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6 BEFORE THE
7 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
8

9 In the Matter of:

10 Request for Hearing on the Solid Waste
11 Facility Permit Application for the Proposed
12 Gregory Landfill,

13 Pala Band of Mission Indians,

14 Petitioner
15
16

DECISION

Public Resources Code Sections 44307,
45030(a)

- 17
- 18 1. This matter came on regularly for hearing before the Department of Resources Recycling
19 and Recovery (“CalRecycle”) on June 13, 2011 at 1:00 pm. Petitioner, Pala Band of
20 Mission Indians, was represented by Walter Rusinek, attorney at law. The San Diego
21 County Department of Environmental Health, Local Enforcement Agency (“LEA”), was
22 represented by Rodney Lorang, attorney at law. The Real Party in Interest, Gregory
23 Canyon Landfill (“GCL”), was represented by William Hutton, attorney at law.
24 CalRecycle staff was represented by Michael Bledsoe, attorney at law.
 - 25 2. This hearing was held before the Acting Director of CalRecycle, Mark Leary, to consider
26
27 Petitioner’s Request for Hearing on the issue of whether or not the San Diego County

1 Department of Environmental Health, Local Enforcement Agency (LEA) acted in
2 accordance with law and regulation when it accepted the permit application of Gregory
3 Canyon Landfill as complete and correct. (Public Resources Code (PRC) section 44307
4 and 45030 et seq.).

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7 3. Having considered the arguments of legal counsel and the documents submitted by the
8 parties, and for good cause appearing, I have made the following determinations:

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10 **Procedural and Evidentiary Matters Related to this Hearing**

- 11 4. Prior to the hearing, the parties stipulated to the following:
- 12 • To hold one hearing, rather than the two contemplated by PRC 45031, in which the
 - 13 parties can present their arguments on both issues to be decided – whether the request
 - 14 raises a substantial issue and if so, a determination on the merits.
 - 15 • The scope of the hearing shall be those issues raised in the Request (Statement of
 - 16 Issues) – this will include whether the Request raises a substantial issue (PRC
 - 17 45031(a)).
 - 18 • The parties were allowed to submit written arguments (briefs) and exhibits by June 6th
 - 19 to allow them to be reviewed prior to the hearing.
 - 20 • As the issues in this matter did not require witness testimony, the hearing was to
 - 21 consist of the parties’ oral arguments and questions from the hearing officer.
 - 22 • As the issues were whether or not the application and related documents submitted
 - 23 complied with CalRecycle’s regulations on completeness or not, there were no
 - 24 evidentiary disputes about those documents, so the parties were to submit the
 - 25 documents (or portions thereof) that they believed were relevant for the Hearing
 - 26 Officer’s consideration. If there are objections, those could still be stated in the
 - 27 parties’ oral arguments.

1 7. I find that it will not be necessary to make a formal determination about whether or not
2 the Request raises a substantial issue. As will be apparent from the discussion below, this
3 issue is moot because I have found that Petitioner's underlying arguments are without
4 merit, so whether that determination is characterized as being because Petitioner's
5 Request did not raise a substantial issue or simply because Petitioner's arguments have
6 been rejected, in either case, I am upholding the LEA's acceptance of GCL's application
7 as complete.
8

9 **Failure of LEA/Hearing Panel to Hold a Hearing**

10 8. This matter has come before CalRecycle as a Request for Hearing, rather than an appeal,
11 because the Hearing Panel has failed to hold a hearing. Legal Counsel for the Hearing
12 Panel has indicated that they did not hold a hearing because they were not able to
13 schedule the hearing within 30 days (pursuant to PRC 44310(b)) and has taken the
14 position that once the hearing panel has missed that deadline, it has no authority to
15 schedule a hearing. CalRecycle rejects that position as an incorrect and an unacceptable
16 interpretation of its statutes. The consequence of accepting that interpretation is that by
17 failing to schedule a hearing as required by law, the hearing panel is relieved of its legal
18 obligation to hold that hearing. With all due respect, CalRecycle believes that this
19 undercuts the purpose of the statute. This position is particularly disturbing given that the
20 petitioner was willing to waive the deadline for the hearing panel hearing. One of the
21 purposes of having a local hearing prior to an appeal to CalRecycle is to ensure that an
22 Administrative Record is established. This is particularly important where there are
23 factual disputes which require testimony. One of the options that CalRecycle has in cases
24 that come before it without a prior local hearing, is to send the matter back to the LEA
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1 and order them to hold a hearing (See PRC 45032(b)(1)). In this case, however, as the
2 evidence in the record consists primarily of documents that have been submitted (the
3 application), and the hearing is primarily about whether those documents meet legal
4 requirements for completeness, I see nothing to be gained at this point by sending the
5 matter back for a local hearing, as the relevant evidence and administrative record are not
6 in dispute.
7

8 9 **Findings of Fact and Conclusions of Law**

10 **Completeness Determinations**

- 11
12 9. 27 CCR 21570 contains the basic requirements on what would be considered to be a
13 complete landfill permit (emphasis added):

14 (a) Any operator of a disposal site who is required to have a full solid waste facilities permit
15 and waste discharge requirements pursuant to Public Resources Code, Division 31 and
16 §20080(f) **shall submit an application package for a solid waste facilities permit in
17 duplicate to the EA pursuant to ¶(f).** The applicant shall also simultaneously submit one
18 copy of the application form and the Joint Technical Document (JTD) to the Regional Water
Quality Control Board (RWQCB) and one copy of the application form to the director of the
local agency that oversees local land use planning for the jurisdiction in which the site is
located. The applicant shall ensure demonstration of financial assurances to CalRecycle
pursuant to Chapter 6 of this Subdivision....

19 (d) The application package shall require that **information be supplied in adequate detail to
20 permit thorough evaluation of the environmental effects of the facility and to permit
21 estimation of the likelihood that the facility will be able to conform to the standards
22 over the useful economic life of the facility.**

23 (f) **A complete and correct application package shall include,** but not necessarily be
24 limited to, the following items:

25 (1) Application For Solid Waste Facilities Permit/Waste Discharge Requirements **Form**
26 **(CIWMB E-1-77, Version 8-04, Appendix 1);** and

27 (2) **Complete and correct Report of Facility Information.** In the case of disposal sites, this
will be a Report of Disposal Site Information (RDSI) **in the format of a JTD** or a Disposal Site
Facility Plan or Disposal Facility Report in the format of a JTD; and

(3) California Environmental Quality Act (**CEQA**) **compliance information as follows:**

1 (A) **Evidence that there has been compliance** with the CEQA, Division 13 (commencing
2 with §21000) of the Public Resources Code, regarding the facility; or

3 (B) **Information on the status of the application's compliance** with the CEQA regarding
4 the facility, including the proposed project description. Once there has been compliance with
5 the CEQA regarding the facility, evidence of compliance shall be submitted to the EA; and ...

6 (6) For disposal sites, **completeness determination of Preliminary or Final
7 Closure/Postclosure Maintenance Plan** as specified in §§21780, 21865, and 21890
8 (Subchapter 4 of this Chapter); and

9 *[Note: The operator has the option of submitting the preliminary closure plan with the
10 JTD, in which case the EA, RWQCB, and CalRecycle would review it at the same time. If
11 deemed complete by the reviewing agencies, the solid waste facilities permit
12 application package could then be accepted for filing if all other information in the JTD
13 is accepted by the EA. Or the operator can submit a stand alone preliminary closure
14 plan to be deemed complete by reviewing agencies before the application package is
15 submitted to the EA. For CalRecycle purposes, all final closure/postclosure plans are
16 stand alone documents but can be processed jointly with a proposed solid waste
17 facilities permit revision as long as the final plan is determined complete prior to
18 approval of the proposed solid waste facilities permit. The JTD Index prepared for the EA
19 should show where each closure requirement is addressed in the closure/post-closure plan.]*

20 (7) For disposal sites, **a copy of the most recently submitted detailed written estimate or
21 latest approved estimate, whichever identifies the greatest cost**, to cover the cost of
22 known or reasonably foreseeable corrective action activities, pursuant to §22101;

23 (8) For disposal sites, **current documentation of acceptable funding levels for required
24 closure, postclosure maintenance, and corrective action Financial Assurance
25 Mechanisms** (in accordance with Chapter 6, Division 2); and

26 (9) For disposal sites, **current documentation of compliance with operating liability
27 requirements** in accordance with Chapter 6;

10. 27 CCR 21590 and 21600 describe the contents of a JTD or RDSI and lists all of the
20 topics that must be addressed (27 CCR 21570(f)(2) in the list above).

21 11. 27 CCR 21650 describes the LEA's process once an application is initially submitted
22 (emphasis added):

23 (a) Upon its receipt, the EA shall stamp the application package with the date of receipt. **The
24 EA shall examine the application package to determine whether it meets the
25 requirements of §21570.** If the EA finds the package meets the requirements of §21570, the
26 application package shall be accepted **and stamped with the date of acceptance.**
27 **Notwithstanding any other provision of this division, the application package shall be
deemed filed on the date of acceptance.**

(b) The EA shall either **accept or reject the application package within thirty days of its
receipt.** ...

1 (d) If the EA determines that the application package **does not meet the requirements of**
2 **§21570, it shall reject** and not file the application, and it shall, within five days of
3 determination, so **notify the applicant**, the CIWMB, and the RWQCB if applicable,
4 **enumerating the grounds for rejection**. The EA shall include in its notification to the CIWMB
5 a copy of the rejected application form. The application package, together with the notice of
6 rejection, shall be kept in the EA's file.

7 (g) **No later than 60 days after the application package has been accepted** as complete
8 and correct and after conducting an informational meeting if required by §§21660.2 and
9 21660.3, the EA shall **mail to the CIWMB** the following:

10 (1) A copy of the **proposed solid waste facilities permit**;

11 (2) The accepted **application package**;

12 (3) A **certification from the EA that the solid waste facilities permit application package**
13 **is complete and correct**, including a statement that the RFI meets the requirements of
14 §21600, 14 CCR §§17863, 17863.4, 17346.5, 18221.6, 18223.5, or 18227....

15 (5) Any **written public comments received on a pending application and a summary of**
16 **comments received at the informational meeting and, where applicable, any steps**
17 **taken by the EA relative to those comments**. Subsequent to the transmittal of the proposed
18 solid waste facilities permit, the EA shall, within five (5) days of receipt, provide a copy of any
19 additional written public comments to the CIWMB....

20 (7) EA finding that the proposed solid waste facilities permit is consistent with and is
21 supported by existing CEQA analysis, or information regarding the progress toward CEQA
22 compliance....

23 (i) The proposed solid waste facilities permit shall contain the EA's conditions. The proposed
24 solid waste facilities permit shall not contain conditions pertaining solely to air or water quality,
25 nor shall the conditions conflict with conditions from WDRs issued by the RWQCB.

26 12. 27 CCR 21563(d) defines the terms complete, correct and application filing as follows
27 (emphasis added):

(1) "Complete" means **all requirements** placed upon the operation of the solid waste facility
by statute, regulation, and other agencies **with jurisdiction have been addressed** in the
application package.

(2) "Correct" means all **information provided** by the applicant regarding the solid waste
facility must be **accurate, exact, and must fully describe the parameters of the solid**
waste facility.

(3) "Application Filing" means the enforcement agency has **determined the application**
package is complete and correct and **the statutory time limit contained in Public**
Resources Code §44008 commences.

1 13. As discussed below, I find that each of the items required to find a complete and correct
2 application listed above in 27 CCR 21570 and 21600 have been provided in the
3 application.

4
5 14. Prior to discussing each of the thirteen instances in which Petitioner has indicated that
6 GCL's permit application is incomplete or incorrect, some preliminary discussion about
7 the purpose of a completeness review is pertinent. This is necessary because Petitioner
8 has fundamentally misunderstood the distinction between a completeness determination
9 and the approval of a permit. Completeness determinations were added to many state
10 application processes in the 1990's (through various legislative enactments like the
11 Permit Streamlining Act and the Perform Reform Act [Gov Code 65920 et seq. and PRC
12 71000 et seq.]) because while many permit processes had specific timelines for
13 processing, those timelines were often not being implemented because the permitting
14 authority was not starting the "clock" on those processing timelines because they did not
15 receive all relevant documents that were necessary in the applications. Applicants were
16 frustrated because the timelines for receiving their permits were not being followed.
17
18 Regulatory agencies were frustrated because they were being asked to review
19 applications on short timelines without having all of the relevant documents before them.
20
21 Completeness determinations are designed to provide the balance between these interests.
22
23 As in the case of this hearing, completeness review periods are shorter than the permit
24 review period and are designed to require the regulatory agency to make a quick
25 determination on whether all of the documents it needs to proceed with its review are
26 present and commence the actual permit review timeline. This ensures to the applicant
27 that they will either have a definite start to the permit review timeline after submittal of

1 its application or that it will be told specifically what pieces are missing so that they can
2 be supplied so that the timeline can commence. (see 27 CCR 21650(b) and (d) and
3 21563(d)(3) excerpted above).

4
5 15. A completeness review is not the actual review of whether or not the substance of the
6 application is approvable, but just whether the reviewing agency believes it has enough
7 information to do its review in the time required (See 27 CCR . 21570(d) excerpted
8 above). This is illustrated by the shorter timeframes involved. In this case, 30 days to
9 determine completeness, versus 120 days for issuance of a permit (See PRC 44008(a)).
10 Many of Petitioner's arguments would result in turning the completeness review into a
11 permit approval review, and as discussed below, they are rejected as inconsistent with the
12 completeness review requirement.
13

14 16. Acceptance of an application does not mean that the application has been approved, just
15 that it is now ready to be reviewed. To the extent that an applicant provides information
16 that does not meet the requirements for approval, they take the risk of disapproval in
17 submitting that application, but they are entitled to having that review period commence
18 if they have provided the information required for completeness.
19

20 **Limitations on CalRecycle and LEA Authority**

21 17. Public Resources Code 43101, 43020 and 43021 contain express provisions that limit
22 CalRecycle's, and by extension, the LEA's authority over the regulation of landfills. Of
23 particular interest here is the fact that matters within the jurisdiction of the Water Board
24 are not within the jurisdiction of CalRecycle or the LEA (emphasis added):
25

26 43101. The Legislature hereby finds and declares as follows:

27 (a) The board and the state water board have submitted a report entitled Joint Report: Reforming
the California Solid Waste Disposal Regulatory Process, and have recommended legislation to the
Governor and the Legislature that identifies areas of regulatory overlap,
conflict, and duplication and makes recommendations for change.

1 (b) The report found that **regulatory overlap, conflict, and**
2 **duplication were evident between the board and the state water board**
3 **and between the board and local enforcement agencies and that**
4 **regulatory reform was necessary to streamline the state's solid waste**
5 **disposal regulatory process.** In addition, it was found that a
6 **recasting of the solid waste facilities permit was warranted to make**
7 **more efficient and streamlined the permitting and regulation of solid**
8 **waste disposal facilities.** The report also makes numerous other
9 appropriate recommendations for improving the manner in which the
10 management of solid waste is regulated by the state which require
11 immediate legislative response.

12 (c) It is, therefore, the intent of the Legislature, in enacting
13 this chapter, and in making the necessary revisions to this division
14 and Division 7 (commencing with Section 13000) of the Water Code by
15 the act enacting this chapter, to accomplish all of the following:

16 (1) As provided by Sections 40054 and 40055, the board, the state
17 water board, and the regional water boards shall retain their
18 appropriate statutory authority over solid waste disposal facilities
19 and sites. **A clear and concise division of authority shall be**
20 **maintained in both statute and regulation to remove all areas of**
21 **overlap, duplication, and conflict between the board and the state**
22 **water board and regional water boards, or between the board and any**
23 **other state agency, as appropriate.**

24 (2) **The state water board and regional water boards shall be the**
25 **sole agencies regulating the disposal and classification of solid**
26 **waste for the purpose of protecting the waters of the state,**
27 consistent with Section 40055, and the board and the certified local
enforcement agencies shall regulate all other aspects of solid waste
disposal within the scope of their appropriate regulatory authority.

(3) To effectuate that clear division of authority, **the board and**
the state water board shall develop one consolidated set of solid
waste disposal facility regulations where distinct chapters are
written and implemented by the appropriate agency, and one
consolidated permit application, including one technical report to
incorporate the requirements of both the solid waste facilities
permit and waste discharge requirements.

(4) The process and timeframe for the review and approval of the
consolidated application shall be revised to allow, to the greatest
extent feasible, for the concurrent development and review of the
waste discharge requirements and the solid waste facilities permit.
The intent of this permit streamlining effort is to shorten the
overall timeframe for processing a permit and to **accommodate**
concurrent reviews by the local enforcement agency and the regional
water boards within a set timeframe.

(5) Any details of a concurrent permit approval process shall be
worked-out in an implementation plan that is developed jointly by the
board and state water board with input from interested parties.

(6) If practicable, joint inspections of facilities shall be
conducted by the board, regional water boards, and local enforcement
agencies, and inspection reports shall be shared with any other
affected state or local agency.

(7) The closure and postclosure maintenance requirements of the
board and the state water board for solid waste landfills shall be
combined into one set of consolidated regulations which require one
closure and postclosure maintenance plan to be prepared for each
solid waste landfill.

1 (8) A clear and concise division of responsibilities shall be
2 maintained to minimize overlap and duplication of permitting,
3 inspection, and compliance duties between the board and certified
4 local enforcement agencies. The board's primary role in regard to
5 permitting and compliance shall be to provide technical assistance
6 and ongoing training and support to local enforcement agencies, to
7 ensure a local enforcement agency's performance in complying with
8 state minimum standards, and to review permits and other documents
9 submitted by local enforcement agencies for board concurrence or
10 approval. The board shall strengthen the state certification and
11 evaluation program for local enforcement agencies and shall set clear
12 and uniform standards to be met by local enforcement agencies.

13 43020. The board shall adopt and revise **regulations** which set forth
14 **minimum standards for solid waste** handling, transfer, composting,
15 transformation, and disposal, in accordance with this division, and
16 Section 117590 of, and Chapter 6.5 (commencing with Section 25100) of
17 Division 20 of, the Health and Safety Code. The board **shall not**
18 **include any requirements that are already under the authority of the**
19 **State Air Resources Board for the prevention of air pollution or of**
20 **the state water board for the prevention of water pollution.**

21 43021. **Regulations shall include standards for the design,**
22 **operation, maintenance, and ultimate reuse of solid waste facilities,**
23 **but shall not include aspects of solid waste handling or disposal**
24 **which are solely of local concern or which are within the**
25 **jurisdiction of the State Air Resources Board, air pollution control**
26 **districts and air quality management districts, or the state water**
27 **board or regional water boards.**

18 18. Furthermore, PRC 44009 (d), the statute that governs CalRecycle's concurrence in Solid
19 Waste Facility Permits, expressly provides that "Nothing in this section is intended to
20 require that a solid waste facility obtain a waste discharge permit from a regional water
21 board prior to obtaining a solid waste facilities permit.

22 19. The Administrative Procedures Act which governs the adoption of regulations by State
23 agencies provides that "...Each regulation adopted ... shall be within the scope of
24 authority conferred..." (Gov Code 111342.1), "...no regulation is valid or effective
25 unless consistent and not in conflict with statute..." (Gov Code 11342.2), and "...
26 regulations must not be in conflict with or contradictory to existing statutes...." (Gov
27

1 Code 11349 (d)). Thus, since CalRecycle's statutes limit its authority as noted above, the
2 regulations to implement those statutes, including those regarding completeness of permit
3 applications, are limited to only those matters within its jurisdiction and authority and
4 must be interpreted within that context. As will be discussed below, this is one of the
5 reasons that a number of Petitioner's assertions regarding water and other issues are not a
6 basis for rejection of GCL's application as incomplete because they do not involve
7 matters within CalRecycle's or the LEA's authority and as such would not be information
8 that it is required for the LEA to conduct its review of the application.
9

10 **Burden of Proof**

11 20. Courts defer to administrative agencies when those agencies interpret the meaning of
12 statutes and regulations within the agencies' purview. (See *Alberstone v. California*
13 *Coastal Commission* (2008) 169 Cal. App. 4th 859, 864). I find this standard to be
14 particularly relevant in the context of this decision when the purpose of a completeness
15 review is for the LEA to determine if it has received enough information to enable it to
16 commence its review of the permit application. (See 27 CCR 21570(d) excerpted above).
17

18 21. However, even without granting any deference to the LEA's determination on
19 completeness and correctness, I still find that the record supports the finding that GCL's
20 application was complete and correct.
21

22 22. Following is a discussion of each of the particular issues Petitioner identifies as areas
23 where the application is incomplete or incorrect.
24

25 **Insufficient Detail**

26 23. Petitioner asserts that because the Gregory Canyon site is uniquely complex, it requires
27 more detail than what was provided in GCL's application to be deemed complete and

1 correct. This assertion is based primarily upon the clause in 27 CCR 21570(d) which
2 provides that information in an application must be “supplied in adequate detail to permit
3 thorough evaluation of the environmental effects of the facility and to permit estimation
4 of the likelihood that the facility will be able to conform to the [State minimum]
5 standards over the useful economic life of the facility.”
6

7 24. As noted above, the completeness review is the LEA’s opportunity to determine if the
8 information provided in an application is sufficient for it to conduct its review. The LEA
9 has clearly stated that it believes that the application contains sufficient detail for it to
10 have commenced its 120 day review period. As the LEA is the actual arbiter of whether it
11 has sufficient information to proceed to commence its review, I find this fact to be
12 dispositive with regard to this general allegation. This generalized assertion by Petitioner
13 that GCL is a more complex site that requires more detail does not provide any factual
14 basis for making a general finding that the application does not provide enough detail to
15 lead me to overturn the LEA’s evaluation of its own needs. It should also be noted that
16 CalRecycle staff, in its brief, has indicated that they believe the application contains
17 sufficient detail to commence the review period. This is germane since CalRecycle staff
18 has its own interest in the application containing sufficient information, since it also has
19 to review the application to make recommendations on whether or not to concur in the
20 proposed permit.
21
22

23 **Preliminary Closure/PostClosure Plan**

24 25. Petitioner asserts that the application submitted by GCL did not demonstrate that the
25 Preliminary Closure/Post-Closure Maintenance Plan (“PCPCMP”) had been approved by
26 the Regional Board. This allegation illustrates Petitioner’s confusion between a
27

1 completeness determination and an approval. CalRecycle regulations only require that
2 PCPCMPs be deemed complete, not approved, before the enforcement agency may deem
3 a Solid Waste Facility Permit (SWFP) application to be complete and correct. (See 27
4 CCR 21570, subd. (f)(6)). The actual approval of PCPCMP does not occur until 120 –
5 130 days after it is complete, and approval may take much longer if the reviewing
6 agencies require changes in the PCPCMP. (27 CCR 21860 (e) and (f). The timeframe
7 for approval of the PCPCMP may extend beyond the 60 days CalRecycle has to concur
8 in, or object to, proposed permits. (See PRC § 44009(d) excerpted above). Thus, such
9 approval may occur after a SWFP has been issued. To address this possibility,
10 CalRecycle’s regulations provide that it may concur in a proposed SWFP for a disposal
11 facility if the applicant has submitted documentation sufficient for Department staff to
12 determine that the PCPCMP is “consistent” with State standards. (27 CCR 21685
13 (b)(5)).
14
15

16 26. In this case, the facts provided support the LEA’s determination that the PCPCMP was
17 complete. The PCPCMP was received by the LEA, the Regional Board and the
18 CalRecycle on approximately December 23, 2010. CalRecycle Engineering Support
19 Branch (“ESB staff”) received and reviewed the PCPCMP for completeness and
20 concluded it was complete. However, this finding was not formalized in a letter. ESB
21 staff allowed their completeness determination to be made by operation of law pursuant
22 to Title 27, Section 21860(c). The Regional Board did not make a finding of
23 incompleteness within 30 days of receipt, either, so by action of Section 21860(c) the
24 Regional Board was deemed to have found the document complete. Accordingly, the
25
26
27 LEA properly made its completeness determination and provided its finding to the

1 agencies in a letter dated January 24, 2011. CalRecycle ESB staff determined the
2 PCPCMP was complete and consistent with State requirements and documented that in
3 an internal form submitted to the Permit Unit. Subsequently, in a May 3, 2011 email,
4 ESB staff provided comments on the PCPCMP to the Operator's consultant. By
5 regulation, the Operator has 60 days to respond to the comments unless an alternate
6 timeline is approved by all agencies including RWQCB, LEA, and CalRecycle. (27
7 CCR 21860 (f)). Therefore, I find that the application meets CalRecycle's requirements
8 for PCPCMP completeness and correctness.
9

10 **California Environmental Quality Act**

- 11
- 12 27. Petitioner asserts that GCL's application is not complete and correct in that it erroneously
13 states that the requirements of CEQA have been satisfied. However, 27, CCR 21570(f)(3)
14 requires that a SWFP application provide either evidence of compliance with CEQA or
15 information as to the status of efforts to comply with CEQA. The application for the
16 SWFP for the Landfill provides such evidence. Exh. 5 of CalRecycle Staff Brief, Letter
17 to Rebecca Lafreniere, dated January 13, 2011, p. 2, Application Form, Part 5.
- 18 28. Petitioner's primary argument here is not that the application fails to meet the complete
19 and correct requirement, but that the LEA has not complied with CEQA because
20 additional CEQA analysis is required for various reasons. This is another example of
21 Petitioner confusing the completeness requirement for an approval or "approvability"
22 requirement. I find that the application meets CalRecycle's requirements for reporting on
23 the status of compliance with CEQA and is thus complete for the purposes of
24 commencing the application review with respect to this issue.

25 **Water Authority Pipelines**

- 26 29. Petitioner asserts that GCL's application fails to show that the Landfill operator will
27 adequately protect the First San Diego Aqueduct located on and near the Landfill site
based upon the requirements of Proposition C (CalRecycle Staff Brief Exh. 4, p. 4).

1 Regardless of the merits of Petitioner's argument regarding the aqueduct, resolution of
2 this issue is not required in order for the LEA to find the application complete and
3 correct. The application contains the information required by Section 21570, subd. (f).
4 Proposition C requires the Landfill operator to take certain steps to protect the aqueduct,
5 not the IWMA or Department regulations.

6 30. To accept Petitioner's argument on this issue would be to accept the idea that a county
7 proposition can add requirements to state agency regulations. This argument is incorrect
8 and unpersuasive and find that this is not a basis to find the application incomplete or
9 incorrect.

10 **Inclement Weather Operations**

11 31. Petitioner asserts that GCL's application is not complete and correct because the JTD
12 does not address the contingency that access to the Landfill may be blocked due to bridge
13 failure or flooding. The only road accessing the Landfill crosses a bridge over the San
14 Luis Rey River. The JTD acknowledges that, in the event of a 100-year flood, the bridge
15 would only have 18 inches of clearance above the floodwaters. Petitioner asserts that the
16 JTD is insufficient because it does not address contingency measures required if a larger
17 flood event or other emergency rendered the Landfill inaccessible.

18
19 32. However, 27 CCR 21600 (b)(4)(A) states that a JTD must "describe how the site design
20 accommodates or provides for ... climatological factors ..." This is adequately described
21 on page B.4-14 of the JTD. The JTD states that should access to the Landfill become
22 unavailable, the Operator would notify haulers to use alternative landfills until access to
23 Gregory Canyon Landfill could again be provided. Waste would not be received at the
24 site until the bridge can be used safely and operations at the Landfill. Thus, the
25 application does provide information on how it will address this issue. Petitioner may not
26 be satisfied with that information, but I find that the LEA was correct in determining that
27

1 the application provided sufficient information for it to review this issue in the
2 application.

3 **Groundwater Monitoring Well Locations**

4
5 33. Petitioner asserts that GCL's application is not complete and correct because the JTD
6 does not demonstrate that the groundwater monitoring wells described in Exhibit G-2 of
7 the JTD and the Technical Memorandum referenced in Exhibit G-2 have been installed.
8 Petitioner argues that the LEA should have required that the referenced groundwater
9 monitoring wells should have been installed before it accepted the application as
10 complete and correct. However, groundwater monitoring relates directly to protection of
11 waters of the state, and falls within the regulatory authority of the Regional Board. (27
12 CCR 20415 – SWRCB - General Water Quality Monitoring and System Requirements.)
13 As noted above, The IWMA precludes CalRecycle from enacting, and, consequently,
14 LEA from imposing, requirements on solid waste facilities that are within the regulatory
15 jurisdiction of the State Water Resources Control Board and the regional water quality
16 control boards. PRC §§ 43020, 43021. Further, the IWMA expressly declares that the
17 protection of water quality rests with the State Water Resources Control Board and the
18 Regional Water Quality Control Boards. PRC § 43101(c)(2). Therefore, LEA is not
19 allowed to make substantive determinations as to matters within the regulatory authority
20 and expertise of the Regional Board, such as the monitoring wells for the purpose of
21 monitoring groundwater quality. Therefore, this would not have been a basis for finding
22 the application to be incomplete.

23 34. Even if these matters were within the LEA's jurisdiction, Petitioner has not asserted that
24 the application does not provide information on this topic, just that the LEA should have
25 required installation of the wells before determining completeness. As discussed above,
26 the completeness and correctness determination is about whether the information has
27 been provided, which it clearly has, not about implementation of that information.

1 Therefore, I find that the LEA was correct in determining that the application provided
2 sufficient information for it to review this issue in the application.

3 **Mitigating a Foreseeable Release**

4 35. Petitioner asserts that GCL's application is not complete and correct because the JTD's
5 calculation of the cost of carrying out known or reasonably foreseeable corrective action
6 activities is based on costs associated with a release to the underlying bedrock and fails to
7 consider a release to the alluvial aquifer. CalRecycle regulations require that operators of
8 disposal facilities demonstrate they have sufficient financial resources to carry out those
9 "corrective action activities...required under [Title 27] Sections 20380(b) and 22100. (27
10 CCR 22220(a) and 22221(a). Section 20380(b) refers to releases to ground water,
11 surface water or the unsaturated zone, and is within the sole authority of the Regional
12 Water Board. (27 CCR 20380(a)). Section 22100 references, in Section 22101(a) and
13 (b), CalRecycle's requirements for cost estimates for carrying out corrective actions for
14 releases to waters of the state (§ 22101(a)) and for other releases (§ 22101(b) – version
15 operative until 7/1/2011). In keeping with the IWMA's requirement that CalRecycle not
16 duplicate or overlap with other agencies' regulatory authority (PRC § 43101), it is solely
17 the Regional Board's responsibility to approve the cost estimate and plan to protect
18 against releases to the state's waters. (27 CCR 20380, et seq.). CalRecycle is responsible
19 for approving the financial assurance mechanism only, not the amount of the corrective
20 action cost estimate or the plan. (27 CCR 22221(a) and 22222).

21 36. The corrective action estimate in the application challenged by Petitioner is related to the
22 water release estimate that the Regional Board reviews and approves. CalRecycle
23 assures that the water release corrective plan is properly funded but neither reviews nor
24 approves the amount of the water release estimate. (27 CCR 22222 – SWRCB –
25 Corrective Action Funding). Therefore, this issue would not have been a basis for the
26 LEA to determine that the application was incomplete and I find that the LEA was
27

1 correct in determining that the application provided sufficient information for it to review
2 this issue in the application.

3 **Fire Control**

4 37. Petitioner asserts that GCL's application is not complete and correct because the JTD
5 fails to adequately describe how the Operator would handle fires at the Landfill, whether
6 arising within the facility area or outside the Landfill boundary. The JTD must contain,
7 among other things, a description of the procedures the operator by which it will handle
8 burning solid waste and will prevent landfill fires. (27 CCR 21600(b)(8)(b)). I find that
9 the JTD meets this requirement for the following reasons.

10 Fire prevention and control is described in the JTD at the following pages:

- 11 • B.4-5 - B. 4-6 – An equipment list is found at Table 7 and includes “a variety of
12 equipment that will be used for the operation of the GCLF. On-site equipment will
13 serve disposal and site maintenance needs to allow for operations of the GCLF in an
14 environmentally sound manner and to comply with all applicable regulatory
15 requirements. On-site equipment will be maintained in accordance with State
16 minimum standards. Less equipment will be necessary during initial refuse disposal
17 operations. The numbers and types of equipment utilized to meet operational
18 requirements will be added as the landfill is developed and increased to accommodate
19 a higher inflow rate. However, in the event of multiple equipment failure, a local
20 rental company will be contacted to provide necessary back-up equipment.” LEA
21 Exh. 8, JTD, p. B.4-5.
- 22 • B.5.3.5 on page B.5-40. The Plan clearly states that due to site's remoteness, fire
23 control measures are of great importance and will be pursued. The measures
24 discussed include, among other things:
 - 25 ○ Site personnel
 - 26 ○ Prohibit the burning of refuse at any time

- 1 ○ Create a firebreak between refuse and the undisturbed natural areas
- 2 surrounding the Landfill
- 3 ○ Comply with PRC Section 4373 (flammable materials shall be maintained at
- 4 least 150 feet from flammable solid waste)
- 5 ○ Clear brush and vegetative debris around active area
- 6 ○ Refuse shall not remain uncovered for more than 4 hours
- 7 ○ Wildfire suppression forces are available from the San Diego County Fire
- 8 Authority, California Department of Forestry and Fire Prevention, North
- 9 County Fire Protection District, and the Pala Reservation Fire Station.
- 10 • B. 5-41 – fire protection capabilities through the San Diego County Fire Authority,
- 11 the North County Fire Protection District and the Pala Reservation fire station. The
- 12 closest fire station would provide the initial response to a wildfire.
- 13 • B. 5-42 – Blasting operations are discussed, noting that the agency providing fire
- 14 protection services will enforce compliance with all provisions of the San Diego
- 15 County Consolidated Fire Code. Fire protection measures related to blasting include
- 16 the use of a fine mesh screen over the blasting area to prevent the escape of rock
- 17 fragments, dust or other debris.
- 18 38. The Operator’s ability to prevent and protect itself against fire is especially important in
- 19 this case because one local agency, the San Diego County Fire Authority, has stated that
- 20 it does not at present have fire protection facilities that are adequate to serve the Landfill,
- 21 and, accordingly, the Fire Authority imposed several conditions on the Landfill. See,
- 22 Letter from Paul Dawson, Fire Marshall, to the LEA, dated February 17, 2011
- 23 (CalRecycle Staff Brief exhibit 6). Among other things, the Authority stated that Fire
- 24 Severity is rated at “Very High” for most of the Landfill site and that “Fire protection
- 25 facilities are not expected to be adequate to serve the proposed development within the
- 26 next five years.’ The proposed Gregory Canyon Landfill is within an area of the County
- 27

1 that the San Diego County Fire Authority does not currently have a designated, staffed
2 fire station in close proximity. It is our goal to have a full service, staffed fire station in
3 the area at some time in the future. We look forward to developing a cooperative plan to
4 that end.” CalRecycle Staff Brief Exhibit 6, p. 1. Toward that end, the Fire Authority
5 requires “that the project commit to participating in a Community Facility District
6 currently under formation or a Developer Agreement to mitigate the impact that the
7 facility will have on fire services.” Id. The statement in the JTD that a fire station will
8 be built in the future appears to stem from this letter.
9

10 39. While this is obviously an important issue, the requirement for completeness and
11 correctness of the JTD and the application is that the Operator “[d]escribe procedures for
12 handling burning waste and preventing landfill fires. (27 CCR 21600(b)(8)(B)). I find
13 that the JTD meets this requirement.
14

15 **Design Features**

16 40. Petitioner asserts that GCL’s application is not complete and correct because the
17 engineering drawings and designs supporting the application and the JTD are merely
18 “conceptual” and are not sufficient “to permit thorough evaluation of the environmental
19 effects of the facility and to permit estimation of the likelihood that the facility will be
20 able to conform to the [State minimum] standards over the useful economic life of the
21 facility,” as required by 27 CCR 21570(d). Petitioner fails to understand that such designs
22 are conceptual at first because not all the minor variables may be known at the time of a
23 SWFP application. Moreover, their main function is to provide support for the estimated
24 costs for the final design for construction. Appendix S, page 44 of the JTD states that the
25 tentative WDRs for the Landfill require that detailed designs be submitted to and
26 approved by the Regional Board prior to initial construction and that final construction
27 reports with as-built drawings be submitted to and approved by the Regional Board prior

1 to the receipt of waste. Thus, substantive review of these items is outside of the LEA's
2 authority and the requirement for completeness is that information on the design be
3 provided. I find that the information provided is sufficient to meet the complete and
4 correct standard to commence review of the application.

5 **Leachate Control and Recovery**

6 41. Petitioner asserts that GCL's application is not complete and correct because the JTD
7 does not provide for a leachate control and recovery system under the side slopes of the
8 Landfill, allegedly required by 27 CCR 20340, and does not disclose an exemption from
9 such requirement. Regulatory requirements for a leachate collection and removal system
10 as specified by Petitioner relate directly to the protection of waters of the state, and thus
11 falls within the regulatory authority of the Regional Board. (27 CCR 20340 – SWRCB -
12 Leachate Collection and Removal Systems). The LEA is not required or allowed to make
13 substantive determinations as to matters within the regulatory authority and expertise of
14 the Regional Water Quality Control Board (RWQCB). PRC § 43101(c)(2). Therefore,
15 this issue would not have been basis for the LEA to determine that the application was
16 not complete and correct.
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21 **Desilting Basin**

22 42. Petitioner asserts that GCL's application is not complete and correct because the
23 desilting basins are sized to accommodate a 10-year rainfall event rather than a 100-year
24 rainfall event on which the perimeter piping discharging into the desilting basins is based,
25 and the basin sizing further relies on outdated best management practices.
26 43. The use of 10-year, 6-hr storm event (an event having a 10% chance of occurring in any
27 given year) is more conservative than the use of the 100-year, 24-hr event for design

1 elements based on peak storm intensity. However, the total volume of precipitation for
2 the 100-yr, 24-hr storm would be greater. San Diego County has a requirement directing
3 developments to utilize the precipitation intensity of the 10-yr, 6-hr event.¹ The State
4 requirement is to utilize the runoff from the 100-year, 24-hour precipitation event. (27
5 CCR 20365, including Table 4.1 [note that this is a requirement imposed by the State
6 Regional Water Quality Control Board, not CalRecycle]). It should also be noted that the
7 JTD indicates at pages D.2-1 and D.2-2 that the Landfill footprint is not within the 100
8 year floodplain.

9 44. Department engineering staff did an analysis based on NOAA tables and found the
10 intensity for the 10-year, 6-hour event is greater than the 100-year, 24- hour event.
11 Another NOAA table showed that the total volume is greater for the 100-year event.
12 Therefore, designs based on storm intensity would be more conservative using the 10-
13 year storm. Designs based on total volume would be more conservative using the 100-
14 year event. Therefore, to meet both County and State requirements, drainage designs
15 based on intensity should use the 10-year event and drainage designs based on total
16 volume should use the 100-year event.

17 45. The Landfill, of course, must meet all regulatory requirements. The JTD, at pages C.2-20
18 – C.2.21, shows that the 10-year, 6-hour event was used in conjunction with particle size
19 to determine the desiltation efficiency of the sedimentation basins, and to determine their
20 appropriate sizing to reduce downstream sediment loading. This is different from flows
21 through the system, which were designed to accommodate a 100-year, 24-hour storm
22 calculated using the Rational Method. Furthermore, the JTD, at p. C.2-20, notes that the
23 design of the desilting basins was based on the 2009 version of the California Stormwater
24 Best Management Practices Handbook, not the earlier 2003 version, as alleged in
25 Petitioner's Statement of Issues.
26
27

- 1 46. The URS Report at p. 2-3 concluded that “[d]esilting basins are designed based on the
2 10-year, 6-hour storm flows for sediment capacity and for the storm water runoff flows of
3 the 100-year, 24-hour storm event. The spillway is sized for the 100-year, 24-hour storm
4 event. This complies with the regulatory requirements and is reasonable for the site.”
- 5 47. The plan presented in the Storm Water Management Plan (Appendix I-1 of the JTD) was
6 designed to mimic the volumes of flow from the Gregory Canyon mainstem occurring
7 during the pre-development condition. The goal was not to prevent flow but to allow
8 flow to occur under circumstances where flow would occur during the pre-development
9 condition. The storm water management system is also designed to allow for the
10 transport of sediments where it would have occurred during the pre-development
11 condition. Routing storm water flows from undisturbed areas through the desilting basins
12 would limit the ability to preserve this pre-development function.
- 13 48. The comment letter by Dr. Richar Horner, attached to the Statement of Issues, makes two
14 primary assertions. First, he states that the Landfill’s plans are flawed for utilizing a flow
15 model that is outdated, instead of using newer techniques currently being developed. The
16 Rational Method, although developed some years ago, is still used often in determining
17 storm water runoff and designing the attendant drainage facilities. The newer techniques
18 espoused by Dr. Horner are still under development and are in the testing stage. The
19 method used by the Landfill is an acceptable method for the purposes of the IWMA and
20 Department regulations.
- 21 49. Second, Dr. Horner opines that the precipitation events utilized in the design were
22 inadequate. The design storms used by the Operator in preparing the plans are those
23 required by local, state, and federal regulations. Title 27, § 20365, including Table 4.1.
- 24 50. Accordingly, I find that the LEA satisfied the requirements for determining the SWFP
25 application was complete and correct with respect to this allegation because those matters
26 were addressed in the JTD. (See Table 1 of the JTD, at p. A.1-6 – A.1-9. The JTD is
27 attached as Exhibit 8 of the LEA’s Response to Petitioner’s Statement of Issues.)

1 **Protection of County Floodplain**

2 51. Petitioner asserts that GCL's application is not complete and correct because a portion of
3 the Landfill's structures and activities (including a desilting basin, an infiltration area and
4 potentially part of the facilities, such as the flare station), are situated within the 100-year
5 floodplain.

6 52. Pursuant to State regulations, the Landfill must be protected from inundation and damage
7 from a 100-year flood event. (27 CCR 20260(c) and 21750(d)(2)). Landfill facilities
8 may be within a 100-year floodplain provided they are protected from damage. (27 CCR
9 20260(c)). Protection can be provided by engineered berms or by demonstrating that the
10 facility elevation is above the 100-year floodplain or other methods. The JTD references
11 this requirement at pages B.5-43, D.2-1, Figure 30B and E.3-3. At page E.3-3 of the
12 JTD, the Operator states that, in the event of flooding that cannot be handled by the
13 stormwater control system, it may construct earthen berms and, if necessary, may cut a
14 diversion channel to avoid inundation of the refuse cell. In addition, sandbags may be used
15 with either of the above measures. Id. Accordingly, I find that the JTD meets the State
16 requirements.
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21 **Rockfall and Protective Construction**

22 53. Petitioner asserts that GCL's application is not complete and correct because the JTD does
23 not contain sufficient detail for this Landfill due to the complexity and sensitivity of
24 developing this site, in particular, because, although the JTD states that a "catching wall"
25 or other means of diverting rocks and boulders falling into the Landfill is recommended,
26 the JTD fails to require such a wall or other diversion, fails to provide a design for such a
27

1 wall or other diversion, and fails to consider the impact of falling rocks and boulders on
2 the integrity of the eastern PSD.

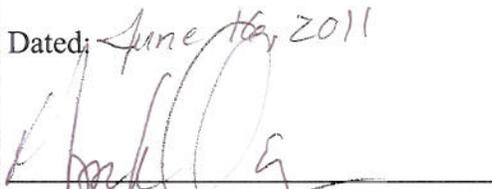
3 54. This is an example of a design detail that will be further refined through the process of
4 reviewing and approving the JTD. The tentative WDRs at Appendix S, p 44 of the JTD
5 require that the detailed designs be submitted to and approved by the Regional Board
6 prior to initial construction and that final construction reports with as-built drawings be
7 submitted to and approved by the Regional Board prior to the receipt of waste. The JTD
8 meets the State requirements and I find that it provides information to be considered to be
9 complete and correct.

10
11 **Order**

12 Based upon the foregoing, I hereby uphold the LEA's determination that GCL's application was
13 complete and correct and find that the LEA did act in accordance with law and regulation.
14

15
16 This Decision shall be effective upon service.
17

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19 Dated: *June 16, 2011*

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21 
22 Mark Leary, Acting Director
23 Department of Resources Recycling and Recovery (CalRecycle)
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