

APPENDIX B

WRITTEN COMMENTS RECEIVED DURING PUBLIC REVIEW

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) are presented in the following order:

- 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

1) Solano County LEA Comments – March 23, 2011

Comment submitted March 23, 2011 by Victor Chan, Solano County LEA

Keith

Based on Mike's email below, Let me revise my recommendations. Your original sentence in the WDR 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.**

Vic

From: Wochnick, Michael [mailto:Michael.Wochnick@CalRecycle.ca.gov]

Sent: Wednesday, March 23, 2011 2:55 PM

To: Yekta, Gino; Chan, Victor M.

Cc: Padilla, Edward L.; Serrano, Ricardo; Hannum, Marcy L.; Schmidtbauer, Terry; Geisert, Matthew

Subject: RE: Potrero Hills WDR

In actuality, the LFG control system is NOT regulated by LEA nor CalRecycle. In other words, we do not permit the control system, only the AQMD does. We do regulate the subsurface migration of LFG and could require its control. However, we do not permit the control measure. We would not be regulating the control system. We would, however, watch to see that the system was working (i.e., causing the LF to meet LFG migration standards).

What the AQMD is permitting is the emissions from the LFG control system.

*Michael B. Wochnick
Closure & Facility Engineering
CalRecycle
916.341.6289
916.319.7334 (fax)*

2) BCDC Comments – April 15, 2011



Making San Francisco Bay Better

April 15, 2011

Keith Robertson
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

SUBJECT: Tentative Order for Updated Waste Discharge Requirements and Water
Quality Certification, and Rescission of Order No. 93-072, Potrero Hills
Landfill, Suisun City, Solano County

Dear Mr. Robertson:

Thank you for the opportunity to comment on the Board's Updated Waste Discharge Requirements and Water Quality Certification for the Potrero Hills Landfill. These comments reflect the views of the staff of the San Francisco Bay Conservation and Development Commission (BCDC), and not the Commission itself. Potrero Hills Landfill is operating under BCDC Permit No. 3-10(M). The initial permit for the landfill (Permit No. 88-09) was amended by BCDC on October 21, 2010 in Appeal No. 1-05 to allow for, among other changes, a 167-acre expansion, habitat restoration and enhancement, and the diversion of Spring Branch Creek. The permit amendment has a number of conditions that address water quality, including salinity, drainage and erosion, vegetation, and groundwater.

Jurisdiction. Section 29500 of the Suisun Marsh Preservation Act requires that any development in the primary and secondary management area of the Suisun Marsh obtain a marsh development permit. The landfill is located in the secondary management area of the Marsh. Solano County has primary permitting authority over development within the secondary management area after BCDC certified its local protection program (LPP) on November 4, 1982. Within the secondary management area, a local government's decision to issue a marsh development permit may be appealed to the Commission. Solano County's permit authorizing the Phase II landfill expansion project was appealed to BCDC on September 13, 2005, and BCDC approved with conditions the County's modifications to Marsh Development Permit No. MD-88-09 and Use Permit U-88-33 on October 21, 2010.

BCDC Permit Conditions. BCDC permit conditions do not address water quality standards or flow restrictions. For these issues, the Commission relies on the Regional Board. However, the Commission was concerned about the aesthetic and ecological impacts of the Landfill on the Marsh, particularly its impacts on groundwater and the diversion of Spring Branch Creek, because the Solano County LPP contains several provisions that address stream flows and Marsh water quality. The Water Quality section of the County's LPP states that:

"Policy 3: Disruption or impediments to runoff and stream flow in the Suisun Marsh watershed should not be permitted if it would result in adverse effects on the quality of water entering the Marsh. Riparian vegetation in the immediate Suisun Marsh watershed should be preserved, and stream modification permitted only if it is necessary to ensure the protection of life and existing structures from floods. Only the minimum amount of modification necessary should be allowed in such cases."

"Policy 4: The development of industrial facilities adjacent to or upstream from the Marsh should not be permitted if they have the potential to cause significant adverse impacts on the water quality of the Suisun Marsh. Activities that could significantly alter the temperature, salinity or turbidity of the water should be prohibited. Industrial facilities that will increase the potential for spills of toxic and hazardous materials should not be permitted unless it is established that spills of such materials will not represent a significant threat to the Marsh.

"Policy 6: Riparian vegetation in the immediate Suisun Marsh watershed should be preserved due to its importance in the maintenance of water quality and its value as Marsh-related wildlife habitat. Stream modification should only be permitted if it is proved necessary to ensure the protection of life and existing structures from floods and only the minimum amount of modification necessary should be allowed."

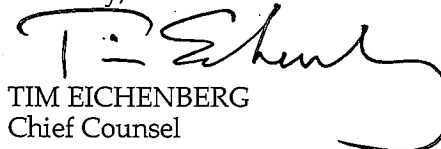
Therefore, BCDC's permit requires that the expansion of the Landfill does not diminish the water quality of the Creek. Special Condition II-N of the permit requires that prior to construction of Phase II, the permittee must "obtain all required approvals from the RWQCB and shall ensure at all times that the landfill does not degrade the water quality of Spring Branch Creek from pre-project conditions."

The BCDC permit also addresses groundwater quality and quantity through Special Condition II-M, which "requires the permittee to ... ensure that the withdrawal of the water will not allow the salt water of the Marsh to intrude into fresh water aquifers." Special Condition II-M also requires the permittee to pump water from the well at a rate no higher than was specified in the aquifer pump tests conducted by Golder Associates Inc, "approximately 15 gallons per minute (gpm) from June through November" to help maintain privately owned water supply wells located 2,000 feet or more from the well. Maintaining the supply of water in such privately owned wells is therefore a requirement of the BCDC permit.

The Tentative Order. The tentative order requires that the filling and relocation of Spring Branch Creek will not violate State water quality standards and that landfill operations will have minimal impacts on groundwater (Tentative Order, p. 18). The order also contains monitoring conditions to verify compliance with the waste discharge requirements. Therefore, BCDC requests the Board to ensure that runoff from Spring Branch Creek does not exceed pre-project water quality conditions, and that the project does not have adverse impacts on groundwater quality and quantity. If permit monitoring indicates that water quality of Spring Branch Creek has been diminished from pre-project water quality conditions, or that the pumping of groundwater is allowing salt water intrusion or is adversely affecting private wells, we request that you notify BCDC as soon as possible.

Thank you for considering the views of the staff of BCDC. Please call staff members Ming Yeung at (415) 352-3616 or Tim Eichenberg at (415) 352-3655 if you have any questions

Sincerely,


TIM EICHENBERG
Chief Counsel

TE:emc

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



POTRERO HILLS LANDFILL

P.O. Box 68
Fairfield, CA 94533
T: 707-432-4621
F: 707-432-4630

April 15, 2011

Mr. Keith Roberson
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street
Suite 1400
Oakland, CA 94612

Subject: **COMMENTS TO TENTATIVE ORDER
UPDATED WASTE DISCHARGE REQUIREMENTS, WATER
QUALITY CERTIFICATION, RECESSON OF ORDER NO. 93-072
POTRERO HILLS LANDFILL, INC**

Dear Mr. Roberson:

We are pleased to submit the enclosed comments to the tentative order for the Updated Waste Discharge requirements to the Potrero Hills Landfill facility in Solano County.

If you should have any questions, please feel free to call me at (707) 432-4621.

Sincerely,

James E. Dunbar, P.E.
District Manager
Potrero Hills Landfill, Inc.

Att.



POTRERO HILLS LANDFILL

P.O. Box 68
Fairfield, CA 94533
T: 707-432-4621
F: 707-432-4630

**COMMENTS TO TENTATIVE ORDER
UPDATED WASTE DISCHARGE REQUIREMENTS,
WATER QUALITY CERTIFICATION,
AND RECESSION OF ORDER NO. 93-072**

POTRERO HILLS LANDFILL, INC

SITE DESCRIPTION

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."

REGULATORY HISTORY

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.

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 the Phase II expansion application for a solid waste facilities permit.

WASTES AND THEIR CHARACTERISTICS

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."

PHYSICAL SETTING

Item 24:

Second sentence, suggest delete the word "named".

LANDFILL CLOSURE

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.

PROHIBITIONS

Item 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."

SPECIFICATIONS

Item 12:

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

Item 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.

PROVISIONS

Item 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."

Item 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."

Item 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 II landfill area, not including areas with certified final cover.”

Item 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.”

Item 31:

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

Items 34, 35, 36, 40:

Suggest to add the following after each fixed date:

Example: “...December 31, 20xx, or an alternate date approved by the Executive Director, the Discharger shall submit...”

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

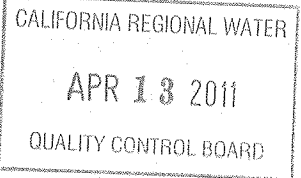
William S. Reustle

Attorney & Counselor at Law

609 Jefferson Street, Suite "G-1"
Fairfield, CA 94533

Tele: (707) 427-1662

FAX: (707) 427-2262



Tuesday, April 12, 2011

California Regional
Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

RE: File 2129.2045 (KER)
CIWQS Place ID 248989

Gentlemen:

On behalf of Mrs. June Guidotti, an adjacent neighbor to Potrero Hills Landfill, we wish to comment on the Tentative Order referenced above. Whereas we fully support the staff comments dated December 8, 2011, we think the Board should adopt a more conservative position. For example, foul odors, particulate matter, methane and trash should be maintained totally on site and not allowed to migrate to adjacent properties, nor to the marsh lands. 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, animal consumption and agriculture. PHLF should reimburse private property owners for the costs of tests for water quality and soil contamination.

It appears that many questions are unanswered regarding the toxic leaching of the former Solano Garbage Company property now owned by Republic Services, Inc., and/or affiliated companies, the pet cemetery on the nearby Tonneson 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. Further, there is a discharge pipe leading from Potrero Hills Landfill to the North-West corner of the Guidotti parcel which releases into the Marsh and U.S. Waters. Safety testing should be conducted to ascertain the effects of pollution of these discharges and of surface runoff discharge into Union Creek, Hill Slough, Spring Creek and any or all sludge ponds. There must be scientific evidence per NPDES permit to determine compliance with the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan). The impacts of the *current* landfill have not been fully evaluated as to the methane gas now being vented into the air and the water table; how does the *new* project then affect the marsh, the estuary, U.S. waters and the natural flow of runoff: does this turn the area into an industrial land in violation of the Marsh Protection Plan? Are there not better locations or other alternatives for dumping than an environmentally sensitive area? Can anyone say with certainty that biological wastes will not spread contagion and infection? Strong winds spread this matter to nearby land. Some of these lands are mitigation parcels thereby invalidating such intended mitigation. Since livestock graze on these adjacent lands, does the meat and/or milk become

contaminated leading to human contamination? We believe so. If so, what are the health concerns therefrom?

There are errors on the submitted supporting documentation (Attachments C and D). For example, on Figure 3, of Attachment C, Mitigation and Monitoring Plan, dated July 15, 2010, there is shown an access road by-pass lane. According to the BCDC permit No. 3-10(M) dated November 1, 2010, this "is not authorized." (Page 56). Furthermore, on Page 32 – 33, of the aforesaid BCDC Permit, it is stated that "based on studies , 'water levels might be lowered about one foot in the local area around the well and the long term pumping of the new well would not affect the other ranch wells in the vicinity.'" Mrs. Guidotti reports that her well water dropped by seven feet and her spring fed stock pond dried up completely around the time of the pumping from well 6R. Pictures of the dry pond were previously sent to CRWQCB.

On attachment D, see Figure 9, there is shown an "existing water pipeline." In fact, this is a garden hose running across a county road, Scally Road. This is interesting because the Directors' Guild property (to which this garden hose runs) contains two drilled wells. Are then these wells are not usable and contaminated? These facts are important when we consider the effect of pumping to keep 15,000 gallon tanks filled for non-agricultural uses. (Under the California State Constitution this is neither beneficial nor reasonable) The Board should condition any permits on a mandatory hold harmless basis for any substantial loss of water for agricultural purposes in the surrounding area.

Attachment C, page 1, refers to uses of the southwest corner of the Griffith Ranch "as a secondary access point from Scally Road for maintenance vehicles and monitoring crews." This amounts to human intrusion in the protected secondary marsh area on agricultural lands and for a non-agricultural purpose.

It is noted that there are no references to a power plant that was previously proposed as part of the PHLF phase II expansion. Therefore, any permit that may be issued should specifically exclude such a power plant, in that effects of such a plant on groundwater quality, or its' degradation, have not been considered. There is no CEQA compliance. See Attachment C, Mitigation and Monitoring Plan, dated July 15, 2010, page 4.

All things considered, Mrs. Guidotti has suffered substantial losses due to trash blowing onto her land, foul odors, heavy industrial traffic night and day, noise, dust, fires, water quality and quantity, and so forth.

Based thereon, Mrs. Guidotti demands that 401 water permit and the water quality certification (as well as the expansion of PHLF) be denied as contrary to the best interests of the public generally and of the Suisun Marsh in particular..

I include herein by reference my letter to Mr. Bruce Wolfe, of the CRWQCB, dated June 30, 2010. We reserve the right to amend or supplement the public record on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'William S. Reustle', with a stylized, flowing script.

WILLIAM S. REUSTLE

WSR:tft

CC: Merry Goodenough
Kamala Harris, Attorney General
Sen. Ma
State Flood Management
Gov. Jerry Brown

WILLIAMS S. REUSTLE

Attorney & Counselor at Law

609 Jefferson Street, Suite "G-1"
Fairfield, CA 94533

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Wednesday, June 30, 2010

Mr. Bruce Wolfe, Executive Officer
CA Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

RE: June Guidotti family and
the Potrero Hills Landfill
Expansion, № 2001-260240N

Dear Mr. Wolfe:

My clients reside on 152 acres, more or less, immediately adjacent to the Potrero Hills Landfill. They have expressed serious concerns regarding their water supply, marsh water quality, agricultural, pond and ground water quality.

It appears that many questions are unanswered regarding the toxic leaching of the former Solano Garbage Company property now owned by Republic Services, Inc., the pet cemetery on the nearby Tonneson 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. Further, there is a discharge pipe leading from Potrero Hills Landfill to the North-West corner of the Guidotti parcel which releases into the Marsh and U.S. Waters. Safety testing should be conducted to ascertain the effects of pollution of these discharges and of surface runoff discharge into Union Creek and Hill Slough. There must be scientific evidence per NPDES permit to determine compliance with the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan). The impacts of the *current* landfill have not been fully evaluated as to the methane gas now being vented into the air and the water table; how does the *new* project then affect the marsh, the estuary, U.S. waters and the natural flow of runoff: does this turn the area into an industrial land in violation of the Marsh Protection Plan? Are there not better locations for dumping than an environmentally sensitive area?

The plan to provide for a culvert or pipe to contain Spring Branch Creek ignores the environmental impacts or effects that this change would impart to the Suisun Marsh in violation of the Marsh Protection Plan. The elimination of the sedimentation basin from the project leaves substantial questions as to how the water quality will be preserved.

The South portion of Solano Garbage Company lands contain fill that was required to be removed and yet still remains. The Killdeer Bridge has not been rebuilt and therefore there is a net loss of wetlands contrary to existing law and Executive Orders. There appears to be little to no enforcement by any public agency.

The truck washing station, the caretaker house, the visitor center and the power plant are all non-compatible uses with the Marsh Protect Act. These are significant impacts to the Marsh and should not be approved as part of the proposed permit.

As to the New Roads, we disagree because the historical existing road does not parallel a portion of Potrero Hills Lane. PHL is one-half mile from the Solano Garbage Company site and is reached by passing through the existing site, proceeding South on Emmington Road and then to the West onto the existing road used for Delta Associates Quarry. The by-pass lane should not be allowed as the applicant made a mistake in identifying the historical road as indicated in the applicant's submittal entitled: *Project Description Potrero Hills Landfill Phase II Expansion Project, prepared for BCDC by Potrero Hills Landfill, March 2000, Pg. 44*. The trucks and the Potrero Hills Lane are not compatible with wildlife and agriculture. The traffic kills wildlife; out of control vehicles break fences, and endanger livestock. The South end of Emmington Road is a cattle right of way that leads into the by-pass road and is not compatible with livestock. In addition, when certain levees are opened, Potrero Hills Lane, at Section 4, Station 9 acts as a dam as it is under 4.5 feet of tidal action and floods 300 acres of land to the East. These are significant impacts that must be remedied: "(e) New roadways . . . that form barriers to movement of terrestrial wildlife should not be constructed in the Suisun Marsh or in adjacent uplands necessary to protect the Marsh" . . . (*Suisun Marsh Protection Plan, page 24, Policies 1. (e)*). Mrs. Guidotti never gave her permission to share an easement or use a cattle right of way to put a road in to the landfill on the North West corner of her property which area is 4½ feet under the tidal action because of the devastation that would do to the Marsh. See Agenda 9, page 35, New Roads, BCDC 6/17/2010.

The West side of the access road (formerly Emmington Road) has a tuff shed which contains spare parts belonging to Potrero Hills Landfill. This location has an address of 3675 Potrero Hills Lane, which is not approved by the Marsh Protection Plan since it is not a residence. This shed and the underlying fill must be removed to return full tidal action as required in the Marsh Protection Plan. Filling in the Marsh is not an alternative. Federal Executive Orders 11989 and 11990 detail required protection of wetlands. Previously imposed requirements in permits to restore the lands have been largely ignored.

Recent court actions to enforce Solano County Measure E thereby limiting waste imports to Solano County place into doubt the efficacy or need for an expansion of Potrero Hills Landfill.

A petition filed by my clients with the State Water Quality Control Board (SWCB/OCC File A-1844) requesting a review of waste discharge requirements and discharge monitoring program is still outstanding.

My client has proposed an alternative via use of a waste-to-energy plant which has been discussed for many years. This alternative was originally a requirement of the permit issued to the Solano Garbage Company. That requirement was never enforced.

There are many questions regarding the Project's direct, indirect and cumulative impacts to wetlands, water quality, downstream hydrology and wildlife habitat, including impacts to endangered species and critical habitat. Completion of the project will result in a fundamental alteration to the Potrero Hills. It is important that the scope of the impacts to waters of the United States be fully analyzed and mitigated before moving forward with the requested permits. PHLF has not overcome the presumption of the Clean Water Act that destroying wetlands is against the public interest.

You may ask why we should protect the marsh. Consider the following:
"Suisun Marsh is the largest contiguous brackish water marsh remaining on the west coast of North America. It is a critical part of the San Francisco Bay-Delta estuary ecosystem. Encompassing 116,000 acres, the Suisun Marsh includes 52,000 acres of managed wetlands, 27,700 acres of upland grasses, 6,300 acres of tidal wetlands, and 30,000 acres of bays & sloughs. It is home to public waterfowl hunting areas and 158 private duck clubs. The Marsh encompasses more than 10% of California's remaining natural wetlands and serves as the resting and feeding ground for thousands of waterfowl migrating on the Pacific Flyway. In addition, the Marsh provides essential habitat for more than 221 bird species, 45 animal species, 16 different reptilian and amphibian species, and more than 40 fish species. The Marsh supports 80% of the state's commercial salmon fishery by providing important tidal rearing areas for juvenile fish allowing them to grow twice as fast as those reared in the upper watershed, thus, greatly enhancing their survival. Two hundred and thirty miles of levees within the Marsh provide critical protection of the drinking water for 22 million people by preventing salt water intrusion into the Delta. The Marsh's large open space and proximity to vast urban areas makes it ideally suited for wildlife viewing, hiking, canoeing, and other recreation opportunities. (Suisun Marsh Program, www.iep.ca.gov/suisun/)."

For all of these reasons, Mrs. Guidotti implores the Board to deny the 401 permit as requested. Mrs. Guidotti requests a hearing on these matters at the Board's convenience and reserves the right to amend or supplement the public record on these matters.

Sincerely,



WILLIAM S. REUSTLE

WSR:tft

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

THE SMITH FIRM

ATTORNEYS

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Sacramento, CA 95831
T 916.442.2019 ■ F 916.442.0220
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April 18, 2011

BY MAIL and EMAIL

San Francisco Bay Regional Water Quality Control Board
Attn: Keith E. Roberson
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

RE: Tentative Order for Updated WDRS, Potrero Hills Landfill, Solano County

Dear Mr. Roberson:

I write as attorney for SPRAWLDEF, which opposes the San Francisco Bay Regional Water Quality Control Board (RWQCB) Tentative Order for Updated Waste Discharge Requirements and Water Quality Certification, Potrero Hills Landfill, Suisun City, Solano County ("WDRs").

Preliminarily, please note 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.

SPRAWLDEF has opposed the operation of Potrero Hills Landfill because it is an unnecessary blight upon the environmentally sensitive and statutorily protected Suisun Marsh. The Tentative Order (TO) displays several factual errors regarding the landfill and the marsh.

The applicant landfill—Potrero Hills Landfill—was not operating when the Suisun Marsh Protection Act was adopted. Rather another landfill was grandfathered in place; Potrero Hills Landfill came later and never should have been permitted. Now filling to capacity, it should not be allowed to wreck even far greater impacts on the Marsh with the granting of these WDRs.

Another inaccuracy is the source of the waste to the landfill. Waste from out-of-state does not come to the landfill. This inaccuracy by the applicant is apparently accepted without question in the TOs. Waste is brought into the landfill from around the Bay Area. But it is taken there because of cheap disposal rates, not for lack of regional landfill capacity. The operator, Waste Connections, is selling out the environmental quality of the Marsh for a quick profit.

Because of its long involvement in this issue before the County, BCDC and the state, SPRAWLDEF requests designated party status in the hearing on the Tentative Order (TO).

SUMMARY OF THE TENTATIVE ORDER

The purpose of the Tentative Order is vague and impossible for the public to comprehend. As described, it apparently addresses WDRs for “current landfill operations, design, and construction of waste disposal units.” It would “update and clarify” waste acceptance criteria for Subtitle D disposal units. Along with the proposed WDRs, the TO would issue Clean Water Act water quality certification. See TO page 3, paragraphs 12-14.

Careful review of the TO content indicates that approval would be given to:

1. Current and future lined disposal cells, including the addition of 61.6 million cubic yards of disposal. This is the landfill expansion sought by the proponent which has not been finally approved; it is not as it “currently operates,” as stated in the TO, paragraph 14. Most glaring is that the Joint Technical Document required to detail operations is not done, paragraph 15.
2. Disposal of sludge. The TO would allow sludge disposal despite Suisun Marsh and Basin Plan protections, and the lack of a finalized management plan and environmental assessment.
3. Disposal of biosolids. The TO would also allow sludge disposal despite Suisun Marsh and Basin Plan protections, and the lack of a finalized management plan and environmental assessment.
4. Inadequate compliance with the District Basin Plan, as it affects Spring Creek and surface water, leaving unanalyzed impacts from the disturbance between upland and marsh connection.
5. Inadequate compliance with the alternatives analysis required under Section 404(b)(1) of the Clean Water Act, instead accepting the proponent’s analysis with its gross shortcomings.

The proposed landfill expansion would bury Spring Branch Creek and its quiet, peaceful valley—now only used for cattle grazing and as wildlife habitat—under a 167-acre solid waste hill, thereby violating the Suisun Marsh’s ecological integrity and prolonging for at least 35 years the corporate misuse of this hidden, little-known geomorphologic feature of the Suisun Marsh.

BACKGROUND

The Tentative Order features several factual inaccuracies that should be corrected. The Tentative Order misstates the status of waste disposal allowed in the Suisun Marsh secondary management area; see page 2 of the TO. The TO states that the “SMPA established conditions under which waste disposal would be allowed to continue.” In fact, the Suisun Marsh Preservation Act only allowed the continued operation of the landfill existing at the time of its enactment, the Solano Garbage Company Landfill.

As noted in the TO, the Potrero Hills Landfill did not begin taking waste until after the enactment of the SMPA.

THE BASIN PLAN VIOLATIONS

According to section 2.2.1 of the relevant Basin Plan: “The beneficial uses of any specifically identified water body generally apply to all its tributaries.” Here the Suisun Marsh is the water body. It is one of the most environmentally precious water bodies in the state.

The tributaries here are the waters that flow from the uplands to the Marsh, through what the project proposes will be turned into a mountain of garbage. And not just garbage, but now sludge and sewer cakes.

The TO would leave unanswered how sludge might be handled at the site. See page 36. This important new activity at the landfill should be presented with public review. The TO acknowledges the potential of “water quality impacts, excess leachate production and nuisance concerns associated with sludges...” Such impacts, unless addressed adequately, will have consequences on the quality of the Marsh and its Basin Plan values.

Similar objection is made to the biosolids which would be allowed under the TO. See page 5 of the TO. The TO would violate the protections against biosolid disposal at the site. The final approval necessary must be through Solano County and BCDC. Instead the TO permits biosolid disposal prior to the necessary approvals. This is improper. Without the administrative review and public participation through Solano County and BCDC, including any amendments to the Marsh Local Protection Plan, the approvals are conducted in a void, lacking substantial evidence necessary to provide the approval.

The surface water protections of the Basin Plan, section 2.2.1, are also violated because, as noted by the TO, the Plan’s Wetland Fill Policy requires that wetland disruption be minimized whenever possible. See page 24 of the TO.

The secondary protection area of the Suisun Marsh is recognized as important to the Marsh because of the drainage from the uplands to the Marsh. The proposed project, as noted in the record, will impact the connection between the uplands and the Marsh; but the TO ignores these connections, the project disruption and the consequent impacts to the Marsh. As discussed below, the TO lacks compliance with the analysis required under 40 CRC §230.11.

NO PRACTICABLE ALTERNATIVE ANALYSIS IS DEMONSTRATED

In 2008, 15 permitted landfills in the nine Bay Area counties had 46,344 tons total permitted daily capacity, three times that necessary every day that year for landfilling, (5,671 tons) in those nine counties, with virtually zero waste exported outside the Bay Area (Attachment).

Solano County’s other permitted disposal site, Hay Road southeast of Vacaville, has a permitted daily disposal capacity of 1,200 tons, of which in the peak year, 2007, about 700 tons per day was used. The daily tonnage from Solano County disposed at PHLF in 2007 was just less than 400 tons.

Waste Connections Inc. (stock symbol: WCN), with 2009 revenues of \$1.2 billion, a publicly traded landfilling company headquartered in Folsom, Sacramento County, bought PHLF for a reported \$58.9 million in 2009 knowing that SPRAWLDEF was obtaining court enforcement of Measure E, passed by Solano County voters to limit imports to 95,000 a year.

The alternatives analysis required under the Clean Water Act.

The TO appears to find the project exempt from the requirement of the Clean Water Act prohibiting discharge on wetlands and federal waters, where an alternative exists. This finding, relying as it does only on the proponent's self-serving information and ignoring other facts, is arbitrary and capricious.

The Clean Water Act, under 40 CFR §230.10, provides:

(a) Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

Thus, under the Act, no discharge is allowed if a "practicable" alternative has "less adverse impact on the aquatic ecosystem."

Section 230.10(a)(2) defines "practicable":

(2) An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.

Thus, under the Act, no discharge is allowed if a "practicable" alternative has "less adverse impact on the aquatic ecosystem."

It should be noted that "taking into consideration cost" clearly does not mean simply that an alternative is more expensive, only that the alternative is impractical because of cost. Under this definition, also, landfilling elsewhere could be "maintained" or "utilized" as an alternative.

The burden is on the project proponent to affirmatively demonstrate, and to "clearly" rebut, the presumption of any "practicable" alternative to landfill wetland destruction. 40 CFR 230.10(b)(3). The Potrero Hills Landfill proponent has provided nothing near an affirmative demonstration of the lack of practicable alternatives.¹ Rather, facts clearly show:

¹ The landfill project proponent frequently misstates a "state-mandated landfill capacity." See page 32 of the proponent's alternatives analysis. This is wrong. Public Resources Code §41701 requires only a plan for 15 years.

- Most—85 percent—of the waste disposed at the landfill is from jurisdictions outside Solano County, and those jurisdictions all have alternative landfill options available right now. It is only because the Potrero Hills Landfill under-prices its rates on the back of the Suisun Marsh environment that out-of-county wastes are disposed there.
- The Hay Road Landfill in Solano County is a viable alternative for the waste disposed at the Potrero Hills Landfill. The court has ordered the County to enforce Measure E, limiting out-of-county imports to 95,000 tons a year, making the existing Hay Road Landfill sufficient to accommodate the waste generated in the County.
- No clear rebuttal has been offered by the proponent to the presumption that practicable alternatives to the proposed landfill exist that do not involve wetlands. The proponent typically dismisses any other landfill capacity out-of-hand. This is not sufficient to meet the analysis required under Section 404(1)(b).

CWA section 230.10(a)(2) defines “practicable”:

(2) An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.

It should be re-emphasized that the burden is on the project proponent to affirmatively demonstrate, and to “clearly” rebut, the presumption of any “practicable” alternative to landfill wetland destruction.

The “alternatives analysis” provided by the project proponent, Waste Connections, and accepted without question in the TOs, has provided nothing near an affirmative demonstration of the lack of practicable alternatives.

The “no project” alternative is not analyzed.

The TO is fundamentally flawed because it fails to analyze not expanding the landfill. Under 40 CFR §230.5(b), the alternative analysis must be performed as follows:

(c) Examine practicable alternatives to the proposed discharge, that is, not discharging into the waters of the U.S. or discharging into an alternative aquatic site with potentially less damaging consequences (§ 230.10(a)).

Obviously, “not discharging” means not expanding the landfill and avoiding the associated impacts. But the TO ignores this requirement. Instead it accepts the proponent’s representation that: “Solano County and the other communities in the primary service area continue to

need economical and environmentally sound landfill disposal capacity...” See page v of the landfill’s alternative analysis.

This conclusion is accepted without verification in the TO. But the facts are clear that abundant landfill capacity exists in the Bay Area. See attachments herewith. That is, already-existing, permitted landfill capacity. Thus not discharging into the Suisun Marsh protected area is possible while still having “economical and environmentally sound landfill disposal capacity,” as the proponent puts it.

Even the proponent’s self-serving analysis acknowledges that landfill capacity exists which will not entail the impacts of the project. See for example, the Contra Costa landfill surveyed on page 22 of the landfill’s analysis. But the proponent concludes that: “This site is a currently operating landfill facility; therefore, it is not available for development of the proposed project. Therefore it is not a practicable alternative.”

This is patent nonsense.

The proponent would have the Board accept that because another landfill is not the proponent’s landfill, it is not an alternative to the landfilling proposed. Obviously, no other alternative that is not the proponent’s landfill would qualify as practicable, under that logic.

And, of course, a “no project” alternative would not be a landfill either. But such “no project” alternative selection is required under the Clean Water Act.

The proponent’s mistaken analysis is applied to all other existing viable alternatives including a large number of landfills in Santa Clara, Contra Costa and Marin counties.

The modified design cannot be rejected solely on Waste Connection’s profit impact.

A modified landfill design could preserve the hydrological connection between the uplands and Suisun Marsh, benefitting all the values assigned to the uplands and marsh in the Basin Plan. Under this alternative, the landfill would be scaled back to preserve Spring Branch Creek. This alternative was originally proposed by staff with the BCDC.

The TO accepts the landfill’s justification for not modifying the site design to avoid covering Spring Branch Creek. The only justification for failing to require this alternative is the loss of profit to the landfill. And the only basis for this determination is the landfill’s self-serving evaluation. See pages 11 and 37 of the landfill’s analysis.

This alternative—on-site alternatives 3 and 4, under the proponent’s analysis—would result in a smaller landfill. The proponent’s alternatives analysis supposedly details additional costs which make no sense. But even accepting that Waste Connections’ marginal return will diminish, no evidence whatsoever is provided that this is “impracticable.” None. No cost sensitivity analysis is provided that compares tipping charges at the other landfill alternatives for example.

An independent confirmation of the costs claimed should also be required. Landfills are built in phases—cell by cell. Thus unit costs can be determined cell by cell. But this was not done. The minimal cost description provided as Appendix A to the proponent's alternatives analysis includes no supporting evidence for the costs figures thrown up.

In the end, the only conclusion can be that “impracticable” means “less profit” under Waste Connections’ analysis. And this is not an analysis that complies with CWA §404(b)(1).

PROTECTION OF THE WATER AND HABITAT IS INADEQUATE

The TO would allow sludge and biosolids to be dumped into all 1.864 acres of jurisdictional waters of the United States. The TO lacks a plan to prevent the additional fill from impacting the water bodies surrounding the landfill. These impacts will negatively affect the beneficial uses identified for the Spring Branch Creek and other wetlands at the project site. The TO fails to provide any appropriate cleanup and abatement plan for the sludge and biosolids which will be discharged in these water bodies. Rather it defers evaluation of these plans until after the public review process, and without environmental assessment, which should be required.

The regional board has the duty to prohibit waste discharge at a site inappropriate for such discharge. Water Code §13243. Regulations reinforce this requirement. According to 27 CCR §20260(a): “Class III landfills shall be located where site characteristics provide adequate separation between non-hazardous solid waste and waters of the state.”

Items 69 and 85 of the TO state that additional fill from the Potrero Hills Landfill will be placed in the Spring Branch Creek during the landfill’s Phase II operations, which destroy the normal drainage of Spring Branch Creek. This will result in the direct fill of 3,970 linear feet of drainages in the headwaters of the Spring Branch Creek.

Thus, issuance of the TO as it stands will result in inadequate compliance with the San Francisco Bay Basin Plan in that the additional fill will negatively affect the beneficial uses identified in the Spring Branch Creek (Warm Freshwater Habitat, Wildlife Habitat, Non-contact Water Recreation, and Water Contact Recreation).

Item 69 of the TO states that any runoff stormwater will be diverted through a pipeline to be installed along the southern edge of the landfill. However, there is insufficient information to conclude that this action will help mitigate the loss of beneficial uses in the Spring Branch Creek.

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 Branch Creek before the suspended sediments had sufficient time to settle. Thus, the proposed mitigation plan as described in item 69 of the TO will not be in compliance with the Tentative Order’s Prohibition numbers 17, 19 and 20; as well with the Basin Plan’s Section 4.9.2 and 27 CCR §20260(a).

NO DEMONSTRATED ABSENCE OF WETLAND HABITAT HARM

The proponent of the landfill expansion must make an affirmative and clear demonstration that the construction or operation of the landfill will not jeopardize the continued existence of endangered species or critical habitats. 40 CFR 230.10(b)(3).

Such an environmental analysis is more critical in the environmentally sensitive Suisun Marsh, where great resources of impacted species and more wetlands exist. The cumulative impacts of the landfill expansion upon Suisun Marsh were never analyzed. This is especially relevant to the project's drainage elements. The project would relocate Spring Branch Creek and divert additional water from around the landfill into the creek and then into Suisun Bay. There is no discussion of the effect of this runoff on the Marsh. The Biological Opinion also fails in this regard.

Pollution from the landfill drainage will impact water quality and the species and uses dependent upon that water quality downstream from the proposed expansion. Thus, a Section 404 permit would violate 40 CFR §230.10(c).

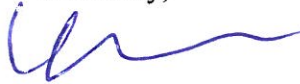
CONCLUSION

It is clear that this landfill is not needed. Existing Bay Area landfill capacity is already a glut, as reported in SPRAWLDEF's September 29, 2010 letter to BCDC. Tripling the size of this garbage dump, using it for the Bay Area's trash can, will have significant impacts to the Marsh.

We urge that the Regional Board deny approval of the Tentative Order until they address the objections raised.

Thank you for your attention to this matter.

Sincerely,



KELLY T. SMITH

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

April 18, 2011

Dear Mr. Roberson,

Hopefully, this e-mail is not too late. And, unfortunately, I did not have much time to read a copy of the Tentative Order and to compose an opposing letter to give all the valid reasons I can think of re the subject matter. As a concerned citizen and resident of Suisun City, I request you and your office to refuse, deny, disapprove any issuance of a Water Quality Certification to Potrero Hills Landfill pursuant to Section 401 of the Clean Water Act. The location of the Landfill itself does not help in protecting the Marsh. Toxic and contaminated substances seep underground. They have not honored the people's voice by disregarding Measure E. "Killing" a creek to "build" another one is preposterous!

I live close to the Landfill and the Marsh. There's always a foul odor; smells like sewer. There's all kinds of insects on the streets, not ordinary/regular ones. Mosquitoes are HUGE!

Please reconsider and please do not approve nor give any Water Certification to Potrero Hills Landfill.

Thank you and I appreciate your attention to this matter.

Respectfully,

Cristina

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

Dear Mr Roberson:

My comments, due by April 18, 2011, on the Tentative Order to grant PHLP and Waste Connections LLC a permit are follows:

The permit should be denied. June Guidotti's ground water should be tested and paid for by Waste Connections from now on into the far future first. The Tonnesen Pet Cemetery needs to first get all its permits (some are not in place according to June Guidotti) and monitoring of the ground water for the cemetery must be studied. More time should be allowed the public to comment on this matter as I have a dial up internet connection on my computer and the amount of material that is presented takes forever to download and read. Finally, Measure E should have been enforced years ago. Till Measure E is enforced, no permits to the garbage dump should be granted. Furthermore, once Measure E is enforced, no permit is needed as expansion is unnecessary. Plus, the idea that Fiona Ma thinks that she can dump SF garbage on Solano County with AB1178 and get rid of Measure E is beyond absurd as she took \$7.5K from the garbage folk and now wants Solano County to pay for San Francisco's lack of planning and mess by taking SF garbage. She should change her name to Fiona Ho! With people like her in office, no wonder the state is in such a mess!

Sincerely,

George Guynn, Jr

George Guynn, Jr
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