

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

DRAFT TECHNICAL REPORT

WATER QUALITY INVESTIGATION ORDER R9-2006-0044

FOR

THE CITY OF SAN MARCOS

IN COMPLIANCE WITH WATER CODE SECTION 13267

CITY OF SAN MARCOS
BRADLEY PARK / OLD LINDA VISTA LANDFILL
SAN DIEGO COUNTY

May 9, 2007

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

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Documents are also available at: <http://www.waterboards.ca.gov/sandiego>.

WATER QUALITY INVESTIGATION ORDER R9-2006-0044

FOR

**CITY OF SAN MARCOS
BRADLEY PARK / OLD LINDA VISTA LANDFILL
SAN DIEGO COUNTY**

Draft Technical Report

Affirmed by the
California Regional Water Quality Control Board
San Diego Region
May 9, 2007

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
9174 Sky Park Court, Suite 10
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STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor
LINDA S. ADAMS, Agency Secretary, California Environmental Protection Agency

**California Regional Water Quality Control Board
San Diego Region**

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John H. Robertus, *Executive Officer*
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INTRODUCTION

On May 16, 2006, the Regional Board received a letter, from the Discharger's legal counsel, requesting the Regional Board schedule a hearing to appeal the issuance of Order R9-2006-0044 to the City of San Marcos (the Discharger). The Discharger asserts that the County of San Diego should also be added as a party responsible for compliance with Order R9-2006-0044.

On August 28, 2006, the Discharger requested that the appeal be held in abeyance pending an attempt by the Discharger and the County of San Diego (the parties) to resolve their dispute concerning responsibility for compliance with Order R9-2006-0044. On August 28, 2006, the legal counsel for the Discharger sent a letter requesting that the Regional Board proceed with appeal of Order R9-2006-0044.

From November 2006 until January 2007, the parties submitted legal briefs and exhibits to support their positions on the question of liability for compliance with Order R9-2006-0044. On February 9, 2007, the Regional Board convened an informal hearing with the parties to discuss the assertions made in their legal briefs discuss additional information provided by the Discharger and the County of San Diego.

For the reasons set forth below, the California Regional Water Quality Control Board, San Diego Region (San Diego Regional Water Board) issued Water Quality Investigation Order R9-2006-0044 to the City of San Marcos, for the Bradley Park/Old Linda Vista Landfill (hereinafter Bradley Park Landfill), under the authority of Water Code §13267.

1. FINDINGS AND FACTUAL BASIS FOR FINDINGS FOR WATER QUALITY INVESTIGATION ORDER R9-2006-0044

This section provides the rationale and factual information supporting the findings relating to the application of responsibility for compliance with Water Quality Investigation Order R9-2006-0044. The text of each finding is presented first, followed by a summary of the rationale and factual evidence supporting that finding.

A. FINDING NO. 1 STATES:

UNAUTHORIZED RELEASE OF WASTE. The City of San Marcos owns and maintains a closed municipal solid waste landfill known as the Bradley Park Landfill at a property located southeast of the intersection of Rancho Santa Fe Road and Linda Vista Drive in the City of San Marcos, California. The City of San Marcos caused or permitted an unauthorized release of waste constituents, including volatile organic chemical and inorganic mineral waste constituents,

from the waste management unit (the “*Unit*”) into both ground water underlying the landfill and a municipal separate storm water conveyance system (MS4) where it probably will be discharged to San Marcos Creek. The City of San Marcos has caused and threatens to cause conditions of pollution and nuisance, and violated requirements prescribed by the Regional Board by discharging waste beyond the limits of the Unit to ground water and into a MS4 tributary to San Marcos Creek that exceeds applicable water quality objectives for the ground water and toxic pollutants in the creek.

BASIS FOR FINDING NO. 1

In November 2004 the County of San Diego Department of Public Works (DPW) informed the San Diego Regional Water Board about a seep of liquid recently discovered at the Bradley Park Landfill. The DPW staff provided the San Diego Regional Water Board with analytical results in a “Seep Investigation Report”, dated January 20, 2005.

On January 26, 2005, the San Diego Regional Water Board staff conducted a compliance inspection and determined that a seep of contaminated water was leaking into the storm water conveyance channel at the Bradley Park Landfill. On February 1, 2005, the San Diego Regional Water Board issued a Notice of Violation (NOV R9-2005-0046) for the discharge of wastes (polluted water) into the storm water conveyance channel. The San Diego Regional Water Board staff observed the seep of liquid discharging into the unnamed creek at Bradley Park Landfill (see photo in Attachment 8). During a subsequent compliance inspection conducted March 28, 2005 the San Diego Regional Water Board staff observed exposed solid wastes located within the creek bed, resulting in the issuance of another Notice of Violation (NOV R9-2005-0172) to the City of San Marcos. The current waste containment unit fails to adequately contain waste constituents in the Bradley Park Landfill. As a result, the San Diego Regional Water Board concludes that there are continuing discharges (releases) of waste constituents into ground water and into the ground water seep located on the south side of the Landfill.

B. FINDING NO. 2 STATES:

PERSONS RESPONSIBLE. Between the years 1948 and 1968, the County of San Diego owned, operated and discharged wastes into the Bradley park landfill. Upon completion of waste disposal activities, the County of San Diego covered the wastes with soil, and subsequently, sold the property to the City of San Marcos who redeveloped the landfill into a park and recreation area. The City of San Marcos is responsible for its management and maintenance under the San Diego Regional Water Board’s waste discharge requirements (Order 97-11) for inactive landfills. The City of San Marcos is referred to as “Discharger” in this Order.

BASIS FOR FINDING NO. 2

Between the years 1948 and 1968, the County of San Diego owned, operated and discharged wastes into the Bradley Park Landfill. Upon completion of waste disposal activities, it is the understanding of the Regional Board that the County of San Diego covered the wastes with soil. According to information provided to the Regional Board, the City of San Marcos acquired the property in 1968, which it redeveloped the landfill into a park and recreation area. The City of San Marcos is responsible for post-closure maintenance and monitoring of the Bradley Park Landfill under waste discharge requirements for inactive landfills (Order 97-11 and addenda thereto).

It is appropriate to allocate sole responsibility for post closure maintenance and monitoring of the landfill, and investigation of water quality associated with the Bradley Park Landfill to the City of San Marcos because:

- 1.) The City of San Marcos is named s the Discharger responsible for compliance with requirements of waste discharge requirements under Order 97-11 and addenda thereto.
- 2.) The investigation required pursuant to Order R9-2006-0016 involves the discharge of waste constituents from the Bradley Park Landfill into groundwater and surface water resources.

While the County of San Diego, which discharged waste into the Bradley Park Landfill, may be properly identified as an “operator” of the former solid waste disposal site, and therefore subject to the Solid Waste Assessment Test (SWAT) requirements of §13273 of the Water Code, this does not relieve the City of San Marcos of its separate obligations under General Order No. 97-11, as amended. The City of San Marcos’ status as a “Discharger” responsible for post-closure maintenance and monitoring is not based on the City’s status as an “operator” of the former solid waste disposal site, nor on a determination that waste from the former landfill is causing or contributing to ground water pollution, but rather on its current and continuing ownership of a closed or inactive landfill containing wastes that could affect the quality of the waters of the state. This was the basis for designating the City of San Marcos as the entity responsible for compliance with General Order No. 97-11, at the County of San Diego’s former Bradley Park Landfill, when the Regional Board issued Addendum No. 1 to General Order No. 97-11 on June 14, 2000.

Application of statutory authority under Water Code §13267. Water Quality Investigation Order R9-2006-0044 was issued to the City of San Marcos (the Discharger) under authority of Water Code §13267, which authorizes the Regional Board to require “Dischargers” to provide the Regional Board with

information deemed necessary to evaluate and assess the impacts on water quality. The Regional Board considered the following requirements of §13267 for Water Quality Investigation Order R9-2006-0044:

“(a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of waters of the state within its region.”

Water Code §13267 authorizes the Regional Board to investigate water quality in connection with any action relating to a water quality control plan or waste discharge requirements authorized by the Porter Cologne Water Quality Act (Water Code) Division 7, commencing with §13000 *et seq.*

Further, Water Code §13267(b) states:

“(b)(1) in conducting an investigation specified in subdivision (a), 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. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports. “

The City of San Marcos is properly identified as the “Discharger” responsible for post-closure maintenance and monitoring of a inactive/closed landfill, that contains wastes that could affect the quality of the waters of the state, under Order 97-11, qualifies as a “... 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” [per Water Code § 13267(b)(1)].

The following facts indicate that the City of San Marcos is properly named as the “Discharger” in the meaning of Water Code § 13267:

1. The City of San Marcos obtained ownership of the Bradley Park Landfill on December 30, 1968.¹
2. On June 14, 2000, the Regional Board adopted Addendum. 1 to Order 97-11² identifying the City of San Marcos as the "discharger" responsible for compliance with post-closure maintenance and monitoring requirements.
3. Discharges of waste constituents to groundwater were reported in the "San Marcos I Landfill SWAT Report" prepared by the County of San Diego and submitted to the San Diego Regional Water Board on October 1, 1991. Halogenated volatile organic constituents in groundwater samples were reported in the SWAT Report³. Subsequent groundwater-monitoring results (e.g., see 2005/06 results reported in Geotracker https://geotracker.swrcb.ca.gov/reports/luft.asp?global_id=L10006943141&assigned_name=LANDFILL) have indicated detectable concentrations of halogenated VOCs in groundwater samples collected groundwater monitoring wells located at the Bradley Park Landfill.
4. In November 2004 the County of San Diego informed the San Diego Regional Water Board about a discharge of liquid waste/water recently discovered in an unnamed creek located at Bradley Park. The County staff provided the San Diego Regional Water Board with analytical results in a "Seep Investigation Report", dated January 20, 2005.
5. On January 26, 2005, the San Diego Regional Water Board staff conducted a compliance inspection and determined that a seep of liquid⁴ was leaking into the storm water conveyance channel at the Bradley Park Landfill. On February 1, 2005, the San Diego Regional Water Board issued a Notice of Violation (NOV R9-2005-0046) for the discharge of wastes (water containing waste constituents) into the storm water conveyance channel. The current waste containment unit fails to adequately contain waste constituents in the Bradley Park Landfill. As a result, there are continuing discharges of waste constituents into ground water and into the ground water seep located on the south side of the Landfill.

¹ Quitclaim documents are included in Attachment 9d to this EOSR, City of San Marcos Administrative Appeal of Water Quality Investigation Order 29[sic]-2006-0044, dated February 9, 2007: see Exhibits 6 and 7.

² See Attachments 11d and 11e to this EOSR, for Addendum 1 to Order 97-11 and Landfill Enrollees.

³ See Attachment 7 to this EOSR, Waste Constituents in groundwater Table 1 of SWAT Report (1991).

⁴ See Attachment 8 to this EOSR, RWQCB Compliance Inspection Photos (from January 26, 2005) of seep/discharge into unnamed creek at Bradley Park Landfill.

6. During a compliance inspection conducted on March 28, 2005, the San Diego Regional Water Board staff observed exposed solid wastes located within the creek bed. The current waste containment unit fails to adequately contain waste constituents in the Bradley Park Landfill. The observations made during that compliance inspection resulted in the San Diego Regional Water Board issuing another Notice of Violation (NOV R9-2005-0172) to the City of San Marcos.
7. On July 17, 2006 the City of San Marcos provided the San Diego Regional Water Board with a report summarizing analytical results (from March 31, 2006) from a liquid samples collected from the seep/subdrain pipe discharge into the unnamed creek at Bradley Park.⁵ The analytical results from that liquid sample are contained detectable concentrations of a halogenated VOC (*cis*-1,2-dichloroethene), which is a VOCs that is commonly associated with other waste constituents containing halogenated VOCs. These results are consistent with the conclusion that waste constituents are discharging (into groundwater and into the unnamed creek) from the Bradley Park Landfill.

The City of San Marcos is properly identified as the “Discharger” responsible for compliance with waste discharge requirements issued by the Regional Board as General Order No. 97-11, and addenda thereto. Evidence of continuing discharges of waste constituents from wastes at the Bradley Park Landfill is derived from results of compliance inspections, analytical results of groundwater samples collected from monitoring wells located at/adjacent to the Bradley Park Landfill, and analytical results from the liquid discharge into an unnamed creek located at Bradley Park. As the “Discharger” responsible for the Bradley Park Landfill, the City of San Marcos also qualifies as the “... 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” [per Water Code § 13267(b)(1)].

The City of San Marcos is also properly identified as the Discharger responsible for compliance with Water Quality Investigation Order No. R9-2006-0044, which requires the “Discharger” to provide information in support of the Regional Boards efforts to develop waste discharge requirements pursuant to Water Code § 13267(a). In response to reported discharges of waste constituents into the groundwater and observed discharges of waste constituents into surface water resources at Bradley Park, the San Diego Regional Water Board requested that

⁵ From “Workplan in Response to Investigative Order No. R9-2006-0044 Bradley Park/Old Linda Vista Landfill in the City of San Marcos, California (dated July 17, 2006), reported in Table 2: Sampling Results from the Seeps and Subdrain system.

the Discharger provide information to develop requirements for implementation of an Evaluation Monitoring Program and/or a Corrective Action Program for the Bradley Park Landfill. The San Diego Regional Water Board finds that the request for information, issued to the Discharger as Order R9-2006-0044, is an appropriate use of the statutory authority granted to the Regional Boards pursuant to Water Code §13267.

The City of San Marcos as the “Discharger” identified in Water Quality Investigation Order R9-2006-0044. The City of San Marcos is properly identified as the “Discharger” responsible for compliance with waste discharge requirements issued by the San Diego Regional Water Board as General Order No. 97-11, and addenda thereto, and also qualifies as a “Discharger” under Water Code §13267.

The City of San Marcos asserts that the San Diego Regional Water Board should add the County of San Diego as a Discharger and also responsible for compliance with Water Quality Investigation Order R9-2006-0044. The City of San Marcos’ contention that the County of San Diego should also be held responsible for implementing Investigative Order R9-2006-0044 is partly based on a Joint Exercise of Powers Agreement (JPA) entered into by the above-referenced parties in August 1986.⁶ The San Diego Regional Water Board is not a party to the JPA agreement between the City of San Marcos and the County of San Diego. While the JPA appears to allocate responsibility for the Bradley Park Landfill between the City of San Marcos and County of San Diego, and may in fact create contractual obligations between the City and County, their respective agreement to allocate responsibility for the Bradley Park Landfill does not compel the San Diego Regional Water Board to adjust its allocation of responsibility under Water Code §13263 and §13267 to reflect their agreement.

Application of statutory authority under Water Code §13304. On May 4, 2000, the San Diego Regional Water Board sent a letter⁷ to the City of San Marcos explaining application of Water Code §13304 at existing landfill Units. The assertions by the County of San Diego, regarding court decisions concerning the limitations of the San Diego Regional Water Board’s authority under Water Code §13304, are not directly applicable to the circumstances at the Bradley Park Landfill. Water Quality Investigation Order No. R9-2006-0044 was issued to the City San Marcos (the Discharger), under authority of Water Code §13267, in order to obtain information in support of the development of waste discharge requirements for implementation of an Evaluation Monitoring Program; pursuant to CCR Title 27, §20425, at the Bradley Park Landfill. However, Order R9-2006-

⁶ See Attachment 6 to the EOSR, for the Joint Exercise of Powers Agreement dated August 1986.

⁷ See Attachment 12, San Diego Regional Water Board letter to the City of San Marcos dated May 4, 2000.

0044 is consistent with standard Orders and court decisions interpreting Water Code §13304.

Application of Regulatory Authority under CCR Title 27. The San Diego Regional Water Board regulates the Bradley Park Landfill through General Waste Discharge Requirements (WDRs) issued to the City of San Marcos (the Discharger) as Order 97-11 and addenda thereto. Water Quality Investigation Order R9-2006-0044 was issued to the Discharger pursuant to the San Diego Regional Water Board's statutory authority, and requires the Discharger to comply with applicable requirements of California Code of Regulations (CCR) Title 27, including but not limited to the following:

- (a) CCR Title 27, §20080(g) provides that persons responsible for discharges at waste management units that were closed, abandoned, or inactive on or before November 27, 1984 (CAI Units) may be required to develop and implement a corrective action program.
- (b) CCR Title 27 §20385(a)(3) provides that a Discharger shall institute an evaluation monitoring program in accordance with CCR Title 27 §20425 whenever there is significant physical evidence of a release from the Unit.
- (c) CCR Title 27, §20425 authorizes the San Diego Regional Water Board to require Dischargers to implement an Evaluation Monitoring Program (EMP) when a release from the Unit has been detected.

Water Quality Investigation Order R9-2006-0044 compels the City of San Marcos to provide the San Diego Regional Water Board with information necessary to comply with the regulatory requirements for an Evaluation Monitoring Program and to develop a Corrective Action Program, pursuant to CCR Title 27.

The San Diego Regional Water Board finds that Water Code §13267 contains a statutory basis for requiring the City of San Marcos to comply with the applicable and relevant requirements of Water Quality Investigation Order R9-2006-0044. The City of San Marcos must provide the San Diego Regional Water Board with the requested information to develop requirements for an effective Evaluation Monitoring Program pursuant to CCR Title 27. The City of San Marcos is a viable "Discharger" with the means to ensure compliance with the requirements of Water Quality Investigation Order R9-2006-0044.

C. FINDING NO. 4 STATES:

WASTE DISCHARGE REQUIREMENTS (WDR). The Bradley Park/Old Linda Vista Landfill is currently regulated under Order No. 97-11, and addenda thereto: *"General Waste Discharge Requirements for Post-Closure Maintenance of*

Inactive Landfills Containing Hazardous and Nonhazardous Waste within the San Diego Region.”

BASIS FOR FINDING NO. 4

Enrolling the Bradley Park Landfill in Order 97-11. The Porter-Cologne Water Quality Control Act (Water Code) §13263 authorizes the Regional Board to prescribe waste discharge requirements for proposed, existing, or a change in existing discharges at a site. The Regional Board issued general waste discharge requirements (as Order 97-11 and addenda thereto) to Dischargers responsible for closed, abandoned and inactive landfills in compliance with the following portions of §13263:

- “(a) The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving water upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of § 13241.
- (d) The regional board may prescribe requirements although no discharge report has been filed.
- (e) Upon application by any affected person, or on its own motion, the regional board may review and revise requirements. All requirements shall be reviewed periodically.
- (f) The regional board shall notify in writing the person making or proposing the discharge or the change therein of the discharge requirements to be met. After receipt of the notice, the person so notified shall provide adequate means to meet the requirements.
- (i) The state board or a regional board may prescribe general waste discharge requirements for a category of discharges if the state board or that regional board finds or determines that all of the following criteria apply to the discharges in that category:
 - (1) The discharges are produced by the same or similar operations.
 - (2) The discharges involve the same or similar types of waste.
 - (3) The discharges require the same or similar treatment standards.

- (4) The discharges are more appropriately regulated under general discharge requirements than individual discharge requirements. “

Under the authority of Water Code §13263, the Regional Board adopted Order 97-11, “General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Waste Landfills within the San Diego Region” on April 9, 1997.⁸ On June 14, 2000, the Regional Board adopted Addendum No. 1 to that Order⁹ thereby enrolling the Bradley Park Landfill in Order 97-11, and obligating the City of San Marcos to ensure compliance with Order 97-11 at the Bradley Park Landfill.¹⁰

The City of San Marcos was aware of the San Diego Regional Water Board staff’s intent to enroll the Bradley Park Landfill under Order 97-11, and the City was notified of the applicable requirements in Order 97-11, issued pursuant to Water Code § 13263. The City of San Marcos failed to initiate an appeal of the enrollment of the Bradley Park Landfill, within the allowable statutory timeframe. Based upon the action taken by the Regional Board in 2000, the City of San Marcos is properly identified as the Discharger responsible for compliance with requirements of Order 97-11 and addenda thereto. Section 13320 of the Water Code, provides any person aggrieved by an action of a Regional Board 30 days to petition the Regional Board’s action to the State Water Resources Control Board for administrative review. The City of San Marcos failed to seek administrative review of Addendum No.1 to Order 97-11 within the jurisdictional 30-day period. Therefore the issue of the City’s responsibility for post-closure maintenance and monitoring at the Bradley Park Landfill is no longer open to challenge. Accordingly, the City of San Marcos is properly named as the “Discharger” for purposes of compliance with waste discharge requirements issued to the City as Order 97-11 and addenda thereto.

The City of San Marcos submitted a copy of a Joint Exercise of Powers Agreement (JPA¹¹) purporting to make the County responsible for “landfill-related incidents.” The Regional Board considered the respective allocation of responsibility between the City of San Marcos and the County of San Diego. Nevertheless, the Regional Board issued Addendum 1 to Order R9-2006-0044 without modifying the designation of the City as responsible entity for compliance with Order 97-11 and addenda thereto.

⁸ See Attachment 11a, 11b and 11c to the EOSR, for General Order 97-11 and Monitoring and Reporting Program 97-11, and Enrollees Landfills.

⁹ See Attachment 11d and 11e to the EOSR, for Addendum 1 to Order 97-11 and Enrollees: Landfills.

¹⁰ See Attachment 12 to the EOSR, for San Diego Regional Water Board letter of intent to enroll Bradley Park Landfill in Order 97-11 (dated April 20, 2000) and the reply letter from City of San Marcos (dated April 26, 2000).

¹¹ See Attachment 6 to the EOSR, for the Joint Exercise of Powers Agreement Between the City of San Marcos and the County of San Diego, dated August 12, 1986.

Order 97-11 established requirements for post-closure maintenance and monitoring for landfills that ceased operation prior to 1984. Owners of landfills subject to Order 97-11 are responsible for the protection of usable waters of the State, from the discharge of wastes, gases, and leachate, during the landfill maintenance period, and for as long as the wastes in the Bradley Park Landfill pose a threat to water quality. Pursuant to CCR Title 27, Chapter 1, Article 1, §20080(g), landfills which were closed, abandoned, or inactive on or before November 27, 1984 are not specifically required to be closed in accordance with CCR Title 27, Subchapter 5, Articles 1 and 2. However, these landfills are subject to post-closure maintenance requirements in accordance with CCR Title 27, §21090(b) and (c); and other requirements for the protection of water resources (§20380 *et seq.*). Order 97-11 and addendum 1 require Dischargers responsible for enrolled Units to comply with post-closure, maintenance and monitoring requirements.