



CHIQUITA CANYON
A Waste Connections Company

May 15, 2026

Via E-Mail

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Re: CCL – Response to EPA Comments to West Slope Pre-Emptive Secondary Containment Plan (April 2026) Revision v.1.4 and West Slope Contingency Secondary Containment Plan (April 2026) Revision v.1.4
UAO Docket No. RCRA 7003-09-2024-0001 and CERCLA 106-09-2024-05

Mr. Holybee:

Chiquita Canyon, LLC (“CCL”) writes in response to comments from EPA dated May 4, 2026, on the West Slope Pre-Emptive Secondary Containment Plan (April 2026) Revision v.1.4 (the “Pre-Emptive Containment Plan”) and West Slope Contingency Secondary Containment Plan (April 2026) Revision v.1.4 (“Contingency Containment Plan,” and together with the Pre-Emptive Containment Plan, the “Plans”).

CCL understands that EPA’s comments stem at least in part from a comment EPA received raising a question about the applicability of California Water Code regulations of “dams” to the proposed temporary soil berm, referred to in the Contingency Containment Plan as the “South Dam.” The contingent, emergency construction of such a temporary berm does not meet the definition of “dam” as set forth in the California Water Code or California Division of Safety of Dams (“DSOD”) implementing regulations, and therefore should not be incorporated as Applicable or Relevant and Appropriate Requirements (“ARARs”) or otherwise in the Plans.

California dam-safety requirements are not applicable here because the temporary soil berm is not a “dam” within the meaning of the California Water Code. California Water Code § 6002 defines a “dam” as an “artificial barrier, together with appurtenant works, which does or may impound or divert water” and that meets specified height or impounding-capacity thresholds. Cal. Water Code § 6003 further excludes certain smaller barriers and weirs from that definition.

The proposed berm here is not a “dam” within the meaning of the California Water Code, because the purpose is not to “impound or divert water” as set forth in definition section 6003, but instead to address a hypothetical release of leachate on an emergency and temporary basis.

Unlike a dam (as the term is typically understood and anticipated in the Cal. Water Code), the berm would not be designed, constructed, or intended to operate as a reservoir, permanent impoundment, or long-term water-retention structure; indeed, it is not proposed to be constructed in a stream or other water course. Rather, it is a temporary, emergency measure that would only be deployed if site conditions require short-term containment of leachate during response activities to prevent leachate from reaching such a water course. Cal. Water Code § 6002. This soil berm is an expanded version of the existing soil “dams” (berms) utilized in the concrete stormwater channel. These soil berms are not now, nor have they ever been, considered a “dam” within the meaning of the California Water Code, nor should a potential larger soil berm be considered a “dam.”

A temporary berm is also not needed at the regulatory height and capacity thresholds that constitute a “dam.” The proposed berm is a contingent measure; it would only be constructed in the event of a catastrophic release of theoretical volumes of leachate.

The soil staging and proposed contingency containment measures were developed in response to EPA’s directive, not because CCL believes a soil dam is necessary to address current site conditions. The volume estimate incorporated into the Contingency Plan and referenced in EPA’s comment i.a was generated by a regulator, without any documented basis that CCL is aware of. CCL does not believe it is an accurate estimate of the volume of leachate in the area of the West Toe Buttress project. Indeed, there is no reservoir of leachate stored in the West Toe area. The periodic seeps observed in that area, and observed during the excavation activities in 2024, reflect preferential pathways that have developed in the West Toe area. Had there been such a pooling of leachate in the West Toe, it would have been encountered during the extensive excavation effort in 2024.

Instead, CCL incorporated the referenced volumetric figure into the Contingency Plan solely in an effort at continued responsiveness and cooperation with EPA. There is no evidence that a release from the West Toe area is likely to arise in any meaningful capacity, and there is no basis on which to develop an estimate of leachate volume in the West Toe that would require construction of a berm exceeding the height or capacity factors for a “dam” within the meaning of the California Water Code. The lack of any meaningful leak or seep during the prior West Toe project and the recent sampling effort further support the conclusion that there is little if any risk of a substantial leachate release, much less one of the proposed magnitude.

Regardless, California dam-safety requirements should not be deemed “relevant and appropriate.” See CERCLA § 121(d) and 40 CFR § 300.5. EPA has not identified any authority treating dam regulations as ARARs for a temporary emergency soil berm that is not designed or operated to impound or divert water. 40 CFR § 300.400(g)(1)-(2). Applying the DSOD’s dam-safety program in this context also would extend the ARAR concept beyond its intended applicability, as it is not substantive environmental law that addresses a hazardous substance. See 40 CFR § 300.5.

Furthermore, DSOD’s dam-safety rules do not substantively align with the “applicable or relevant and appropriate” factors listed in the National Contingency Plan (NCP) at 40 CFR § 300.400(g)(2)(i)–(viii):

- (i) **Purpose.** The purpose of DSOD’s dam-safety requirements is to manage the risks associated with dam design, construction, operation, maintenance, breach, and downstream inundation; in contrast, the purpose of the CERCLA action here is to implement a temporary emergency containment measure, if a response is required. 40 CFR § 300.400(g)(2)(i); 23 CCR § 312(b); 23 CCR § 335.6.
- (ii) **Media.** The DSOD program regulates dams, reservoirs, and appurtenant works that impound or divert water, including associated operating features such as spillways, outlet works, seepage, and instrumentation; the potential medium at issue here is a temporary soil berm. 40 CFR § 300.400(g)(2)(ii); Cal. Water Code §§ 6002, 6102.5.
- (iii) **Substances.** The substances regulated by the dam-safety requirements are not hazardous substances or contaminants, but water retained behind a jurisdictional dam; the theoretical substance at issue is leachate. 40 CFR § 300.400(g)(2)(iii); Cal. Water Code § 6002.
- (iv) **Activities.** The activities regulated by DSOD are dam design, construction, operation, and maintenance; the contemplated activity here is short-term deployment of a temporary soil berm, if needed, for emergency containment. 40 CFR § 300.400(g)(2)(iv); 23 CCR § 305; 23 CCR § 312(b).
- (v) **Exceptions.** Because the DSOD framework does not appear to provide a tailored variance, waiver, or exemption for a temporary, EPA-directed emergency containment berm at a CERCLA site, this factor does not support treating dam-safety requirements as relevant and appropriate. Rather, importing those requirements would impose a full dam-safety regime on a contingency measure whose assumed capacity was directed by EPA and whose necessity CCL disputes. 40 CFR § 300.400(g)(2)(v).
- (vi) **Location type.** The regulatory provisions are directed at dams, reservoirs, and downstream inundation areas; the place affected here is a landfill, subject to an ongoing response action. 40 CFR § 300.400(g)(2)(vi); Cal. Water Code § 6003(a).
- (vii) **Size.** The type and size of structure regulated is a jurisdictional dam meeting statutory height or capacity thresholds; the structure contemplated here is a temporary emergency berm of theoretical dimensions, intended to address hypothetical circumstances. 40 CFR § 300.400(g)(2)(vii); Cal. Water Code §§ 6002, 6003.
- (viii) **Potential use.** Finally, the dam-safety program’s consideration of affected resources concerns the use and risks of impounded water and downstream inundation; the affected resources at the landfill are addressed through a number of workplans and CERCLA response controls. 40 CFR § 300.400(g)(2)(viii); 23 CCR § 335.6.

With regard to EPA’s remaining comments, CCL is prepared to update the map to redesignate the proposed contingency measure as the “South Berm” if EPA believes it would be helpful to avoid further confusion over whether it constitutes a “dam” within the meaning of California regulations. Given the inapplicability of the dam regulations, CCL has not incorporated EPA comments regarding soil fill compaction and density specifications (ii.a and ii.b), inundation mapping (ii.d), or dam construction and design measures (ii.e).

The Plans provide a framework for implementing extremely conservative contingency measures in a manner protective of human health and the environment. The identified measures would be subject to field oversight and engineering judgment in the event construction becomes necessary. In such an event, CCL would work with a qualified engineer, and provide a final QA / QC report, consistent with EPA comment ii.c.

In sum, EPA should not convert a conservative, agency-directed contingency measure into a regulated dam based on a storage capacity that CCL does not believe reflects an actual site need or credible release scenario. The available information indicates that leachate in the West Toe area migrates, if at all, through preferential pathways as seeps or localized leaks that have been, and can continue to be, promptly vacuumed and contained. Treating the EPA-directed contingency capacity as the basis for imposing dam-safety requirements would be circular, unsupported by current site conditions, and would improperly penalize CCL for attempting to accommodate EPA's requested contingency planning. CCL therefore requests that EPA approve the Plans without requiring additional dam-related revisions.

If EPA nevertheless requires additional information about this contingency measure, CCL requests an opportunity to meet and confer to discuss further.

Sincerely,



Kevin Green
District Manager
Chiquita Canyon Landfill

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