



Michael B. Giancola, Director
300 N. Flower Street, Suite 400
Santa Ana, CA 92703

www.ocjanfills.com
Telephone: (714) 834-4000
Fax: (714) 834-4183

March 26, 2012

LDU:agrove

Amy Grove, Engineering Geologist
Land Disposal Unit
Regional Water Quality Control Board – San Diego Region
9174 Sky Park Court
Suite 100
San Diego, CA 92123-4353

Subject: Comments on Tentative Waste Discharge Requirements for Closed, Abandoned, or Inactive Waste Management Units Order No. R9-2012-0001 and Monitoring and Reporting Program No. R9-2012-0002

Dear Ms. Grove:

Thank you for the opportunity to provide comments on Tentative Order No. R9-2012-0001, General Waste Discharge Requirements for the Maintenance and Monitoring of Closed, Abandoned, or Inactive Waste Management Units (Tentative Order), Monitoring and Reporting Program No. R9-2012-0002 (M&RP), and the Draft Information Sheet. We appreciate the open communication the San Diego Regional Water Board has had with stakeholders to revise existing Order No. 97-11, which will update the performance-based requirements with current regulations for the maintenance of closed landfills and burn dumps within the San Diego Region. Although none of Orange County's closed landfills will be enrolled under the Tentative Order, the comments we are offering are from a policy standpoint given that this Order and M&RP may be used as a model template for other Regional Water Boards that are considering issuing similar Orders. Furthermore, it is our understanding that the revisions to the Tentative Order will be incorporated into the new Order for the Forster Canyon Landfill and the proposed San Juan Meadows development.

DRAFT INFORMATION SHEET

Designation of Discharger

As the Regional Board is well aware, assigning responsibility for maintenance of a closed landfill and specifically naming the responsible discharger(s) can be legally complex given the long history a site may have involving multiple parties. As indicated in the Information Sheet, Title 27 of the California Code of Regulations provides broad authority for the Regional Board to designate the discharger/operator, which can include current and former owners, current and former operators, and entities that are legally responsible through various agreements for maintenance of the landfill in accordance with federal, state, and local requirements. In determining the discharger designation, we would ask the Regional Board to also recognize settlement agreements, cooperative agreements, and similar court-like agreements that have been litigated or negotiated between the affected parties. Our utmost concern is that this Tentative Order or the issuance of individual Orders not usurp these agreements and undermine the lengthy

efforts to ensure these disposal sites are being properly cared for or re-assigning the responsibilities that have been previously agreed to by the involved parties. In many of these agreements, the responsibilities have been clearly delineated, and in some cases, one or more parties may have been relieved of responsibility based on the terms and conditions of that agreement. These agreements should be upheld and incorporated into all regulatory permits until such agreements have been nullified, superseded, or one or more parties cease to exist; to do otherwise could compromise the long term effectiveness of maintaining the landfill.

Section F. Annual Fees

As indicated in the Information Sheet, landfills covered under the Tentative Order or issued an individual Order are subject to an annual fee pursuant to Section 2200, Title 23, Division 3, Chapter 9, Article 1 of the California Code of Regulations. Each landfill is ranked based on a Threat to Water Quality (TTWQ) and Complexity (CPLX) rating as determined by the Regional Board. With the issuance of a new Tentative Order, we are requesting that the Regional Board provide the scoring criteria used to categorize the landfills within the region. Making the scoring criteria available to the public ensures consistency and transparency in how these sites are being ranked and helps identify the water quality issues of concern for each site. As such, the scoring criteria used by the Regional Board can also be used to help dischargers work toward developing strategies to minimize the disposal site's potential threat to water quality and to traverse from one tier to another based on the site conditions evaluated using the scoring criteria. Without this information, dischargers would be at a disadvantage as to how these disposal sites are to be maintained under postclosure maintenance.

TENTATIVE ORDER

MONITORING AND REPORTING PROGRAM (M&RP)

Part 1: Annual Groundwater Summary Report

Within the M&RP, two Semi-annual Monitoring and Maintenance Reports are required to be submitted on a yearly basis, along with an Annual Groundwater Summary Report. The requirements for the Annual Groundwater Summary Report are very similar to the year-end Semi-annual Monitoring and Maintenance Report. We suggest consolidating the requirements of the Annual Groundwater Summary Report and the year-end Semi-annual Monitoring and Maintenance Report into a single report. Preparing these reports is a costly expense and many of these landfills are no longer generating revenue, so the funds to maintain these landfills will be limited. To the extent possible, the number of reports should be reduced where information can be found in other reports filed with the Regional Board.

Part 1: Constituents of Concern Report/Five Year COC Scan

Within the M&RP, a Constituents of Concern (COC) Report is required to be submitted every five years for all monitoring and background points for all constituents identified in Table 2, Part II.B of the M&RP and Appendix II of the Code of Federal Regulations, Title 40, Part 258. The requirement for an initial COC Report and follow-up COC testing every five years is burdensome, costly, and duplicative of previous historic and current groundwater monitoring

data collected at these closed landfills. The identification of site-specific COCs was performed as part of the initial Solid Waste Assessment Test (SWAT) investigation conducted at many closed landfills throughout the state in the late 1980's. The identified COCs have been monitored continuously since then as monitoring parameters (MPars), as approved by the Regional Board, generating a database of the COCs and MPars spanning a period of over 20 years.

In addition, the Appendix II COC list referenced in the Code of Federal Regulations, Title 40, Part 258 only applies to municipal solid waste landfills that received waste after October 9, 1991. For purposes of this Tentative Order, all landfill sites have been identified as "*waste management units that were closed, abandoned, or inactive prior to November 27, 1984.*" These landfills are subject to Part 257 of Title 40 which does not make reference to Appendix II of Part 258.

Given that these landfills have ceased accepting waste long ago and the historical groundwater data collected, the contaminants that have been released are already known. Furthermore, many of these releases are posing a minor threat to water quality standards or are in the process of being remediated through environmental control measures. We suggest that the COC Report only be required in situations where a new release has occurred, or there is a change in land use where the containment of the waste may be compromised which could lead to a release and therefore warrant a full COC scan.

Part IV: Evaluation of a Release

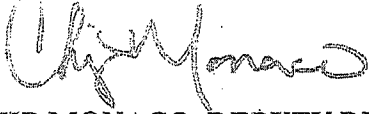
The M&RP prescribes a protocol in the event a release is detected; dischargers are required to submit a proposed evaluation monitoring program/engineering feasibility study which could lead to a corrective action program. There should be recognition within this Tentative Order that many landfill sites have landfill gas control systems which serve as dual purposes: (1) to control gas migration and (2) to serve as groundwater corrective action. It has long been recognized that groundwater impacts associated with landfills are the result of landfill gas migration. Thus, if a landfill gas control system is in operation, the infrastructure is already in place to remediate any impacts to groundwater caused by landfill gas contamination. The requirements for an evaluation monitoring program should be bypassed due to its burdensome and costly requirements for landfill sites with landfill gas control systems. In most cases, operation of the landfill gas control system is sufficient to remediate the groundwater impact release. This strategy has been very effective for OC Waste & Recycling sites to clean up the groundwater and has proven cost effective. An evaluation monitoring program should only be warranted in those situations where a release has occurred for which the landfill gas control system cannot remediate or if a landfill gas control system does not exist.

Once again, thank you for this opportunity to provide comments on the Tentative Order. If you have any questions regarding these comments, please contact David Tieu at (714) 834-4064 or via e-mail at David.Tieu@ocwr.ocgov.com.

Amy Grove
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June 13, 2012
Item No. 10
Supporting Document No. 5

Sincerely,



CHIP MONACO, DEPUTY DIRECTOR
Government & Community Relations

cc: Brian Kelly, San Diego Regional Water Quality Control Board
Michael B. Giancola, OC Waste & Recycling
Dick Harabedian, OC Waste & Recycling
Kevin Kondru, OC Waste & Recycling
Jeff Southern, OC Waste & Recycling
Dylan Wright, OC Waste & Recycling
David Tieu, OC Waste & Recycling