

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

RESPONSE TO WRITTEN COMMENTS

On Proposed Settlement Agreement and
Stipulation for entry of Administrative Civil Liability Order
Vista Corporation and Clover Flat Land Fill, Inc.
Calistoga, Napa County

Water Board staff received four sets of written comments on the Proposed Settlement Agreement and Stipulated Administrative Civil Liability Order (Proposed Order) to Vista Corporation doing business as Clover Flat Land Fill Inc. (Settling Respondent) for violations of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order 2014-0057-DWQ, as amended. The Settling Respondent owns and operates the Clover Flat Landfill, a refuse disposal site at 4380 Silverado Trail in Calistoga (Facility). All comments support issuance of the Proposed Order and note other compliance issues at the Facility. The comments do not give cause to alter the Proposed Order.

Summary of Institute for Conservation Advocacy Research and Education (ICARE) Comments

ICARE commented that the Settling Respondent should be fined the maximum penalty for the following reasons:

1. The penalty should reflect the lack of aquatic life that ICARE observed 1 mile downstream of the Facility on April 3, 2019.
2. The penalty should account for the time and resources residents and organizations have spent responding to the Settling Respondent's pollution.
3. The penalty should cover short-term and long-term losses to public trust resources, disadvantaged communities, and individuals.
4. The penalty should be based on the highest salary within each salary range and should recover more than \$17,300 in staff costs.

ICARE also asked whether Water Board staff has observed any environmental impacts associated with radioactive materials at the Facility.

Staff Response: *The penalty was calculated using the methodology set forth in the State Water Board's Enforcement Policy, as required.*

1. *The proposed penalty reflects that the California Department of Fish and Wildlife observed no aquatic life in stream 1 on April 2 (see Proposed Order page 12-A).*

2. *Neither the California Water Code nor the Enforcement Policy allows the Water Board to recover costs incurred by parties other than the Water Board.*
3. *The proposed penalty covers losses to public trust resources (see Proposed Order page 11-A), including losses of beneficial uses of the Napa River. Although the Enforcement Policy's penalty calculation methodology does not specifically address harm to disadvantaged communities and other individuals, the proposed penalty is sufficient to provide substantial justice to any disadvantaged groups.*
4. *Staff costs reflect costs incurred from the moment the violations were discovered to the time settlement negotiations began, and are based on average salary ranges since staff with a variety of salaries work on case investigation and document preparation. Using the highest salaries within each range would not reflect actual costs.*

The Water Board has no evidence of water quality impacts from radioactive materials stored at the Facility. All frack tanks that contained trace radioactive material were transported to Yuma, Arizona, in 2020.

Summary of Jose Garibay Comments

Jose Garibay submitted two sets of comments on December 29 and revised versions of those comments on January 3. The revised comments were submitted after the close of comment period and were similar to the timely comments.

Jose Garibay claimed the violations alleged in the Proposed Order were the result of systemic problems and identified factors that potentially contributed to them. In addition, he described other issues he observed at the Facility and at another landfill also owned by the Settling Respondent on Whitehall Lane. These issues include a lack of best management practices, such as leachate containment, stormwater containment, wastewater containment, and erosion control, and improper waste sorting, fire management, and compost management.

Staff Response: *The Proposed Order accounts for any intentional and negligent behavior on the part of the Settling Respondent by incorporating a high culpability factor that increases the penalty amount (see Proposed Order page 21-A). There may be other issues at the Facility, and this settlement does not preclude the Water Board from taking enforcement for issues other than those listed in section II, paragraph 4, of the Proposed Order.*

Summary of Geoff Ellsworth Comments

Geoff Ellsworth commented that he supports the proposed settlement and noted other issues related to the Settling Respondent and the Facility, specifically mentioning PFAS issues, a federal case against the Settling Respondent, and the sale of the Facility.

Staff Response: *There may be other issues at the Facility, and this settlement does not preclude the Water Board from taking enforcement for issues other than those listed in section II, paragraph 4, of the Proposed Order.*

Summary of Teirey Tagliaferri Comments

Teirey Tagliaferri commented that she supports the proposed settlement and noted other issues at the Clover Flat Landfill and the Whitehall Lane facility. She noted an ongoing petition to decommission these facilities.

Staff Response: *There may be other issues at both facilities, and this settlement does not preclude the Water Board from taking enforcement for issues other than those listed in section II, paragraph 4, of the Proposed Order.*