

California Regional Water Quality Control Board
San Diego Region

Response to Comments Report

Tentative Cease and Desist Order No. R9-2023-0085
for
United States Marine Corps
Las Pulgas Landfill
United States Marine Corps Base Camp Pendleton
San Diego County

December 26, 2023

**Response to Comments Report
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Introduction

This report contains the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Prosecution Team's responses to written comments received on Tentative Cease and Desist Order No. R9-2023-0085 for the United States Marine Corps, Las Pulgas Landfill, United States Marine Corps Base Camp Pendleton, San Diego County (Tentative Order). The following San Diego Water Board staff make up the Prosecution Team:

1. Chiara Clemente, Compliance Assurance Unit
2. Kelly Dorsey, Assistant Executive Officer
3. Amy Grove, Site Restoration & Waste Management Unit
4. Julie Macedo, Office of Enforcement, State Water Resources Control Board
5. Frank Melbourn, Compliance Assurance Unit
6. Roger Mitchell, Site Restoration and Groundwater Protection Branch
7. Erin Schmitt, Site Restoration & Waste Management Unit
8. Laurie Walsh, Surface Water Protection Branch
9. Nicholas White, Stormwater Management Unit

The Prosecution Team provided public notice of the release of the Tentative Order on October 12, 2023, providing a period of 50 days for public review and comment. The written comment period ended on December 1, 2023.

The following entities provided written comments by December 1, 2023:¹

1. John Odermatt; and
2. United States Marine Corps (USMC or Discharger).

Comments and Responses

Summarized written comments and Prosecution Team responses are set forth in Table 1: Responses to Comments, below. The responses include a description of any actions taken to revise the Tentative Order in response to the comment. Proposed revisions to the Tentative Order are in "red underline" for added text and "~~red-strikeout~~" for deleted text.

¹ The documents are available for download from the San Diego Water Board's File Transfer Protocol (FTP) Site. Please contact Frank Melbourn at (619) 521-3372 or fmelbourn@waterboards.ca.gov for instructions on accessing the documents.

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Table 1: Responses to Comments

No.	Comment	Response	Action Taken
John Odermatt, November 25, 2023, email.			
1	<p>[U]nder no circumstances should a liner system design be approved without some configuration of that component [gravel/sand blanket sub drain]. A true double liner system may be required and is allowed for Class III solid waste units under certain circumstances by USEPA Guidance (2002).</p>	<p>Comment noted.</p> <p>In 2020, San Diego Water Board Site Restoration & Waste Management Unit staff reviewed and concurred with the design plan for Phase I, which includes a pervasive drainage layer beneath the new side slope liner system. In addition, the design plan includes an encapsulated geosynthetic clay layer which provides additional protection against groundwater infiltration and functions in a similar capacity to a double liner system. The design plan was incorporated into <i>Waste Discharge Requirements for the United States Marine Corps, Marine Corps Base Camp Pendleton, Las Pulgas Landfill, Camp Pendleton, California</i> (Order No. R9-2010-0004) through <i>Addendum No. 2 to Order No. R9-2010-0004</i> adopted on February 10, 2021.</p> <p>The Prosecution Team prepared the Tentative Order to direct the Discharger to, in-part, investigate and determine whether the integrity of Phase I and II Unit containment structures are compromised, and implement necessary repairs and</p>	<p>No changes were made to the Tentative Order in response to Mr. Odermatt’s comment.</p>

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		improvements to ensure compliance with Order No. R9-2010-0004, as amended.	
2	The board staff should work with the USMC/Navy on the specified schedule of submitting plans for corrective action. The 60, 90 or even 180 days may not be possible for them to meet depending on the work/plan required and the date the board adopts the Order. Consider the timing of the federal fiscal cycle at first glance.	<p>Comment noted.</p> <p>The Prosecution Team met extensively with the Discharger and their consultants to discuss the path forward, funding, contract, and scheduling challenges. In its comments, the Discharger requested that the Prosecution Team consider the ability to extend the deadlines to certain deliverables. The Prosecution Team is proposing amendments to sections 36 and 37 by including footnotes that provide the San Diego Water Board Executive Officer with discretion to consider extensions requested by the Discharger. See comments 16 and 17, infra.</p>	<p>Pursuant to similar Discharger comments, the following two footnotes were added to the Tentative Order to allow the Discharger to make requests for extensions if necessary:</p> <p><u>“³¹ The Discharger may request in writing an extension of this deadline if made prior to the deadline initially set forth in this Order, directed to the Executive Officer and circulated to the relevant San Diego Water Board staff. A request should include the reason for the delay and a proposed schedule for completion of the deliverable. The Executive Officer may exercise their discretion</u></p>

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			<p><u>in granting or denying the request in writing.”</u></p> <p><u>“34 The Discharger may request in writing an extension of this deadline if made prior to the deadline initially set forth in this Order, directed to the Executive Officer and circulated to the relevant San Diego Water Board staff. A request should include the reason for the delay and a proposed schedule for completion of the deliverable. The Executive Officer may exercise their discretion in granting or denying the request in writing.”</u></p>
USMC/Discharger, November 28, 2023, letter			
3	<p><u>Commenting on Tentative Order Section 12, page 4 “The Discharger has not submitted the final construction report to the San Diego Water Board.”</u></p> <p>In 2009, clean closure was an option to resolve the noncompliance issues with</p>	<p>The Prosecution Team does not concur with the Discharger’s recommendation.</p> <p>Clean closure, as defined in California Code of Regulations (CCR) title 27, section 21090(f), is to “render the landfill (including all surrounding environs contaminated by</p>	<p>No changes were made to the Tentative Order in response to the Discharger’s comment.</p>

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	<p>the Phase I Unit, but what occurred was not clean closure, but instead “corrective construction.”</p> <p>Recommend change from clean closure to corrective construction.</p>	<p>waste released from the landfill) no longer capable of posing a threat to water quality.” Clean closure activities typically include the removal of all wastes, contaminated components of the containment system, affected geologic materials including soils and rock beneath and surrounding the waste management unit, and the discharge of these materials to an appropriate waste management facility.</p> <p>The Discharger submitted a Corrective Action Plan (CAP) for Phase I of the Las Pulgas Landfill on December 13, 2007. The proposed corrective construction of Phase I included the removal of all wastes, liner components, and contaminated soils, and the subsequent reconstruction of the Phase I liner system. These activities are consistent with the requirements for clean closure as described in CCR title 27. Therefore, the language used in Tentative Order paragraph 12 is appropriate to describe the purpose of the 2009 Joint Technical Document (JTD).</p>	
4	<p><u>Commenting on Tentative Order Section 17.b, page 6 “The 2009 JTD included plans to develop the Phase II Unit to accept waste generated from the clean closure of the Phase I Unit.”</u></p>	<p>The Prosecution Team does not concur with the Discharger’s recommendation.</p> <p>The Prosecution Team reviewed and concurred with the <i>Revised Phase II Unit Side Slope Liner System Repair Work Plan</i>,</p>	<p>No changes were made to the Tentative Order in response to the Discharger’s comment.</p>

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	<p>The testing and repair work for the damaged Phase II Unit has been tabled by MCB CPEN and Board staff mutual consent until the summer 2024 dry season. MCB CPEN will complete the required design work and obtain Board approval for these repairs over the upcoming winter 2023/24 rainy season via a Liner Evaluation Work Plan (EWP) as required by this CDO.</p> <p>Recommend deleting this sentence.</p>	<p>dated August 3, 2022; however, the Discharger has not provided a final construction report. The Prosecution Team understands that the Discharger now plans to implement the work plan in 2024; however, the language in Tentative Order Finding No. 17.b is accurate and the violation, failure “to maintain the integrity of the Phase II unit side slope liner system” alleged in Notice of Violation (NOV) No. R9-2022-0051, continues until these activities have been completed and the required information has been submitted to the San Diego Water Board for review and consideration.</p>	
5	<p><u>Commenting on Tentative Order Section 17.c, page 6 “The San Diego Water Board reviewed and concurred with the work plan on December 20, 2022, but the Discharger has not fully implemented the work plan, as of the date of this Order.”</u></p> <p>MCB CPEN proposed and the Board staff concurred with demonstration testing to show the integrity of the GCL panels in question. With the Board staff’s consent, MCB CPEN is delaying this demonstration testing until the 2024 dry season, to complete it as part of the liner</p>	<p>See response to Comment 4 above.</p>	<p>No changes were made to the Tentative Order in response to the Discharger’s comment.</p>

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	<p>testing required by the draft CDO Liner Evaluation Work Plan.</p> <p>Recommend deleting the final clause "... but the Discharger has not fully implemented the work plan, as of the date of this Order."</p>		
6	<p><u>Commenting on Tentative Order Section 17.d, page 7 (final sentence) The Discharger has not submitted a final soil sampling work plan to the San Diego Water Board, as of the date of this Order.</u></p> <p>MCB CPEN submitted a soil sampling work plan on August 3, 2023, and received Board staff concurrence for this work plan on September 7, 2023. Since that date, MCB CPEN has submitted a technical memorandum to the Board staff presenting the final results of this work plan and is awaiting Board staff review.</p> <p>Recommend rewriting this sentence to reflect accurate status of soil sampling as of the date the draft CDO is presented to the Board.</p>	<p>The Prosecution Team concurs with the Discharger's recommendation.</p>	<p>Amend Tentative Order paragraph 17.d, last paragraph, as follows: "Subsequently, the Discharger notified the San Diego Water Board on January 16, 2023, that the Landfill's LCRS overflowed and discharged comingled landfill leachate and stormwater into the onsite stormwater detention basin and Las Flores Creek. San Diego Water Board staff inspected the Landfill on January 20, 2023, and observed ponding and significant erosion in the Phase I and II Unit construction areas and erosion at the point</p>

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			<p>of leachate discharge. The Discharger has not submitted a final soil sampling work plan to the San Diego Water Board, as of the date of this Order. The Discharger submitted a revised soil sampling work plan on August 25, 2023. The San Diego Water Board concurred with the revised soil sampling work plan on September 7, 2023, and the Discharger provided soil sampling results on September 26, 2023.</p>
7	<p><u>Commenting on Tentative Order Section 17.g, page 8 “... and a discharge of wastewater to Las Flores Creek, ...”</u></p> <p>Using a single term “leachate” throughout would avoid confusion. Using the broad term “wastewater” may be misconstrued as “sanitary wastewater,” when no sanitary wastewater exists at LPLF or within the context of this draft CDO.</p>	<p>The Prosecution Team agrees that the use of term “leachate” in this instance is appropriate and avoids confusion. The Prosecution Team will replace the term “wastewater” with “leachate” in section 17.g and other appropriate sections. The Prosecution Team does not support the Discharger’s recommended change to all uses of “leachate” to “leachate and stormwater” because, by definition (see Tentative Order paragraph 16), “leachate”</p>	<p>Amend Tentative Order paragraph 17.g as follows “<u>NOV R9-2023-0101</u>: The San Diego Water Board issued NOV No. R9-2023-0101²² to the Discharger on June 5, 2023, for exposure of waste and significant erosion in the Phase I and II Unit construction</p>

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	<p>Recommend: "... and a discharge of commingled leachate and stormwater to a drainage that flows to Las Flores Creek."</p>	<p>includes "stormwater that comingles with leachate."</p>	<p>areas and a discharge of wastewater<u>leachate</u> to Las Flores Creek, based on San Diego Water Board staff's inspection of the Landfill on March 24, 2023."</p>
8	<p><u>Commenting on Tentative Order Section 17.h, page 8 "... for the failure to prohibit: the unauthorized discharge of wastewater to Las Flores Creek, ..."</u></p> <p>Similar to Comment [7], using the single term "leachate" throughout would avoid confusion.</p> <p>Recommend: "... for the failure to prohibit: the unauthorized discharge of commingled leachate and stormwater to a drainage that flows to Las Flores Creek."</p>	<p>See response to Comment 7 above.</p>	<p>Amend Tentative Order paragraph 17.h. as follows "<u>NOV R9-2023-0180</u>: The San Diego Water Board issued NOV No. R9-2023-0180²³ to the Discharger on September 12, 2023, for the failure to prohibit: the unauthorizedd discharge of wastewater<u>leachate</u> to Las Flores Creek, ponding of stormwater at the Landfill, the exposure of waste on the Phase II Unit cover, and the erosion of the Legacy side slope. San Diego Water Board staff based NOV No. R9-2023-0180 on the</p>

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			Discharger’s post-rain inspection report.”
9	<p><u>Commenting on Tentative Order Section 18, page 8 “The Discharger pumped approximately four million gallons of leachate from the Phase I and II Unit construction area to the stormwater conveyance system between February 25 and March 24, 2023.”</u></p> <p>All of this flow was pooled rainfall pumped directly from the Phase I Unit into a stormwater conveyance and discharged to a drainage that flows to Las Flores Creek. These flows never entered the body of the landfill or transited through the LCRS. Our water testing indicates these flows absorbed some minor contamination (primarily heavy metals) from short-term contact with existing Phase 1 Unit cover soils. The CDO Section 19 definition of leachate as “heavily polluted wastewater” is not supported by physical evidence and testing results, as discussed in Comment [15], below.</p> <p>Recommend: “The Discharger pumped approximately four million gallons of</p>	<p>The Prosecution Team does not concur with the Discharger’s recommendation.</p> <p>Tentative Order paragraph 16 provides a definition for leachate that includes comingled stormwater and leachate, and stormwater that comes into contact with exposed waste. The four million gallons of leachate removed from the Phase I and II construction areas and pumped into the stormwater drain during the storm events between February 25 and March 24, 2023, meet the definition of leachate as described above.</p>	No changes were made to the Tentative Order in response to the Discharger’s comment.

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	<p>commingled leachate and stormwater from the Phase I and II ...”</p>		
<p>10</p>	<p><u>Commenting on Tentative Order Section 18, page 8 “This stormwater conveyance system empties into the stormwater detention basin, and subsequently discharges into Las Flores Creek.”</u></p> <p>This stormwater conveyance system is a concrete V-ditch which does not empty into the sedimentation (aka stormwater detention) basin. The V-ditch discharges to an ‘unnamed intermittent coastal stream’ per the Basin Plan Interactive Map. USGS Topo and StreamStats reflect the same. Discharge is conveyed from the V-ditch outfall to another “intermittent coastal stream” within Las Pulgas Canyon prior to convergence with Las Flores Creek. This convergence point is approximately 4.7 miles (straight line distance) from the V-ditch outfall.</p> <p>These facts are important because the primary contamination at issue in this CDO arises from stormwater transiting through the LCRS, becoming leachate by absorbing contamination inside the body of the landfill, overflowing the LCRS from an inspection port, and entering into the sedimentation basin where the leachate</p>	<p>The Prosecution Team does not concur with the Discharger’s recommendation.</p> <p>The leachate that accumulated in the Phase I and II construction areas during storm events between February 25 and March 24, 2023, was pumped into the stormwater v-ditch located between the legacy waste prism and Phase II, within the footprint of the Las Pulgas Landfill. This internal stormwater v-ditch drains directly into the stormwater detention basin located at the toe of the Las Pulgas Landfill. The v-ditch is not part of the perimeter drain which discharges to the unnamed tributary as described in the comment.</p>	<p>No changes were made to the Tentative Order in response to the Discharger’s comment.</p>

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	<p>commingled with a large volume of clean stormwater. The flows discussed in this section never entered the sedimentation basin and became commingled with leachate from the LCRS, instead remaining stormwater with some highly dilute heavy metal contaminants as discussed in the previous Comment [9].</p> <p>Recommend: "This stormwater conveyance system discharges into an unnamed drainage which flows to Las Flores Creek."</p>		
11	<p><u>Commenting on Tentative Order Section 18, page 8 "The Discharger also removed approximately 593,000 gallons of leachate from the leachate tanks between January 16, 2023, and March 24, 2023, which is equivalent to nearly one Olympic sized swimming pool."</u></p> <p>This 593,000-gallon volume of leachate was safely and appropriately disposed of at the MCB CPEN's two wastewater treatment plants. The fate of this large volume of leachate is not mentioned, and read in context with the rest of Section 18 the sentence implies that MCB CPEN is at fault for improper unknown disposal of leachate.</p>	<p>The Prosecution Team concurs with the Discharger's recommendation to add a clarifying statement indicating that the leachate was appropriately collected, transported, and disposed of at the Northern and Southern Regional Tertiary Wastewater Treatment Plants at Marine Corps Base Camp Pendleton.</p>	<p>Amend Tentative Order paragraph 18 as follows: "The Discharger pumped approximately four million gallons of leachate from the Phase I and II Unit construction area to the stormwater conveyance system between February 25 and March 24, 2023. This stormwater conveyance system empties into the stormwater detention basin, and</p>

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	<p>Recommend: "The Discharger also removed approximately 593,000 gallons of leachate from the leachate tanks and disposed of it properly."</p>		<p>subsequently discharges into Las Flores Creek. This volume is equivalent to over six and a half Olympic size swimming pools. The Discharger also removed approximately 593,000 gallons of leachate from the leachate tanks between January 16, 2023, and March 24, 2023, which is equivalent to nearly one Olympic size swimming pool. <u>The leachate removed from the leachate tanks was appropriately collected, transported, and disposed of at the Northern and Southern Regional Tertiary Wastewater Treatment Plants.</u> The total volume of leachate discharged to Las Flores Creek is unknown."</p>

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12	<p><u>Commenting on Tentative Order Section 19, page 9 “Leachate is heavily polluted wastewater, containing the following four types of pollutants: ...”</u></p> <p>The Board is applying two different standards to the definition of leachate, here in Section 19 and previously in Section 16. The Board correctly cites the regulatory definition of leachate in Section 16, however in Section 19 the Board defines leachate as “heavily polluted wastewater” which does not align with the results MCB CPEN obtained from water and soil sediment testing.</p> <p>MCB CPEN conducted extensive water testing during Tropical Storm Hilary (August 20 & 21, 2023) including sampling at the discharge of the sedimentation basin into the unnamed Las Flores Creek drainage. These testing results are representative of the outflows occurring over the 2022/23 rainy season. These results have been provided to the Board staff and show these flows carrying contaminants only barely above CA drinking water standards.</p> <p>MCB CPEN also conducted soil sampling at the LCRS observation port where the LCRS system overflow began, the</p>	<p>The Prosecution Team disagrees with the Discharger’s position that the Tentative Order contains two different standards to the definition of “leachate.” Tentative Order paragraph 16 provides the legal definition of “leachate” while paragraph 19 describes the general physical characteristics of leachate based upon scientific research. However, the Prosecution Team will propose an amendment to the language to address the Discharger’s concern that paragraph 19 may cause confusion.</p>	<p>Amend Tentative Order paragraph 19 as follows: “Leachate is<u>can be</u> a heavily polluted wastewater, containing the following four types of pollutants:²⁴”</p>

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	<p>sedimentation basin outflow, in the affected drainage areas leading to Las Flores Creek, and for approximately half a mile along the run of Las Flores Creek leading away from LPLF. The results of this soil testing show only minimal heavy metal contamination at the LCRS observation port with concentrations falling below background levels after the sedimentation basin outfall. They do not show contamination consistent with leachate inundation outside the boundaries of the landfill, including in any drainage of Las Flores Creek.</p> <p>MCB CPEN understands the definition of leachate from CCR Title 27 cited in CDO Section 16 to be authoritative. We accept and understand that the definition presented in Section 19 is likely an extension of the CCR Title 27 definition created by regulatory authorities to provide more specific guidance to the public. However, as written the CDO proffers two definitions of leachate which are related to each other in an unknown manner.</p> <p>Recommend: Delete Section 19 to eliminate confusion.</p>		

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13	<p><u>Commenting on Tentative Order Section 21, page 9 “These wells are vulnerable to discharges from the Las Pulgas Landfill.”</u></p> <p>While the SWRCB’s Department of Drinking Water’s (DDW) source water assessment conducted in July 2002 states that Base drinking water production wells are generally “vulnerable to contamination” from “historic and operational waste dumps and landfills,” MCB CPEN disagrees with the inference that the production wells situated approximately five miles down gradient of the Las Pulgas Landfill are specifically or definitively vulnerable to discharges from the Las Pulgas Landfill.</p> <p>MCB CPEN has two drinking water wells in the Las Flores Creek watershed. Water quality in these two wells is monitored on a monthly basis for many of the contaminant analytes which present in LPLF leachate. We have not seen any change in water quality at these wells since the 2022/23 rainy season which precipitated the leachate releases discussed in this CDO. Testing results for these wells are available to the Board on DDW’s website.</p>	<p>The Prosecution Team’s intent with the language is to identify that activities at the Las Pulgas Landfill threaten to cause environmental harm to the downgradient drinking water wells, not that pollution is ongoing. The Prosecution Team does not support the Discharger’s recommended change because the statement in the Tentative Order is accurate. Not only is the statement supported by the DDW Source Assessment finding, but it is also supported in the Discharger’s 2009 Joint Technical Document. While the Discharger points to the lack of change in water quality analysis results for the two wells in the Las Flores Creek watershed since the last wet season, it is unclear how long it would take for leachate groundwater contamination to show up in the wells’ water quality analysis results after a leachate discharge.</p>	<p>No changes were made to the Tentative Order in response to the Discharger’s comment.</p>

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	<p>Recommend: Change “vulnerable” to “down gradient.”</p>		
14	<p><u>Commenting on Tentative Order Section 22, page 9 “Disadvantaged Communities.”</u></p> <p>While MCB CPEN may be classified as a disadvantaged community based on salaries earned by its military members, it is misleading and unnecessary to associate this designation to the MCB CPEN’s noncompliance regarding storm event discharges at/from the Las Pulgas Landfill. Comparatively, Camp Pendleton has some of the healthier water bodies in San Diego County as well as open lands supporting threatened and endangered plants and animals that have been eradicated elsewhere. We contend that MCB CPEN does not fall within the spirit of the DAC regulation, even if it falls within the letter of that regulation.</p> <p>Recommend: Delete paragraph.</p>	<p>The Prosecution Team’s examination of whether a site resides within a “Disadvantaged Community” is a standard practice pursuant to the State Water Resources Control Board Water Quality Enforcement Policy for all San Diego Water Board enforcement actions and their analysis. The San Diego Water Board promotes enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority and low-income populations in the state.</p> <p>In 2012, Senate Bill (SB) 535 established initial requirements for minimum funding level to “Disadvantaged Communities” (DACs). The legislation also gives the California Environmental Protection Agency (CalEPA) the responsibility for identifying those communities, stating that CalEPA’s designation of disadvantaged communities must be based on “geographic, socioeconomic, public health, and environmental hazards criteria.” A 2022 update to CalEPA’s SB 535 Disadvantaged Communities identification, indicates that</p>	<p>Amend Tentative Order paragraph 22 as follows: “Disadvantaged Communities’ (DACs) refers to the areas throughout California which most suffer from a combination of economic, health, and environmental burdens. These burdens include poverty, high unemployment, air and water pollution, presence of hazardous wastes as well as high incidence of asthma and heart disease. According to the California Department of Water Resources DAC Mapping Tool, MCBGP is considered a Disadvantaged Community. Another <u>One</u> way that the state identifies underserved</p>

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		<p>Camp Pendleton is no longer listed as a “Disadvantaged Community.” However, Camp Pendleton continues to have a CalEnviroScreen 4.0 “Pollution Burden” percentile of 93 and “Groundwater Threats” percentile of 99. CalEnviroScreen is a screening tool used to help identify communities disproportionately burdened by multiple sources of pollution and with population characteristics that make them more sensitive to pollution. Therefore, the Prosecution Team will propose an amendment to Tentative Order paragraph 22 to correct for the updated data.</p>	<p>communities is by collecting and analyzing environmental information for communities all over the state. CalEnviroScreen, an analytical tool created by the California Environmental Protection Agency (CalEPA), combines different types of information into a score to determine which communities are the most burdened or “disadvantaged.” According to CalEnviroScreen, MCBCP has a Pollution Burden Percentile of 93% (where 100% is the most polluted), largely due to water quality related conditions.”</p>

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15	<p><u>Commenting on Tentative Order Section 33, page 12 “Cease accepting waste at the Landfill until...”</u></p> <p>MCB CPEN is taking voluntary corrective action to address the Board’s concerns at the LPLF. We will cease waste acceptance at LPLF not later than January 15, 2024, and will not resume operations until repairs are complete and appropriate Board certifications are obtained to ensure environmentally safe landfill operations. We appreciate the involvement, confidence, and technical expertise of the Board staff. MCB CPEN is committed to a proactive approach in addressing all the concerns put forth. With these facts in mind, MCB CPEN believes an issuance of a CDO is unnecessary at this present juncture and that the remediation plan laid out in current draft CDO is most appropriately issued in a Cleanup and Abatement Order.</p>	<p>The Prosecution Team appreciates the Discharger’s cooperative efforts to redirect waste but finds that the issuance of a Cease and Desist Order (CDO) is the most appropriate enforcement tool, given the chronic non-compliance problems at the Las Pulgas Landfill that are not amenable to a short term solution.</p> <p>While the Prosecution Team continues to conclude the issuance of a CDO is appropriate, the Discharger’s preference or request for a Cleanup and Abatement Order (CAO) was considered and rejected. The Tentative Order sets forth timelines for actions to bring the Las Pulgas Landfill into compliance with existing waste discharge requirements. A CAO, by contrast, is appropriate when remedial action is needed, often as a result of an unpermitted discharge. In many instances, the initial deliverable of the CAO is a thorough investigation of the discharge’s impacts compared to background natural conditions. Here, such investigation is unnecessary because the regulatory standard is the permitting document, and certain actions (acceptance of waste) are required to cease. The appropriate tool was chosen to force corrective action, especially given other comments that indicate the discharges</p>	<p>No changes were made to the Tentative Order in response to the Discharger’s comment.</p>

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No.	Comment	Response	Action Taken
		<p>of the past winter may have impacted beneficial uses of Las Flores Creek (see Discharger’s comment no. 7, above). The primary aim of the Tentative Order is to compel compliance with the waste discharge requirements, and a CDO is the appropriate enforcement tool for this purpose.</p> <p>A CAO or investigative order pursuant to Water Code section 13267 may be necessary in the future if discharges continue and/or have been found to impact beneficial uses.</p>	
16	<p><u>Commenting on Tentative Order Section 36, page 14 “Stormwater and Leachate Management Investigation Work Plan, 60-day submission requirement.”</u></p> <p>MCB CPEN acknowledges the requirement to complete this work plan prior to recertifying LPLF. Recommend: Edit Section 36 to allow the Discharger to request extensions while preparing the work plan and implementing its requirements, similar to Section 39 and as indicated in Attachment B.</p>	<p>The Prosecution Team acknowledges that even with diligent effort, extensions may be required to provide a complete plan or analysis. The current deadlines in the Tentative Order were selected based on staff experience with developing enforcement documents with similar remedial requirements.</p> <p>Nonetheless, in response to Discharger’s comments 16 and 17, the Prosecution Team will propose an amendment to the Tentative Order to reflect the granting of the San Diego Water Board’s authority to the Executive Officer in considering extension requests.</p>	Footnote 31 was added to Section 36 of the Tentative Order in response to the Discharger’s comment. See also “Action Taken” for comment 2.

**Response to Comments Report
Tentative Cease and Desist Order
No. R9-2023-0085, Las Pulgas Landfill
December 26, 2023**

No.	Comment	Response	Action Taken
17	<p><u>Commenting on Tentative Order Section 37, page 15 “Liner Evaluation Work Plan, 60-day submission requirement.”</u></p> <p>Similar to Comment [14], above, MCB CPEN acknowledges the requirement to complete this work plan prior to recertifying LPLF. Recommend: Edit Section 37 to allow the Discharger to request extensions while preparing the work plan and implementing its requirements, similar to Section 39 and as indicated in Attachment B.</p>	<p>The Prosecution Team acknowledges that even with diligent effort, extensions may be required to provide a complete plan or analysis. The current deadlines in the Tentative Order were selected based on staff experience with developing enforcement documents with similar remedial requirements.</p> <p>Nonetheless, in response to Discharger’s comments 16 and 17, the Prosecution Team will propose an amendment to the Tentative Order to reflect the granting of the San Diego Water Board’s authority to the Executive Officer in considering extension requests.</p>	<p>Footnote 34 was added to Section 37 of the Tentative Order in response to the Discharger’s comment. See also “Action Taken” for comment 2.</p>