
**COLANTUONO
HIGHSMITH
WHATLEY, PC**

GARY B. BELL | 916-898-0049 | GBELL@CHWLAW.US

MEMORANDUM

TO: Honorable Chair and Boardmembers DATE: June 10, 2025
Upper Valley Waste Management Agency
Board of Directors

FROM: Gary B. Bell, General Counsel FILE NO. 51003.0001
Mackenzie D. Anderson, Assistant General
Counsel

CC: Steve Lederer, Manager

RE: Clover Flat Landfill Closure

INTRODUCTION

The Clover Flat Resource Recovery Park, formerly known as the Clover Flat Landfill (the “Landfill”), is a Class III municipal refuse disposal site operated by Waste Connections (the “Operator”) at 4380 Silverado Trail, Calistoga, California 94515. The Operator has determined that ongoing operation of the Landfill is no longer economically viable and is now planning to close the Landfill.

In light of this anticipated closure, we write to: (1) summarize the process and regulatory requirements for the Landfill’s closure, and (2) analyze the effects of the Landfill’s closure on the Upper Valley Waste Management Agency (the “Agency”), its franchise agreements for solid waste collection, processing, and disposal services, and the rates paid for such services.

BACKGROUND

The Landfill has been accepting municipal solid waste since 1963, subject to:

555 UNIVERSITY AVENUE, SUITE 275, SACRAMENTO, CALIFORNIA 95825 | (916) 400-0370
GRASS VALLEY | ORANGE COUNTY | PASADENA | SACRAMENTO | SONOMA

Honorable Chair and Boardmembers
Upper Valley Waste Management Agency
June 10, 2025
Page 2

1. Napa County Use Permit No. U-438889, issued by the Napa County Department of Conservation, Development and Planning on June 20, 1990;
2. Waste Discharge Requirements Order No. 91-160, adopted by the Regional Water Quality Control Board, San Francisco Bay Region (the “RWQCB”) in November of 1991;
3. Waste Discharge Requirements Order No. 93-113, adopted by the RWQCB in September of 1993;
4. National Pollutant Discharge Elimination System (“NPDES”) General Permit for Storm Water Discharges Associated with Industrial Activities adopted by the State Water Resources Control Board (the “SWRCB”) by Order WQ 2014-0057-DWQ on April 1, 2014, as amended by Order WQ 2015-0122-DWQ on August 4, 2015 and Order WQ 2018-0028-DWQ on November 6, 2018;
5. Industrial Activities Stormwater Pollution Prevention Plan (“SWPPP”) prepared by EKI Environment & Water Inc. in December 2024; and
6. Solid Waste Facilities Permit (“SWFP”) No. 28-AA-0002, issued by the California Department of Resources Recycling and Recovery, formerly known as the California Integrated Waste Management Board (“CalRecycle”), on April 3, 2001 and amended in May 2011.

Waste Connections acquired the Landfill, previously operated by Clover Flat Land Fill, Inc., on February 13, 2023.¹ The Agency’s “Amended and Restated Franchise Agreement Between Upper Valley Waste Management Agency and Clover Flat Land Fill, Inc. for Construction and Demolition Debris, Organic Materials, and Solid Waste

¹ Clover Flat Resource Recover Park, “JPA Meeting – Clover Flat Landfill 10/21/24” <<https://napa.legistar.com/View.ashx?M=F&ID=13381680&GUID=39A98FEF-4845-4F57-A953-9A05A0EDF5C8>> (accessed Mar. 13, 2025).

Processing and Disposal Services” (the “Landfill Franchise Agreement”) was assigned to the Operator when it acquired the Landfill.²

At the same time, Waste Connections also acquired Upper Valley Disposal Service (“UVDS”), the company which collects and hauls waste to the Landfill. The Agency’s “Amended and Restated Franchise Agreement Between Upper Valley Waste Management Agency and Upper Valley Disposal Service For Recyclables, Organics, Construction and Demolition Debris and Solid Waste Collection Services” (the “Collections Franchise Agreement”) was also assigned to the Operator.³

CLOSURE REQUIREMENTS

A. Closure & Post Closure Maintenance Plans

Operators of Class III municipal solid waste facilities must prepare preliminary and final closure plans (“CPs”) and postclosure maintenance plans (“PCMPs”) demonstrating how they intend to treat and secure the landfill site to avoid health, safety, and environmental harms. These plans must be reviewed and approved by the Local Enforcement Agency (“LEA”; here, Napa County), CalRecycle, and the RWQCB.⁴

The Landfill’s previous operator was required to submit a preliminary CP and PCMP when it applied for its Solid Waste Facilities Permit.⁵ The latest versions of these plans are included in the Landfill’s Joint Technical Document.⁶ At this time, the previous

² Upper Valley Waste Management Agency, Agency Resolution #22-07 (Oct. 17, 2022) <<https://www.countyofnapa.org/DocumentCenter/View/26860/Agency-Resolution-22-07---Consenting-Assignment-of-the-Franchise-Agreement-with-CFL-PDF>> (accessed Mar. 11, 2025).

³ Upper Valley Waste Management Agency, Agency Resolution #22-06 (Oct. 17, 2022) <<https://www.countyofnapa.org/DocumentCenter/View/26861/Agency-Resolution-22-06---Consenting-Assignment-of-the-Franchise-Agreement-with-UVDS-PDF>> (accessed Mar. 14, 2025).

⁴ CalRecycle, “Plan Review Process” <<https://calrecycle.ca.gov/swfacilities/closure/>> (accessed Mar. 13, 2025).

⁵ Cal. Code of Regs., tit. 27, § 21780, subd. (c)(1); Public Resources Code, §§ 43501, subd. (a)(1); 40110. The previous operators were also required to submit copies of these plans to the Bay Area Air Quality Management District, pursuant to Cal. Code of Regs., tit. 27, § 21780, subd. (b).

⁶ Edgar & Associates, Inc. and EBA Engineering, “Joint Technical Document Clover Flat Resource Recovery Park Calistoga, California” (Oct. 21, 2021) <https://geotracker.waterboards.ca.gov/regulators/deliverable_documents/4478650748/CFL%20JTD%20A

operators were also required to establish a trust fund or equivalent financial arrangement to adequately pay for closure and postclosure maintenance activities.⁷

Final CPs and PCMPs for solid waste landfills must be submitted **two years** before an anticipated date of closure.⁸ CalRecycle, the RWQCB, and the LEA must notify the Operator whether the CP and PCMP are incomplete within 30 days of receipt, otherwise they will be deemed complete.⁹ Once deemed complete, the agencies have 120 days to notify the Operator whether the CP and PCMP meet applicable closure requirements, otherwise they will be deemed approved.¹⁰ Closure activities may not begin until the Final CP and PCMP are approved.¹¹

A final CP and PCMP must contain:

1. An itemized cost analysis of all actions necessary to close the landfill and carry out 30 years of post-closure maintenance, and assurance of funding;¹²
2. A proposed schedule for closure activities and disbursement of funds for closure activities;¹³
3. Various maps of the facility;¹⁴
4. An updated Report of Waste Discharge ("ROWD"), if the operator will discharge waste that could affect water quality;¹⁵

[mendment%20No.%206%20Oct%2021%202021%20%28Revised%20Feb%2011%202022%29.pdf](#)> (accessed Mar. 10, 2025).

⁷ Pub. Resources Code, §§ 43501, 43600, 43602, 43604; 40 C.F.R. §258.70; Cal. Code of Regs., tit. 27, §§ 20950, subd. (f); 21780, subd. (a)(3); 40 C.F.R. § 258.71, 258.72.

⁸ Cal. Code of Regs., tit. 27, § 21780, subd. (c)(3).

⁹ Cal. Code of Regs., tit. 27, § 21860, subds. (c)-(d).

¹⁰ Cal. Code of Regs., tit. 27, § 21860, subd. (e).

¹¹ Cal. Code of Regs., tit. 27, § 21870, subd. (b).

¹² Cal. Code of Regs., tit. 27, §§ 21815, 21820, 21840.

¹³ Cal. Code of Regs., tit. 27, § 21800, subd. (d).

¹⁴ Cal. Code of Regs., tit. 27, §§ 21769, 21790, 21800.

¹⁵ Cal. Code of Regs., tit. 27, § 21769, subd. (c)(2)(E).

5. An updated Design Report and Operations Plan (“DROP”), if necessary for ground water and leachate control;¹⁶
6. The proposed post-closure land use of the landfill site;
7. An emergency response plan specifying procedures for minimizing hazards during the post-closure maintenance period;¹⁷
8. A description of the “final cover” to be installed on the landfill site (or the plan for treatment and decontamination if waste and contaminated materials are to be physically removed from the site);¹⁸
9. A description of maintenance, monitoring, and control systems that will be in place during the post-closure maintenance period to preserve the final cover and protect the quality of surface and ground waters (e.g., leachate collection and removal systems, drainage plan, ground water and surface water monitoring systems, gas monitoring systems);¹⁹ and
10. A plan for securing the site to prevent unauthorized access during closure.²⁰

Along with the final CP, the Operator must submit a Labor Transition Plan providing for preferential reemployment and transfers of displaced Landfill employees and assistance for employees to find comparable employment elsewhere.²¹

¹⁶ Cal. Code of Regs., tit. 27, § 21769, subd. (c)(2)(F).

¹⁷ Cal. Code of Regs., tit. 27, §§ 21830, 21130, 21132.

¹⁸ Cal. Code of Regs., tit. 27, §§ 21090, 21140, 21869; 40 C.F.R. § 258.60. The “final cover” is a protective layer of earthen materials installed on top of a former landfill site that minimizes water infiltration and prevents erosion. At a minimum, the final cover system will include at least 2 feet of a foundation layer, 1 foot of a low-hydraulic-conductivity layer, and 1 foot of erosion-resistant vegetative layer. The County may require additional thickness, quality, and type of coverage as appropriate.

¹⁹ 40 C.F.R. § 258.61; Cal. Code of Regs., tit. 27, § 21090, subd. (b).

²⁰ Cal. Code of Regs., tit. 27, § 21135.

²¹ Pub. Resources Code, § 43501.5; Cal. Code of Regs., tit. 27, § 21785.

The Operator must give the LEA a written Notice of Intent at least 60 days before beginning closure of the Landfill.²² Closure activities are to be completed within 180 days, unless an extension is granted by the LEA, CalRecycle, and the RWQCB.²³

The County, as the LEA, will be responsible for ongoing inspections of closure activities, for approval of minor changes from the terms of the approved CP, and for quarterly inspections of the site during the closure and postclosure maintenance periods.²⁴ Significant changes to the CP or PCMP will require approval by the LEA, CalRecycle, and RWQCB.²⁵

Within 180 days of completing closure activities, the Operator must certify to the LEA, CalRecycle, and RWQCB under penalty of perjury that the Landfill has been closed in accordance with the approved final CP.²⁶ The LEA, CalRecycle, and the RWQCB have 120 days to review the certification. Upon completion of closure, the Operator will file a map with the LEA and the County Recorder's office, along with a description of the site, the covered area, and where the CP and PCMP can be obtained.²⁷ The Operator must also record a notation on the deed to the property, perpetually notifying any potential purchasers of the property that the land was used as a landfill facility and its use is restricted.²⁸

Once the certification of closure has been approved, RWQCB regulations require its Solid Waste Facility Permit be updated to reflect formal closure.²⁹ The Landfill will thereafter be in the postclosure maintenance period. During postclosure, the Operator must survey the site with aerial photographs and produce topographic maps depicting

²² Cal. Code of Regs., tit. 14, § 17370.2, subd. (f); 40 C.F.R. § 258.60, subd. (e).

²³ 40 C.F.R. 258.60, subd. (g); Cal. Code of Regs., tit. 27, §§ 21090, subd. (d); 21110, subd. (b)(3)(D).

²⁴ Cal. Code of Regs., tit. 27, § 21870.

²⁵ Cal. Code of Regs., tit. 27, § 21890.

²⁶ Cal. Code of Regs., tit. 27, § 21880; 40 C.F.R. § 258.60, subd. (h). The certification must be completed by a registered civil engineer or certified engineering geologist and supported by documentation, including but not limited to a Final Construction Quality Assurance report.

²⁷ Cal. Code of Regs., tit. 27, § 21170.

²⁸ 40 C.F.R. § 258.60, subd. (i). The Operator may request permission to remove this deed notation if all wastes are removed from the property.

²⁹ CalRecycle, "Recommended Procedures for Completion of Solid Waste Facility Permit for Closed Sites" <<https://www2.calrecycle.ca.gov/Docs/Web/111840>> (accessed Mar. 13, 2025).

changes in elevation and grading that could affect drainage of surface water.³⁰ The Operator may be released from postclosure after a minimum of 30 years, if it certifies and shows the Landfill no longer poses a threat to public health, safety, and the environment, to the satisfaction of the LEA, CalRecycle, and the RWQCB.³¹ All postclosure land uses, other than non-irrigated open space, must be approved by the LEA, the RWQCB, and the Bay Area Air Quality Management District (“BAAQMD”).³²

If the Operator plans to sell or transfer ownership of the Landfill site during the closure or post-closure maintenance periods, they must notify the LEA and CalRecycle at least 45 days before the anticipated transfer of title. The transferee must provide financial assurance and agree to comply with the SWFP, CP, and PCMP. The LEA would have 30 days to determine whether the new operator is acceptable.³³

According to the Operator’s presentation to the Agency on October 21, 2024, it plans to submit a revised CP to the LEA, CalRecycle, and the RWQCB in early 2025.³⁴

B. Napa County Use Permit

The Landfill site is located within the County’s Agricultural Watershed (“AW”) zoning district and has a General Plan land use designation of Agriculture, Watershed, and Open Space (“AWOS”).³⁵ A sanitary landfill facility is allowed in the AW District

³⁰ Cal. Code of Regs., tit. 27, § 21180; 21090. Surveys and mapping must be completed every 5 years unless the RWQCB approves alternative surveying techniques. If RWQCB does not require maps every 5 years, the County may require them if it determines such maps are necessary for reasons other than water quality protection. Cal. Code of Regs., tit. 27, § 21142.

³¹ Cal. Code of Regs., tit. 27, §§ 20950, subd. (a)(1); 21900; 21180; 40 C.F.R. § 258.61. The postclosure maintenance period can be extended beyond 30 years if State agencies determine the wastes continue to pose a threat to health, safety, or the environment.

³² Cal. Code of Regs., tit. 27, § 21190.

³³ Cal. Code of Regs., tit. 27, § 21200.

³⁴ Clover Flat Resource Recover Park, “JPA Meeting – Clover Flat Landfill 10/21/24.”

³⁵ Napa County Planning, Building & Environmental Services Department, “Notice of Preparation of Draft Focused Environmental Impact Report” (July 27, 2022) < <https://files.ceqanet.opr.ca.gov/280441->

Honorable Chair and Boardmembers
Upper Valley Waste Management Agency
June 10, 2025
Page 8

subject to use permit approval.³⁶ The Landfill currently operates under Napa County Use Permit No. U-438889.

The Operator reportedly plans to apply for a Use Permit Major Modification from the County to allow transfer and/or transload operations at the site.³⁷ If approved by the County Planning Commission, this would allow the Operator to load and haul materials for transfer to the Potrero Hills landfill.

EFFECT ON FRANCHISE AGREEMENTS & RATES

A. Effects on & Options Under the Landfill Franchise Agreement

Under the Landfill Franchise Agreement, the Operator guarantees to operate and provide “sufficient capacity” at the “Approved Facility” for waste materials until July 1, 2047.³⁸ It also agrees to “Process”³⁹ construction and demolition debris and organic materials and to “Dispose”⁴⁰ of solid waste and residue at the Approved Facility. The “Approved Facility” under the Landfill Franchise Agreement is defined as the Clover Flat Sanitary Landfill.

Based on the Operator’s presentation to the Agency on October 21, 2024, the Operator plans to continue delivering waste to the Landfill, but use the site as a transfer station. The Agency may consent to naming an alternative landfill as the Approved Facility under the Landfill Franchise Agreement.⁴¹ It appears, based on the Operator’s October presentation to the Agency, that the Operator would request Portrero Hills

<1/attachment/-sEwjME9fZKy8kUK33IAdiVeakAt9NU14ra--Y4Gk882nSLNTy9R7eC1MvkIpA4xtSZozBezdgbr-qoL0>> (accessed Mar. 13, 2025).

³⁶ Napa County Code, § 18.20.030, subd. (F).

³⁷ Clover Flat Resource Recover Park, “JPA Meeting – Clover Flat Landfill 10/21/24.”

³⁸ See sections 3.1, 4.1, 5.1 of the Landfill Franchise Agreement.

³⁹ Attachment “A” (“Definitions”) of the Landfill Franchise Agreement defines “Process” to mean “to sort, separate, prepare, treat, bale or otherwise package, compost, cure, or to take other steps necessary to re-use materials, or to remanufacture, reconstitute, and or create new products from Discarded Materials. Processing includes reuse, Recycling and Composting, and excludes energy conversion processes except by prior approval of the Agency.”

⁴⁰ Attachment “A” (“Definitions”) of the Landfill Franchise Agreement defines “Dispose” to mean the “ultimate disposition of unprocessed Solid Waste intended for Disposal, and Residue.”

⁴¹ Attachment A (“Definitions”) of the Landfill Franchise Agreement.

Landfill be named the Approved Facility. To change the Approved Facility, the Landfill Franchise Agreement states it must be “preapproved by the Agency in writing.”⁴²

The Landfill Franchise Agreement between the Agency and the Operator does not automatically terminate if or when the Landfill closes. Section 12.11 of the Agreement specifically requires the Operator to, at its sole expense, follow State regulations governing landfill closure and post-closure in the manner required by CalRecycle and the Agency. This section also specifies that funds collected by the Operator for closure and post-closure costs from Agency customers are held in trust for the Agency. The provisions of this Section 12.11 “shall survive the termination or expiration” of the Agreement.

The Operator’s general duty to indemnify the Agency and its individual Members against any claims and damages arising out of Operator’s performance under the Landfill Franchise Agreement (except as caused by the sole negligence or willful misconduct of the Agency or Member) also survives termination of the Agreement.⁴³

In contrast, the Operator’s duty to defend, indemnify, and hold harmless against claims and damages attributable to its negligence or willful misconduct in handling **hazardous** waste is **not** limited to only its performance under the Agreement.⁴⁴ This would remain an ongoing duty beyond any termination or expiration.

The insurance coverage specified in the Landfill Franchise Agreement is only required to be maintained and “in force through the life of [the] Agreement.”⁴⁵

B. Effects on & Options Under the Collections Franchise Agreement

The Collections Franchise Agreement similarly requires that the “Authorized Collection Contractor” transport collected materials to the “Approved Disposal Facility” (the Landfill) and guarantee sufficient capacity at the Approved Disposal Facility

⁴² *Id.*

⁴³ Section 10.1(A) of the Landfill Franchise Agreement.

⁴⁴ Section 10.1(C) of the Landfill Franchise Agreement.

⁴⁵ Section 10.2 of the Landfill Franchise Agreement.

throughout the term of the Agreement.⁴⁶ Like the Landfill Franchise Agreement, the parties can name a different facility if preapproved by the Agency in writing.⁴⁷

The Collections Franchise Agreement offers the same enforcement remedies as the Landfill Franchise Agreement and contains the same indemnification and insurance terms as the Landfill Franchise Agreement, analyzed above.⁴⁸

C. Effects on Franchise Rates

Under the Landfill Franchise Agreement, the Operator charges the “Authorized Collection Contractor” certain rates per tonnage of waste for its disposal and processing services.⁴⁹ Under the Collections Franchise Agreement, the Authorized Collection Contractor then charges waste generators (i.e., property owners) certain rates allowed under the Agreement for collecting and transporting their waste.⁵⁰

Both Franchise Agreements make clear that, if the Operator’s or Authorized Collection Contractor’s actual performance costs exceed the rates collected under the Agreement, neither is entitled to be compensated for this difference.⁵¹

To increase rates charged to the Authorized Collection Contractor under the Landfill Franchise Agreement, the Operator would need to petition the Agency for an “Extraordinary Rate Adjustment” based on either a “Change in Law,” “Change in Scope,” or a “Change in Fees.”⁵² (The Operator **may** charge higher rates, however, to other customers like self-haulers that deliver waste to the Landfill.)⁵³

⁴⁶ Sections 5.1, 5.3, and 5.7 of the Collections Franchise Agreement.

⁴⁷ Attachment A (“Definitions”) of the Collections Franchise Agreement.

⁴⁸ Article 11 (“Default and Remedies”) of the Collections Franchise Agreement.

⁴⁹ Section 7.2 of the Landfill Franchise Agreement.

⁵⁰ Article 9 (“Contractor’s Compensation and Rate Setting”) of the Collections Franchise Agreement. The Authorized Collection Contractor is Upper Valley Disposal Service (“UVDS”), which is owned by Upper Valley Disposal Holdings, Inc. (UVDH), itself a wholly owned subsidiary of Waste Connections US, Inc.

⁵¹ Section 7.1 of the Landfill Franchise Agreement; Section 9.1 of the Collections Franchise Agreement.

⁵² Section 9.2 of the Landfill Franchise Agreement.

⁵³ Section 7.2(C) of the Landfill Franchise Agreement states the Operator may charge other customers (excluding the Authorized Collection Contractor and Agency Members) “at the Rates determined by [the

A “Change in Law” refers to the enactment or modification of applicable law or the issuance of a court order that “has a material and adverse effect on the performance” of a party. A “Change in Scope” means “any Agency-directed change in the scope of Operator’s services.” Finally, a “Change in Fees” means “the establishment by the Agency, any Member or any other governmental body of any franchise or other fees payable by [Operator] with respect to the operation of the Approved Facility... .”

Under Section 5.7 of the Collections Franchise Agreement, if the Landfill closes and the Authorized Collection Contractor is required to use an alternative disposal facility, its compensation “shall not be adjusted for any change in [t]ransportation and [c]ollection costs associated with use of the alternative [d]isposal facility” if the need for an alternative facility is “discretionary or for reasons within [the Authorized Collection Contractor’s or its Subcontractor’s] reasonable control.” If a change in facilities results in increased transportation and collection costs, the Agency may direct the Authorized Collection Contractor to use a lower-cost alternative.⁵⁴

Together, this means the Operator cannot charge higher rates to the Authorized Collection Contractor, nor can the Authorized Collection Contractor charge higher rates to Member Agencies or property owners receiving collection services, to recoup additional costs incurred as a result of the Landfill closure. The Operator acknowledged as much during its October presentation to the Agency, stating “[p]er Franchise Agreement, any increased costs due to shipping waste to Potrero are responsibility of the Company.”⁵⁵

CONCLUSION

Given the lengthy plans and regulatory approvals needed from the State and the LEA, closure of the Landfill will not occur for a number of years. When the Landfill closes, many of the terms of the Franchise Agreements will remain in effect.

Operator], provided that such Rates shall not be less than the Rates charged to the Authorized Collection Contractor, except under special circumstances”

⁵⁴ Section 5.7, subd. (E) of the Collections Franchise Agreement.

⁵⁵ Clover Flat Resource Recover Park, “JPA Meeting – Clover Flat Landfill 10/21/24.”