



County of San Diego

JACK MILLER
DIRECTOR

SOLID WASTE LOCAL ENFORCEMENT AGENCY

5500 Overland Ave, Ste 110 SAN DIEGO, CA 92123
(858) 694-2888 FAX (858) 495-5004
1-800-253-9933
www.sdcdelh.org

ELIZABETH POZZEBON
ASSISTANT DIRECTOR

DECISION ON GREGORY CANYON LANDFILL SOLID WASTE FACILITY PERMIT

As the Director of the San Diego County Solid Waste Local Enforcement Agency (LEA) in the Department of Environmental Health, I am the decision maker for the Solid Waste facility Permit for the proposed Gregory Canyon Landfill. On May 13, 2011 I forwarded a proposed Solid Waste Facility Permit for the Gregory Canyon Landfill to the California Department of Resources Recycling and Recovery (CalRecycle) for concurrence or objection. On July 15, 2011 the Acting Director of CalRecycle concurred in that proposed permit. On August 1, 2011, I took the following actions:

1. I considered whether an updated Approved Jurisdictional Determination issued by the U.S. Army Corps of Engineers (ACOE) dated July 8, 2011 (which the LEA received July 14, 2011) provided significant new information or constituted a change in the circumstances under which this project would be undertaken that should be further analyzed pursuant to Section 15162 of the California Environmental Quality Act (CEQA) Guidelines (14 Cal. Code Regs. §§ 15000 *et seq.*). For the reasons stated in the attached "Supplement to Attachment B Revised CEQA Findings," which I adopt, I determined that preparation of a Subsequent or Supplemental EIR is not required in response to this ACOE determination.
2. I considered the information provided in public comments and by CalRecycle staff in the course of CalRecycle's review of the proposed permit, and considered LEA staff's analysis of written comments submitted to CalRecycle by Procopio, Cory Hargreaves and Savitch, LLP, provided to me in a Supplemental LEA Staff Report. I determined that preparation of a Subsequent or Supplemental EIR is not required in response to any of these comments. Therefore, I reaffirm my prior CEQA findings made on May 13, 2011 in accordance with California Environmental Quality Act (CEQA) Guidelines (14 Cal. Code Regs. §§ 15000 *et seq.*) Section 15091 regarding the Gregory Canyon Landfill project.
3. I reviewed and considered the May 13, 2001 Statement of Overriding Considerations and all the significant and unavoidable impacts identified in the environmental review documents for this project and the conclusion of the Acting Director of CalRecycle that this project would have a significant environmental justice impact and determined that the benefits of this project outweigh and override these impacts.
4. I found that the proposed solid waste permit is consistent with Division 30 of the Public Resources Code and regulations adopted by CalRecycle and its predecessor agency pursuant to that division applicable to solid waste facilities.
5. I considered what further steps to take in light of the updated Approved Jurisdictional Determination issued by the U.S. Army Corps of Engineers (ACOE) dated July 8, 2011, including whether to ask CalRecycle to reconsider or reaffirm its concurrence decision taking the ACOE determination into account. State law does not provide for a procedure of that kind, but I nevertheless considered it because an analysis of the ACOE Determination

by Bill Magdych, Ph.D. of Bill Magdych Associates dated 7/26/2011 revealed that the revised ACOE determination of the waters under its jurisdiction reclassified as jurisdictional approximately 0.2 additional acres of area that would be temporarily impacted by bridge construction, above the temporarily impacted acreage within the area the ACOE had previously classified as jurisdictional. The area of permanent impact to waters of the U.S. and waters subject to Clean Water Act Section 401 certification remains at <0.1 acres, as provided in the 2010 Addendum.

The reclassification as ACOE jurisdictional of an area that will be temporarily impacted by the project does not affect matters within the authority or jurisdiction of CalRecycle or the LEA under Division 30 of the Public Resources Code; rather, it relates to matters within the jurisdiction of the ACOE and the Regional Water Quality Control Board. I therefore determined that CalRecycle cannot take any further or different substantive action on the proposed permit in response to the ACOE determination, and that the procedural step of re-submitting the matter to CalRecycle could not change CalRecycle's concurrence or otherwise have any substantive impact. My conclusion is based on Section 44009 of the Public Resources Code, on statements made by the Acting Director of CalRecycle in his Action concurring on the proposed permit for this facility, and on statements in the CalRecycle Staff Report on the proposed permit that were adopted by the Acting Director in that Action, as set out more fully below.

Section 44009 of the Public Resources Code, with bracketed material included in the CalRecycle Staff Report at footnote 5, provides in pertinent part as follows:

“(a)(2) If the board determines that the permit is not consistent with the state minimum standards adopted pursuant to Section 43020, or is not consistent with Sections 43040 [financial responsibility for liability arising from operations], 43600 [financial assurances for closure and postclosure maintenance], 44007 [timely notice of the proposed permit to the Department and the applicant], 44010 [conformance with standards adopted by the Department], 44017 [additional requirements for conversion facilities], 44150 [additional requirements for transformation facilities] , and 44152 [additional requirements for transformation facilities] or Division 31 (commencing with Section 50000) [consistency with the county-wide integrated waste management plan], the board shall object to provisions of the permit....(c) The board shall not object to the issuance, modification, or revision of any solid waste facilities permit unless the board finds that the permit is not consistent with the state minimum standards adopted pursuant to Section 43020, or is not consistent with Section 43040, 43600, 44007, 44010, 44017, 44150, or 44152 or Division 31 (commencing with Section 50000).”

The revised jurisdictional determination by the ACOE does not cover, relate to, involve or implicate any of the provisions of the Public Resources Code listed above. The restrictions on CalRecycle's ability to object, as set out in subsection (c) of Section 44009 of the Public Resources Code, would therefore prevent CalRecycle from considering the revised ACOE determination even if I returned the proposed permit to CalRecycle for reconsideration of its concurrence determination.

In addition, the Acting Director of CalRecycle, in discussing another impact from the project, acknowledged that “it is not within the jurisdiction or authority of the Department to object to a proposed permit based upon this issue, and as a Responsible Agency under CEQA, our ability to add mitigations to a permit are limited to those matters within our authority, therefore, it cannot be a basis for my decision in the matter.”

The Acting Director's Action also stated, "I adopt the findings and determinations set out in the Staff Report and this Request for Action on the grounds stated therein..." The Staff Report addressed the limitations applicable to CalRecycle's ability to object to proposed permits in detail, including in this passage at page 12:

"With respect to its consideration of alternatives to the proposed project and the imposition of mitigation measures, a Responsible Agency is more limited than the Lead Agency. As a Responsible Agency, the Department is responsible "for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve." CEQA Guidelines, § 15096(g)(1). The specific aspects of the proposed project that the Department must consider are those requirements set out in Public Resources Code Section 44009 which provide the only grounds on which the Department can object to a proposed permit. As set out in this staff report, the proposed permit satisfies all of those requirements. None of the project's unavoidable significant impacts identified in the FEIR and RFEIR arise from the aspects of the project that the Department is authorized to act on....The Department has no authority to impose mitigation measures to reduce these impacts under its organic law, and CEQA does not convey authority beyond the Department's organic law to address environmental concerns solely within other agencies' jurisdictions. Indeed, the Department is precluded from imposing conditions on the solid waste facilities permit that the LEA has proposed." (Footnotes omitted.)

Because the revised jurisdictional determination is a matter outside of the jurisdiction or authority of CalRecycle; because the revised jurisdictional determination does not cover, relate to, involve or implicate any parts of the project that CalRecycle will carry out, finance, or approve; because CalRecycle cannot add mitigations related to the ACOE' revised determination, and cannot base its concurrence or objection decision on that revised determination; and because the Acting Director of CalRecycle and the staff at CalRecycle have clearly agreed that this is the case in the Staff Report and in the Acting Director's Action, it is my determination that resubmittal of the proposed SWFP to CalRecycle for reconsideration of its concurrence decision is not required.

6. I issued the Solid Waste Facility Permit to the applicant, Gregory Canyon Ltd.



Jack Miller, DIRECTOR

Local Enforcement Agency

Date: 8/1/11

Attachment A

**STATEMENT OF LOCATION AND CUSTODIAN OF DOCUMENTS
OR OTHER MATERIALS THAT CONSTITUTE THE RECORD OF PROCEEDINGS**

Project Name: Gregory Canyon Landfill

Reference Case Numbers: Environmental Record (ER) 98-02-025; SCH # 1995061007,
SWFP

CEQA requires the lead agency (in this case, the County of San Diego Department of Environmental Health) to specify the location and custodian of the documents or other material that constitute the record of proceedings upon which its decision is based. (Public Resources Code section 21081.6(a)(2).) It is the purpose of this statement to satisfy this requirement.

Location of Documents and Other Materials That Constitute the Record of Proceedings:

County of San Diego, Department of Environmental Health
Solid Waste Local Enforcement Agency
5500 Overland Ave, Ste 110
San Diego, California 92123

Custodian:

County of San Diego, Department of Environmental Health
Solid Waste Local Enforcement Agency
5500 Overland Ave, Ste 170
San Diego, California 92123

**SUPPLEMENT TO
ATTACHMENT B
REVISED CEQA FINDINGS**

The purpose of this document is to supplement prior findings made on May 13, 2011 in accordance with California Environmental Quality Act (CEQA) Guidelines (14 Cal. Code Regs. §§ 15000 *et seq.*) Section 15091 by the County of San Diego, Department of Environmental Health, designated as the Local Enforcement Agency (LEA) regarding the Gregory Canyon Landfill project.

In the May 13, 2011 revised CEQA Findings, and in accordance with CEQA Guidelines §15162, the LEA identified and analyzed all changes to the project or the circumstances under which the project is undertaken that were not previously disclosed or analyzed in the CEQA Documents. In total, 25 such changes were identified and analyzed.

Subsequent to the adoption of the revised CEQA Findings, new information related to an additional change in the circumstances in which the project is undertaken has been identified. The identification and analysis of that change in circumstance is set forth below, as a new Item 26.

Item #	Current Project Feature/Description	Project Feature/Description Described in Previous CEQA Documents
26	Temporary impact to 0.9 acres of waters of the U.S. and waters subject to Clean Water Act Section 401 certification related to construction of landfill access road bridge	Temporary impact to 0.7 acres of waters of the U.S. and waters subject to Clean Water Act Section 401 certification related to construction of landfill access road bridge

The 2010 Addendum included an analysis of potential impacts from changes in the designations of waters within the area of disturbance by state and federal agencies. The 2010 Addendum concluded that no “new information” arose from the assertion of broader jurisdiction, since those waters were in areas already designated for disturbance as part of the project, and mitigation measures reducing those impacts to less than significant had already been provided.

Recently, the U.S. Army Corps of Engineers (Corps) has provided an updated jurisdictional determination for the landfill property. The Corps included a series of graphics and supporting documentation identifying waters of the U.S., but did not provide any graphics showing those jurisdictional areas in relation to the area of disturbance. Based on a review of existing mapping in comparison to the graphics provided by the Corps, there is an indication that the area of temporary impact to waters of the U.S., and waters subject to Clean Water Action Section 401 certification, related to construction of the landfill access road bridge would be approximately 0.9 acres. The 2010 Addendum estimated 0.7 acres of temporary impact. However, that estimate was expressly subject to final confirmation by the agencies. This would add approximately 0.2 additional acres of temporary impact above the acreage previously identified. The area of permanent impact to waters of the U.S. and waters subject to Clean Water Act Section 401 certification remains at <0.1 acres, as provided in the 2010 Addendum.

As noted in the 2010 Addendum, this indication from the Corps does not in and of itself indicate a new or increased significant impact. "Whether or not a water on the landfill site is jurisdictional or not, the activity that may create a significant impact is the disturbance of that portion of the landfill property" (2010 Addendum, p. 6).

The 2010 Addendum concluded that the conditions requiring preparation of a Subsequent or Supplemental EIR did not exist even though the impacts to waters of the U.S. and waters subject to Clean Water Act Section 401 certification were subject to final confirmation and could change. LEA has evaluated potential impacts arising from the increase in temporary impacts to waters of the U.S. and waters subject to Clean Water Act Section 401 certification. Based on that evaluation, LEA concludes that it would not result in the identification of a new significant impact or an increase in a previously-identified significant impact, for the reasons set forth below.

- The area of increased temporary impacts to waters of the U.S. would overlap the significant vegetation community impacts for which mitigation is proposed, and that following implementation of mitigation measures would be reduced to less than significant.
- The area of increased temporary impacts to waters of the U.S. would overlap potential environmental effects to sensitive species for which mitigation is proposed, and that following implementation of mitigation measures would be reduced to less than significant.
- The area of increased temporary impacts to waters of the U.S. will not affect the acreage of land that will be disturbed in connection with the project.
- The area of increased temporary impacts to waters of the U.S. will not change potential impacts to hydrology and water quality which, after implementation of mitigation measures, will remain less than significant.
- The area of increased temporary impact to waters of the U.S. will not change potential impacts to steelhead trout, which will remain less than significant since impacts to hydrology and water quality will remain less than significant.
- The area of increased temporary impacts to waters of the U.S. will not change potential impacts from litter which, following installation of a proposed litter fence, would remain less than significant.

The slight increase in the temporary impact to waters of the U.S. and waters subject to Clean Water Act Section 401 certification do not result in one or more significant impacts not discussed in the CEQA Documents, nor indicate that a significant impact previously examined will be substantially more severe than shown in the CEQA Documents. LEA therefore reaffirms its conclusion previously made in the May 13, 2011 revised CEQA Findings that preparation of a Subsequent or Supplemental EIR is not required.