



# California Regional Water Quality Control Board

## Santa Ana Region



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Edmund G. Brown Jr.  
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John Arnau  
County of Orange Waste & Recycling  
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### AMENDED CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE FRANK BOWERMAN LANDFILL MASTER DEVELOPMENT PLAN, COUNTY OF ORANGE (ACOE REFERENCE NO. SPL-2006- 00212 – CJF)

Dear Mr. Arnau:

On May 26, 2011, we received an application for an amendment to an existing Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the Master Development Plan at the Frank R. Bowerman Landfill in the County of Orange. We have considered your request to revise the March 26, 2007 Certification for the subject project. The revised Certification follows.

This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

**Project Description:** Implementation of a new operating condition for the Frank R. Bowerman Landfill under a Master Development Plan. The new operating condition involves the ultimate expansion of the Landfill from its current 341-acre footprint to approximately 534 acres. The ultimate elevation of the landfill will be increased from its current planned height of 1,100 feet above mean sea level to 1,350 feet above mean sea level. The refuse inflow rate will be increased from 8,500 tons per day to 11,500 tons per day<sup>1</sup>. Implementation of the Master Development Plan will result in the excavation

<sup>1</sup> The refuse inflow rate is used here for descriptive purposes only. The regional boards do not regulate refuse inflow rates for landfills. As such, these rates are subject to change over the lifetime operation of the landfill.

of over 37 million cubic yards of soil and the discharge of fill to 2.81 acres of waters of the U.S. Implementation of the Master Development Plan will occur over a 47-year period and extend the useful life of the Landfill from the year 2022 to 2053. The project site is located north of State Route 241 in the Bee Canyon area of Orange County in Sections 143, 144, and 118, and within Township 5 South, Range 8 West, as shown on the U.S. Geological Survey *El Toro, California*, 7.5-minute topographic quadrangle map (33degrees 42 minutes 31seconds N/-117 degrees 42 minutes 30 seconds W).

Receiving water: Five (5) un-named drainages tributary to Bee Canyon Wash.

Fill area: 0.75 acre of permanent impact to ephemeral stream habitat (5,275 linear feet) and 2.06 acres of permanent impact to wetland habitat.

Dredge/Fill volume: N/A

Federal permits: U.S. Army Corps of Engineers Individual Permit No. SPL-2006-00212-CIF. U.S. Fish and Wildlife Service Section 10

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Those measures will be implemented in a manner that is consistent with the Central Sub-Region Natural Community Conservation Plan/Habitat Conservation Plan.

The Frank R. Bowerman Landfill is subject to drainage and erosion control requirements specified in Regional Board Waste Discharge Requirements Order No. R8-2010-0017. Order No. R8-2010-0017 also finds that the proposed landfill expansion has been reviewed in order to assure consistency with the requirements of California Code of Regulations (CCR), Title 27, and specifies other waste discharge requirements for the on-going operation of the landfill, including its expansion.

Appropriate Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order No. R8-2009-0030, amended by Order No. R8-2010-0062), commonly known as the Orange

County Municipal Storm Water Permit. Order No. R8-2009-0030 requires that you substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 2009-0009-DWQ, including the preparation of a Storm Water Pollution Prevention Plan (SWPPP).

Construction de-watering discharges from the proposed project may be regulated under Regional Board Order No. R8-2009-0003, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimis) Threat to Water Quality. For more information, please review Order No. R8-2009-0003 at [www.waterboards.ca.gov/santaana/pdf/03-61.pdf](http://www.waterboards.ca.gov/santaana/pdf/03-61.pdf).

Storm water discharges associated with the operation of the Frank R. Bowerman Landfill are subject to State Water Resources Control Board Water Quality Order No. 97-03-DWQ, NPDES Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities, Excluding Construction Activities.

You have applied for an Individual Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game, which was issued April 12, 2011. Pursuant to the California Environmental Quality Act (CEQA), the Orange County Integrated Waste Management Department adopted a final Environmental Impact Report on August 15, 2006.

As outlined in the project's Habitat Mitigation & Monitoring Plan (dated October 26, 2010), you have proposed to compensate for impacts to beneficial uses affected by the proposed discharge of fill to waters of the U.S. through a wetlands creation project on the Frank R. Bowerman Landfill site and a riparian restoration and enhancement project in Agua Chinon Wash.

The wetland creation project at the Frank R. Bowerman Landfill site will yield 4.2 acres of compensatory mitigation for permanent impacts to 2.06 acres of wetlands and 0.75 acres of ephemeral stream habitat non-wetland "waters of the U.S." Mitigation for impacted coast live oak trees and disturbed sycamore woodlands is also included in this area. More specifically, this mitigation would provide:

- 2.6 acres of wetland and riparian habitat creation (including a 1.5-acre earthen basin and 1.1 acre side slope);
- 1.6 acres of riparian enhancement; and

- Establishment of coast live oak and western sycamore trees throughout the 4.2 acres of mitigation area.

You have also proposed mitigation in the Agua Chinon Wash, also located within the San Diego Creek Watershed. The Agua Chinon Wash mitigation would provide approximately 19 acres of riparian and riparian adjacent restoration (including re-establishment and rehabilitation) and enhancement, and 103 acres of non-native invasive plant eradication. It is our understanding that Orange County Waste & Recycling is planning to implement both mitigation projects prior to September 2012.

**This 401 Certification is contingent upon the execution of the following conditions:**

- 1) The applicant must comply with the requirements of the applicable Clean Water Act section 404 permit.
- 2) All materials generated from construction activities associated with this project shall be managed appropriately. This shall include identifying all potential pollution sources within the scope of work of this project, and incorporating all necessary pollution prevention BMPs as they relate to each potential pollution source identified.
- 3) The project proponent shall utilize BMPs during project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the state and of the United States.
- 4) Substances resulting from project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, portland cement concrete or asphalt concrete, and washings and cuttings thereof, shall not be discharged to soils or waters of the state. All waste concrete shall be removed.
- 5) Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the state on-site, except as necessary to complete the proposed project. No equipment shall be operated in areas of flowing water.

- 6) This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
- 7) A copy of this Certification and any subsequent amendments must be maintained on site for the duration of work as a denoted element of any project SWPPP or WQMP.
- 8) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 9) Applicant shall ensure all procedures and policies specified within the project's WQMP, shall adequately address any hydraulic conditions of concern generated during and as a result of this project.
- 10) Applicant shall follow all procedures and policies specified within the project's Habitat Mitigation & Monitoring Plan.
- 11) Construction de-watering discharges, including temporary stream diversions necessary for project construction may be regulated under Regional Board Order No. R8-2009-0003, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality. For more information, please review Order No. R8-2009-0003 at [www.waterboards.ca.gov/santaana/](http://www.waterboards.ca.gov/santaana/)
- 12) Prior to the discharge of fill to any wetlands, their condition shall be determined by conducting a California Rapid Assessment Method (CRAM) study of the wetland site(s). See [www.cramwetlands.org](http://www.cramwetlands.org) CRAM studies shall be conducted by a trained CRAM practitioner. Results of these studies shall be submitted to the [www.wetlandtracker.org](http://www.wetlandtracker.org) database.
- 13) Created wetlands shall be monitored by conducting periodic CRAM studies. The applicant shall propose a schedule for conducting these CRAM studies and for reporting the study results to Board staff and shall implement that schedule upon Board staff approval.
- 14) OC Waste & Recycling shall provide funding for the on-site wetlands and woodlands creation mitigation project and for the Agua Chinon Wash riparian enhancement mitigation project, as proposed. Funding shall include contingency monies for corrective actions necessary to achieve the goals of

the restoration and enhancement effort, and for follow-up monitoring and reporting for a 5-year period.

- 15) Construction of all proposed mitigation work shall begin no later than 36-months following the date of this Certification.

**Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:**

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

Although we anticipate no further regulatory involvement, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate.

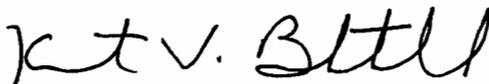
The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. Please notify our office five (5) days before construction begins on this project.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at [www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf](http://www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf)

Should there be any questions, please contact Marc Brown at (951) 321-4584, or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt V. Berchtold  
Executive Officer

cc: U. S. Army Corps of Engineers, Los Angeles Office – Corice Farrar  
State Water Resources Control Board, OCC – David Rice  
State Water Resources Control Board, DWQ-Water Quality Certification Unit –  
Nancy Dagle  
California Department of Fish and Game, Ontario Office – Naeem Siddiqui  
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Tim  
Vendlinski  
University of California, Irvine, Dept. of Ecology – Dr. Peter Bowler  
Southern California Wetlands Recovery Project – Karen Bane

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