

**Attachment No. 5**

Notice of Violation No. R9-2008-0051



# California Regional Water Quality Control Board San Diego Region



Handwritten initials

Linda S. Adams  
Secretary for  
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
Recipient of the 2004 Environmental Award for Outstanding Achievement from U.S. EPA

Arnold Schwarzenegger  
Governor

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<http://www.waterboards.ca.gov/sandiego>

**CERTIFIED MAIL – RECEIPT REQUESTED**  
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May 30, 2008

Mr. Mike Mercereau  
Director of Public Works  
City of San Marcos  
201 Mata Way  
San Marcos, CA 92069-2949

Dear Mr. Mercereau:

**RE: NOTICE OF VIOLATION NO. R9-2008-0051: FAILURE TO COMPLY WITH  
DIRECTIVES OF INVESTIGATIVE ORDERS R9-2006-0044 AND R9-2007-0041:  
BRADLEY PARK/OLD LINDA VISTA LANDFILL, SAN MARCOS, CA**

The technical report entitled *Report of Waste Discharge: San Marcos 1 Landfill, San Marcos, CA (RoWD)* fails to comply with several directives prescribed in *Water Quality Investigative Order No. R9-2006-0044, City of San Marcos, Bradley Park/Old Linda Vista Landfill*, and in *Investigative Order No. R9-2007-0041 for the City of San Marcos for the Failure to Maintain Adequate Best Management Practices and Discharge of Rock Fill into the Waters of the State Within the City of San Marcos, San Diego County* (Investigative Orders). The RoWD was submitted by the City of San Marcos to comply with several of the directives in the two Orders. In particular, the RoWD lacks a detailed assessment of the nature and extent of the release/discharge of waste constituents from the Bradley Park landfill into surface waters, ground water, and the vadose zone (via landfill gas/soil vapors) and fails to propose Water Quality Protection Standards based on valid and appropriate water quality data. Detailed comments on the RoWD are provided under separate cover.

Because the problems with the RoWD are substantial, the California Regional Water Quality Control Board, San Diego Region (Regional Board) has issued the enclosed Notice of Violation R9-2008-0051 alleging that the City of San Marcos violated a number of directives of the Investigative Orders. These violations subject the City of San Marcos to enforcement action by the Regional Board, including administrative enforcement orders requiring the City of San Marcos to clean up waste and abate proceedings for the assessment of civil liability in amounts of up to \$1,000 per day; referral to the State Attorney General for injunctive relief; and referral to the District Attorney for criminal prosecution.

*California Environmental Protection Agency*



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Questions pertaining to the attached comments and Notice of Violation should be directed to Ms. Amy Grove at (858) 637-7136 or via e-mail at [agrove@waterboards.ca.gov](mailto:agrove@waterboards.ca.gov); or Mr. Peter Peuron at (858) 637-7137, or via e-mail at [ppeuron@waterboards.ca.gov](mailto:ppeuron@waterboards.ca.gov). If you feel you have received this Notice in error, or need clarification on any of the above violations, please contact our office immediately. Written correspondence should be directed to the following address:

Ms. Julie Chan  
Supervising Engineering Geologist  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340  
Attn: Mr. Peter Peuron and Ms. Amy Grove

*Julie Chan*

Julie Chan  
Supervising Engineering Geologist

*May 30, 2008*

Date

Attachments: Notice of Violation R9-2008-0051

cc: Ms. Rebecca Lafreniere, County of San Diego Local Enforcement Agency, 9325 Hazard Way, San Diego, CA 92123

Ms. Vicki Gallagher, County of San Diego, Department of Public Works, 5201 Ruffin Road, Suite D, San Diego, CA 92123

Mr. Richard Opper, Esq. Opper and Varco, LLP, 225 Broadway, Suite 1900, San Diego, CA 92101

Mr. James O'Day, Esq. County of San Diego, County Administration Center, 1600 Pacific Highway, Room 355, San Diego, CA 92101

Mr. Garth Koller, City of San Marcos, 1 Civic Center Drive, San Marcos, CA 92069-2949

Mr. David Boyers, Senior Staff Counsel, State Water Resources Control Board Office of Enforcement, 1001 I Street, 16<sup>th</sup> Floor, Sacramento, CA 95814



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IN THE MATTER OF )  
)  
Mr. Mike Mercereau )  
Director of Public Works )  
City of San Marcos )  
201 Mata Way )  
San Marcos, CA 92069-2949 )

NOTICE OF VIOLATION  
R9-2008-0051  
  
May 30, 2008

Subject Site: Bradley Park / Old Linda Vista Landfill  
San Marcos, CA

**YOU ARE HEREBY NOTIFIED THAT:**

The City of San Marcos is in violation of *Water Quality Investigative Order No. R9-2006-0044, City of San Marcos, Bradley Park/Old Linda Vista Landfill, San Diego County, and Investigative Order No. R9-2007-0041 for the City of San Marcos for the Failure to Maintain Adequate Best Management Practices and Discharge of Rock Fill into the Waters of the State Within the City of San Marcos, San Diego County.*

These Orders were issued pursuant to California Water Code section 13267, requiring the City to submit several technical reports and a Report of Waste Discharge (RoWD). The Orders required information to establish a corrective action program for the landfill that complied with the requirements of the California Code of Regulations (CCR) Title 27, section 20430.<sup>1</sup> Specifically, the Orders required the City of San Marcos to submit a Report of Waste Discharge (RoWD) to update site conditions and to propose corrective action alternatives to mitigate the release at the site. The Orders also required information on the timing and extent of water quality impacts from the unauthorized discharge of waste into the Bradley Park Creek, located adjacent to the landfill. The City of San Marcos made a request to submit all of the required information in a single report, in the form of a single RoWD.<sup>1</sup>

**Description Of Alleged Violations**

**A. ORDER NO. R9-2006-0044**

**1. Directive C.1.a. Delineation of Release**

Directive C.1.a states that the RoWD shall contain a detailed assessment of the nature and extent of the release/discharge of waste constituents from the Unit into surface waters, ground water, and the vadose zone (via landfill gas/soil vapors).

**Finding:** The RoWD fails to provide a plume delineation map or a determination of the downgradient extent of constituents in ground water, surface waters, or the vadose zone.

<sup>1</sup> CCR Title 27 section 20430 outlines the requirements for a Corrective Action program and requires submission of a RoWD to propose corrective action alternatives.

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## **2. Directive C.1.b. Constituents of Concern**

Directive C.1.b states that the RoWD shall propose a list of Constituents of Concern (COC), including waste constituents, reaction products, and hazardous constituents that are reasonably expected to be present in or derived from waste contained in the Landfill Site.

**Finding:** The proposed list of COCs is based upon incomplete and questionable data because the impairment of the ground water, surface water, and vadose zone is not well-defined, and monitoring results from some wells may not adequately represent actual site conditions.

## **3. Directive C.1.c. Water Standard**

Directive C.1.c states that the RoWD shall propose Water Quality Protection Standards pursuant to CCR Title 27, section 20390 for each constituent of concern.

**Finding:** The Water Quality Protection Standards (WQPS) proposed in the RoWD are derived from data collected from existing background monitoring wells that have been influenced by waste constituents from the landfill and have contained waste constituents historically since 1991. The presence of waste constituents in wells SM-1 and SM-6 invalidate these wells as "background" wells to be used in the calculation of WQPS. Therefore, the WQPS proposed in the RoWD are invalid and inappropriate for use at the Site. The selection of appropriate background wells was discussed during a meeting between the Regional Board and representatives of the City of San Marcos on September 26, 2007, where the Regional Board explained that WQPS for the Bradley Park Landfill can only utilize data from "clean" background monitoring wells (i.e., those wells not influenced by the landfill).

## **4. Directive C.1.d. Engineering Feasibility Study**

Directive C.1.d states that the RoWD shall present an engineering feasibility study of remedial alternatives, including the cost, implementation schedule and effectiveness of each alternative, to attain the Water Standard proposed for each constituent of concern.

**Finding:** Impairment of the ground water, surface water, and vadose zone is not well-defined, and, therefore, corrective action alternatives cannot be evaluated at this time. The City should not propose remedial alternatives for the Bradley Park Landfill until a comprehensive site delineation has been completed.

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### 5. Directive C.1.e. Recommended Corrective Action Program

Directive C.1.e states that the RoWD shall provide a detailed description of a recommended corrective action program describing the proposed corrective action measures necessary to achieve compliance with each proposed Water Standard.

**Finding:** The City's proposal for corrective actions is based upon an incomplete site assessment and evaluation of water quality data and, therefore, invalidates the proposed corrective action alternatives.

### B. ORDER R9-2007-0041

#### 1. Directive 2.A.ii. Assessment of Rock Materials

Directive 2.A.ii states that the technical report shall include an assessment of the effects of the discharge of rock material, used for channel armoring, into the creek on the functions and values of the creek and waters downstream of the creek.

**Finding:** The RoWD does not provide an adequate assessment of the effects of the discharge on the functions and values of the creek and downstream areas.

#### 2. Directive 2.A.iii. Assessment of Check Dams

Directive 2.A.iii states that the technical report shall include an assessment of the effects of the construction of check dams within the creek on the functions and values of the creek and waters downstream of the creek.

**Finding:** The RoWD does not provide an adequate assessment of the effects of the discharge on the functions and values of the creek and downstream areas.

#### 3. Directive 2.A.iv. Map of Vegetation

Directive 2.A.iv states that the technical report shall include a map showing areas where vegetation should be restored and where rock fill material has been deposited.

**Finding:** The required map was not included in the report submittal.

The above violations subject the City of San Marcos to possible enforcement action by the Regional Board, including administrative enforcement orders requiring the City of San Marcos to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative or judicial proceedings for the assessment of civil liability in

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amounts of up to \$1,000 per day; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

*Julie Chan*

Julie Chan  
Supervising Engineering Geologist  
California Regional Water Quality Control Board

*May 30, 2008*

Date

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Mr. Mike Mercereau  
 201 Mataway  
 San Marcos, CA 92069-2949

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Street, Apt. No., or PO Box No. 201 Mata Way

City, State, ZIP+4 San Marcos, CA 92069-2949

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