

***Frequently Asked Questions - Gregory Canyon Landfill
5-18-2011***

Why did the LEA submit a proposed Solid Waste Facility Permit (SWFP) for the Gregory Canyon Landfill to CalRecycle for concurrence?

The permit application package meets requirements in state regulation and law, and the LEA determined that the benefits outweigh negative impacts of the proposed landfill.

What is the timeline now?

CalRecycle now has 60 days to either concur or object on the proposed permit (On or before July 12, 2011.)

Where is Gregory Canyon?

The landfill site is located within an approximately 1,770 acre parcel located in northern San Diego County north and south of State Route 76, approximately three miles east of Interstate 15 and two miles southwest of the community of Pala. The site is crossed by the San Luis Rey River. The 183-acre landfill footprint would be in the largest canyon on the site, south of State Route 76, along the western slope of Gregory Mountain. The entire project development comprises approximately 308 acres. No less than 1,313 acres of the remaining area on the landfill property will become permanent open space.

Who owns the Gregory Canyon property?

The landfill site is owned by Gregory Canyon Ltd., the project applicant.

Why is a landfill being proposed for this site?

The property owners want to build and operate a landfill at this site, and asked the voters of San Diego County to agree. In November 1994, the voters approved [Proposition C](#), the Gregory Canyon Landfill and Recycling Collection Center Ordinance, by a vote of 68-32%. By amending the County's General Plan and Zoning Ordinance to allow a landfill without a County major use permit, Proposition C streamlined the project approval process. Ten years later, in 2004, landfill opponents drafted and sponsored a second voter initiative, Proposition B, seeking to invalidate the 1994 initiative. Proposition B was not approved by the voters, by a vote of 64-36%. Because of Proposition C, the County Board of Supervisors is not involved in decisions about the proposed landfill.

Who makes the decision whether a landfill can operate at this site?

The applicant will still needs separate approvals from several state and federal agencies for the proposed landfill, including.

- [San Diego Regional Water Quality Control Board](#)
- [San Diego County Air Pollution Control District](#)
- [California Department of Fish and Game](#)
- [United States Army Corps of Engineers](#) (including consultation with [United States Fish and Wildlife Service](#))

Attachment SWFP-D to the SWFP application gives a detailed status of applicable permits.

What was the role of the Department of Environmental Health?

DEH is designated by the State of California as the Solid Waste Local Enforcement Agency (LEA) for all of San Diego County except the City of San Diego.

As the LEA, DEH is responsible for processing the project's [Solid Waste Facility Permit](#) (SWFP) application package, and for writing a proposed permit for the construction, operation, closure, and post-closure care of the landfill. A state agency, CalRecycle, will review the LEA's proposed permit, and concur or object, before a SWFP can be issued.

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The LEA is also the lead agency for the preparation of an Environmental Impact Report (EIR) for the proposed project, as required under the California Environmental Quality Act. The EIR is an informational document prepared to disclose to the public and other state and local agencies the potential environmental impacts of the proposed project. Although Proposition C amended the County's General Plan and Zoning Ordinance, compliance with CEQA is required for the project to be approved.

What is the relationship of the LEA, DEH, the County of San Diego and the Board of Supervisors?

The LEA is a program within DEH, and DEH is a Department within the County of San Diego. But it is DEH and not the County of San Diego that is designated by the State of California as the Solid Waste Local Enforcement Agency (LEA) for this site. The decision maker for LEA-issued permits is the DEH Director. In addition, because of Proposition C, the LEA is the CEQA lead agency for this project. The decision maker for the LEA under CEQA is the DEH Director. Because of Proposition C, the County Board of Supervisors is not involved in the CEQA process or in land use permitting decisions for the proposed landfill.

What decisions did the Department of Environmental Health make?

DEH made decisions as both the lead agency under CEQA, and as the LEA. Under CEQA, DEH had to determine (based on the EIR and supplemental environmental documents) how the environmental impacts of the project can be mitigated, whether the project will have significant adverse environmental impacts after mitigation, and whether the benefits of the landfill outweigh those impacts.

As the LEA, DEH had to decide whether to propose to issue the Solid Waste Facility Permit, and what requirements that permit would include.

Several other landfill sites have expanded their capacity recently, why do we still need this one?

When the voters approved Proposition C in 1994, and when they rejected Proposition B in 2004, they took the political question of whether a landfill is "needed" at this site away from Board of Supervisors. As CEQA lead agency, DEH still had to decide whether the benefits of the proposed project outweigh the significant unavoidable environmental impacts identified in the certified EIR. The Director of DEH considered the most recent available information on the regional solid waste situation in San Diego County in making this decision.

What is the status of environmental review for the project?

The Environmental Impact Report (EIR) required by CEQA (state law) for the project has been completed and certified. State and local agencies are required to rely on this report when they make permitting decisions. A federal Environmental Impact Study (EIS) is also being prepared by the U.S. Army Corps of Engineers.

There has been a lot of CEQA litigation. Is the EIR really final?

The EIR for the project was initially certified on February 6, 2003, State Clearing House #1995061007. Litigation challenging the EIR was filed, and in 2006 a court ordered additional analysis in the areas of traffic, mitigation for impacts to biology, and water supply. A Revised Final EIR (RFEIR) addressing these issues was prepared and certified in 2007, but a court ordered additional analysis in the area of water supply. An Addendum to the RFEIR was prepared in response to the court order, and adopted in 2008. Trial and appellate courts upheld the RFEIR with this addendum. The RFEIR and this addendum cannot be further litigated. Subsequently, two further Addendums to the certified RFEIR have been prepared. One addendum addressed additional sources of water and the impacts of using those sources, and the other addressed a new Jurisdictional Determination by the U.S. Army Corps of Engineers (Army Corps). The adequacy of these addendums could be challenged in future litigation.

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If the project is changed in the future, any state or local agency required to make a further discretionary decision related to the project will have to consider whether additional environmental review is needed.

What about the federal environmental study? How can any permits be issued before that study is done?

The U.S. Army Corps of Engineers is responsible for preparing an Environmental Impact Statement (EIS) for the project under the National Environmental Policy Act (NEPA). In most cases where both a CEQA EIR and a federal EIS are needed for the same project, the EIS is completed first in a manner that can be used for CEQA purposes, or both studies are done at the same time. In this case however the need for an EIS arose only recently, when the Army Corps changed its jurisdictional determination. The CEQA EIR was certified before the NEPA process was underway, making preparation of a joint EIR/EIS infeasible.

The LEA was required to make permitting decisions within specific time frames after a complete and correct permit application was submitted and CEQA compliance was demonstrated. As a governmental entity, the LEA was required to base its decisions on the completed CEQA EIR.

If federal agencies decide not to issue permits and approvals for the landfill project based on their environmental review and legal mandates, the project may not go forward even if state and local permits have been issued. If the project proponent is required to redesign the landfill project because of federal agency permitting decisions based on the federal EIS, any state or local agencies required to make a further discretionary decision concerning the project will need to determine whether further environmental study is needed.

Some people have been fighting this project for years. Why does it keep resurfacing?

The project applicant has a legal right to seek permits for a landfill on this site, and has been pursuing required permits continuously. Litigation challenging Proposition C and the CEQA EIR delayed the LEA permitting process, but that litigation was resolved in ways that required the LEA to continue processing of the solid waste facility permit application for the proposed project.

How is the landfill designed to protect groundwater?

As CEQA lead agency, the LEA has studied groundwater protection issues for the proposed landfill, and the LEA will require the project owner to construct and operate this project as it has been described for CEQA study purposes—including design features to protect groundwater. However, it is important to note that State law assigns the Regional Water Quality Control Board (RWQCB) responsibility for permitting and regulating landfills to protect groundwater and surface water, and prohibits LEAs from imposing permit requirements in those areas. This is an area in which the RWQCB has the lead, and the LEA does not speak for the RWQCB on this issue.

Groundwater protection at the proposed landfill involves the liner design (including a leachate collection system), a subdrain system, and groundwater monitoring and extraction wells. A multiple-layer liner and a leachate collection system would be installed by the applicant to a design approved by the RWQCB. The liner system to be installed at the proposed landfill exceeds the prescriptive design standards required by RWQCB regulations. From top to bottom, the liner system consists of the following components:

- 24-inch thick protective soil cover layer,
- 12-ounce non-woven geotextile,
- 12-inch thick Leachate Collection and Removal System gravel layer,
- 16-ounce non-woven geotextile,
- 80-mil HDPE geomembrane (textured on both sides),
- a non-woven geosynthetic clay liner (GCL),
- 60-mil HDPE geomembrane (textured on both sides),

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- 16-ounce non-woven geotextile,
- 9-inch minimum thickness gravel or equivalent drainage layer (including collection pipe),
- 16-ounce non-woven geotextile,
- 60-mil HDPE geomembrane (textured on both sides), and
- 24-inch thick layer of low-hydraulic-conductivity material ($<1 \times 10^{-7}$ cm/sec) placed over the subdrain system with a 12-ounce non-woven geotextile between the low-permeability layer and a 12-inch thick layer of subdrain gravel.

If leachate were to penetrate the top soil layer, it would be collected in the upper leachate collection and removal system. If leachate were to penetrate further, through the three-layer membrane and clay barrier beneath the leachate collection system, there is another 9 inch thick zone with gravel and drainage pipes to collect liquid, with a membrane and clay barrier beneath that.

If the liner leaks, what happens?

If leachate were to get past both of the barriers and both collection systems described above, the next line of defense would be a subdrain system which is proposed to be constructed beneath the waste containment system. The subdrain system is intended primarily to keep any ground water that rises significantly above the normal water table away from the landfill liner system, but the drain system would also function as a third interception system for leachate.

The facility also will have groundwater monitoring and water production wells which are designed to detect contamination and to intercept any contaminated groundwater and treat it in a dedicated water treatment plant before it can reach the San Luis Rey River. These wells will be regularly monitored for contamination. The Joint Technical Document (JTD) discusses and evaluates various scenarios for releases and associated mitigation. The mitigation of potential releases is included in the closure cost estimates and covered by the financial assurance mechanisms as required by regulation.

In addition to the financial assurance requirements provided in the regulations, the applicant has agreed with the San Luis Rey Municipal Water District to supply replacement water and obtain a \$100,000,000 environmental impact liability insurance policy in the event of off-site pollution impacts.

How can the public provide input on the proposed project?

Public participation in the state-level environmental review has already been completed as a part of the CEQA process. However, there are additional opportunities to comment. CalRecycle may hold a public meeting before concurring with or objecting to any proposed SWFP. Finally, at some point, there may be another public comment process for the federal EIS. Some agencies that must make decisions on permits or approvals may provide additional opportunities for public comment or participation.

How does the overall permit approval process work? Is there one single agency that has final say over the project?

The project proponent must obtain permits or approvals from each local, state and federal agency with jurisdiction over the project. Some required approvals involve multiple agencies. No single approval by itself is enough to allow the project to go forward. Denial of a required permit or approval would prevent the project from going forward as currently proposed, unless there was a successful litigation challenge to the denial, or unless the project was modified and approved in a modified form.

Regarding the DEH / Solid Waste Local Enforcement Agency (LEA) permitting process:

The Solid Waste Facility Permit process is the one that the LEA oversees and was the subject of the Informational Meeting. The landfill operator is required to obtain a Solid Waste Facility Permit from the County Department of Environmental Health acting as the Local Enforcement Agency (LEA) under the

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authority of the Public Resources Code (Sections 44001-44018) and California Code of Regulations (CCR) Title 27, Division 2, Subdivision 1, Chapter 4 (beginning at Section 21440). The Solid Waste Facility Permit is issued by the LEA with concurrence from the Department of Resources Recycling and Recovery (CalRecycle) formerly the California Integrated Waste Management Board (CIWMB). The Solid Waste Facility Permit specifies the person(s) authorized to operate the facility and the boundaries of the facility. The Solid Waste Facility Permit contains the conditions necessary to specify a design and operation for which the applicant has demonstrated to the LEA the ability to control the adverse effects of the facility. In terms of the Solid Waste Facility Permit, the facility's "design" includes:

- the number and types of fixed structures;
- the total volumetric capacity of the disposal site;
- vehicle traffic flow and patterns within the facility;
- proposed contouring; and
- other factors that may be considered a part of the facility's physical configuration.

Is the County's approval of the permit the final judgment on the project?

The County has no authority over this project as "the County" and the Board of Supervisors had no role in permitting or denying any permit for the project. If the Department of Environmental Health, acting as the Local Enforcement Agency (LEA) for the State of California, had denied the solid waste facility permit, the project could not go forward. However, even though the LEA approved the permit, other approvals are still required.

If the Solid Waste Facility Permit is approved, can the landfill start building?

Approval of the solid waste facility permit, by itself, is not enough to allow the landfill to start building the landfill. That approval might be enough to allow the project proponent to begin work on some environmental mitigation.

What specific criteria did DEH's director use to make his decision to approve the proposed permit ?

As the LEA, DEH cannot issue a solid waste facility permit unless it is consistent with the relevant part of the Public Resources Code and any applicable regulations adopted by CalRecycle. Those requirements principally relate to the design, operation, maintenance and ultimate reuse of the facility. (CalRecycle cannot adopt regulations on matters within the jurisdiction of the state water board or regional boards, e.g., concerning the protection of groundwater or surface waters.) The LEA is also required to ensure that primary consideration is given to the protection of public health and safety and preventing environmental damage, and to long-term protection of the environment. The preliminary determination of LEA staff is that the facility as proposed meets the requirements contained in the Public Resources Code and CalRecycle regulations. .

As the CEQA lead agency for the project, the LEA could not approve the project unless there are enforceable requirements to implement feasible mitigation measures for the environmental impacts of the project. The EIR addresses these issues. The Director determined that this requirement has been met.

The EIR for this project concluded the project would have significant unmitigated environmental impacts. As the decision maker for the CEQA lead agency, the Director of DEH could not propose to issue a permit unless he found that those impacts are outweighed by the benefits of the project.

What other information was considered by DEH in this decision?

DEH considered;

- The EIR for the project, including all prior comments and comment responses incorporated into that document

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- Addenda to the EIR prepared subsequent to certification
- The detailed permit application submitted by the project proponent, and reviews of that application conducted by LEA staff and by an outside consultant
- Comments by the public at the public information meeting or submitted in writing
- Applicable law

Can new information be added to the decision-making process? If so, what type?

The EIR for this project has been certified and is no longer open for public comments. Any information on CEQA issues that was submitted during the permitting process was provided or summarized for submission with the package being forwarded to CalRecycle. That information may or may not affect the decision-making process.

The information meeting was held so the public could provide any new information relevant to the solid waste facility permitting process. That information was considered by the LEA and provided to or summarized for CalRecycle.

Other agencies, including the federal agencies now conducting an environmental impact study, will make their own determinations about new information to consider.

Did DEH staff make a recommendation?

DEH staff did NOT make a recommendation. DEH staff made a preliminary determination that the proposed facility can be constructed, operated, and closed in conformance with the Public Resources Code and related regulations.

Where do I go for additional information?

For further information, please contact the Local Enforcement Agency by e-mail at DEHComments@sdcounty.ca.gov .