



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105**

Certified Mail No. 7008 3230 0000 3863 1482  
Return Receipt Requested

June 15, 2012

Diana C. Messina  
Supervising Engineer  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

Re: Tentative Order/Draft NPDES Permit for the Kiefer Landfill Groundwater Extraction and Treatment Plant (NPDES Permit No. CA0083681)

Dear Ms. Messina:

Thank you for the opportunity to review and comment on the tentative order/draft permit (NPDES Permit No. CA0083681) for the discharge from the Kiefer Landfill Groundwater Extraction and Treatment Plant to Deer Creek, which was public noticed on May 15, 2012. We have concerns about the draft permit that need to be addressed to ensure the permit effectively protects water quality and complies with NPDES requirements. Specifically, we are concerned with the reasonable potential analysis for selenium. Pursuant to 40 CFR 123.44, reserve the right to object to issuance of this permit if our concerns are not addressed.

The permit should impose WQBELs for selenium. 40 CFR 122.44(d)(1) requires that effluent limitations be established for all pollutants which are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality. Limits may be required when the effluent concentration does not exceed, but has a reasonable potential to cause an excursion above the water quality standard. For selenium, the effluent concentration exceeds the water quality standard.

EPA's Technical Support Document for Water Quality-Based Toxics Control states that when characterizing an effluent for the need for an individual toxicant limit, the regulatory authority should use any available effluent monitoring data as the basis for the decision. The State's *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP) confirms this by stating that the Regional Board shall use all available, valid, relevant, representative data and information.

We are concerned about misuse of the SIP's consideration of inappropriate or insufficient data in the reasonable potential analysis. The SIP provides examples where this exception is warranted, including evidence that a sample has been erroneously reported or is not representative of effluent or ambient receiving water quality; questionable quality control/quality assurance practices; and varying seasonal conditions. The fact sheet does not provide justification to invalidate the data point that exceeds the CTR criterion.

Unless the Regional Board can provide justification for excluding this data point in a future reasonable potential analysis with additional data, the result is unlikely to change, since the existing data point would need to be included in the data set.

If more monitoring data is needed to confirm reasonable potential, it should be acquired prior to reissuance of the permit, rather than a condition of the reissued permit. In the future, if the Regional Board is uncomfortable with setting limits based on one data point, more frequent monitoring should be required in the previous permit in order to obtain the data necessary for the next permit renewal (i.e. more than one priority pollutant scan).

Other Regional Boards (and until recently, this Regional Board) have established reasonable potential and imposed limits based on only one data point, so determining that the discharge does not have reasonable potential to exceed water quality standards because there is only one data point would be inconsistent with past State interpretations of the SIP and federal NPDES regulations.

We appreciate the opportunity to provide input on the draft permit. If you would like to discuss these comments, please contact Elizabeth Sablad of my staff at (415) 972-3044.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Smith".

David Smith, Manager  
NPDES Permits Office (WTR-5)