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Via Electronic Mail

March 29, 2012

Harold Singer
Executive Officer
California Regional Water Quality Control Board
14440 Civic Drive, Suite 200
Victorville, CA 92392

RE: Nursery Products - Design Plan

Dear Mr. Singer,

On behalf of Nursery Products, this letter responds to the letter of February 23, 2012 ("Letter") from the Regional Water Quality Control Board, Lahontan Region ("Water Board") regarding the Design Plan for the Nursery Products Hawes Compost Facility ("Hawes Facility"). The Design Plan was originally submitted May 5, 2010 and the Water Board has had only two issues (as addressed further below) but has sent eight letters over the course of two years regarding the Design Plan. The latest version of the Design Plan was submitted January 24, 2012 and that version is referenced further in this letter. In addition to responding to the Letter, this response describes the Water Board's pattern of raising new or incremental comments on previously approved portions of the Design Plan. Because of the pattern, as well as the delays, it is difficult to believe that Nursery Products will receive treatment that will result in the approval of the Design Plan.

The February 23rd Letter by its very terms is illogical and appears inconsistent with prior Water Board correspondence. First, let's provide context for the issue raised in the Letter. The Letter is the fourth letter from the Water Board regarding a fractional area of the Hawes Facility, which portion does not even directly contain materials described as "wastes." In this area, the initial design included a short (less than 1-foot) unpaved surface area over compacted soils at the end of the concrete "spillway" that will channel storm water to the impoundment. This area is underlain by the liner of the impoundment, and sloped. The area will only be contacted by rainwater runoff from the Facility and only in the event of a very significant storm event. The likelihood of such rains is extremely low. In addition, the concrete "spillway" and compacted soil is sloped at a 0.5% slope and the previously unpaved space was underlain by the end of the liner of the surface impoundment. The area in question is located at three locations where the spillways enter the two surface impoundments. The area constitutes 0.001% percentage of the 80 acre site and will not, unlike 72 acres of the Hawes Facility, be in direct contact with composting materials.

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As described in detail in the latest version of the Design Plan, in response to Water Board's demands and after numerous iterations, a metal plate will extend over the 90% compacted soil and act to extend the spillway directly in to the surface impoundment. The metal plate will extend over 3-feet from the end of the concrete and completely cover the unpaved surface area. The metal plate will extend beyond the edge of the surface impoundment itself without touching the liner of the impoundment. This overlap will provide ample distance for gravity to act on any water that may course over the metal plate. To put the area covered by the metal plate in fuller perspective, the metal plate will be located only at two 10-foot openings in the diversion berm for the eastern surface impoundment and a single 20-foot opening in the diversion berm for the western surface impoundment 40 square feet [(10' +10'+20') X 1] on a site of 80 acres.

As further background, at the time you telephonically requested a metal plate, you promised, and then later provided, examples of similar plates from other facilities. The single example of a plate from a waste water treatment plant was received on August 17, 2011 and the photograph clearly shows the growth of vegetation in the supposed area of the plate. It's clear that the metal plate exemplar provided by the Water Board, applied a different standard of review to that facility than is being applied to the Hawes Facility. The exemplar plate clearly included sufficient soil for plant materials to take root and grow. To put the nature of the Water Board's latest comments on the metal plate in context consider that the 72 acres of the 80 acre Hawes Facility will be covered with compost windrows which contain "wastes" in Water Board parlance. In the 72 acre area, constructed as a "waste pile," biosolids/green materials will be composted in direct contact with the surface. By contrast the area covered by the metal plate will only have rainwater runoff on it and then only on those extremely rare occasions when sufficient rain water falls at a sufficiently fast rate to create run off.

The February 23rd letter states that the Design Plan "does not meet the requirements of the Board Order." This statement is so general as to be meaningless and one could just as easily argue the opposite. Clearly the Order is silent on such details. The Letter goes on to reference the "areas between the concrete aprons located at the base of the surface impoundment diversion berms, and the edge of the liner of the surface impoundments" and mentions the metal plate that was proposed by Nursery Products in the fall and incorporated into the January 24th Design Plan to be attached to the downstream edge of the concrete apron. The metal plate was in fact proposed last August 22, 2011 after a proposal that included a water resistant geoweb material (which had been proposed because of the difficulty of construction and potential for damage to the liner of the impoundment which is anchored at this location and because the Water Board had expressed a concern about erosion in this area) had been rejected by the Water Board. As set forth in the September 22, 2011 letter, the Water Board accepted any of three designs including the metal plate (and two other designs) but requested additional revisions to the metal plate. Those revisions were made in the January 24, 2012 submittal by Nursery Products. The Letter now raises an additional issue: the absence of "a seal or liner ... at the point of contact with the metal plate." Thus, having yet again met the Water Board's request for

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additional incremental design changes with the January 24th Design Plan, Nursery Products is yet again asked for additional, different changes to the engineer-approved Design Plan.

The Water Board Letter raises a new issue by stating that "a seal or liner is not proposed at the contact with the metal plate and the concrete apron."(Emphasis added). This in spite of the fact that the Water Board letter of September 22, 2011 had approved, with certain conditions, a prior design that Nursery Products had provided with those requested alterations. Nonetheless, Nursery Products hereby includes a revised Page 6 of 9 to the Design Plan as Attachment A. This Substitution Page 6 of 9 to the Design Plan drawings shows the emplacement of a sealant material at the point of contact between the metal plate and concrete, in addition to the embedded emplacement and bolting of the plate as shown in the January 24th drawings. A seal will be obtained using an epoxy material between the concrete apron and the metal plate. The engineer has recommended sealing with Sikaflex-1a or an equivalent material as set forth on the enclosed substitution page. The attached complies with the Water Board's inferred, but never previously raised, basis for non-approval of the latest design and provides every reasonably available protection of this .001% area of the Facility.

The Letter goes on to request revisions to the Sampling and Monitoring Plan but wholly fails to set forth the basis of this request. The Letter, and all prior correspondence on the Design Plan fails to correlate the request to the previous correspondence and approval of the Sampling and Monitoring Plan. Since the reference in the Letter is vague, general, based on a major misinterpretation of the Design Plan, and does not reference any of the prior correspondence regarding either soils monitoring in the vicinity of the impoundment or the prior correspondence on the Sampling and Monitoring Plan, said plan is not hereby revised. To attempt to revise the Sampling and Analysis Plan under these circumstances would be pure folly.

Finally, the February 23rd Letter from the Water Board is the eighth letter regarding the approach to and construction of the rain water flow into the impoundments. These eight letters focus on this physically small area, which relates only to stormwater management in spite of the fact that 72 acres of the Hawes Facility will contain windrows of composting materials. This focus on 0.001% of the physical site that has significantly less potential for discharges is quizzical for any agency in these times of limited budgets. It is even more frustrating because the Water Board has, at every turn, refused to accept Nursery Products repeated requests to meet in person to work out these issues. The history of correspondence is set forth with a short summary in the Attachment B to this letter. This history illustrates the changed positions and comments by the Water Board even though Nursery Products (and their consultants) provided revisions to the Design Plan in response to every comment by the Water Board. Our review of Water Board files do not find precedent for this approach and this recitation of the extensive comment history illustrates the inefficiency since after repeated requests by the undersigned and Nursery Products for a simple meeting for the purpose of resolving any issues related to the Design Plan.

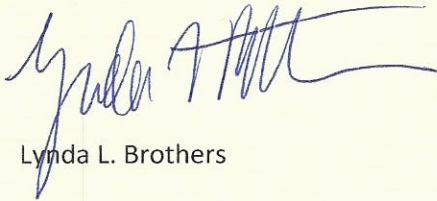
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Construction is underway at the Hawes Composting Facility and will proceed consistent with the engineered designs referenced in this letter.

Sincerely yours,

L Brothers Law

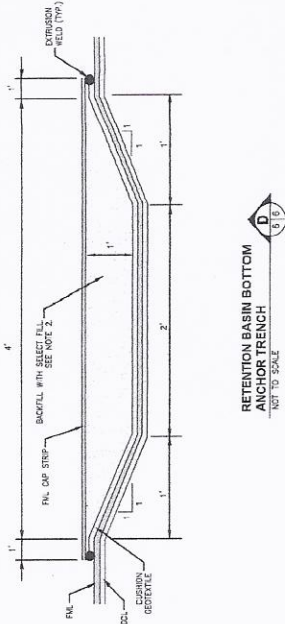
A handwritten signature in blue ink, appearing to read "Lynda L. Brothers", with a stylized flourish extending to the right.

Lynda L. Brothers

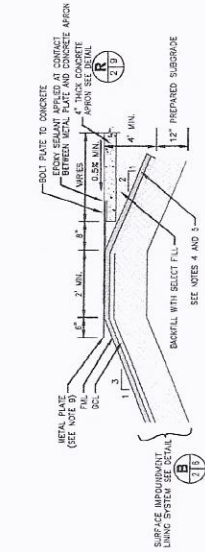
Enclosures

cc Chris Seney

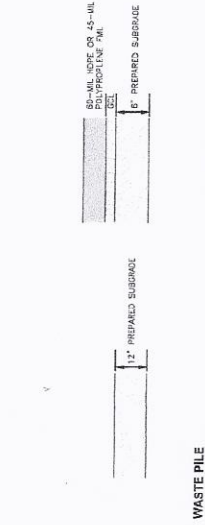
ATTACHMENT A



RETENTION BASIN BOTTOM ANCHOR TRENCH
NOT TO SCALE

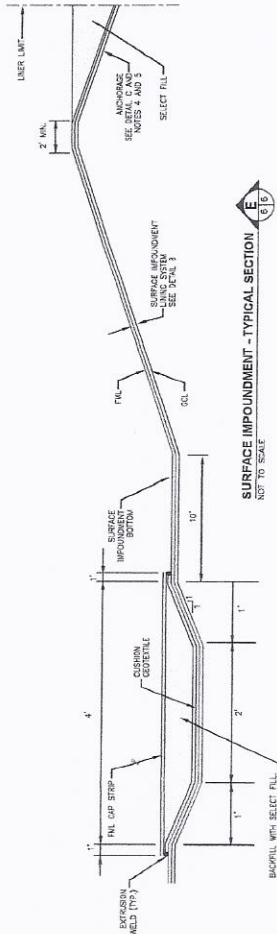


SURFACE IMPOUNDMENT PERIMETER ANCHORAGE (SHOWN AT DIVERSION BERM OPENING)
NOT TO SCALE



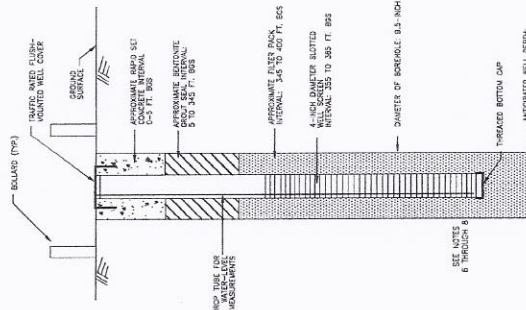
WASTE PILE COMPOSITING AREA LINING SYSTEM
NOT TO SCALE

SURFACE IMPOUNDMENT LINING SYSTEM
NOT TO SCALE

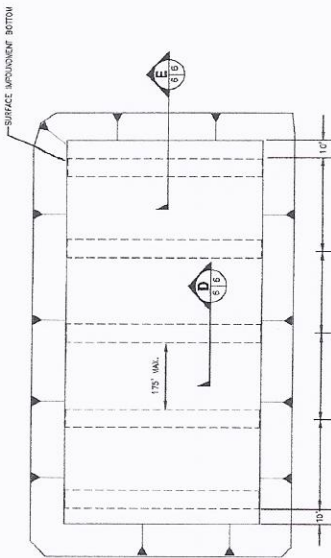


SURFACE IMPOUNDMENT - TYPICAL SECTION
NOT TO SCALE

- NOTES:**
- EXISTING GROUND SURFACE IS BASED ON SURVEY DATA PREVIOUSLY PERFORMED BY OTHERS.
 - USE SELECT FILL TO CONSTRUCT THE COMPACTED LINER ANCHORAGE. SELECT FILL SHALL CONSIST OF GRANULAR MATERIALS WITH THE MAXIMUM PARTICLE SIZE OF 1-1/4-INCH.
 - TOP OF THE SITE PERMETER BERM SHALL BE GRADED FLAT IN THE LONGITUDINAL DIRECTION AND SHALL BE GRADED TO A MAXIMUM SLOPE OF 1:1. THIS SLOPE MAY VARY FROM THE INSIDE OF THE IMPOUNDMENT.
 - ANCHORAGE ALIGNMENT AND EDGES SHALL BE STRAIGHT AND SMOOTH.
 - EXTEND BERM/MEMBRANE SEAM THROUGH THE ANCHORAGE.
 - THE GROUNDWATER MONITORING SCREEN SHALL BE 10 FEET BELOW THE SCHEMATIC AND IS NOT TO SCALE.
 - WELLS MAY BE DEEPER AND SCREEN LENGTHENED BASED ON GEOLOGY.
 - WELL GROUNDWATER MONITORING DESIGN IS BASED ON ENCOUNTERING GROUNDWATER AT AN APPROXIMATE DEPTH OF 300 FEET.
 - THICKNESS AND TYPE OF METAL PLATE TO BE PROVIDED BY CONSULTANT AND APPROVED BY ENGINEER-APPROPRIATE.



GROUNDWATER MONITORING WELL
NOT TO SCALE



RETENTION BASIN BOTTOM ANCHORAGE
NOT TO SCALE

REV	DESCRIPTION OF REVISION	BY	DATE	PROJECT	HCF	REVISION	DATE	REVISION
1	REVISION SECTION C TO INCLUDE EPOXY SEALANT	MSH	3/16/12	HAWES COMPOSITING FACILITY SAN BERNARDINO COUNTY, CA	JUN	JMS	5/19/11	3
2	REVISED SECTION C AND E	MHC	1/13/12					
3	MAY 2011 DESIGN DRAWINGS	MSH	5/19/11					
4	MARCH 2011 DESIGN DRAWINGS	MSH	2/21/11	PROJECT WORKSHEET	JUN	6	6	
5				DETAILS AND SECTIONS				



ATTACHMENT B

SUMMARY

SENDER

DATE

May 5, 2010	Nursery Products	Submission of draft Design Plan.
July 2, 2010	Water Board	After two months, Water Board comments on Design Plan asking for more information regarding the gate system for overflow from the 1000 year flood and related berm heights.
July 7, 2010	Water Board	Water Board corrects to a comment in their letter of July 2, 2010.
August 13, 2010	Nursery Products	Design Plan revised and resubmitted with back up material to explain the berm heights issue raised on July 2, 2010.
October 7, 2010	Water Board	After two months, Water Board raises one additional question in regard to calculations of flow area volume and berm heights in the event of the 1000 year flood. The letter did not raise any additional issues and this issue was only marginally related to the previously raised and resolved issue.
October 12, 2010	Nursery Products	Letter explaining the surface area and flow area calculations and management plans in the event of major rainfall event.
October 25, 2010	Nursery Products	Letter to further explain the only outstanding Water Board issue at the time which was the over flow area volume calculation. This letter was submitted after verbal discussions with the Water Board.
November 22, 2010	Nursery Products	Another letter to further explain the issue of flow area volume calculation. This letter directly responded to verbal comments from the Water Board indicating reviews by different staff. The overflow area calculations were the only issue under consideration.

	Water Board	<p>This letter raised new issues that had not been presented in prior correspondence and requested extensive additional redesign work, a revised Design Plan. The Water Board raised new issues and claimed there was conflicting information and too many addendums even though the addenda were all in response to Water Board requests. At this point the primary design issue related to the type of material to be used to open/close the gates of the 1,000 year berm gates by one person even though more staff will always be on site.</p>
December 24, 2010	Nursery Products	<p>Resubmitted a new Design Plan to address all the new issues/concerns raised to date.</p>
March 17, 2011	Water Board	<p>This letter contained the first mention of the area between the 1,000 year berm and the surface impoundments but the concern was strictly in regard to <u>erosion of the compacted soil</u> and integrity of the liner. The letter asked for clarification of plans to prevent soil erosion in this area.</p>
April 21, 2011	Nursery Products	<p>Letter to the Water Board addressing all their comments and specifically addressing potential for erosion of compacted soil between the berm and impoundment. Proposed the use of Geoweb which is an erosion reduction product; also updated the plan and drawings again.</p>
May 25, 2012	Nursery Products	<p>After 3 months of effort to obtain a telephone conversation over the Water Board's confusion about the Geoweb, a letter was sent to clarify the nature of the material. The Water Board apparently now changed their concern from erosion to percolation caused by Geoweb. Nursery Products proposed concrete in place of the Geoweb and a metal plate that would extend as close as possible for engineering concerns to the edge of the impoundment leaving about an inch of space over 90% compacted soil in this area also underlain by the impoundment liner.</p>
August 22, 2011	Nursery Products	

September 22, 2011	Water Board	<p>The Water Board analyzed and accepted with conditions any of the proposals in the area near the end of the spillway and generally threatened additional monitoring requirements if those changes were not incorporated to deal with the 1" soil area. No mention was made of a seal at this location.</p>
January 3, 2012	Nursery Products	<p>Letter proposing to proceed with one of the past designs discussed in the latest Water Board letter but with the requested revisions to eliminate the 1" gap of soil.</p>
January 10, 2012	Water Board	<p>The Water Board sent us a letter requesting additional illustration of the proposal to eliminate the 1" area of soil not covered by the metal plate. The letter discussed the interface between the concrete and metal plate and again made no mention a seal or glue or liner.</p>
January 24, 2012	Nursery Products	<p>Letter and drawings to illustrate the metal plate interface with the concrete and how the metal plate will act as a spill way. This was the design discussed with Water Board Staff.</p>
February 23, 2012	Water Board	<p>The Water Board waited a month to find the concrete plate to be inadequate because a seal between the plate and the concrete (previously never mentioned or requested) was not included. The Water Board continues to fail to recognize the extremely low likelihood of impacts from this location and stated Nursery Products would be "creating the potential for deep percolation and discharge outside of the impoundments which would violate the WDR" without recognizing that the area is over 90% compacted soil – the standard for a class II waste pile on site.</p>