

1 RODNEY F. LORANG (BAR NO. 93078)
Senior Deputy County Counsel
2
3 Office of County Counsel, County of San Diego
1600 Pacific Highway, Room 355
San Diego, California 92101-2469
4 Telephone: (619) 531-4884
Facsimile: (619) 531-6005
5 E-Mail: rodney.lorang@sdcounty.ca.gov

6 Attorney for San Diego County Department of
Environmental Health
7

8 **BEFORE THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**
9

10 PALA BAND OF MISSION INDIANS,

11 Petitioner,

12 v.

13 SAN DIEGO COUNTY DEPARTMENT OF
ENVIRONMENTAL HEALTH,

14 Respondent.

15
16 GREGORY CANYON LTD.,

17 Real Party in Interest.

HEARING ON LOCAL ENFORCEMENT
AGENCY'S ALLEGED FAILURE TO ACT AS
REQUIRED BY LAW OR REGULATIONS

Case No. LEA-2011-_____

**LEA'S RESPONSE TO PALA BAND OF
MISSION INDIANS' REQUEST FOR
HEARING ON THE SOLID WASTE
FACILITY PERMIT APPLICATION FOR
THE PROPOSED GREGORY CANYON
LANDFILL**

Public Resources Code §§ 44307 and 45030(a)

Date: June 13, 2011
Time: 1:00 p.m.
Room 2410, Cal/EPA Building
1001 I Street
Sacramento, California 95814

21 **I. INTRODUCTION**

22 Petitioner Pala Band of Mission Indians' ("Petitioner's") request for hearing arises under
23 and is governed by the Integrated Waste Management Act, Public Resources Code sections 40000,
24 *et seq.* (the "Act").¹ Petitioner asserts that the San Diego County Department of Environmental
25 Health, in its capacity as Solid Waste Local Enforcement Agency ("LEA"), did not act as required

26
27 ¹ Unless otherwise stated, all subsequent references herein to the "Act" are references to the
Integrated Waste Management Act, and all references to section numbers are to Public
28 Resources Code section numbers for the Act.

1 by law or regulation when it accepted a permit application submitted by Gregory Canyon Ltd.
2 (“GCL”).

3 The LEA submits this brief to urge the California Department of Resources Recycling and
4 Recovery (“CalRecycle”) (1) to find that nine of the thirteen claims asserted by Petitioner fail to
5 raise a “substantial issue” for consideration by CalRecycle because they are outside the
6 jurisdiction of the LEA and CalRecycle under the Act; and (2) to find that three of the remaining
7 claims asserted by Petitioner fail to raise a substantial issue because the specific objections of
8 Petitioner are trivial and insubstantial and do not rise to a level that justifies review by
9 CalRecycle; and (3) to find that the level of detail in the solid waste facility permit application
10 (“SWFPA”) and Joint Technical Document (“JTD”) as a whole is clearly sufficient; or (4) in the
11 alternative as to each claim that may be determined to raise a substantial issue, to deny the
12 petition because the LEA acted as required by the Act.

13 Petitioner’s appeal from LEA’s acceptance determination alleges thirteen separate
14 deficiencies, referred to hereafter as issues or Claims. These Claims are designated by brackets
15 and numbers on a copy of Petitioner’s initial petition to the local hearing panel, attached as Exhibit

16 1. The 13 Claims are as follows:

- 17 1. Legal Standards (insufficient detail generally);
- 18 2. Preliminary Closure/Post Closure Maintenance Plan;
- 19 3. California Environmental Quality Act (“CEQA”);
- 20 4. Protection of County Water Authority Pipelines;
- 21 5. Inclement Weather Operations;
- 22 6. Groundwater Monitoring Well Locations;
- 23 7. Mitigating a Foreseeable Release;
- 24 8. Fire Control;
- 25 9. Design Features;
- 26 10. Leachate Control and Recovery;
- 27 11. Desilting Basin;
- 28 12. Floodplain; and

1 13. Rockfall and Protective Construction.

2 Claim 1 construes legal standards under the Act and asserts generally that the level of detail in the
3 SWFPA and JTD are inadequate because the site for this project is complex. Claims 2 through 13
4 allege specific grounds challenging LEA's acceptance determination.

5 None of these Claims raise a "substantial issue" for CalRecycle. Nine Claims relate to
6 matters over which LEA and CalRecycle have no jurisdiction under the authority granted by the
7 Act. Five of these nine Claims (numbers 6, 7, 9, 10, and 11) ask CalRecycle to address project
8 design and environmental protection issues that are squarely and solely within the purview of the
9 Regional Water Quality Control Board ("RWQCB") under the Act. Claim 2 is based on a mistake
10 as to law regarding the review of preliminary closure and post-closure care and maintenance plans
11 ("PCPCMPs"). Claim 3 goes to the LEA's role as CEQAn LEAd agency for this project,² but
12 CalRecycle does not have authority to review the LEA's CEQA determinations. Claim 4 involves
13 a local land use issue addressed in Proposition C (discussed and attached below) that must be
14 resolved between the applicant and another public agency. Claim 8 is based on a mistake of law
15 as to the scope of fire protection issues relevant to the permit application process under the Act,
16 versus under CEQA.³ Absent any legal issue as to Claim 2, and absent the necessary CalRecycle
17 jurisdiction to address Claims 3, 4, 6, 7, 8, 9, 10 and 11, the alleged deficiencies in the SWFPA
18 cannot raise a "substantial issue" for review by CalRecycle.

19 Claims 5, 12, and 13 are within CalRecycle's jurisdiction, but the objections raised by
20 Petitioner are trivial rather than substantial, and do not warrant review by CalRecycle.

21 Petitioner's general assertion in Claim 1 that the SWFPA and JTD lack sufficient detail
22 amounts to a general statement that a more complex site requires a more detailed permit
23 application, and a conclusory statement that this permit application is not detailed enough.
24 Petitioner has not identified any defects other than those alleged in its discussion of Claims 2

25 _____
26 ² The LEA's authority over these matters is derived from CEQA, and LEA's role as the CEQAn
LEAd Agency pursuant to County-wide ballot Proposition C (1994).

27 ³ The LEA's filing for the local Hearing Panel did not assert that Claim 8 was outside the scope
28 of the Act. We have since considered the specific assertions made in Claim 8 in more detail.

1 through 13, and no other alleged failures are called out in the petition. The petition does not
2 include citations to the record to support this assertion as a separate Claim.

3 Setting aside the procedural defects of the appeal, all of the Claims asserted by Petitioner
4 also fail on the merits because LEA at all times conformed with the requirements of the Act. As
5 will be seen, every topic required to be addressed by the California Code of Regulations (“CCR”)
6 has been addressed with sufficient clarity and detail. Nothing more is required. Accordingly,
7 Petitioner’s appeal from LEA’s complete and correct determination should be denied, because it
8 fails to raise a substantial issue, and because it fails to demonstrate that LEA violated the Act.

9 **II. PROCEDURAL BACKGROUND**

10 The SWFPA before CalRecycle is the application submitted by GCL and determined to be
11 complete and correct by LEA on February 1, 2011. The SWFPA generally consists of Form E-
12 177 and supporting documents, and the JTD, prepared in accordance with the applicable
13 regulations.

14 On March 3, 2011, Petitioner appealed LEA’s determination and filed a statement of the
15 issues, which alleged thirteen deficiencies. LEA’s Response to Petitioner’s statement of the issues
16 (“LEA Response”) was submitted on March 15, 2011, and Petitioner filed a reply on March 25,
17 2011. As noted in Petitioner’s appeal, a hearing before the San Diego County Solid Waste
18 Hearing Panel was scheduled for March 30, 2011, but was cancelled when one of the panelists
19 recused himself, citing a conflict of interest. The independent advisory attorney to the Hearing
20 Panel, from County Counsel’s office, determined that a hearing before the County Solid Waste
21 Hearing Panel could not proceed. On April 14, 2011, Petitioner filed this appeal with CalRecycle
22 and attached its previous statement of the issues.

23 On May 13, 2011, the Director of LEA submitted proposed Solid Waste Facility Permit
24 #37-AA-0032 to CalRecycle for its concurrence review, in accordance with Public Resource Code
25 section 44009.

26 ///

27 ///

28

1 **III. STATEMENT OF FACTS**

2 The SWFPA was submitted by GCL as incomplete on August 5, 2010, in accordance with
3 27 CCR section 21580. The SWFPA is over 3,000 pages long. Due to its submittal as an
4 “incomplete package,” GCL was allowed up to 180 additional days to correct any deficiencies.

5 During this 180-day period, the SWFPA underwent a comprehensive review. LEA staff
6 identified issues and provided specific comments to GCL. GCL supplemented and corrected the
7 SWFPA, and provided a summary table indicating the response taken to each LEA
8 comment/proposed action (Exhibit 2). Thereafter, LEA commissioned an independent peer
9 review of the SWFPA by URS Corporation, an expert solid waste consulting firm. URS submitted
10 tracking tables that identified issues (Exhibit 3) and provided detailed comments in a preliminary
11 report (Exhibit 4). Based on this extensive third-party review, GCL again supplemented and
12 corrected the SWFPA, and provided an updated summary of the response taken to each URS
13 comment/proposed action. URS reviewed GCL’s responses, and provided a final Memorandum to
14 LEA on January 28, 2011 (Exhibit 5).

15 In addition to checking for errors and omissions in the SWFPA URS also reviewed all of
16 the key design assumptions for the landfill specifically against the compliance criteria set out in
17 state law and regulations. URS focused on the requirement for sufficient detail set out in 27 CCR
18 section 21570(d). URS made 35 separate findings in its report, concluding that all reviewed
19 design elements were reasonable, sufficiently detailed, and in compliance with applicable
20 requirements. As can be seen, LEA went far beyond the normal process to assure that the SWFPA
21 was complete and correct, and included all of the information LEA needed to take action on the
22 application in accordance with its authority under the Act.

23 **IV. SCOPE OF LEA AND STATE AGENCY AUTHORITY**

24 Before addressing the specific assertions of Petitioner, it may be helpful to address
25 generally the extent to which CalRecycle may and may not review whether the LEA “failed to act
26 as required by law or regulation” in accepting this application as complete and correct.

27 ///

28 ///

1 The LEA has a unique role with respect to the Gregory Canyon Landfill project, because
2 the project was the subject of a 1994 County-wide initiative known as Proposition C, attached as
3 Exhibit 6. LEA became the Lead Agency under CEQA, because land use entitlements for the
4 landfill project were obtained through the initiative process. LEA certified a Final Environmental
5 Impact Report dated, December 2002 (“FEIR”), and a Revised Final Environmental Impact
6 Report, dated March 2007 (“RFEIR”), and approved three Addendums to the Final Environmental
7 Impact Report dated July 2008, December 2009 and May 2010, respectively. As a result, LEA’s
8 authority over the project is derived from two separate and distinct sources – CEQA and the Act.

9 Permitting under the Act includes attention to environmental issues related to the LEA’s
10 responsibilities under the Act.

11 Petitioner asserts that CalRecycle can overturn the LEA’s decision to accept GCL’s
12 application if CalRecycle concludes that the LEA has not complied with CEQA. That assertion is
13 incorrect for several reasons.

14 First, the review of whether an LEA has failed to act as required by law authorized by
15 sections 44307 and 45030 of the Act only extends to actions pursuant to the Act. The Act includes
16 Section 44012, which instructs LEAs, when issuing a permit pursuant to the Act, to give primary
17 consideration to the protection of public health and safety and preventing environmental damage,
18 and to make long term protection of the environment the guiding criterion. But review under
19 sections 44307 and 45030 of the Act does not extend to actions pursuant to legal authority other
20 than the Act and its related regulations, and the interpretation and application of the Act itself must
21 be harmonized with other state statutes, including CEQA. Petition-based review of LEA
22 permitting actions for compliance with Section 44012 of the Act can only extend to LEA actions
23 that are based on authority provided by the Act.⁴ Section 44012 cannot be tortuously construed to
24 establish an Act-based procedure for challenging LEA actions taken pursuant to CEQA,

25
26 ⁴ Note that Section 44012 may not be applicable in this proceeding at all, because the LEA’s
27 acceptance of a permit application is not an action “issuing or revising” a permit. Section
28 44012 is also not applicable to CalRecycle review of proposed LEA permits. The scope of
CalRecycle’s review of a proposed permit is set out in Section 44009 of the Act.

1 particularly since CEQA provides its own detailed procedures, standing requirements, statutes of
2 limitations and standards of review. This jurisdictional limitation would have applied to the local
3 Solid Waste Hearing Panel to the same extent it applies here to CalRecycle.

4 Second, under the Act CalRecycle does not supervise or oversee the LEA in the LEA's
5 capacity as CEQA LEA agency. CalRecycle has no role in reviewing the LEA's substantive
6 compliance with CEQA, unless it takes specific timely actions pursuant to the "responsible
7 agency" provisions of CEQA. None of these actions have been taken by CalRecycle at this time,
8 so none can be at issue in this determination.

9 Third, permit applications may be accepted by an LEA as complete and correct based on a
10 statement of the "status" of CEQA; *completion* of the CEQA process is not a requirement. The
11 LEA could have accepted this application as complete and correct even if the applicant had stated
12 that compliance with CEQA had not yet been completed. The determination that a permit
13 application is complete and correct does not require a finding of CEQA compliance by the LEA,
14 much less by a Hearing Panel or CalRecycle.

15 Nevertheless, at the time the LEA accepted this permit application, there were no pending
16 CEQA determinations for the LEA to review. The litigation process, including appeals, was
17 complete for CEQA actions the LEA had already taken. The LEA subsequently adopted CEQA
18 findings and a separate statement of overriding considerations for this project when it forwarded a
19 proposed permit for review by CalRecycle, but those actions post-date the LEA action Petitioner
20 has challenged, and are not at issue here.

21 CalRecycle likewise has no jurisdiction to review whether the SWFPA adequately
22 addresses requirements of the Act which the Act reserves to the RWQCB, such as the design of
23 the landfill liner and monitoring systems for the protection of ground water and surface water
24 resources. The JTD addresses these issues because the JTD is a joint document for the LEA and
25 RWQCB. But the LEA's acceptance of the JTD as complete and correct does not imply any LEA
26 determination as to matters within the exclusive jurisdiction of the RWQCB, nor does it expose
27 RWQCB matters to review or revision by CalRecycle where such review is expressly prohibited
28 by Act.

1 These limitations on CalRecycle review of RWQCB matters are not eroded by section
2 44012 of the Act. Section 44012 must be construed to be consistent with the rest of the Act, and
3 therefore cannot be construed to negate the allocations of responsibility between the LEA and
4 CalRecycle on the one hand, and the RWQCB on the other hand, elsewhere in the Act.

5 **V. STANDARD OF REVIEW**

6 This section addresses the standard of review for two separate issues: whether the Claims
7 in the petition present a “substantial issue” and whether the LEA acted in conformance with the
8 Act and its regulations.

9 Neither Public Resources Code section 45031(a) nor any associated regulations define the
10 phrase “substantial issue.” Nor has any reported judicial decision ever considered how to define
11 the term in the context of the Act. However, this issue has been analyzed previously by the
12 CIWMB and its staff on at least one occasion: the Appeal of the Decision of the Solid Waste
13 Independent Hearing Panel, County of Solano, Case No. LEA-2009-01 (“SPRAWLDEF”). In the
14 Staff Report prepared for the Board in that case, it was noted that, in the absence of any direction
15 from the Legislature or the courts, the determination of whether a substantial issue has been raised
16 is left to the sound discretion of the decision-making agency. Based on well-established law,
17 courts generally defer to administrative agencies when those agencies interpret the meaning of
18 statutes and regulations within the agencies’ purview. *See, e.g., Alberstone v. California Coastal*
19 *Commission* (2008) 169 Cal.App.4th 859, 864. That same deference is appropriate here.

20 For 9 of Petitioner’s 13 Claims, a determination of whether a “substantial issue” has been
21 raised will turn on the legal questions of the LEA’s duty and authority, and CalRecycle’s
22 authority. In the SPRAWLDEF matter, the Petitioner asserted that low tipping fees at a regional
23 landfill that was seeking a permit modification were undermining broader State and regional waste
24 management policies, and asserted that the application for a permit modification should have been
25 denied or the permit conditioned by the LEA to avoid these adverse impacts.

26 CIWMB staff and legal counsel recognized that waste management policy issues were
27 potentially of interest to CIWMB, but also recognized that LEA authority is not arbitrary or
28 unconstrained. In the Staff Report, legal counsel advised the CIWMB that a preliminary legal

1 question had to be asked – whether the LEA had a duty and the authority to deny or condition a
2 proposed SWFP on the grounds asserted by petitioner. Staff noted that petitioner had not
3 identified any source of such authority (it was petitioner’s burden to do so), and stated that staff
4 was not aware of any such authority nor of any such duty “imposed on the LEA by the [Act] or
5 Board regulations....” (Staff Report at 9:5-9.) “An issue raised by an appellant cannot be a
6 ‘substantial issue’ if the LEA has no authority to take the action that the appellant demands and
7 the Board has no authority to command the LEA to take such action.” (Staff Report at 11:15-17.)
8 The CIWMB concluded on these grounds that the petition did not raise a substantial issue, and
9 declined to hear an appeal. Similarly in this case, the legal questions of LEA authority and duty
10 and CalRecycle authority must be addressed first. Where there is no duty and authority, there can
11 be no “substantial issue” for CalRecycle to review.

12 It is explicit in the Act that the LEA and CalRecycle have no authority over matters within
13 the exclusive jurisdiction of the RWQCB, and on that basis CalRecycle must decline to review the
14 five RWQCB-based Claims of Petitioner (numbers 6, 7, 9, 10 and 11). As the Staff Report in
15 SPRAWLDEF recognized, there can be no substantial issue where the LEA lacks authority to act
16 and CalRecycle has no authority to command.

17 If CalRecycle determines that some or all of Petitioner’s Claims raise a “substantial issue,”
18 a hearing on the merits may proceed. Petitioner would have the burden of proving that LEA
19 “failed to act as required” by law or regulation. Pub. Res. Code §§ 44307 and 45032(b). Within
20 the context of the Act, this language is to be read as requiring proof that the LEA abused its
21 discretion when it accepted this permit application. *SPRAWLDEF v. County of Solano*
22 *Department of Resource Management* (2008) 167 Cal. App. 4th 1350, 1362. This is a heavy
23 burden of proof, because pursuant to Evidence Code section 664, it is presumed that LEA has
24 acted properly. As stated by the appellate courts, the “effect of the rebuttable presumption created
25 by section 664, is to impose upon the party against whom it operates the burden of proof as to the
26 nonexistence of the presumed fact.” (Citation omitted.) *California Advocates for Nursing Home*
27 *Reform v. Bonita* (2003) 106 Cal. App. 4th 498, 505. Petitioner would have to overcome the
28 presumption and prove the LEA failed to act by a “preponderance of the evidence.” See, Section

1 6(D) of the Procedures Manual; *see also* Cal. Admin. Hearing Practice Section 7.51 (“Because
2 administrative proceedings are civil in nature. . . the standard of proof used in most cases is a
3 preponderance of the evidence.”). As shown below, Petitioner cannot make the requisite showing.

4 **VI. FORMAT FOR ARGUMENT**

5 CalRecycle proposes to make determinations on both the “substantial issue” question and
6 on the merits of any Claims that need to be resolved based on a single filing by each Party, and on
7 a single hearing on June 13, 2011. To cover all of the necessary ground, the remainder of this
8 Response is separated into three sections. Section VII discusses why Claims 2 through 13 fail to
9 raise a “substantial issue.” Section VIII will discuss Claim 1 and demonstrate that the level of
10 detail provided in this permit application should be expressly acknowledged by CalRecycle as
11 adequate. Section IX will discuss how Claims 2 through 13 fail on the merits.

12 **VII. ARGUMENT – FAILURE TO RAISE SUBSTANTIAL ISSUES**

13 LEA submits that of the thirteen Claims made in Petitioner’s statement of the issues, eight
14 Claims fail to raise a “substantial issue” because they relate to matters beyond the duty and
15 authority of LEA and beyond the authority of CalRecycle to command the LEA under the Act and
16 its regulations. One claim is based on a mistake of law. Petitioner’s objections in three additional
17 Claims are trivial rather than substantial, and do not warrant review by CalRecycle.

18 **A. Matters Related to Water Quality Protection Fall Outside the Act.**

19 Petitioner’s statement of the issues includes five substantive claims that relate to the
20 protection of water quality. Those are Claim 6 (Groundwater Monitoring Well Locations), Claim
21 7 (Mitigating a Foreseeable Release), Claim 9 (Design Features – as applied to the design of storm
22 drains), Claim 10 (Leachate Control and Recovery), and Claim 11 (Desilting Basin).

23 Each of these issues falls outside of the duty and authority of LEA and CalRecycle due to
24 the Solid Waste Disposal Regulatory Reform Act of 1993, found at Public Resources Code section
25 43101, *et seq.* Section 43101(c)(1) mandates that a “clear and concise division of authority shall
26 be maintained in both statute and regulation to remove all areas of overlap, duplication, and
27 conflict between [CalRecycle] and the state water board and regional water boards, or between
28 [CalRecycle] and any other state agency, as appropriate.” Section 43101(c)(2) mandates that the

1 “state water board and the regional water boards shall be the sole agencies regulating the disposal
2 and classification of solid waste for the purpose of protecting the waters of the state.” The
3 regulation that implements this legislation is very direct – the “proposed solid waste facility permit
4 shall contain the EA’s conditions. The proposed solid waste facilities permit shall not contain
5 conditions pertaining solely to air or water quality, nor shall the conditions conflict with
6 conditions from [waste discharge requirements] issued by the RWQCB.” (Emphasis added.)
7 27 CCR section 21650(i).

8 Because of this, the LEA’s obligation with respect to acceptance of this application was
9 simply to assure that these issues were included in reasonable detail in the SWFPA. LEA was not
10 obligated to undertake a substantive review. Instead, the regulations mandate that information is
11 “correct” if it is sufficiently descriptive. 27 CCR section 21650(f)(2). This distinction is
12 important, both to assure that the LEA does not address subject areas precluded by Public
13 Resources Code section 43101(c)(2) and over which it lacks permitting authority under 27 CCR
14 section 21650(i), but also to properly allow the expert agency, the Regional Water Quality Control
15 Board, to address substantive matters related to the protection of water quality.

16 **B. Claim 2 Regarding the PCPCMP is Based on a Mistake of Law.**

17 The petition asserts that the PCPCMP submitted by the applicant had to be approved by the
18 RWQCB and CalRecycle before the permit application could be accepted by the LEA. Petitioner
19 is incorrect. In order for LEA to make its complete and correct determination, the PCPCMP need
20 only be deemed complete by the reviewing agencies. 27 CCR section 21570(f)(6), 27 CCR
21 section 21860(e). As is discussed in more detail in Section IX of this Response, the PCPCMP has
22 been deemed complete. Petitioner’s selection of regulatory provisions to quote in support of its
23 argument in its Petition is incomplete (27 CCR section 21860(e) is not acknowledged), and its
24 application of the relevant regulations is therefore incorrect.

25 Petitioner’s March 25, 2011 Reply to the local Hearing Panel conceded the application of
26 27 CCR section 21860, but argued that this regulation improperly binds the actions of the RWQCB
27 in a CalRecycle regulation. However, 27 CCR section 21860 simply says what it says – if the
28 RWQCB does not provide notice of incompleteness of the PCPCMP within 30 days, the LEA can

1 deem the PCPCMP complete. Petitioner's concession in its prior Reply should effectively remove
2 this Claim from the Statement of Issues, but in any event, because Claim 2 is based on a mistake
3 of law, it cannot raise a "substantial issue" for review by CalRecycle.

4 **C. Matters Related to Greenhouse Gas Impacts Fall Outside of the Act.**

5 Claim 3 asserts that LEA, prior to its complete and correct determination, should require
6 that GCL undertake additional environmental impact review, particularly with regard to potential
7 impacts associated with greenhouse gas ("GHG") emissions. This assertion does not raise a
8 "substantial issue" because the LEA and CalRecycle have no authority under the Act to require
9 that GCL undertake the additional analysis demanded by Petitioner in order to render a permit
10 application complete and correct. According to the applicable regulations, an application is
11 complete and correct if it includes either evidence of compliance with CEQA or information on
12 the status of compliance with CEQA. 27 CCR sections 21570(f)(3)(A), (B). Attachment SWFP -
13 C in the permit application package addressed CEQA compliance and, at the very least, provided a
14 complete and accurate description of the status of CEQA compliance. Petitioner does not contest
15 the adequacy or accuracy of Attachment SWFP-C, and therefore does not raise a substantial issue.

16 Moreover, CalRecycle lacks the authority to direct the LEA to make a different CEQA
17 determination. As discussed in Section IV of this Response, above, CEQA provides for and
18 governs CEQA-related challenges, and sections 44307 and 45030 of the Act cannot be construed
19 to create parallel and inconsistent review mechanism.

20 Nor can Petitioner bring the GHG issue within the scope of LEA regulatory authority
21 under the Act rather than under CEQA. GHG regulation is a matter falling within the authority of
22 the air districts, and in this case, the San Diego Air Pollution Control District ("SDAPCD"). Were
23 LEA to regulate on this subject matter, it would be inconsistent with the requirement in Public
24 Resources Code section 43101(c)(1) to "remove all areas of overlap, duplication, and conflict . . .

25 ///

26 ///

27 ///

28 ///

1 between the board and any other state agency, as appropriate,” and the express direction in
2 27 CCR section 21650(i) that the proposed solid waste facilities permit shall not contain
3 conditions pertaining solely to air quality. SDAPCD operates as a local agency enforcing and
4 implementing the requirements of the California Air Resources Board; LEA and CalRecycle
5 cannot usurp the SDAPCD’s authority.

6 Because neither the LEA nor CalRecycle could order the CEQA action sought by
7 Petitioner, Claim 3 of the petition cannot raise a “substantial issue.”

8 **D. Matters Related to Local Land Use Regulation Fall Outside of the Act.**

9 Claim 4 asserts that the LEA should have rejected the permit application because final
10 arrangements related to protection of aqueduct pipelines on GCL’s property have not been
11 concluded between GCL and the San Diego County Water Authority (“SDCWA”). With respect
12 to the aqueduct pipelines, Proposition C required that GCL reach an agreement with SDCWA for
13 protection of the aqueduct pipelines, but established no time frame for reaching that agreement.
14 Acting as CEQA LEA Agency, the LEA included a mitigation measure in the FEIR and RFEIR
15 directing that the agreement must be reached prior to commencement of construction. Petitioner
16 asserts that the Act requires that this agreement be reached prior to acceptance of the SWFPA.

17 However, Petitioner does not, and cannot, point to any provision of the Act or its
18 regulations that address local land use issues generally, or the protection of aqueduct pipelines
19 specifically. This project requirement arises solely from Proposition C and the mitigation measure
20 imposed under CEQA. The Act does not confer authority on LEA or CalRecycle to interpret local
21 land use requirements or to require that GCL complete its arrangements for protection of the
22 aqueduct pipeline on a timeline chosen by Petitioner. And, as explained above, Public Resources
23 Code section 45032(b) indicates that LEA and CalRecycle cannot address the merits of the
24 project’s CEQA review in this appeal.

25 Because CalRecycle has no authority to direct the LEA not to accept a permit application
26 unless a specific contract between the permit applicant and a local agency is in place, Claim 4
27 cannot raise a “substantial issue” for CalRecycle review.

28 ///

1 **E. General Matters Related to Fire Protection Fall Outside of the Act.**

2 Claim 8 asserts that the SWFPA provides an inadequate discussion on fire protection, and
3 in particular, an inadequate analysis of wild fires and excavation blasting. Petitioner’s criticism is
4 based on an overly expansive reading of the Act. Because the specifics of this Claim do not
5 implicate authority that the LEA or CalRecycle derive from the Act, the Claim cannot raise a
6 “substantial issue” for CalRecycle review.

7 The Act as implemented by CalRecycle imposes three requirements related to fire
8 protection. First, Item 6.C of the SWFP application form requires an attachment showing “Fire
9 District Compliance,” which means a showing that the facility is able to comply with fire code
10 requirements. That attachment was included in the permit application package, as part of
11 Attachment SWFP-D. Second, 27 CCR section 21600(b)(8)(A) requires that the SWFP describe
12 the procedures for handling burning waste and preventing landfill fires. That analysis is found in
13 Section B.5.3.5 of the JTD. Burning waste is prohibited, and procedures for minimizing the
14 potential for landfill fires are provided. Third, Public Resources Code section 44151 requires a
15 discussion of flammable clearance provisions. Section B.5.3.5 of the JTD, which also addresses
16 this issue, includes specific measures to meet this requirement and an overview of the enforcement
17 authority over this requirement. Petitioner does not assert that the SWFPA is inadequate regarding
18 these matters, and because these are the only fire-related matters that are relevant under the Act,
19 Petitioner has not raised a “substantial issue” related to fire protection.

20 Instead, Petitioner is concerned with wild fires, the potential for fire impacts from blasting,
21 and more generally, fire protection services. However, none of these items is a required element
22 for a complete and correct SWFPA. Petitioner provides no citation to the Act or its regulations
23 that requires a discussion of these subject matters in the SWFPA. As a result, Petitioner does not
24 raise an issue that would enable CalRecycle to direct the LEA not to accept this permit
25 application. The authority of the LEA over the fire protection issues raised by Petitioner comes
26 from LEA’s role as the CEQAn LEAd Agency, pursuant to Proposition C. As discussed in
27 Section IV of this Response, CalRecycle has no authority to review LEA CEQA actions, and
28 compliance

1 ///

2 with CEQA is not a requirement for acceptance of a permit application. Therefore Claim 8 cannot
3 raise a “substantial issue” for CalRecycle review.

4 **F. Petitioner’s Other Claims Raise Only Trivial Issues not Substantial Issues.**

5 Claim 5 concerns inclement weather. The bridge for the main access road to this landfill
6 has been designed to accommodate a water level in the San Luis Rey River 18 inches higher than
7 the anticipated water level during a 100 year flood. Claim 5 asserts that the permit application
8 should have provided additional detail on contingency arrangements and “what would occur” if
9 that margin for bridge clearance were to turn out not be adequate. The manner in which the
10 landfill will be operated is relevant under the Act, but CalRecycle regulations define what a JTD
11 must include concerning inclement weather. Specifically, 27 CCR section 21600(b)(4)(A) states
12 that a JTD must “describe how the site design accommodates or provides for...climatological
13 factors...” The JTD does this. Apart from the flood-accommodating design of the bridge itself,
14 the actions to be taken in response to high river conditions are adequately described on page B.4-
15 14 of the JTD. The requirement for further discussion that Petitioner seeks to impose is
16 Petitioner’s own invention. Moreover, Petitioner provides no evidence concerning flood
17 conditions that could affect this bridge, and no evidence that the contingency measures that are
18 described in the JTD would be insufficient. Unsupported and vague speculation of this kind,
19 against a standard that does not exist under the Act, does not raise a “substantial issue” warranting
20 review by CalRecycle.

21 Claim 12 objects to a lack of detail or precision in the JTD concerning construction in a
22 floodplain, the impacts of such construction, and to a lack of Federal Emergency Management
23 Agency (“FEMA”) permits. Petitioner provides no evidence that any FEMA permits are required
24 (none are) and does not cite to any requirements in the Act that have not been met. In fact, state
25 regulations do not prohibit desilting basins in a floodplain. The most nearly applicable regulations
26 is 27 CCR section 20260(c), which is an RWQCB requirement. That regulation merely requires
27 that landfills in floodplains be designed to prevent inundation or washout during floods. And even
28 that requirement does not apply to a desilting basin; “landfill” for purposes of 27 CCR section

1 20260(a) is defined as the unit in which waste is disposed (27 CCR section 20164). The waste
2 disposal area proposed in the Gregory Canyon permit application is not in or near a floodplain.
3 There is nothing significant or relevant in this Claim for CalRecycle to review, therefore the claim
4 does not raise a “substantial issue.”

5 Claim 13 asserts that the JTD should have provided more detail on location and
6 construction details for rockfall protection measures, so that the impacts of that construction could
7 be analyzed. Section D.4.7 of the JTD includes a discussion of rockfall protection, and Figure 36
8 of the JTD depicts typical designs for this feature. This was more than adequate for LEA to
9 evaluate environmental effects and determine conformance with applicable requirements.
10 Moreover, this claim asserts that construction within “open space” areas would not be allowed.
11 Open space preservation requirements for this project arise out of Proposition C, and requirements
12 to analyze the impacts of construction arise out of CEQA. Because the open space requirement
13 arises out of the Act, to this extent it cannot raise a “substantial issue” for purposes of CalRecycle
14 review. Petitioner’s general assertion that more design detail should be required at the permit
15 application stage for these protective features also does not raise a substantial issue for CalRecycle
16 review.

17 **VIII. ARGUMENT – SUFFICIENCY OF DETAIL**

18 Petitioner’s general assertion in Claim 1 is that the SWFPA and JTD lack sufficient detail.
19 The detail actually contained in these submissions is quickly apparent in any review of the
20 SWFPA (Exhibit 7), the main text of the JTD (Exhibit 8) and attachments to the JTD (Exhibit 9,
21 on disc). Petitioner does not support their general argument of insufficient detail with any
22 citations to this extensive record. Nor did Petitioner identify any required element of a permit
23 application that has not been addressed. 27 CCR section 21570(f) lists 12 things a “complete and
24 correct” application package must include.⁵ Petitioner does not assert that any of those elements is

25
26 ⁵ This list is not described in the regulations as a “minimum” list, as Petitioner asserts, but as a
27 “not necessarily limited to” list. The grant of grace in the latter clause means both that a
28 permit application would not be “incorrect” if it contained other elements or information, and
that it would not be “incomplete” if it only contained these twelve elements.

1 missing in this application package. One of the 12 elements is a “complete and correct” JTD.
2 27 CCR section 21600 (Exhibit 10) lists 45 required elements for a JTD. Petitioner does not assert
3 that any of those elements is missing in the JTD. Petitioner offers only the most generalized
4 objections as to level of detail, even though the permit application package accepted by the LEA is
5 more than 3,000 pages long.

6 The Act provides some guidance as to how much detail concerning the required elements
7 of a permit application and JTD is necessary. 27 CCR section 21570(d) states that an application
8 has to have “adequate detail” – specifically, enough detail to enable a “thorough evaluation of the
9 environmental effects of the facility” and to “estimate the likelihood of conformance” with state
10 standards. Contrary to the assertion of Petitioner, this is not a requirement for construction-level
11 designs for all aspects of the facility, nor a requirement that the applicant specify design elements
12 that show a clear single path to compliance with regulatory standards. This is a functional
13 standard that expressly contemplates subsequent work to better understand the facility.
14 Environmental effects need not have been thoroughly evaluated at the application stage – they
15 only need to be capable of being evaluated. Compliance with the Act need not have been proved –
16 the Act only requires that the likelihood of compliance be capable of being estimated by an expert
17 LEA.

18 It is Petitioner’s burden to prove not only that the application package fell short of the
19 requirements for detail set out in 27 CCR section 21570(d), but also that the LEA abused its
20 discretion when it implicitly determined that the application package met those requirements for
21 detail. Because the environmental impacts of this project have been thoroughly analyzed in
22 CEQA documents that have been certified, litigated and upheld by the courts, it would be virtually
23 impossible for Petitioner to show that the permit application package provided insufficient detail
24 to allow environmental effects to be evaluated. As for estimating the likelihood that the facility
25 will be able to conform to standards, the level of detail required is whatever is necessary to allow
26 the specified evaluation by the LEA. CalRecycle must give considerable deference to an LEA
27 determination that information supplied to the LEA was adequate to support LEA determinations.
28 In light of that deference, and Petitioner’s nonexistent efforts to offer any proof on this point,

1 Petitioner has failed to meet its heavy burden, and the Claim should be rejected.

2 Furthermore, the Act does not provide a specific definition of what “complete and correct”
3 means in context of the JTD. The Act does provide broadly applicable definitions for “complete”
4 and for “correct,” however, those general definitions must be used with care in determining what it
5 means for a JTD to be “complete and correct.”

6 For instance, “complete” is defined at 27 CCR section 21563(d)(1) to mean “...all
7 requirements placed upon the operation of the solid waste facility by statute, regulation, and other
8 agencies with jurisdiction have been addressed in the application package.” That definition fits
9 very poorly with the requirement for a “complete and correct JTD” in 27 CCR section 21570(f)(2).
10 The JTD by itself is not “the application package” referenced within the definition. The JTD is a
11 document that describes the proposed facility; it is not a compilation of all applicable
12 requirements. Section 43101(c)(3) is clear that the “technical report” included with a permit
13 application (i.e., the JTD) is only required to incorporate the requirements of the solid waste
14 facility permit for the LEA and waste discharge requirements for the RWQCB. It is therefore
15 appropriate to say that a “complete permit application” must be “complete” as defined in 27 CCR
16 section 21563(d)(1), but it is internally contradictory to say that a mere JTD must be “complete”
17 according to the application-referencing definition in 27 CCR section 21563(d)(1).

18 In practice, the required contents of a JTD need not be extrapolated from this poorly
19 fitting, general purpose definition. Instead, state regulations provide a detailed description of what
20 a JTD must contain in three columns of detailed regulatory text included in 27 CCR section
21 21600, attached as Exhibit 10. The LEA and URS reviews of the permit application package
22 cross-referenced the JTD against these detailed regulatory specifications, and concluded that those
23 specifications had been met. See Exhibits 2 and 3.

24 With regard to the “complete” nature of the SWFPA, the definition in 27 CCR section
25 21563(d)(1) refers to “all requirements placed on the operation of the facility,” and Petitioner’s
26 quotation of this definition in Claim 1 includes emphasis that this clause relates to “other agencies
27 with jurisdiction.” Petitioner does not identify any important “other agency” requirements have
28 been omitted from the permit application package, and thus have again failed to meet their burden

1 of proof. Moreover, this definition does not expressly or implicitly require that compliance with
2 all “other agency” requirements be demonstrated in the permit application package. The definition
3 of “complete” at 27 CCR section 21563(d)(1) only calls out requirements that are “placed upon
4 the operation” of the facility. “Placed upon” can only mean actual permit conditions imposed by
5 other agencies, to the extent they exist at the time of the complete and correct determination by
6 LEA. Even these requirements, to the extent they exist when an application is accepted, only need
7 to be “addressed” in the permit application. A recitation of the information required by RWQCB
8 contained in the JTD is set forth in Table 1 of the JTD, at p. A.1-6 - A.1-9, and all required topics
9 are “addressed.” (The JTD, not including appendices, is attached to this Response as Exhibit 8.
10 JTD Appendices are included on the Exhibit 9 CD.)

11 In summary, CalRecycle cannot direct the LEA to reject an application because the
12 application does not speculate on the future conditions that may be imposed on a facility by
13 another agency with approval authority. Certainly, the application need not and cannot
14 demonstrate compliance with these potential requirements, as Petitioner appears to be asserting.
15 27 CCR section 21600 – which expressly sets out requirements for JTDs – is more informative
16 and authoritative as to how much detail must be provided as to other agency requirements: the
17 JTD must include a “Compilation of approvals – Provide a list of all approvals having jurisdiction
18 over the disposal site.” 27 CCR section 21600(b)(9). That list is provided in Section D.2.2.4 and
19 Table 5 of the JTD.

20 Moving on to the next requirement, that a JTD be “correct,” that term is defined for general
21 purposes at 27 CCR section 21563(d)(2) as meaning that “...all information provided by the
22 applicant regarding the solid waste facility must be accurate, exact, and must fully describe the
23 parameters of the solid waste facility.”⁶

24 Petitioner apparently wants to assert that only a fully detailed description of the facility, at
25

26 ⁶ As with the definition of “complete,” this definition is not an exact fit when used as an
27 adjective modifying “JTD,” because the definition refers to information outside of the JTD,
28 i.e., to “...all information provided by the applicant regarding the solid waste facility....”
However, the definition is not problematic in practice and it does go directly to the quality or
“detail” that is required for information in a permit application package.

1 the construction plan level, could be “correct.” But that is not the case. To the extent the
2 definition of “correct” in 27 CCR section 21563(f)(2) requires description, what must be described
3 are “parameters,” not features or details. Dictionaries define “parameters” as “limits,”
4 “boundaries,” or “characteristic elements.” The best guide to which “parameters” of a facility
5 must be described in a JTD is 27 CCR section 21600, with its listing of 45 elements that must be
6 included in a JTD. That section also provides guidance on how “accurate,” “exact” and “full” the
7 description of “design parameters” for a facility needs to be. Under “General Design Parameters,”
8 27 CCR section 21600 specifies that a JTD must “Describe how the site design accommodates or
9 provides for the service area, climatological factors, physical setting, soils, drainage, and other
10 pertinent information.” That direction is very general.

11 Under the above standards, the LEA therefore concludes that a JTD that adequately
12 describes the 45 elements specified in 27 CCR section 21600 would be “complete and correct” for
13 purposes of 27 CCR sections 21563(f)(1) and (2) and 21570(f)(2). Petitioner has not and cannot
14 make a serious attempt to meet its burden of proof that some part of this required description has
15 been missed. Certainly, the 3,000-page permit application provides enough detail to satisfy the
16 requirements.

17 Petitioner may intend to assert that the command to provide “correct information” is
18 another way the Act requires the LEA to undertake a substantive review of potential RWQCB
19 requirements. But under this definition information is “correct” if it is sufficiently descriptive of a
20 relevant “parameter.” Maintaining this distinction between the underlying parameters of the
21 facility, and specific requirements the RWQCB may impose in the future to protect water quality,
22 is necessary at the permit acceptance stage because the RWQCB is the expert agency in matters
23 related to water quality, while LEA is the expert in solid waste facility operations.

24 Setting aside the above responses based on the definitions in the regulations, two
25 additional points are worth mention. First, the LEA, not a Hearing Panel or CalRecycle, is best
26 able to determine how much detail the LEA needs to take a permitting process forward. This is
27 not an unconstrained decision, because the Act and related regulations provide a richly described
28 set of standards for what a SWFPA and JTD must include, and an LEA cannot accept less than

1 this body of law and regulations requires. The 12 elements for an application called out in 27
2 CCR section 21570(f) must be present. The 45 elements for a JTD called out in 27 CCR section
3 21600 must be adequately described. Any requirements imposed by other agencies must be are
4 addressed, and there must be a listing of other required approvals. There must be sufficient detail
5 on these necessary elements to allow evaluation of environmental impacts and an estimate of the
6 likelihood of compliance with the Act by the LEA. But after these regulatory hard points are
7 covered, the permit application is a tool for LEA decision making. The LEA is best positioned to
8 decide how “exact” is exact enough. Under the Act, the decisions that depend on the contents of
9 an application package are LEA decisions.

10 CalRecycle’s ability to second guess an LEA on these determinations is constrained by law
11 in this proceeding. When an LEA accepts a permit application, it is making a determination that
12 the application includes sufficient detail. CalRecycle cannot overturn that LEA decision unless it
13 concludes the LEA has abused its discretion, and CalRecycle cannot make an abuse of discretion
14 determination unless Petitioner provides a record sufficient to overcome the legal presumption that
15 the LEA’s determinations were appropriate. Petitioner has failed to make such showing.

16 A second and separate consideration regarding level of detail is that, if the permit
17 application and review process in this case are found to be insufficient by CalRecycle, CalRecycle
18 would be setting an unrealistic standard for permit application acceptance for all solid waste
19 facilities going forward.

20 The LEA-accepted application package for this facility is the product of an intensive seven
21 month process of refinement, following acceptance of an incomplete application. This recent work
22 was built on more than a decade of prior LEA work, intensive reviews and extensive comments by
23 various parties and informative litigation. The permit application package that was finally
24 accepted by the LEA is more than 3,000 pages long.

25 GCL submitted the SWFPA as “incomplete,” a classification that allowed GCL up to 180
26 additional days to correct deficiencies in the application package. During this 180 day period, the
27 incomplete application package was corrected, updated, supplemented and refined. This was a
28 systematic, documented, well-staffed, comprehensive process. The LEA expended approximately

1 289 staff hours on its internal review of the application package. LEA staff and LEA legal counsel
2 identified issues and provided specific comments to GCL. GCL supplemented and corrected the
3 application package as necessary. GCL then provided a summary table to the LEA indicating the
4 action taken in response to each LEA comment/proposed revision. The LEA considered this table
5 when making its determination that the application package was complete and correct. This
6 “LEA/GCL” tracking table is attached as Exhibit 2.

7 In addition, the LEA commissioned an independent peer review of the application package
8 by URS Corporation, an expert solid waste consulting firm. The LEA and URS reviews
9 overlapped in time. The LEA estimates that URS expended approximately 550 staff hours on this
10 peer review process. In addition to checking for statutory and regulatory deficiencies in the
11 resubmitted incomplete application package, URS checked for consistency between different parts
12 of the application package, and between the application package and the environmental
13 documentation for the project.

14 URS submitted a report, two tracking tables, and a final Memorandum with detailed
15 comments and proposed revisions to the LEA. All of URS’s detailed comments were carefully
16 reviewed by the LEA and GCL, and revisions to the application package were made as
17 appropriate. GCL added response columns to the URS tracking tables indicating the action taken
18 in response to each URS comment or proposed revision. These “URS/GCL” tracking tables were
19 submitted to the LEA by GCL, and were considered by the LEA when making its determination
20 that the refined permit application package was complete and correct. The URS/GCL tracking
21 tables (Table 1 and Table 2) are attached as Exhibit 3. The URS Report is attached as Exhibit 4.
22 After GCL responded to the URS tracking tables, URS reviewed those responses and provided a
23 final Memorandum to the LEA, dated January 28, 2011. LEA staff annotated this memorandum
24 as final changes to the permit application were made. That annotated memorandum is attached as
25 Exhibit 5.

26 **IX. ARGUMENT – ISSUE SPECIFIC COMPLIANCE WITH LAW**

27 Petitioner asserts twelve specific Claims. As discussed above, these Claims do not raise
28 “substantial issues” that should be reviewed by CalRecycle. However, to the extent CalRecycle

1 chooses to review any of these Claims, those Claims should be rejected because Petitioner has not
2 met its burden of proof to overcome the presumption the LEA acted appropriately, and because the
3 LEA has, in fact, acted as required by the Act and related regulations.

4 For many of Petitioner's Claims, there is an unavoidable overlap between the LEA's
5 discussion above of whether a Claim raises a substantial issue under the Act and the discussion in
6 this section of compliance with the requirements of the Act. Our focus here is on burden of proof
7 and facts, but the status of proof and facts is only relevant to the extent a Claim actually implicates
8 the requirements of the Act. The LEA need not show here that it met requirements that do not
9 arise under the Act. See Section IV of this Response, above.

10 A brief summary of the issues of burden of proof and of compliance with the Act as to
11 each Claim is provided below; detailed discussion follows.

12 Claim 2 asserts that the PCPCMP has not been approved by state agencies. That is
13 irrelevant to the LEA's acceptance of this application: The PCPCMP only needs to be deemed
14 complete by, not be approved by, those agencies for permit application acceptance purposes.
15 Where an agency takes no action, the plan submission date and a calendar determine whether these
16 plans are deemed complete. The fact that this plan was deemed to be complete is indisputable.

17 Claim 3 asserts that the application does not demonstrate compliance with CEQA. The
18 LEA believes that assertion is substantively incorrect, but more importantly for this proceeding,
19 the assertion is irrelevant. State law and regulations allow an application to be accepted if it
20 discloses the status of the CEQA process for the project. This application does that.

21 Claim 4 asserts that the LEA could not legally accept this application until there is an
22 agreement in place between the operator and the County Water Authority concerning protection of
23 water aqueducts. This issue arises under Proposition C, not the Act. And, in any event, the LEA's
24 requirement that this agreement be in place prior to construction is fully protective.

25 Claim 5 through 13 assert that the JTD does not include enough design detail in specific
26 areas. Petitioner is incorrect. The LEA's determination that the JTD was complete and correct is

27 ///

28 ///

1 ///

2 supported by the 2,800 pages of information in the JTD, by the URS peer review of key design
3 assumptions for the landfill, and by URS's 35 separate findings that those designs were
4 reasonable, provided the detail required by 27 CCR section 21570(d), and were in compliance
5 with applicable requirements. (See Exhibit 4 at pages 2-1 to 2-4.)

6 As explained above, CalRecycle reviews these LEA determinations on an abuse of
7 discretion standard, and Petitioner bears the burden of proof. Petitioner has not explained how the
8 level of design information in the permit application package on the subject matter of any of these
9 Claims falls short of what is required by 27 CCR section 21570(d). CalRecycle cannot order the
10 LEA to reject this application unless CalRecycle finds that the LEA abused its discretion and
11 accepted an application that was clearly incomplete or incorrect under state law and regulation.
12 On the record presented, following the review process documented in Exhibits 2, 3, 4, and 5, the
13 LEA urges CalRecycle to find that the LEA fully complied with the law when it accepted the
14 SWFPA.

15 **A. Claim 2: Preliminary Closure/Post Closure Maintenance Plan.**

16 Petitioner asserts that the PCPCMP for the landfill must be "approved by the Regional
17 Board and by CalRecycle before the LEA can accept the application..." Petitioner argues that
18 compliance with this requirement has not been demonstrated, because "GCL merely refers to
19 Section 21860, which applies to final closure plans."

20 Petitioner is incorrect as shown above. For the same reasons that Petitioner's argument is
21 based on a misunderstanding of the Act, Petition cannot show that the LEA failed to comply with
22 the Act.

23 We noted briefly in Section VII.B of this Response that Petitioner's selection of regulatory
24 provisions to quote in support of its argument is incomplete, and its application of the relevant
25 regulations is incorrect. A detailed explanation follows.

26 The SWFP permitting regulations do not require that a PCPCMP be "approved" by the
27 Regional Board and CalRecycle before a permit application can be accepted by the LEA. The
28 actual language in 27 CCR section 21570(f)(6), only requires a "completeness determination...as

1 specified in Sections 21780, 21865, and 21890.”

2 Completeness determination procedures are controlled by 27 CCR section 21860. That
3 section is not cross referenced in 27 CCR section 21570(f)(6), but the three sections that are cross-
4 referenced are either silent on procedures, or point to Section 21860. Section 21780 discusses
5 when and how plans must be submitted, Section 21865 discusses the amendment of plans *and*
6 *cross references Section 21860* on the evaluation and approval of plan, and Section 21890
7 expressly requires adherence to plans approved *pursuant to Section 21860* unless changes are
8 approved.

9 27 CCR section 21860 is not limited in its application to “final” closure plans as Petitioner
10 asserts. Unlike other closure plan sections of these regulations, neither the title nor the text of
11 Section 21860 draw a distinction between preliminary and final plans. (This section is titled
12 “Schedule for Review and Approval of Closure and Post-Closure Maintenance Plans.”) There is
13 no other section of the regulations that addresses completeness determinations or the schedule and
14 process for review and approval of closure and maintenance plans, whether preliminary or final.
15 The regulatory provision that applies is 27 CCR section 21860.

16 27 CCR section 21860(c) contains the following critically important language, which
17 Petitioner chose not to attach, cite or quote:

18 **21860(c).** Within 30 days of receipt, closure and postclosure maintenance plans
19 *shall be deemed complete by default* unless the RWQCB, the EA, or the CIWMB
20 determines and informs the operator that the plan is determined to be incomplete
pursuant to applicable CIWMB and SWRCB requirements. ... (emphasis added.)

21 The PCPCMP was provided by GCL to the reviewing agencies on December 23, 2010.
22 These transmittal letters are attached as Exhibit 11. The LEA determined that the PCPCMP was
23 complete on January 23, 2011; this letter is attached as Exhibit 12. The LEA also copied the
24 reviewing agencies on the LEA’s determination. In accordance with 27 CCR section 21860(c), the
25 PCPCMP was deemed complete by default by the other agencies 30 days after receipt by those
26 agencies (i.e., on or about January 23, 2011) because none of the reviewing agencies informed
27 GCL that the PCPCMP was incomplete within thirty days of their receipt of GCL’s submittal.

28 ///

1 ///

2 **B. Claim 3: CEQA.**

3 Petitioner asserts that the LEA has not complied with CEQA because the certified EIR
4 documents for the project are old, because subsequent addendums were not adequate, and because
5 the effects of GHG emissions from the landfill have not been assessed.

6 As discussed above, these assertions do not raise a “substantial issue” under the Act
7 because state law and regulations do not require “compliance with CEQA” before a SWFPA can
8 be accepted as complete and correct. The LEA did not abuse its discretion when it accepted this
9 application because the requirements of the Act were satisfied. Nonetheless, even if Petitioner
10 could raise a substantial issue, and it cannot, then this Claim should be rejected by CalRecycle
11 without further consideration, because after making these assertions Petitioner says nothing
12 further. Mere assertions cannot meet Petitioner’s burden of proof.

13 And, despite Petitioner’s meager contentions, the specific CEQA issues asserted by
14 Petitioner are incorrect. Petitioner previously made the same demand for additional CEQA
15 analysis to address GHG impacts in a letter to LEA dated April 21, 2010. That demand was fully
16 and adequately addressed in a letter from GCL dated June 21, 2010. These letters were not part of
17 the permit application package, but they were known to the LEA when it determined the
18 application was complete and correct. These letters are attached as Exhibits 13 and 14.

19 The LEA’s ability to require a subsequent or supplemental EIR (“SEIR”) for this project,
20 which has a certified EIR, is limited by state law, which provides that an EIR is conclusively
21 presumed to be valid after certification, unless the requirements for a SEIR are met. Pub. Res.
22 Code § 21167.2, and 14 CCR § 15162.

23 Petitioner seems to assert that GHG emissions represent new information that was not
24 analyzed and thus, a SEIR was needed. However, the threat of global warming was well known
25 even before the RFEIR was certified on May 31, 2007, and does not constitute “new information”
26 within the meaning of Public Resources Code section 21166(c).⁷ The revisions to the CEQA

27 _____
28 ⁷ See, *A Local & Regional Monitor v. City of Los Angeles* (2d Dist. 1993), 12 Cal. App. 4th
1773, 1800 (in order to show that an SEIR is required, a petitioner must demonstrate that the

1 Guidelines referred to by Petitioners became effective on March 18, 2010, after the RFEIR was
2 certified. Thus, the revisions are not applicable to this project. This was very recently confirmed
3 by the Fourth Appellate District, Division One in San Diego, in a decision that has not yet been
4 approved for publication for purposes of citation in judicial proceeding. *See, Citizens for*
5 *Responsible Equitable Environmental Development ("CREED") v. City of San Diego*, Appellate
6 Case No. DO57524, May 19, 2011, attached as Exhibit 16. However, the decision provides
7 useful guidance and it may be considered by CalRecycle to the extent relevant for its persuasive
8 value.

9 Moreover, Petitioner presents exaggerated estimates of the emission of GHGs from the
10 landfill, by including only information as to landfill gas generation and not acknowledging that the
11 vast majority of landfill gas would be collected and destroyed. Petitioner's efforts to cherry pick
12 the data should be rejected.

13 **C. Claim 4: Protection of County Water Authority Pipelines.**

14 Water supply pipelines cross the landfill site, outside of the proposed waste footprint.
15 Petitioner describes briefly how landfill construction and operation could affect these pipelines,
16 and quotes Proposition C (Exhibit 6), as follows: "The Project will include work required to
17 protect any San Diego Aqueduct pipelines to the extent and in the manner required by the San
18 Diego County Water Authority." Petitioner then incorrectly equates project to permit,⁸ and states

19 "new information was not known and *could not have been known* at the time the EIR was
20 certified." *Emphasis in original.*); *Citizens for a Megaplex-Free Alameda v. City of Alameda*
21 (2007) 149 Cal. App. 4th 91, 114 (petitioner must establish "new information" could not have
22 been obtained "with the exercise of reasonable diligence."). Since the information on GHG
emissions was available, the conditions for requiring preparation of a SEIR are not met.

23 ⁸ Petitioner argues that the aqueduct-related requirements in Proposition C must be captured in
24 the permit application to the LEA because Proposition C (1) says "the Project" will include
25 "work" to protect the aqueducts, and (2) defines the term "Project" in part by reference to any
26 description submitted with the permit application. Petitioner's theory of construction would
27 also imply, absurdly, that the permit application itself must include "work." But even if one
28 concludes that Proposition C requires the permit application to include a description of
protective measures for the aqueducts that satisfies the Water Authority, Petitioner's Claim
should be rejected for two reasons. First, the permit application in fact contains the protections
called for in the Proposition: the MMRP includes a condition requiring that an agreement
between the operator and the Water Authority be in place prior to construction, and that is all
the Water Authority asked for in its most recent statement to the LEA, at the public meeting on
the permit application. And second, a requirement arising out of Proposition C (or out of a

1 “the issue of how the aqueduct would be protected to the satisfaction of the County Water
2 Authority must be resolved *before the SWFP can be issued....*” (Emphasis added.) Petitioner does
3 not directly contend that this issue must be resolved prior to LEA’s complete and correct
4 determination and that issue need not be resolved at this time.

5 As noted above, Petitioner has not raised a “substantial issue” for review of this Claim
6 because requirements arising outside of the Act are not relevant to the determination that a permit
7 application is complete and correct. Petitioner has also completely failed to meet its burden of
8 proof, because the petition offers absolutely no explanation of why Petitioners believe that their
9 preferred earlier timing for an agreement is either legally mandatory, or factually necessary to
10 ensure protection of the pipelines.

11 Nevertheless, if CalRecycle chooses to address the merits of this issue, the LEA’s
12 determination that this permit application was complete and correct should be upheld. The LEA
13 has stated clearly and repeatedly that it will require this agreement to be in place prior to the start
14 of construction, i.e., prior to any activity that could endanger the pipeline.

15 Petitioners has attached as Exhibit 14 an August 12, 2010, SDCWA letter asking the LEA
16 not to issue a permit until this agreement is in place. SDCWA did not ask in its letter that the
17 *permit application* be rejected as not being complete and correct, so that letter provides no support
18 for Petitioner’s assertion. In any event, the LEA replied to SDCWA, providing appropriate
19 assurances. (Exhibit 15.) SDCWA also then provided comments at the LEA’s public information
20 meeting on this permit. Petitioner included those comments in its Reply Brief for the aborted local
21 hearing panel process, as Exhibit 1, but did not submit the transcript with its petition to
22 CalRecycle. The transcript (attached as Exhibit 17) shows that the SDCWA only asked the LEA
23 to require in its permit that an agreement be in place prior to construction.⁹

24 As this exchange of letters and public meeting comment make clear, Petitioner’s

25
26 tortured interpretation of poor drafting in Proposition C) does not arise out of the Act, and so
cannot raise a “substantial issue” for review by CalRecycle.

27 ⁹ See lines 78:23 to 79:5 of the public meeting transcript. The SDCWA references the LEA’s
28 CEQA condition that an agreement be in place “before landfill construction commences,” and
asks that “this condition” be included in a permit if a permit is issued.

1 unsupported timing argument is in error.

2 Furthermore, the LEA is committed to not allow any landfill construction until the required
3 agreement is in place. Consistent with the LEA's well-known commitment, proposed Solid Waste
4 Facility Permit #37-AA-0032 includes a condition requiring the agreement between the applicant
5 and SDCWA to be in place prior to commencement of construction. That condition is sufficient
6 to ensure that the pipelines are not put at risk by the landfill project. And quite apart from the
7 communications discussed above, it is obvious that acceptance of a permit application does not
8 authorize any activity at the site, much less activity that could endanger these pipelines. An
9 agreement between the operator and the SDCWA at the application acceptance stage of the
10 permitting process is simply not required to ensure protection of these aqueducts.

11 **D. Claim 5: Inclement Weather Operations.**

12 As explained above, the JTD provides for a bridge over the San Luis Rey River that is
13 designed to provide 18 inches of clearance above the expected river level in a 100 year, 24 hour
14 storm. Petitioner asserts that the JTD "fails to discuss" contingency measures if the San Luis Rey
15 River were to rise so high that it damaged the bridge, or otherwise posed risks that required the
16 bridge to be closed. That is incorrect.

17 The JTD states (at page B.4-14) that if there is potential flooding that could overtop the
18 bridge deck, waste haulers will be notified using the ongoing notification system and operations
19 will be halted. Although the JTD does not expressly say so, the same contingency measures
20 would be implemented if the bridge were damaged and could not be used. Pursuant to the
21 requirements of 27 CCR section 21600 (b)(4)(A), the JTD adequately described the actions to be
22 taken in response to high river conditions, as discussed above.

23 Petitioner has not its burden of proof to show that that the climatological scenarios used by
24 the applicant were inappropriate, that the applicant's estimates of river levels in a 100 year storm
25 were incorrect, that the contingency measures described in the JTD are inadequate, or that a storm
26 event that would raise the San Luis Rey River more than 18 inches above that level is likely
27 enough within the operating life of this landfill that it should have been addressed in the JTD.
28 Absent such arguments based on law or fact, the LEA will not speculate on Petitioner's

1 unsupported hypotheticals.

2 Petitioner also states the JTD fails to address risks associated with a landfill that only can
3 be accessed by a bridge. Petitioner has not met its burden to show that access to the landfill under
4 the conditions it postulates would not be feasible. Moreover, the premise of the comment is
5 incorrect; alternative access to the landfill site would be in place for fire protection and other
6 purposes in the event the primary bridge were damaged. The applicant has legal access to this site
7 from the south, well-away from the river (Parcels 12 and 13). The FEIR for the project also
8 described, at page 3-28, the use of an existing low-flow river crossing for movement of
9 construction equipment and materials prior to construction of the landfill access road bridge, at the
10 western end (boundary) of the site. The location of that crossing is depicted, among other places,
11 on Figure 3, of Appendix I-3 of the JTD, and is included in the property description contained in
12 Attachment SWFP-A of the permit application (Parcel 43). That crossing could be used for
13 purposes other than the receipt of waste after a flood subsided if the bridge was damaged.

14 **E. Claim 6: Groundwater Monitoring Well Locations.**

15 The JTD describes an enhanced groundwater monitoring system that GCL proposes to
16 implement, based on the recommendation of Dr. David Huntley.¹⁰ Approval of plans for this
17 enhancement is pending at the RWQCB. GCL and the LEA anticipate that if an RWQCB permit
18 is issued for this landfill, it will require that this system be implemented.

19 Petitioner asserts that the LEA was required to demand the actual installation of this
20 enhanced system before the LEA could accept this permit application. In effect, Petitioner would
21 turn a proposed system enhancement that is under consideration at the RWQCB into an
22 application defect at the LEA. To satisfy Petitioners, the LEA would have to somehow require
23 that this good idea *be implemented* before the idea could be *accepted for consideration* by the
24 LEA or RWQCB. That is not the sequencing that state solid waste facility permitting laws and
25 regulations require. Petitioner cites no authority to support its assertion that the permit application

26
27 ¹⁰ Dr. Huntley's technical memorandum is Exhibit G to Petitioner's Statement of Issues and
28 Appendix C-2 of the JTD.

1 cannot be complete and correct for SWFP purposes because RWQCB has not approved the work
2 plan, or because the additional monitoring wells have not yet been installed. Petitioner has
3 therefore failed to meet its burden of proof.¹¹

4 Petitioner is also challenging the wrong agency, and therefore fails to raise a “substantial
5 issue” for CalRecycle review as discussed above. Groundwater monitoring relates directly to
6 protection of waters of the state, and falls within the regulatory authority of RWQCB. The LEA
7 has no authority to approve the pending work plan for this enhanced groundwater monitoring
8 system, or to impose permit conditions to protect groundwater. The LEA’s role under the Public
9 Resources Code is limited to ensuring, when it accepts a permit application as complete and
10 correct, that groundwater monitoring is addressed in the JTD. It clearly is.

11 Even if requiring compliance with 27 CCR section 20415 was within the LEA’s authority,
12 Petitioner cannot complain at this stage in the permitting process. The purpose of the detection
13 monitoring program (“DMP”) is to monitor groundwater that might be affected by a release from
14 the landfill. The need for a DMP is triggered by the receipt of waste, not by acceptance of a
15 permit application, or even by the issuance of a permit by the RWQCB. 27 CCR section 20420
16 requires that adequate samples have to be taken to establish background, but the regulation does
17 not set a specific time for the sampling, other than prior to waste receipt.

18 The tentative Monitoring and Reporting Program (“M&RP”) for the landfill, at Appendix
19 S, p. 29-30 of the JTD, requires submittal of a plan for expanding and improving the existing
20 groundwater quality network in order to meet all the required performance criteria for a DMP.
21 Although that portion of the JTD was included for the RWQCB and pertains to RWQCB matters,
22 the LEA can discern deadline dates. The submittal date for the work plan, at Appendix S, p. 33 of
23 the JTD, is within 90 days of adoption of issuance of an RWQCB permit. That permit will be
24 issued well before the initial receipt of waste, and for that reason, the project would be consistent
25 with the requirements of 27 CCR section 20415.

26 _____
27 ¹¹ Further research by Petitioner could not cure this defect, because State laws and regulations do
28 not empower the LEA to require physical work on any aspect of a facility as a precondition for
accepting a permit application.

1 ///

2 Finally, regardless of the merits or feasibility of these groundwater monitoring
3 enhancements, and regardless of the status of this plan at the RWQCB, the requirements for the
4 LEA's acceptance of the permit application have been satisfied because those matters were
5 addressed in the JTD. (See Table 1 of the JTD, at p. A.1-6 – A.1-9. The JTD is attached as
6 Exhibit 8.) As discussed in Section VI.A of this Response, that is all that the Act requires.

7 **F. Claim 7: Mitigating a Foreseeable Release.**

8 Petitioner asserts that GCL should have used a different release scenario to determine the
9 amount of assurance for financial responsibility required pursuant to 27 CCR section 22221(a).
10 The release scenario Petitioner dislikes was developed with express reliance on the findings of Dr.
11 Huntley, who also developed the groundwater monitoring enhancements that Petitioner is so eager
12 to have implemented in Claim 6.

13 27 CCR section 22221(a), which addresses financial responsibility coverage amounts for
14 reasonably foreseeable corrective action, is a CalRecycle regulation. Nevertheless, this is an
15 RWQCB concern, which cannot raise a "substantial issue" for consideration by CalRecycle.¹²
16 But even if CalRecycle chooses to view this as a matter the LEA was required to review, there is
17 sufficient information in the JTD to support an LEA determination that the release scenario
18 submitted by GCL was reasonable, and Petitioner has not met its burden to show otherwise.

19 For instance, the JTD, at p. B.5.21-23, included a detailed discussion and rationale for the
20 selection of the reasonably foreseeable release, which formed the basis for the corrective action
21 cost estimate. (See also Table 1 of the JTD, at p. A.1-6 – A.1-9. The JTD is attached as Exhibit
22 8.) Based on that material, there is substantial evidence that a release from the landfill would not
23 significantly impair the alluvial aquifer. In fact, Dr. Huntley opined in Appendix C-2, p.4 of the
24 JTD that any release from fractured bedrock to the alluvial aquifer would be rapidly attenuated

25 _____
26 ¹² The cross-reference in 27 CCR section 22221(a) is to a corrective action cost estimate
27 submitted or approved pursuant to 27 CCR section 22101(a), which is also a CalRecycle
28 regulation. But 27 CCR section 22101(a) states that this cost estimate must be "in accordance
with the program required by the SWRCB pursuant to Section 20380(b)." The development of
reasonably foreseeable corrective action scenarios and of cost estimates for those scenarios is
therefore an RWQCB matter.

1 over a distance of as little as 50 feet downgradient of the interface between the fractured bedrock
2 and the alluvial aquifer, to a point of virtual non-detection. This would be well within the landfill
3 property, and there would be no reasonably foreseeable impact on any downgradient users of the
4 alluvial aquifer.¹³

5 Therefore, this issue is addressed (in some detail) in the JTD. That coverage is sufficient
6 to support acceptance of the SWFPA by the LEA, regardless of any dispute as to whether the
7 release scenario addressed in the JTD is appropriate.

8 **G. Claim 8: Fire Control.**

9 Section VI.E of this Response distinguished between those fire control related assertions of
10 the Petition that arise under the Act, and those that arise only under Proposition C or CEQA. The
11 latter do not present a “substantial issue” for review by CalRecycle. The sufficiency of the permit
12 application with respect to the three requirements that arise under the Act was demonstrated
13 above, and in any case, Petitioner does not assert that the SWFPA is inadequate regarding those
14 matters.

15 Furthermore, the JTD contains more information on fire control than Petitioner
16 acknowledges. The on-site capabilities of the operator to respond to fires on the landfill property
17 are apparent from the equipment list included on p. B.4-6 of the JTD, which include 2-4 dozers, 1-
18 2 compactors, and 2 scrapers. This is the equipment that would be utilized to address subsurface
19 fires, as provided in the JTD, p. B.5-41, as well as providing additional fire protection capabilities.

20 The primary thrust of Petitioner’s criticism relates to wild fires, but this discussion is
21 incomplete. Petitioner fails to acknowledge that the JTD, at p. B.5 -41, discussed additional fire
22 protection capabilities through the San Diego County Fire Authority, the North County Fire
23 Protection District, and the Pala Reservation fire station. Also, the JTD noted that the fire
24 protection authorities are parties to reciprocal aid agreements, meaning that the closest fire stations
25 would provide the initial response to a wildfire.

26 _____
27 ¹³ These are determinations to which the SWRCB and RWQCB can readily apply their expertise.
28 It is the LEA’s understanding that the RWQCB will address this issue before its permit is
issued, and that state regulations will require the issue to be revisited periodically thereafter.

1 With respect to blasting operations, the JTD, at p. B.5- 41, notes that the agency providing
2 fire protection services will enforce compliance with all provisions of the County Consolidated
3 Fire Code. Based on the fire protection letter provided in Attachment SWFP-D of the permit
4 application, that agency likely would be the San Diego County Fire Authority, since the landfill
5 site is within the boundaries of the Authority. Also, the JTD, at p. B.5 – 42, notes that fire
6 protection measures related to blasting include the use of a fine mesh screen over the blasting area
7 to prevent the escape of rock fragments, dust or other debris.

8 The LEA’s determination that this information is sufficient is confirmed by the
9 independent URS Corporation peer review. The URS report (Exhibit 4) assessed the fire
10 protection information in the JTD, and concluded at page 2-2 that “Litter, dust, vector, bird, noise,
11 fire, odor and hazardous waste controls are typical to techniques that have been successfully used
12 at other similar facilities.”

13 **H. Claim 9: Design Features.**

14 Petitioner makes the claim that “conceptual” design drawings are inadequate for permit
15 acceptance purposes, and cites to the example of remodeling a private residence. There is no
16 support for this claim, and no indication of what level of design Petitioner believes state law and
17 regulations require. Petitioner does not say what would be adequate. The analogy to a home
18 remodeling project is inappropriate, since the necessary permit Petitioner references would be a
19 building permit that would require a final design. The SWFPA does not equate to a building
20 permit.

21 This claim is nothing more than a bald assertion that whatever has been submitted is not
22 enough. That hardly suffices as a substitute for LEA’s (or RWQCB’s) reasoned judgment as to
23 what is required to demonstrate the ability to conform to applicable standards.

24 The tentative RWQCB permit, at Appendix S, p. 44 of the JTD, mandates that detailed
25 designs must be submitted to and approved by RWQCB prior to initiating construction, and that
26 final construction reports with as-built drawings be submitted to and approved by RWQCB prior
27 to the receipt of waste. Nothing requires that level of detail now. Final design drawings would be
28 required to be consistent with the permit-level drawings to obtain approval from RWQCB.

1 Useful guidance on the amount of detail that is sufficient in SWFPA is contained in 27
2 CCR section 21600 (Exhibit 10):

- 3 • Regarding ancillary facilities: “provide a plot plan showing all ancillary facilities at
4 the site, including buildings, entrance facilities, scales, maintenance structures,
5 and hazardous materials storage areas.”
- 6 • Regarding general design parameters: “Describe how the site design accommodates
7 or provides for the service area, climatological factors, physical settings, soils,
8 drainage and other pertinent information.”
- 9 • Regarding drainage and erosion: “Provide a *conceptual design and description* of
10 the drainage system as it pertains to roads, structures and gas monitoring systems,
11 preventing safety hazards and preventing the escape of waste.” (Emphasis added.)

12 These requirements are general in nature, and there is no provision in 27 CCR section
13 21570 or any other provision of Title 27 that requires a discussion in the JTD as to how the landfill
14 is to be constructed. The information in the JTD is adequate to support LEA’s acceptance of this
15 application.

16 It should also be noted that URS, an expert firm with substantial experience with solid
17 waste permitting throughout California, did not take issue with the level of design drawings in the
18 permit application. Instead URS expressly found that designs for required elements provided the
19 level of detail required by 27 CCR section 21570(d). (Exhibit 4, pages 2-1 to 2-4.) Concerning
20 the perimeter storm drain, which Petitioner specifically calls, URS found at p. 2-4 that “the
21 perimeter storm drain (PSD) system consisting of a reinforced concrete trapezoidal drainage
22 channels placed around (outside) the refuse footprint and earthen berms to divert run-on from
23 adjacent slopes and the up-canyon areas of the undisturbed footprint into the perimeter storm
24 drains is appropriate for the site,” that “the phased construction of the PSD moving up canyon as
25 the landfill is developed is reasonable,” and that the “discharge and percolation area appears to be
26 adequately sized and the energy dissipaters proposed are typical.”

27 It is helpful that URS’s expert judgment confirms that the LEA did not abuse its discretion.
28 But for purposes of the decision CalRecycle must make on the petition, it may be more important

1 that that 27 CCR section 21600(b)(8)(F) expressly endorses JTD use of “conceptual” designs for
2 drainage systems, and of “plot plan” designs more generally. The JTD often goes beyond this, and
3 generally includes design drawings at a level of detail consistent with longstanding industry and
4 regulatory practices, which is clearly adequate for the LEA’s permit acceptance determination.
5 But even if the designs for the PSD (or for other aspects of the landfill) were merely “conceptual,”
6 the minimal design detail standards established in 27 CCR section 21600 mean that LEA cannot
7 be said to have acted contrary to state law and regulation when it found this permit application to
8 be complete and correct.

9 **I. Claim 10: Leachate Control and Recovery.**

10 As discussed in Section VI.A of this Response, leachate collection and treatment is
11 undertaken for the purpose of protection of waters of the state, and falls within the regulatory
12 authority of RWQCB. Claim 10 therefore cannot raise a “substantial issue” for CalRecycle
13 review.

14 If CalRecycle chooses to address this issue, it should conclude that the LEA has met the
15 requirements of the Act applicable to permit application acceptance. As to this issue, and no
16 other, the statement of issues actually asserts that an aspect of the landfill design as disclosed in
17 the permit application package would violate a specific regulatory standard-- 27 CCR section
18 20340. However, Petitioner is mistaken because that regulation requires that certain Class III
19 landfills (including Gregory Canyon) have a leachate control and recovery system (“LCRS”), but
20 does not “require that the entire waste unit be underlain by an LCRS.” Since Gregory Canyon will
21 utilize a standard LCRS, the design is governed by 27 CCR section 20340(e), which requires that
22 the LCRS extend up the side slope as much as possible.

23 The JTD at p. B.5-2 – B.5-3 includes a detailed discussion of the design of the side slope
24 collectors and the rationale for compliance with 27 CCR section 20340(e). In particular, the JTD
25 indicates that leachate entering into the bench collectors would flow by gravity into the LCRS
26 mainline placed down the center of the refuse area. Leachate not entering the bench collectors
27 would flow by gravity along the interface between the operations layer and the geomembrane liner
28 to the bottom areas and into the LCRS. The benches and bench collector piping would be sloped

1 to prevent ponding, and, obviously, the side slopes would be sloped and would prevent ponding.
2 The URS report, at p. 2-3 noted that one important advantage of a gravity-based LCRS is that it
3 would eliminate the possibility of a pump failure causing a leachate release. The design proposed
4 by GCL complies with applicable regulatory requirements.

5 As shown, leachate collection and treatment is addressed in the JTD, and that discussion is
6 sufficient to support permit application acceptance by the LEA on any matter that is within the
7 exclusive jurisdiction of the RWQCB. (See Table 1 of the JTD, at p. A.1-6 – A.1-9. The JTD is
8 attached as Exhibit 8.)

9 **J. Claim 11: Desilting Basin.**

10 The issues Petitioner raises (and confuses) in this Claim are stormwater desiltation and
11 infiltration. Those aspects of storm water management relate to protection of waters of the state,
12 and fall within the regulatory authority of RWQCB. Therefore, they cannot raise a “substantial
13 issue” for consideration by CalRecycle.

14 If CalRecycle chooses to address this Claim, it must sort through multiple objections raised
15 in the statement of issues, which allege a missing rationale, a lack of discussion, use of an obsolete
16 reference, and inadequate support for a selected technical parameter. All of these contentions are
17 mistaken, and in any case CalRecycle cannot find that the LEA acted contrary to law on this Claim
18 merely because technical debates about hydrology issues are possible.

19 Petitioner’s Claim demonstrates a lack of understanding of the design methodology for the
20 storm water management system. As indicated in the JTD at p.C.2-20 – C.2.21, the 10-year, six-
21 hour event was used in conjunction with particle size to determine the desiltation efficiency of the
22 sedimentation basins, and to determine their appropriate sizing to reduce downstream sediment
23 loading. This is different than the capacity of the system to handle high volumes of water. This
24 system is designed both to accommodate a 100-year, 24-hour storm flow (calculated using the
25 Rational Method), and to meet the requirements established in state law and regulation for
26 desilting basins.

27 ///

28 ///

1 The URS Report, at p. 2-3 concluded that “[d]esilting basins are designed based on the 10-
2 year, 6-hour storm flows sediment capacity and for the storm water runoff flows of the 100-year,
3 24-hour storm event. The spillway is sized for the 100-year, 24-hour storm event. This complies
4 with the regulatory requirements and is reasonable for the site.”

5 The JTD, at p. C.2-20, notes that the design of the desilting basins was based on the 2009
6 version of the California Stormwater Best Management Practices Handbook, not the earlier 2003
7 version as alleged by Petitioner.

8 The statement of issues makes the unsupported claim that all flows, even from undisturbed
9 areas, should flow through the desilting basins for sediment removal. The statement evidences yet
10 another one of Petitioner’s misunderstanding, in this case, Petitioner does not grasp the current
11 storm water protection practice, which is to mimic the pre-development condition with respect to
12 both flows and functions. The plan presented in the Storm Water Management Plan (Appendix I-
13 1 of the JTD) was designed to mimic the volumes of flow from the Gregory Canyon mainstem
14 occurring during the pre-development condition. The goal was not to prevent flow, but to allow
15 flows to occur under conditions where flow would occur during the pre-development condition.
16 Likewise, one of the functions served by such flows is the transport of sediment. The storm water
17 management system is designed to allow for such transport where it would have occurred during
18 the pre-development condition. Routing storm water flows from undisturbed areas through the
19 desilting basins would limit the ability to preserve this pre-development function.

20 The comment letter prepared by Dr. Richard Horner, attached to the statement of issues,
21 makes two primary assertions. First, the landfill is criticized for not utilizing a different flow
22 modeling technique. But the recommended technique is not fully developed, and is not in
23 widespread (or even any) use in California. Identification of a potential alternative analytic
24 approach does not meet Petitioner’s burden of proving, in the face of a presumption of proper
25 action, that the LEA acted contrary to law in accepting the use of another generally accepted
26 method of analysis.

27 Second, the crux of the proposed method is to take into account additional factors, such as
28 rainfall over a period of time and antecedent moisture. Dr. Horner criticizes GCL for not making

1 more detailed on-site observations of these factors and of on-site stormwater flows. However,
2 GCL undertook extensive on-site observations of an extreme rainfall event during the 2004-2005
3 rain year occurring over a period of numerous days that resulted in flows in the Gregory Canyon
4 mainstem. Those observations considered the factors raised in the Horner comment letter (e.g.
5 rainfall over a period of time, antecedent moisture), and were described in the Updated
6 Hydrogeomorphology and Beneficial Uses at Gregory Canyon report (“Hydrogeomorphology
7 Report”), included as Appendix I-1 of the JTD. GCL also performed HEC-1 modeling of flows,
8 which are presented in Table 1, p. T-1 of the Hydrogeomorphology Report. The series of storms
9 producing flow in the 2004-2005 rain year exceeded six inches of rain, as described in the
10 Hydrogeomorphology Report, p. 2-7. And, importantly to the design of storm water facilities, the
11 maximum flow volume in this extreme event was in the range of 21-31 cfs, with an average of 26
12 cfs, and was representative of a 10-40 flood event (depending on the frequency and method), as
13 described in the Hydrogeomorphology Report, p. 2-6. This volume of flow is substantially less
14 than the volumes calculated through use of the Rational Method (138.35 cfs in a 10-year event),
15 which was the basis of design for the basic elements of the storm water management system, and
16 was consistent with the flow estimates produced through the HEC-1 modeling. The
17 Hydrogeomorphology Report at p. 2-4 noted that the Rational Method tends to exaggerate flows
18 within the watershed. This provides substantial assurance that the storm water management
19 facilities are adequately sized, and if anything, oversized.

20 The URS Report (Exhibit 4), at p. 2-3 – 2-4 concluded that “[t]he drainage control system
21 designed for 100-year, 24-hour storm event run-off volumes complies with the regulatory
22 requirements and is reasonable for the site,” that “[t]he estimated run-off values calculated based
23 on the San Diego County Hydrology Manual (2003 version) in conjunction with computer
24 software developed by Advanced Engineering Software (AES) is appropriate.” and that “[t]he
25 hydrologic analysis conducted using the Rational Method Computer program (in accordance with
26 the San Diego County Hydrology Manual Criteria) to determine the peak flows discharged from
27 the Gregory Canyon watershed under pre- and post-developed conditions is reasonable for the
28 project.”

1 As discussed above, the matters raised in Claim 11 were addressed thoroughly and
2 appropriately in the JTD (see Table 1 of the JTD, at p.A.1-6-1.1-9.). Petitioner has not shown that
3 the LEA failed to comply with the Act as to this Claim, and if the Claim is considered by
4 CalRecycle, it should be rejected.

5 **K. Claim 12: Floodplain**

6 Petitioner argues that the landfill design calls for desilting and infiltration structures and
7 “possibly” other facilities to be located within the 100 year plain, that the impacts of this
8 “construction” have not been studied, and that without further analysis and a FEMA approval, the
9 permit application package cannot be complete and correct. These assertions are erroneous in
10 part, and to the extent they may be correct they do not establish that the LEA acted contrary to law
11 and regulation when it accepted this permit application.

12 Petitioner has not taken the best available maps into consideration. The assertion that the
13 eastern desilting basin and portions of the facilities area are within the 100-year floodplain is not
14 established by the map Petitioner attached. (Figure 30B.) That map does not include an outline of
15 the location of those features, and without that it would be impossible to reach the conclusion
16 asserted in the comment. Floodplain mapping in the FEIR (Exhibit 4.4-2, p. 4.4-5) with overlays
17 represent that no portion of these features is within the 100- or even 500- year floodplains, and the
18 adequacy of this mapping or analysis was never challenged by Petitioner (or any other party) or
19 overturned by the courts.

20 Even if the infiltration area were within the 100-year or 500-year floodplain, the LEA’s
21 determination that the permit application package was complete and correct would not be contrary
22 to law. As discussed in response to Claim 11, one goal of the storm water management system is
23 to mimic the pre-development condition. Thus, if there were pre-development flooding in this
24 area during a storm event, the storm water management system would want to allow flooding to
25 occur post-development. Further, the portion of the landfill under discussion is simply an
26 infiltration area, and there is no physical development or disturbance of the pre-development
27 condition. An infiltration area would not interfere with a flood.

28 ///

1 The statement of issues does not specify what “FEMA approvals” are allegedly required
2 for the landfill project to receive an SWFP, or for the permit application to be complete and
3 correct. FEMA mapping relates to the availability of flood insurance, or disaster recovery
4 assistance. There are no required FEMA approvals for this project, and FEMA has therefore not
5 been designated an approving agency for SWFP application purposes or as responsible agency for
6 CEQA purposes.

7 **L. Claim 13: Rockfall and Protective Construction.**

8 Petitioner complains that the JTD states that rockfall protection measures will be necessary
9 at the landfill, and objects that the location and design of these features is not disclosed.

10 At heart, this is another “design detail” objection, and the LEA has adequately addressed
11 this general type of objection in Section VII of this response, and in connection with Claim 9
12 above. The information provided in the JTD is adequate to support the LEA’s acceptance of this
13 application. The tentative RWQCB permit, at Appendix S, p. 44 of the JTD, would require that
14 drainage control facilities be subject to detailed design and as-built review by RWQCB, but that is
15 a future requirement of a different agency.

16 Regarding locations, Petitioner’s reference to open space appears to articulate a concern
17 that open space required to be maintained as such pursuant to Proposition C could be affected by
18 rockfall protection construction. The LEA’s compliance with Proposition C is not subject to
19 oversight by CalRecycle, and cannot be put in issue by a petition under the Act.

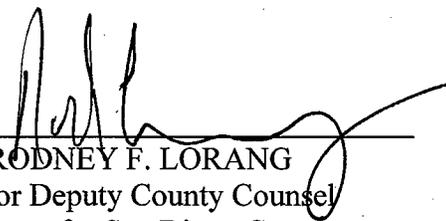
20 Nevertheless, LEA does not expect this construction to intrude on protected open space.
21 Construction of rockfall protection of one or more of the types depicted in the examples in Figure
22 36 of the JTD can be accommodated within the current limits of grading. In addition, the current
23 limits of grading preserve more open space than Proposition C requires. Section 3B of
24 Proposition C provides that the amount of open space acreage can be adjusted, but must be at least
25 1,313 acres. Current facility plans provide for more open space than that. Also, Section 3A of
26 Proposition C provides that the size and location of facility components can be adjusted. As a
27 result, subject to the requirements of applicable law, these structures could, in the unlikely event it
28 is needed, extend beyond the current limits of grading and still avoid impacts to the open space.

1 **X. CONCLUSION**

2 Overall, Petitioner's Claims do not raise a "substantial issue" that is legally capable of
3 review by CalRecycle under the Act, or that warrants review by CalRecycle. Moreover, Petitioner
4 has not shown that the LEA has acted contrary to state law and regulations. The relief Petitioner
5 seeks should therefore be denied in its entirety.

6
7 Respectfully submitted,

8
9 DATED: 6-3-11

10 By: 
11 **RODNEY F. LORANG**
12 Senior Deputy County Counsel
13 Attorney for San Diego County
14 Department of Environmental Health

15
16 Attachments

17
18
19
20
21
22
23
24
25
26
27
28