

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2004-0520

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

COUNTY OF SAN JOAQUIN AND FOOTHILL SANITARY LANDFILL, INC.
SAN JOAQUIN COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to County of San Joaquin and Foothill Sanitary Landfill, Inc. (hereafter known jointly as "Discharger") based on a finding of failure to submit reports pursuant to California Water Code (CWC) Section 13267 and based on provisions of CWC Section 13267(b)(1) and Sections 13268(a) and (b), which authorize the imposition of an Administrative Civil Liability.

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. San Joaquin County owns, and Foothill Sanitary Landfill, Inc. operates, a Class III municipal solid waste landfill about 1 mile south of Shelton Road, in Section 12 and 13, T2N, R9E, MDB&M, known as the Foothill Sanitary Landfill.
2. The facility is comprised of an 800-acre parcel (Assessors Parcel No. 093-44-01) containing a single Waste Management Unit. This Unit is comprised of two areas: LF-1 and LF-2. LF-1 contains a single, unlined module (referred to as Module "I"), covering approximately 80 acres. LF-2 is comprised of multiple lined modules, the first of which is planned for completion in 2003.
3. Waste Discharge Requirements (WDRs) Order No. R5-2003-0020 was adopted by the Regional Board on 31 January 2003. The WDRs address the construction, operation, closure, and evaluation monitoring of the Class III landfill.

HISTORY OF VIOLATIONS

4. On November 6, 2002, the Discharger submitted an Evaluation Monitoring Plan, which describes the criteria for delineating the nature and extent of groundwater pollution. Because Module "I" is unlined and presumed to be the source of waste discharges, the WDRs require the closure of Module "I" as part of the corrective action measures for past detections of VOCs, as defined in Finding No. 5 of the WDRs.
5. WDRs Order No. R5-2003-0020, Provision J.12, requires that the Discharger submit on 1 June 2003, the *Engineering Feasibility Study* report, including closure of Module "I." The Discharger did not submit the document by the date of compliance.
6. On 16 September 2003, the Executive Officer issued a CWC 13267 Order requiring the Discharger to submit two reports, including (a) the *Engineering Feasibility Study* report, which

includes the closure of Module “I,” required by the WDRs and (b) a *Partial Cover* workplan, which includes design and construction of the soil cover for all modules in the Unit and addresses the performance standards for precipitation and drainage controls. The WDRs required the reports be submitted on 1 June 2003. The CWC 13267 Order required the documents to be submitted on 1 November 2003.

7. On 30 October 2003, the Discharger submitted the *Partial Cover Workplan and the Engineering Feasibility Report and Corrective Action Program, Based on the Results of the Evaluation Monitoring Plan at the Foothill Sanitary Landfill* (Report), prepared by San Joaquin County, Department of Public Works, Solid Waste Division, that did not include closure of Module “I” in compliance with WDRs Order No. R5-2003-0020 and Title 27 California Code of Regulations (Title 27 CCR), Division 2, Subdivision 1.
8. On 16 December 2003, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. R5-2003-0159 regarding the violation of WDRs Order No. R5-2003-0020 and Sections 13267 and 13268 of the California Water Code by San Joaquin County and Foothill Landfill, Inc. for not submitting a Closure Plan for Module “I” that was in compliance with WDRs and Title 27 CCR. ACLC No. R5-2003-0519 proposed to impose \$10,000 in administrative civil liability on the Discharger.
9. The Executive Officer and Discharger entered into a settlement discussion, which culminated in the Discharger’s acceptance of a Settlement Agreement (Agreement), which includes the issuance of a Cleanup and Abatement Order No. R5-2004-0706 and this new ACLC No. R5-2004-0520 rescinding ACLC No. R5-2003-0159.
10. The Agreement between the Executive Officer and Discharger resolves by consent and without further administrative proceedings certain alleged violations of the California Water Code and Waste Discharge Requirements Order No. R5-2003-0020. The Agreement contains, among other things, the agreement of the Discharger to pay \$10,000 in civil liability and the agreement of the Executive Officer, upon a demonstration that discharges of landfill gas from Module “I” have been satisfactorily eliminated, to recommend that the WDRs be reopened and modified to be consistent with CAO No. R5-2004-0706.

REGULATORY CONSIDERATIONS

11. The Discharger, by the acts and omissions above, violated provisions of CWC Section 13267 (b)(1), which reads, in part, as follows:

“...the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters within its region, shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires....”

12. CWC Section 13268 (a) states:

“Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”

13. CWC Section 13268(b)(1) states:

“Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”

14. CWC Section 13327 states:

“In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”

15. CWC Section 13268(b)(1) authorizes Administrative Civil Liability in an amount not to exceed one thousand dollars (\$1,000) for each day of failure to submit technical reports as required by CWC Section 13267(b). The CWC 13267 Order required the *Engineering Feasibility Study*, including the closure of Module “I” and the *Partial Cover Workplan* be submitted by 1 November 2003. As of the date of this Complaint, the Discharger has failed to submit the reports describing the closure of Module “I”, as required by the WDRs.

16. The maximum liability for the nonsubmittal of the technical reports is forty six thousand dollars (\$46,000). This amount is based upon \$1,000 dollars a day since 1 November 2003 to the date of this Complaint (46 days). The amount of the liability proposed is based upon a consideration of the factors set forth in CWC Section 13327 cited in Finding No. 11 above. No minimum liability is required to be imposed under CWC Section 13268(b)(1).

17. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

18. This complaint is being issued to make editorial clarifications to Administrative Civil Liability Complaint No. R5-2003-0159.

COUNTY OF SAN JOAQUIN AND FOOTHILL SANITARY LANDFILL, INC. ARE HEREBY GIVEN NOTICE THAT:

1. Administrative Civil Liability Complaint No. R5-2003-0159 is rescinded and replaced with this Complaint.
2. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of ten thousand dollars (\$10,000). The amount of the liability proposed is based upon a review of the factors set forth in California Water Code Section 13327 cited in Finding No. 10 above.
3. A hearing shall be held unless the Discharger agrees to waive the hearing and pay the imposed civil liability in full.
4. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
5. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the hearing, please sign the enclosed waiver and return it with the amount of civil liability (in a check made payable to the State Water Resources Control Board), to the Regional Board's office at 11020 Sun Center Drive #200, Rancho Cordova, CA 95670-6114.

original signed
THOMAS R. PINKOS, Executive Officer

18 May 2004
(Date)

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