

## **Attachment No. 3**

E-mail Correspondence between the  
San Diego Regional Board and the  
City of San Marcos

**From:** Bob Morris  
**To:** Mike Sowinski  
**CC:** Amy Grove; David Barker; Mark Alpert; Richard Oppen  
**Date:** 11/16/2007 9:37 AM  
**Subject:** RE: Bradley Park Landfill - Corrective Action Work Plan

Mike,

Thanks for your email. It helps clarify the current status of the project. We have the following general comments:

1. You stated "the City has performed all necessary fieldwork that it and its consultants believe are necessary in order to perform the feasibility study and corrective action evaluation (as well as the other items) that the ROWD requires."

It seems the County of San Diego disagrees with this conclusion, because the County submitted a workplan for additional site assessment and field work to supplement the data previously obtained by the City. Is the City objecting to this additional work?

2. We also noted that the title of the work plan is, "County of San Diego's Revised Corrective Action Work Plan pertaining to Bradley Park Landfill, City of San Marcos" However, the work plan itself is for supplemental site assessment activities and not for implementation of corrective action. Perhaps the title should be revised. With the understanding that conducting this assessment by itself will not complete the RoWD, we have no objections to additional assessment activities. Keep in mind that we have deferred further enforcement action until Jan. 30, 2008 for violation of the May 18, 2007 deadline for submittal of a complete RoWD. Consideration will then be given to the quality and completeness of the RoWD that would include specific site information, the engineering feasibility study, and a corrective action plan (including remedial alternatives) that may or may not be developed as a result of the field investigation the County is planning to perform.

Here are some specific comments on the status that you provided:

**a. Delineation of the release** You stated *completed and documented in prior submitted EMP report*. **We disagree**. The delineation of the release and the delineation of the waste at the Bradley Park Landfill are two different things. The EMP report identifies the boundaries of the waste, based on past studies and their most recent field investigations. However, we do not have a plume delineation study, or map referring to the extent of groundwater contamination at the site. We know that contaminants are present in down-gradient monitoring wells, but not if ground water beyond those points has been impacted. This should be included as part of the delineation of the release. As noted above, additional delineation is being proposed by the County.

**b. Identification of constituents of concern** You noted and **we concur** that this has been completed and documented in prior submitted EMP report).

**c. Identification of applicable water quality standards** You reported that this has been *completed and documented in prior submitted EMP report*. **We disagree** As we informed the City at the meeting in September, the former background monitoring well (SM-1) is not considered a viable well for establishing background information because it has been influenced by the landfill, and has had contaminants detected in monitoring events in the past. The new well (I believe it is SM-8) may be in a more suitable location and, if contaminants are not found to be present in that well, it will be a viable well for establishing background levels at this site. The City still has the responsibility to propose how many monitoring events, or data points are appropriate for establishing background levels, and then should propose the methods they would use in order to establish background levels. This information needs be included in the report of waste discharge.

d. the engineering feasibility study (in progress, scheduled for Jan. 2008) **No comment**

e. the proposed corrective action program (in progress, scheduled for Jan. 2008) **No comment except**

I will be preparing a written status report for the Board sometime between Dec 3-5. Any new information or updates will be appreciated, especially regarding the status of the feasibility study and the proposed corrective action. If a meeting is necessary I'm available most days during the week of Nov. 26.

Bob Morris  
858-467-2962  
bmorris@waterboards.ca.gov

>>> "Mike Sowinski" <MikeSowinski@envirolawyer.com> 11/15/2007 2:28 PM >>>  
Bob,

The City has performed all necessary fieldwork that it and its consultants believe are necessary in order to perform the feasibility study and corrective action evaluation (as well as the other items) that the ROWD requires. The City continues to target January 2008 for completion and believes this is achievable. For more details, see "specific responses" below.

Pursuant to the authority granted to it under the Polanco Redevelopment Act, the City's Redevelopment Agency asked the County to develop a remedial action plan. In response, the County prepared the CAWP that you refer to below. The RDA possesses the authority to approve the CAWP, and accordingly it has provided contingent approval to the County - contingent upon the RWQCBs satisfaction that the County's efforts, as envisioned by its CAWP, would satisfy the requirements that the RWQCB has set forth in Order R9-2006-0044.

While the County, I understand, has sent the CAWP to you, they do not appear to have otherwise sought the RWQCBs agreement that the efforts they contemplate would result in an acceptable and timely ROWD. However, they are submitting this plan as a result of a Polanco request that requires they satisfy the requirements of the RWQCB, and they expect to rely on data the City generated, as well as develop additional data, in order to accomplish this goal, as they have described in their CAWP. We hope and expect that using this process will result in a timely submission to the RWQCB. The RWQCB has worked cooperatively with our firm on various Polanco projects, throughout the watershed, and this is no different from those. We hope that the participation of the discharger along with the City will bring additional resources to a successful ROWD (which was the document that the RWQCB sought from the County, not the City, when 97-11 was first adopted.

#### Specific Responses

a. Delineation of the release (completed and documented in prior submitted EMP report)

- b. Identification of constituents of concern (completed and documented in prior submitted EMP report).
- c. Identification of applicable water quality standards (completed and documented in prior submitted EMP report).
- d. the engineering feasibility study (in progress, scheduled for Jan. 2008)
- e. the proposed corrective action program (in progress, scheduled for Jan. 2008)
- f. a proposal for a monitoring program to assess the corrective action program (in progress, scheduled for Jan. 2008)

J. Michael Sowinski Jr.  
Opper & Varco LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101  
619-231-5858  
619-231-5853 (fax)  
[msowinski@envirolawyer.com](mailto:msowinski@envirolawyer.com)

This information is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination, or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

-----Original Message-----

From: Bob Morris [<mailto:BMorris@waterboards.ca.gov>]  
Sent: Thursday, November 15, 2007 1:31 PM  
To: Mike Sowinski  
Cc: Amy Grove; David Barker; Mark Alpert  
Subject: RE: Bradley Park Landfill - Corrective Action Work Plan

Mike,

Amy and I have discussed the workplan that was submitted by the County and it is not clear what is the purpose of the workplan. It might be reasonable for addressing an element of the Report of Waste Discharge (but certainly not all of the Report of Waste Discharge).

What was the scope of work that was issued to the contractor for development of the workplan? Was it to prepare a workplan for completing the report of waste discharge that would include:

- a. Delineation of the release
- b. Identification of constituents of concern
- c. Identification of applicable water quality standards
- d. the engineering feasibility study
- e. the proposed corrective action program
- f. a proposal for a monitoring program to assess the corrective action program

or was the scope of work just to delineate the release?

If the City's progress for completion of the RoWD is only at the point of delineation, the City is in serious trouble of not having a complete RoWD by Jan. 30, 2008, which is the date that I understand we agreed to postpone further enforcement action.

Would you give me an update of where the City is with completion of each of the above items. I want to give our Board a written status report of the City's progress in the December Executive Officer report, especially if it's likely the City is not going to be submitting a complete RoWD by Jan. 30, 2008.

Bob Morris  
858-467-2962  
[bmorris@waterboards.ca.gov](mailto:bmorris@waterboards.ca.gov)

>>> "Mike Sowinski" <[MikeSowinski@envirolawyer.com](mailto:MikeSowinski@envirolawyer.com)> 11/15/2007 10:33 AM  
>>> >>>  
Hello Amy,

Thanks for your time on Tuesday afternoon explaining the RWQCB's process and expectations concerning the submission of a Report of Waste Discharge "ROWD" for Bradley Park. I'm writing to summarize our discussion.

What I understood from our discussion is that the RWQCB does not feel it is appropriate nor do you plan to review and/or approve the County-prepared work plan (referred to in the e-mails below). Rather, the RWQCB will review and approve (assuming it is acceptable) a Report of Waste Discharge (ROWD) when submitted. Finally, you explained that the RWQCB expects to receive the ROWD for Bradley Park in January, 2008 as listed in the City's prior-submitted EMP.

I hope that I have accurately understood our conversation but if I have not, please correct me.

Cordially,

Mike S.

J. Michael Sowinski Jr.  
Opper & Varco LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101  
619-231-5858  
619-231-5853 (fax)  
[msowinski@envirolawyer.com](mailto:msowinski@envirolawyer.com)

This information is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination, or other use of, or taking of any action in reliance upon, this information by persons or entities

other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

-----Original Message-----

From: Amy Grove [<mailto:AGrove@waterboards.ca.gov>]  
Sent: Friday, November 09, 2007 3:18 PM  
To: Mike Sowinski; Richard Opper; [hhp@lfap.com](mailto:hhp@lfap.com);  
[Barry.Pulver@sdcounty.ca.gov](mailto:Barry.Pulver@sdcounty.ca.gov); [James.ODay@sdcounty.ca.gov](mailto:James.ODay@sdcounty.ca.gov);  
[Vicky.Gallagher@sdcounty.ca.gov](mailto:Vicky.Gallagher@sdcounty.ca.gov); [dsimpson@simpsonlawfirm.com](mailto:dsimpson@simpsonlawfirm.com); Bob  
Morris; Catherine George  
Cc: [MMercereau@ci.san-marcos.ca.us](mailto:MMercereau@ci.san-marcos.ca.us)  
Subject: RE: Bradley Park Landfill - Corrective Action Work Plan

Bob and I have looked over the information provided and still aren't sure what the purpose of the workplan is. The table was helpful in pointing out what information is still outstanding with regards to the report of waste discharge, however, the point of completing further field work is still elusive. Please provide further information.

Regards,  
Amy

>>> "Mike Sowinski" <[MikeSowinski@envirolawyer.com](mailto:MikeSowinski@envirolawyer.com)> 11/9/2007 1:24 PM  
>>> >>>

Amy,

In your prior e-mail, below, you wrote that "[i]t is the RWQCB's understanding that the only remaining outstanding issues regarding the Order is the submittal of a Report of Waste Discharge (ROWD), and the need to establish a set of background data from the newly constructed up-gradient groundwater monitoring well..." The City of San Marcos agrees with this statement.

You also wrote that the RWQCB could not determine whether the County of San Diego's Revised Corrective Action Work Plan would satisfy Investigative Order R9-2006-0044 requirements to complete a ROWD and/or establish background data because the City of San Marcos had not specifically described which ROWD items has already been completed. To provide specificity, the City prepared the attached table. This table lists each of the ROWD items listed in Order R9-2006-0044 and it notes whether each has been completed by the City. As you will notice, this table references the City's EMP report for further details. The EMP report includes the same information, but perhaps not summarized as concisely as the attached table.

---

I hope that the attached table enables review of the County's Work Plan, and that you will issue a written notice advising both the City and the County of the fact that the RWQCB approves the County's proposed plan.

Please do not hesitate to contact me if you desire any additional details.

Sincerely,

Mike S.

J. Michael Sowinski Jr.  
Opper & Varco LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101  
619-231-5858  
619-231-5853 (fax)  
[msowinski@envirolawyer.com](mailto:msowinski@envirolawyer.com)

This information is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination, or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

-----Original Message-----

From: Amy Grove [<mailto:AGrove@waterboards.ca.gov>]  
Sent: Monday, October 29, 2007 2:43 PM  
To: Mike Sowinski; Richard Opper; [hhp@lfap.com](mailto:hhp@lfap.com);  
[Barry.Pulver@sdcounty.ca.gov](mailto:Barry.Pulver@sdcounty.ca.gov); [James.ODay@sdcounty.ca.gov](mailto:James.ODay@sdcounty.ca.gov);  
[Vicky.Gallagher@sdcounty.ca.gov](mailto:Vicky.Gallagher@sdcounty.ca.gov); [dsimpson@simpsonlawfirm.com](mailto:dsimpson@simpsonlawfirm.com); Bob  
Morris; Catherine George  
Subject: RE: Bradley Park Landfill - Corrective Action Work Plan

Bob and I have talked about the work plan and the outstanding issues related to Order R9-2006-0044. The RWQCB has no way of knowing whether or not the proposed work plan will meet the requirements of Order R9-2006-0044 because we don't know exactly what information you have already gathered. The RWQCB received the EMP report in May 2007, and the City of San Marcos indicated that some of the information presented in that report would cover information required in the ROWD, however, no specifics were ever given or indicated. Order R9-2006-0044 and CCR Title 27 Section 20430 and Section 21710 clearly outline what is required for a report of waste discharge. It is up to the Discharger to inform the RWQCB what sections of CCR Title 27 or Order R9-2006-0044 the work plan intends to provide information about, and what sections have already been covered by the EMP report.

I will not begin my review of the proposed work plan until this information has been submitted.

---

Regards,  
Amy

>>> "Richard Opper" <[ropper@envirolawyer.com](mailto:ropper@envirolawyer.com)> 10/29/2007 2:38 PM >>>  
Dear Ms. Grove -

Although most of the Polanco matters we have worked on (and all of them that the RWQCB has overseen) did come about as a result of "Polanco Agreements" - there is none in this instance. However, the statute

doesn't require an Agreement. The statute contemplates a redevelopment agency making a demand for a cleanup plan by sending a 60 Day Notice, and a recipient of such a demand has the right to submit a plan for the work, instead of entering into an Agreement. That is what has occurred here. The County has responded to the 60 Day Notice with the plan (the CAWP) that has been submitted to you. If, in your view, the CAWP fulfills the remaining requirements of the RWQCB's 13267 Order, then it will be approved by the agency as soon as the RWQCB indicates its own approval (subject, of course, to any modifications the RWQCB may want to suggest.) Does this action require a meeting? Perhaps the you can merely indicate whether the CAWP will satisfy your 13267 Order's requirements?

Richard G. Opper  
Opper & Varco LLP  
ph. 619.231-5858  
fax 619.231-5853

This information is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination, or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

-----Original Message-----

From: Amy Grove [<mailto:AGrove@waterboards.ca.gov>]  
Sent: Monday, October 29, 2007 2:26 PM  
To: Mike Sowinski; Richard Opper; 'Gallagher, Vicky'; O'Day, James R; Pulver, Barry; [dsimpson@simpsonlawfirm.com](mailto:dsimpson@simpsonlawfirm.com); Bob Morris; Catherine George  
Subject: Bradley Park Landfill - Corrective Action Work Plan

Hello.

On October 17, 2007 the RWQCB received a report entitled "County of San Diego's Revised Corrective Action Work Plan pertaining to Bradley Park Landfill, City of San Marcos." According to the cover letter and introduction, the County of San Diego proposes to perform additional investigative work on behalf of the City of San Marcos in response to the Polanco Redevelopment Act. The RWQCB was not aware that there was a Polanco agreement between the City of San Marcos and the County of San Diego, and requests a copy of that agreement be submitted to this office for our records.

The report indicates that the purpose of the work plan is to address the outstanding issues related to Investigative Order R9-2006-0044. It is the RWQCB's understanding that the only remaining outstanding issues regarding the Order is the submittal of a Report of Waste Discharge, and the need to establish a set of background data from the newly constructed up-gradient groundwater monitoring well at the site. The RWQCB already concurred with the proposed site assessment work plan submitted by the City of San Marcos to meet the requirements of Order R9-2006-0044. Furthermore, the report title indicates that the County proposes to implement corrective action at the Bradley Park Landfill. The corrective action alternatives should be presented in the Report of

Waste Discharge so that the RWQCB has the opportunity to comment and respond to all proposed alternatives and participate in the decision-making process. It is inappropriate for the County or the City to propose corrective action measures at the site when clearly all of the information needed to make a decision regarding what measures, if any, would be appropriate for mitigating the release at the site has not been submitted.

Should either the County of San Diego or the City of San Marcos want to discuss this issue, the RWQCB is willing to meet to discuss these issues, providing that everyone is available to meet at the same time.

Regards,

Amy Grove  
Engineering Geologist  
Land Discharge Unit  
California Regional Water Quality Control Board San Diego Region 9  
(858) 637-7136  
Fax: (858) 571-6972

Phone: (858) 637-7136  
Fax: (858) 571-6972.

**From:** "Mike Sowinski" <MikeSowinski@envirolawyer.com>  
**To:** "Bob Morris" <BMorris@waterboards.ca.gov>  
**CC:** "Richard Opper" <ropper@envirolawyer.com>, "Amy Grove" <AGrove@waterboar...>  
**Date:** 11/16/2007 11:54 AM  
**Subject:** RE: Bradley Park Landfill - Corrective Action Work Plan

Bob,

I really appreciated the clarity of your e-mail. I'll try to respond in kind. As you'll notice, I have added the folks from the County who have been on this e-mail chain over the past week or so, but not on the most recent exchanges from yesterday afternoon and this morning (recorded below).

1) Does the City object to the County's proposal for new sampling?

Not necessarily - the City defers to the County. The City simply desires the County's efforts to, when completed, provide a ROWD that you consider acceptable and timely. The City has always recognized that the County has so many years of experience with the landfill (going back to the 1940s) and, in turn, it has developed such good expertise on the site issues. Thus, the City does not disagree with the County's plan for additional sampling - just as long as the County's efforts conclude with a ROWD that you find acceptable and timely under the circumstances.

2) Additional delineation of groundwater contamination.

I appreciate the clarification and I believe that sufficient data exists, from both the pre-existing monitoring wells and the new monitoring wells installed by the City, to complete such maps within the forthcoming ROWD.

3) Upgradient well.

Understood. I believe the ROWD can and will recognize that the new "background" well has not necessarily proved itself as a real background well and that only after additional sampling can it officially qualify as one. The forthcoming ROWD can recognize this and account for it.

4) Future updates prior to Dec. 3.

Will do.

Sincerely,

Mike S.

---

From: Bob Morris [mailto:BMorris@waterboards.ca.gov]  
Sent: Fri 11/16/2007 9:37 AM  
To: Mike Sowinski  
Cc: Richard Opper; Amy Grove; David Barker; Mark Alpert  
Subject: RE: Bradley Park Landfill - Corrective Action Work Plan

Mike,

Thanks for your email. It helps clarify the current status of the project. We have the following general comments: