

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESPONSE TO WRITTEN COMMENTS FOR ITEM 7

May 11, 2011 Board Meeting

Update of Waste Discharge Requirements, Adoption of Water Quality Certification, and Rescission of Order No. 93-072 for the Potrero Hills Landfill, Inc., Solano County

Comments on the tentative order (TO) were received from the following parties:

- 1) Solano County Local Enforcement Agency (LEA) staff
- 2) San Francisco Bay Conservation and Development Commission (BCDC) staff
- 3) Potrero Hills Landfill, Inc. (the Discharger)
- 4) Mr. William S. Reustle representing Ms. June Guidotti
- 5) Mr. Kelly Smith representing SPRAWLDEF
- 6) Mr. George Guynn, Jr.
- 7) Christina Padua-Hughes

This response to these comments summarizes each comment in *italics* (often quoted and sometimes paraphrased for brevity) followed by the Regional Water Board staff response. For the full context and content of each comment, refer to the original comment letters in Appendix B. Regional Water Board staff also initiated revisions to the tentative order.

1) Solano County LEA Comments – March 23, 2011

The Solano County LEA, after consultation with staff at CalRecycle, recommended a clarification in the TO regarding agency oversight of landfill gas collection.

Comment 1:

Your original sentence in the WDR (Finding 75) was correct but you should add the following sentence in bold:

*The Gas Collection and Control System (GCCS) is regulated by the BAAQMD. **Cal-Recycle and the Solano County LEA (Local Enforcement Agency) provide regulatory oversight of subsurface migration of landfill gas (such as gas monitoring wells) to ensure that the GCCS is working properly.***

Response to Comment 1

The recommended language was inserted into Finding 75 (now Finding 74) in the TO.

2) BCDC Comments – April 15, 2011

Comment 1: General Comment

The letter submitted by BCDC staff counsel Tim Eichenberg summarized conditions in BCDC's Marsh Development Permit No. 3-10(M) that relate to water quality. BCDC's letter pointed out that this permit prohibits impacts to water quality from operations at Potrero Hills Landfill. The letter also noted that BCDC relies on the Regional Water Board to monitor and protect water quality. The letter requested that the Water Board ensure that runoff from Spring Branch Creek does not exceed pre-project water quality conditions. The letter also requested that Water Board staff promptly notify BCDC in the event of observed water quality impacts, or if groundwater pumping adversely affects private wells or causes salt water intrusion.

Response to Comment 1

Board staff understands that water quality impacts would constitute a violation of Marsh Development Permit No. 3-10(M). Staff will review groundwater and surface water monitoring reports and will notify BCDC staff promptly if there is any evidence of impacts to water quality.

3) Potrero Hills Landfill, Inc. Comments – April 15, 2011

Comment 1:

“Item 11: Update date and volumes to read “As of December 2010, approximately 15,473,000 cubic yards of solid waste have been disposed in the landfill.”

Response to Comment 1:

Finding 11 has been revised to reflect this updated information.

Comment 2:

“Item 14: Streambed alteration permit was issued on November 19, 2009. However, due to a delay in receiving other permits for the expansion, the CA Dept of Fish & Game will have to re-issue a new permit since we were not able to initiate project activities within 1 year of the initial permit issuance. This has been re-applied for.”

Response to Comment 2:

Finding 14 has been revised to reflect this information regarding the status of the Streambed Alteration Permit from the Department of Fish and Game.

Comment 3:

“Item 15: The current date of the JTD is August 2006, updated October 2006. Upon receipt of updated WDRs, a new JTD will be completed and submitted in support of Phase II expansion application for a solid waste facilities permit.”

Response to Comment 3:

Finding 15 has been revised to reflect this information regarding the status of the Joint Technical Document.

Comment 4:

“Item 21: Suggest to add the following as a final sentence to this item:

“Until such time that a final determination is made concerning the status of TASW, the Discharger is authorized to manage the use of TASW as ADC or accept TASW for disposal.”

Response to Comment 4:

We decline to add this sentence at the end of Finding 21. The next-to-last sentence of Finding 21 already states that treated auto shredder waste (TASW) can be used as alternate daily cover (ADC). We feel the additional sentence is unnecessary.

Comment 5:

“Item 24: Second sentence, suggest delete the word “named.”

Response to Comment 5:

The second sentence in Finding 24 was revised to address the comment.

Comment 6:

“Item 50: The financial assurance for corrective action estimate was submitted to the RWQCB on March 10, 2011. There is financial assurance in place for this activity in the amount of \$269,907. The latest estimate will revise/update this amount for the current period.”

Response to Comment 6:

Finding 50 was revised to reflect this information.

Comment 7:

“Prohibition A.20: Suggestion to add as a last sentence: ‘Sludges that are managed in accordance with an approved Sludge Management Plan may be used for ADC as authorized.’”

Response to Comment 7:

The comment seems to relate to Specification B.20 rather than Prohibition A.20. Staff added the words “or use as ADC” to the end of the first sentence in this Specification rather than the recommended sentence at the end of the paragraph. Please note that we have also added the following sentence at the end of this Specification: “Sludges must be managed so they do not present nuisance concerns on neighboring properties.”

Comment 8:

“Specification 12: Suggest adding to first sentence, ‘2) ...and does not exceed a thickness of 12 inches, not including LCRS sump(s);’ “

Response to Comment 8:

It was not our intent to limit leachate thickness to less than 12 inches in LCRS sumps, as a sufficient thickness is necessary for pump operation. Specification B.12 was revised to add the requested language.

Comment 9:

“Specification 18: Suggest to add friable asbestos to the list of special handling items. The JTD will include the requirements of Title 27 and other applicable requirements for the acceptance, handling and disposal of friable asbestos or friable asbestos-containing material.”

Response to Comment 9:

Non-friable asbestos can be disposed in Class III landfills, provided special handling procedures are followed to control dispersal and prevent inhalation hazards. This is covered in Specification B. 17. However, friable asbestos is classified by the California Department of Toxic Substances as hazardous waste and can only go to Class I landfills.

Comment 10:

“Provision 7: Suggest alternate language to the last sentence: ‘The updated Sludge Management Plan must also be included in the JTD, or submitted as an amendment to an approved JTD.’ ”

Response to Comment 10

The recommended language was added to Provision C. 7.

Comment 11:

“Provision 8: Suggest alternate language to the last sentence: ‘The updated Leachate Management Plan must also be included in the JTD, or submitted as an amendment to an approved JTD.’ ”

Response to Comment 11:

The recommended language was added to Provision C. 8.

Comment 12:

“Provision 10: Suggest alternate language for the second sentence: ‘After approval of the Phase II expansion area, the updated estimate must reflect the largest area of constructed liner in the Phase I and Phase II landfill area, not including areas with certified final cover.’ ”

Response to Comment 12:

The date for submittal of the estimate is already indicated in the compliance date at the end of the Provision. Our intent is to require demonstration of the existence of funding to cover landfill closure and post-closure monitoring and maintenance. The amount of funding will need to be increased incrementally as the size of the Landfill increases. No changes were made to the finding.

Comment 13:

“Provision 11: Suggest alternate language for the second sentence: ‘After approval of the Phase II expansion area, the updated estimate must reflect the larger landfill area resulting from the Phase II expansion.’ ”

Response to Comment 13:

The submittal date for the estimate is already indicated in the compliance date at the end of the Provision. The amount of funding will need to be increased incrementally as the size of the Landfill increases. No changes were made to the finding.

Comment 14:

“Provision 31: Third line, lower-case “s” in the word “Salamander” to be consistent throughout the text.”

Response to Comment 14:

The recommended change was made.

Comment 15:

Provisions 34, 35, 36, 40: Suggest to add the following after each fixed date: ‘...December 31, 20xx, or an alternate date approved by the Executive Director, the Discharger shall submit...’ ”

Response to Comment 15:

We decline to add the requested phrase regarding an alternate date. To remain consistent with deadlines of other oversight agencies, we require that these dates remain firm. The actual deadline date for these tasks is December 31, 2013, and we have changed the dates in the provisions that said 2014.

4) William S. Reustle for Ms. June Guidotti Comments –April 12, 2011

Comment 1: General Comment

The comments submitted by Mr. Reustle on behalf of Ms. Guidotti express multiple concerns about contamination allegedly emanating from the Potrero Hills Landfill (PHL), as well as alleged contamination from the nearby Tonnesen Pet Cemetery and the closed Solano Garbage Company Landfill. The letter also refers to several alleged procedural “errors” in various documents that support the TO. Ms. Guidotti complains of personal impacts from landfill operations, including odors, noise, dust, fires, trash, traffic, and water quality impacts. On the basis of these concerns, Ms. Guidotti demands that the Section 401 Water Quality Certification (and expansion of PHL in general) be denied.

Response to Comment 1

Board staff acknowledges your opposition to the landfill expansion. We also recognize your concerns about potential contamination from the landfills near your property. Through our regulation of PHL, we will continue to work with the Solano County LEA to prevent impacts to water quality and to address nuisance concerns (such as odors, noise, traffic, dust, etc.) associated with waste disposal at PHL. However, the Water Board is not in a position to compel the County’s enforcement of Measure E or to overturn the land use decisions that have been made by Solano County and upheld by BCDC and the courts. Given that the landfill expansion has already been approved by the jurisdictional land use agencies, issuance of a Section 401 Water Quality

Certification is needed to ensure adequate mitigation for the loss of beneficial uses of Spring Branch Creek.

Comment 2

“Monitoring should be increased substantially to include monthly water samples from the groundwater wells and the wells on adjacent properties which are used for human and animal consumption and agriculture. PHLF should reimburse private property owners for the costs of tests for water quality and soil contamination.”

Response to Comment 2

Board staff understands your desire for sampling of groundwater wells on properties adjacent to PHL. Offsite sampling is indeed appropriate, and it is appropriate for the owner/operator of potentially polluting operations to pay for testing performed on adjacent properties.

Regarding the appropriate locations for offsite groundwater sampling, groundwater migrates in ways that are well understood to groundwater scientists. When looking for evidence of leakage from PHL, some places are appropriate for groundwater monitoring while others are not. Groundwater levels have been monitored in the Potrero Hills for over 20 years, and during this time it has been established that groundwater flows downslope from east to west in the Potrero Hills valley (the Spring Creek drainage). Thus, offsite detection monitoring is routinely performed in the area to the west of PHL. Groundwater migration from PHL to the north, beneath the hills that separate PHL from Ms. Guidotti’s property, is highly unlikely. Nonetheless, we agree that some groundwater sampling on Ms. Guidotti’s property is advisable. At this point, we see no need for monthly groundwater sampling. Unless the area is known to have very rapid groundwater flow (and the Potrero Hills area does not), or unless groundwater pollution has been confirmed, sampling on a monthly schedule is unwarranted. In our opinion, an appropriate approach would be to collect representative samples from available wells on adjacent properties (including Ms. Guidotti’s) and analyze them for a suite of chemicals that would include all reliable indicators of leakage from a landfill. An appropriate schedule for followup sampling would be determined based on the results of the initial sample analyses.

Comment 3:

“It appears that many questions are unanswered regarding the toxic leaching of the former Solano Garbage Company property..., the pet cemetery on the nearby Tonnesen lands and Potrero Hills Landfill. The 401 permit should be denied until and unless testing shows that the lands mentioned are not in fact polluting.”

Response to Comment 3:

PHL, the Tonnesen Pet Cemetery, and the Solano Garbage Company Landfill are all monitored under WDRs for evidence of contaminant migration. There is no evidence of contamination from PHL and the Pet Cemetery. Groundwater contamination has been detected and confirmed on the north side of the former Solano Garbage Company Landfill. Republic Services has performed corrective actions in this area to break down the contaminants. The only unanswered question at this point is whether the corrective actions have been successful. Further monitoring will answer this question.

The fact that corrective actions are being performed at a nearby landfill is not a valid reason to deny or delay the Section 401 Water Quality Certification for PHL.

5) Mr. Kelly Smith for SPRAWLDEF Comments – April 18, 2011

Comment 1:

The second paragraph of the SPRAWLDEF comments (page 1) states that “SPRAWLDEF incorporates into these comments all exhibits and testimony before the Bay Conservation and Development Commission (BCDC) at its November 2010 hearings on this matter.”

Response to Comment 1:

Incorporation by reference of SPRAWLDEF’s prior comments on the Landfill expansion at BCDC’s November 2010 hearing is inappropriate. Specific comments that are directly relevant to the matter being considered by the Water Board (i.e., adoption of Waste Discharge Requirements and a Water Quality Certification) should have been provided to Water Board staff during the public comment period.

Comment 2:

“The purpose of the TO is vague and impossible for the public to comprehend.”

Response to Comment 2:

Finding 8 breaks down the purpose of the TO into seven items (a – g). However, as indicated by the TO’s title, the TO accomplishes two primary actions, both of which are consistent with the Water Board’s mission:

- 1) it updates the Waste Discharge Requirements (WDRs) for the Potrero Hills Landfill, and
- 2) it issues a Section 401 Water Quality Certification (WQC) for the Phase II expansion.

The WDRs protect water quality by regulating the discharge of waste to land pursuant to Title 27 of the California Code of Regulations. The updated WDRs will apply to both the existing (Phase I) landfill and the planned Phase II expansion. The WQC protects water quality by ensuring that impacts to Spring Branch Creek are compensated by adequate mitigation.

Comment 3:

Point #1 under “Summary of the Tentative Order” (page 2) states that the TO gives approval to current and future disposal cells. The comment also seems to imply that the WDRs should not be updated until a Joint Technical Document (JTD) is “done.”

Response to Comment 3:

The TO specifies the components that must be present in the liner of each new disposal cell (see Specification B. 2). However, the TO does not give blanket approval to all cells that will be built at PHL in the future. Water Board staff must review and approve a design report for each new disposal cell prior to construction.

The WDRs and the JTD are both “living documents” that are updated, revised, or amended periodically to reflect changes in operations or regulations. The Water Board updates WDRs for landfills at its own discretion, generally every five years or so, to ensure that the discharger’s

operations continue to be protective of water quality and comply with current regulations. Often, the promulgation of new or revised discharge regulations will prompt the Water Board to revise WDRs. Similarly, the discharger updates the JTD as necessary to keep the JTD up-to-date as regulatory or operational changes occur. The Water Board, CalRecycle (formerly the Integrated Waste Management Board), or the local enforcement agency (LEA) can compel the discharger to update its JTD to reflect operational changes or to demonstrate compliance with new regulations.

In this particular case, PHL operates under WDRs that were issued by the Water Board in 1993. The current JTD was updated and approved in 2006. PHL is in the process of revising its JTD to reflect its Phase II expansion plans. PHL submitted a draft JTD update in April 2010, and the Water Board staff used this draft JTD in preparing the TO. The fact that this version of the JTD is not yet finalized or approved does not prevent the Water Board from updating the WDRs. The TO (Provision C. 6) requires PHL to update the JTD anytime a material change in discharge practices is proposed.

Comment 4:

Points #2 & #3 under “Summary of the Tentative Order” (page 2), state that “The TO would allow sludge disposal despite Suisun Marsh and Basin Plan protections, and the lack of a finalized management plan and environmental assessment.” The same comment is made regarding disposal of biosolids.

Response to Comment 4:

These comments imply that the disposal of sludges and biosolids at PHL constitutes a violation of the Basin Plan and the Suisun Marsh Protection Plan (SMPP). Disposal of sludges and biosolids is regulated by the State of California because these materials have the potential to pollute water if managed or discharged improperly. However, neither the SMPP nor the Basin Plan specifically prohibits disposal of sludges and biosolids in landfills. In fact, Title 27 clearly states that lined landfills with leachate collection and recovery systems (LCRS) are an appropriate location for sludge and biosolids disposal, provided that specified conditions are met for the sludges and for the receiving cells. The TO establishes the conditions under which sludges and biosolids can be disposed at PHL in compliance with Title 27.

Regarding “the lack of a finalized management plan,” Provision C. 7 of the TO requires the Discharger to update its existing Sludge Management Plan. Provision C. 7 is specific about the content of this plan, which will have to be approved by the Executive Officer.

Comment 5:

Point #4 under “Summary of the Tentative Order,” states that the TO would not adequately comply with the San Francisco Region Basin Plan as it affects Spring Branch Creek and surface water by not fully analyzing potential impacts between the upland and marsh areas.

Response to Comment 5:

The commenter does not identify or discuss what specific impacts have not been considered and addressed during the permitting process. We recognize that the proposed landfill expansion would impact the Spring Branch Creek watershed. The identified impacts will be mitigated. The summary of impacts, as presented in the TO, is based on the County-certified Revised Final CEQA document, and staff's review of the various reports submitted with the permit application materials.

Comment 6:

Point #5 under “Summary of the Tentative Order” (page 2) states that the TO would not comply with the alternative analysis required under CWA Section 404(b)(1), but instead accepts the Project proponent’s inadequate analysis.

Response to Comment 6:

Board staff has reviewed and commented on the adequacy of the Alternative Analysis reports. Our correspondences of May 10, 2006, July 19, 2006, and December 9, 2009, identified deficiencies with the alternatives analysis. The Discharger has responded and acceptably addressed the deficiencies in our comment letters. We have determined that the revised documents are in compliance with State regulatory requirements.

Comment 7:

The third paragraph of SPRAWLDEF’s comments under the heading “The Basin Plan Violations” (page 3) states, “The TO would leave unanswered how sludge might be handled at the site...This important new activity at the landfill should be presented with public review.” The fourth paragraph in this section makes similar statements about biosolids: “The TO would violate the protections against biosolids disposal at the site. The final approvals necessary must be through Solano County and BCDC.”

First, disposal of sludges is not a new activity at PHL that will be allowed for the first time in the TO. Sludge disposal was addressed in the 1993 WDRs for PHL, and sludges have been disposed at PHL in compliance with the existing WDRs and Title 27 for many years. Secondly, the TO does not leave sludge management issues unanswered. The TO (Finding 19 and Specifications B. 18 & 20) describes the conditions under which sludges can be accepted at PHL. Additionally, Provision 7 requires PHL to update its Sludge Management Plan. Provision C. 7 spells out the issues that must be addressed in the Sludge Management Plan (the procedures for acceptance, management, and disposal of sludges on-site). The Sludge Management Plan will have to be approved by the Executive Officer and can be circulated for public review and input prior to approval.

Water Board staff are not aware of “protections against biosolids disposal” at PHL. The TO (Finding 20) discusses the implications of State Water Board Order No. 2004-0012-DWQ, which provides regulatory guidance on the land application of biosolids as a soil amendment. Order No. 2004-0012-DWQ does not restrict the disposal of biosolids in landfills; in fact, it notes specifically that Title 27 authorizes the disposal of biosolids in lined landfills equipped with an LCRS.

Comment 8:

In paragraph five under “The Basin Plan Violations” (page 3), the commenter states that the Basin Plan Wetland Fill Policy would be violated by not adequately minimizing wetland disruption.

Response to Comment 8:

The Wetland Fill Policy establishes that wetland disturbance should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered. As noted in the response to Commenter’s comment 6, the Discharger has submitted a Clean Water Act section 404(b)(1) Alternatives Analysis and supplemental information to show that appropriate effort was made to avoid and then to minimize wetland and stream impacts as required by the Basin Plan. The Discharger has revised

the Alternatives Analysis several times in response to deficiencies identified by Water Board staff. Staff has determined that the current Alternatives Analysis complies with the requirements of the 404(b)(1) Guidelines and accordingly is in compliance with the Basin Plan Wetland Fill Policy.

Comment 9:

In the section entitled “No Practicable Alternative Analysis Is Demonstrated,” (pages 3 – 6), the commenter notes that the TO approves of an alternatives analysis that did not meet the requirements specified in CWA Section 404(1)(b). Specifically, 1) the TO did not analyze “no project alternative,” and 2) the modified design cannot be rejected solely on the proponent’s profit impact.

Response to Comment 9:

First, the “no project alternative” was presented in the Draft EIR Report, dated November 24, 2003. Although the no-project alternative would be considered the environmentally superior alternative, the Discharger’s objectives would not be met if this alternative were implemented. Second, the Discharger has submitted an Alternatives Analysis and supplemental information in accordance with the Section 404(b)(1) Guidelines. A total of 16 off-site locations were identified in the service area as potentially capable of accommodating the overall project purpose. The sites were screened for practicability based on a number of criteria including: size (capacity), physical suitability for accepting the types of wastes that PHL is permitted to receive, and availability. None of the 16 sites were found to pass all the screening criteria, and accordingly, it was determined that no practicable off-site alternatives are available.

The Alternatives Analysis also provided information about 6 on-site alternatives. In response to Water Board staff comments, modifications of several of the initially proposed onsite design alternatives that would further reduce impacts to waters were evaluated. These modified onsite alternative designs included evaluation of reduced horizontal expansion of the Phase II and increased height of the Phase I landfill areas. Another modified design significantly reduced impacts by providing for a drainage course between cells in the Phase II expansion area, i.e., physically separating waste cells north and south of the drainage course. Staff determined that further avoidance of impacts to waters by increasing the vertical extent of the existing disposal area was impracticable in that it would produce steeper slopes unstable under static and seismic conditions and would likely result in significant water quality impacts should the slopes fail.

In addition, staff determined that the Phase I vertical expansion configuration would be logistically impracticable for cell sequencing, soil and refuse vehicle access, wet-weather operations, landfill gas control construction and operation and final cover slope maintenance. Staff determined the alternative that would physically separate waste cells north and south of the drainage course was impracticable due to the practical limitations associated with constructing, operating and maintaining disposal cells and separating leachate and landfill gas control systems on both sides of the drainage, in conjunction with logistical inefficiencies and additional expense associated with post-closure maintenance. Additionally, constructing the landfill expansion on both sides of the drainage would provide limited aquatic and terrestrial habitat value.

The Discharger has adequately demonstrated that landfill expansion designs that avoid filling of wetlands and other waters beyond the current proposed design are not practicable. Based on this analysis process, staff determined the Phase II expansion as proposed was the Least Environmentally Damaging Practicable Alternative (LEDPA).

Comment 10:

The first sentence under the heading “Protection of the Water and Habitat is Inadequate” (page 7) states, “The TO would allow sludge and biosolids to be dumped into all 1.854 acres of jurisdictional waters of the United States.” The second sentence states, “The TO lacks a plan to prevent the additional fill from impacting the water bodies surrounding the landfill.”

Response to Comment 10:

The first comment implies that the Landfill will be unlined, and that a waste stream consisting largely of sludge and biosolids would be dumped directly into jurisdictional wetlands. The TO makes it clear that this is not the case. The second statement regarding the lack of a plan to prevent fill from impacting water bodies is unfounded. In reality, a large portion of the TO consists of specific requirements for cell liner construction so that waste fill is prevented from contacting water and impacting water quality.

Comment 11:

Paragraphs 3 and 4 under the heading “Protection of the Water and Habitat is Inadequate” (page 7) discuss impacts to Spring Branch Creek and the loss of beneficial uses of water as a result of landfill development. The commenter claims that the TO as it stands will result in inadequate compliance with the Basin Plan by negatively impacting the beneficial uses in the Spring Branch Creek.

Response to Comment 11:

The Basin Plan Wetland Fill Policy establishes that wetland disturbance should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered. The Commenter’s comments are presented as though there will be no mitigation for these impacts. As noted in the responses to Commenter’s comments 6, 8, and 9, the Discharger has submitted a Clean Water Act section 404(b)(1) Alternatives Analysis and supplemental information that adequately demonstrates that appropriate effort was made to avoid and then to minimize any unavoidable impacts to wetlands and stream as required by the Basin Plan. Water Board staff has also determined that the Discharger has proposed suitable compensatory mitigation habitat for unavoidable impacts. All the regulatory agencies that have been involved in the oversight of the landfill expansion agree that the package of mitigation that is required for Phase II development is more than adequate compensation for the loss of habitat and beneficial uses in Spring Branch Creek.

Comment 12:

The last paragraph on page 7 states, “The TO fails to consider that additional overflow during periods of heavy rainfall will result in waste water which has accumulated in Basins 1, 2, and 3 to be discharged in the Spring Creek Branch Creek before the suspended sediments had sufficient time to settle.”

Response to Comment 12:

The Landfill has to be designed with adequate stormwater management capacity. The Landfill currently operates under the statewide General Industrial Stormwater Permit and a site specific stormwater pollution prevention plan (SWPPP). The SWPPP will have to be updated prior to expansion of the Landfill. Specification B. 5 requires that, “Precipitation and drainage control facilities shall be designed with a minimum capacity to accommodate a 100-year, 24-hour storm

event. Disposal units intended to accept designated waste shall be designed and constructed with a minimum capacity to accommodate a 1000-year, 24-hour storm event.”

Comment 13:

On page 8, the commenter states that the proponent of the Project must demonstrate that the Project construction or operation will not jeopardize the continued existence of endangered species or critical habitat and that no sufficient information about the cumulative impacts of the proposed expansion upon Suisun Marsh, especially the drainages at the Project site have been conducted.

Response to Comment 13:

The U.S. Fish and Wildlife Service (FWS) issued a biological opinion dated November 9, 2010, on the effects of the landfill expansion on listed species and their habitat. FWS has evaluated the effects of the landfill expansion and its cumulative effects and concluded that “the proposed Project is not likely to jeopardize the continued existence of the CA tiger salamander, Conservancy fairy shrimp, vernal pool tadpole shrimp, vernal pool fairy shrimp, and Contra Costa goldfields.”

Comment 14:

The proposed Project would create pollution of the landfill drainage that would impact water quality and the species and uses downstream from the proposed expansion. Therefore, a Section 404 permit would violate 40 CFR S.230.10(c)

Response to Comment 14:

The U.S. Army Corps of Engineers is the lead agency responsible for compliance with and issuance of CWA Section 404 permits and would need to determine whether such a violation would occur.

6) Ms. Cristina Padua-Hughes Comments – April 18, 2011

Comment 1: General Comment -

Ms. Padua-Hughes opposes Water Board issuance of a Water Quality Certification pursuant to Section 401 of the Clean Water Act. She also complained of constant odors and insects that she attributed to landfill operations. She expressed frustration with Solano County for not honoring Measure E.

Response to Comment 1

Board staff acknowledges your opposition to the landfill expansion. Through our regulation of the Landfill, we will continue to work with the Solano Country LEA to prevent impacts to water quality and to address nuisance concerns (such as odors and insects) associated with waste disposal at the Landfill. However, the Water Board is not in a position to compel the County’s enforcement of Measure E or to overturn the land use decisions that have been made by Solano County and upheld by BCDC and the courts. Given that the landfill expansion has already been approved by the jurisdictional land use agencies, issuance of a Section 401 Water Quality Certification is needed to ensure adequate mitigation for the loss of beneficial uses of Spring Branch Creek.

7) Mr. George Guynn, Jr. Comments – April 18, 2011

Comment 1: General Comment -

Mr. Guynn opposes Water Board issuance of a Water Quality Certification. Mr. Guynn stated that groundwater beneath June Guidotti's property should be monitored. He wants to have groundwater at the Tonnesen Pet Cemetery studied and the Pet Cemetery fully permitted before the Water Board issues any permits for the Potrero Hills Landfill. Mr. Guynn also stated that Solano County needs to enforce Measure E.

Response to Comment 1

Board staff acknowledges your opposition to the landfill expansion. However, the Water Board is not in a position to compel the County's enforcement of Measure E or to overturn the land use decisions that have been made by Solano County and upheld by BCDC and the courts. Given that the landfill expansion has already been approved by the jurisdictional land use agencies, issuance of a Section 401 Water Quality Certification is needed to ensure adequate mitigation for the loss of beneficial uses of Spring Branch Creek.

Although the Potrero Hills Landfill and the Tonnesen Pet Cemetery are adjacent properties, they are owned and operated by separate parties and must be regulated independently. The permitting schedule for Potrero Hills is not dependent upon the permitting of the Pet Cemetery, which is already permitted under WDRs issued by the Water Board. Also, please note that groundwater is monitored at the Pet Cemetery, and has been for over 20 years. There have been no confirmed impacts to water quality from the Pet Cemetery.

Finally, we agree that it would be appropriate for Ms. Guidotti's water well(s) to be tested. However, it is our understanding that Ms. Guidotti has declined several offers to have her water tested in the past.