

RTC 13: Time allotted for testimony at a Hearing is at the discretion of the Board chairman. Staff propose to give each of the five people listed above five minutes of speaking time. Any written material submitted by Recology must be submitted in accordance with the public hearing procedures of the Regional Water Board. Except at the discretion of the Regional Water Board Chair, written material received after the comment submittal date will not be accepted.