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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**  
**2023 - 2024 Regular**

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**Bill No:** SB 1208  
**Author:** Padilla  
**Version:** 2/15/2024  
**Urgency:** No  
**Consultant:** Gabrielle Meindl  
**Hearing Date:** 4/24/2024  
**Fiscal:** Yes

**SUBJECT:** Waste discharge permits: landfills

**DIGEST:** Prohibits a Regional Water Quality Control Board (Regional Water Board) from issuing a waste discharge permit for a new landfill that is used for the disposal of nonhazardous solid waste if the land is located within the Tijuana River National Estuarine Research Reserve or within an area that is tributary to the Tijuana River.

**ANALYSIS:**

Existing law:

- 1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States and to regulate quality standards for surface waters. (33 United States Code (USC) §1251 et seq.)
- 2) Establishes the National Pollutant Discharge Elimination System (NPDES) permit program and authorizes the State Water Resources Control Board (State Water Board) and the nine Regional Water Boards to prescribe waste discharge requirements (WDRs) which, among other things, regulate the discharge of pollutants in stormwater, including municipal stormwater systems. (33 USC § 1342; Water Code (WC) § 13377)
- 3) Prohibits a Regional Water Board from issuing a waste discharge permit for a new landfill, or a lateral expansion of an existing landfill, that is used for the disposal of nonhazardous solid waste if the land has been primarily used at any time for the mining or excavation of gravel or sand. (Public Resources Code § 40060 (a))
- 4) Prohibits, pursuant to the Porter-Cologne Water Quality Control Act, the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board or a Regional Water Board. (WC § 13000, et seq.)

- 5) Requires California's Regional Water Boards to adopt water quality standards within their region of jurisdiction. (WC § 13240)
- 6) Requires a Regional Water Board to prescribe requirements for any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area upon or receiving waters into which the discharge is made or proposed. Specifies that requirements must implement any relevant water quality control plans that have been adopted, and take into consideration, the beneficial uses to be protected, water quality objectives, other waste discharges, the need to prevent nuisance and other factors. (WC § 13263)

This bill:

- 1) Prohibits a Regional Water Board from issuing a waste discharge permit for a new landfill that is used for the disposal of nonhazardous solid waste if the land is located within the Tijuana River National Estuarine Research Reserve or within an area that is tributary to the Tijuana River.
- 2) Expands the definition of "landfill used for the disposal of nonhazardous solid waste" to also include a disposal site regulated by a Regional Water Board as a Class II landfill, as provided.

## **Background**

- 1) *Federal Clean Water Act (CWA)*. The Federal Water Pollution Control Act of 1948 was the first major U.S. law to address water pollution. The law was amended in 1972 and became commonly known as the Clean Water Act (CWA). The federal CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, the United States Environmental Protection Agency (U.S. EPA) has implemented pollution control programs, including setting wastewater standards for industrial facilities, as well as setting water quality standards for contaminants in surface waters. The CWA made it unlawful to discharge any pollutant from a point source into navigable waters without a permit. Industrial, municipal, and other facilities must obtain a permit under the National Pollutant Discharge Elimination System in order to discharge into surface water.
- 2) *National Pollutant Discharge Elimination System (NPDES)*. As authorized by the CWA, the NPDES Permit Program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Point

sources are discrete conveyances such as pipes or man-made ditches. Examples of pollutants include, but are not limited to, rock, sand, dirt, and agricultural, industrial, and municipal waste discharged into waters of the United States. The NPDES Program is a federal program which has been delegated to the State of California for implementation through the State Water Board and the Regional Water Boards.

- 3) *State Water Board*. Created by the State Legislature in 1967, the five-member Board allocates water rights, adjudicates water right disputes, develops statewide water protection plans, establishes water quality standards, and guides the nine Regional Water Boards located in the major watersheds of the state
- 4) *Regional Water Boards*. There are nine regional water quality control boards statewide. Regional boundaries are primarily based on watersheds and some water quality requirements may be based on the unique differences in climate, topography, geology, and hydrology for each watershed. Each Regional Water Board makes critical water quality decisions for its region, including setting standards, issuing WDRs, determining compliance with those requirements, and taking appropriate enforcement actions.

By taking away the Regional Water Board's authority to issue waste discharge permits, this bill would establish a blanket prohibition on new landfills in the Tijuana River National Estuarine Research Reserve or within an area that is tributary to the Tijuana River.

- 5) *Tijuana River and Estuary Contamination*. The Tijuana River flows north from Tijuana into the Tijuana River and Estuary (TJRE) in the U.S., emptying into the Pacific Ocean at Imperial Beach. The TJRE is severely contaminated by untreated sewage, industrial waste, and urban run-off due to inadequate infrastructure and urbanization and the watershed is classified as an impaired water body according to the U.S. Clean Water Act. This contamination is a persistent environmental and public health threat with major economic, legal, social, and health implications for the nearby communities such as San Ysidro and Imperial Beach, according to a February 13, 2024, white paper from the San Diego State University, School of Public Health, titled *Tijuana River Contamination from Urban Runoff and Sewage: A Public Health Crisis at the Border*. Below is an excerpt from the white paper:

“Threats to public health include known concerns posed by any exposure to untreated sewage in the U.S., but of special concern and specific to this watershed are the unusual threats to health from pollutants arising in

Mexico, including human and livestock diseases eradicated in California, pathogens carrying antibiotic-resistant genes, and industrial and municipal chemicals not permitted to be discharged into the environment in California, among others...Contaminated water is flowing into the ocean year-round, and, especially after rain events, has forced beach closures in the region for years; however, this problem does not just adversely affect beachgoers and surfers exposed to contaminated seawater. Exposures impact the health of people who live and work nearby like children, seniors, lifeguards, military personnel, border patrol officers and other at-risk populations. Current regulation and monitoring measures are inadequate in relation to known contaminants yet potential health risks to surrounding communities from harmful viruses, bacteria and parasites as well as toxic chemicals in water and air, presenting a pressing public health crisis.”

- 6) *Environmental impacts of landfills*. In support of this measure, the author provided the committee with a July 2022 article from Environmental Science and Pollution Research, titled *An overview of the environmental pollution and health effects associated with waste landfilling and open dumping*. The article reports that landfilling is associated with various environmental pollution problems, namely, underground water pollution due to the leaching of organic, inorganic, and various other substances of concern contained in the waste, air pollution due to suspension of particles, odor pollution from the deposition of municipal solid waste, and even marine pollution from any potential run-offs. Further, the research shows health impacts may occur through the pollution of the underground water and the emissions of gases, leading to carcinogenic and non-carcinogenic effects of the exposed population living in their vicinity.

It should be noted that this article was based on a “desk review,” which is a scientific method that involves scanning the available body of literature. The study did not specifically look at the environmental impacts of landfills in California. California’s Regional Water Boards are required to ensure landfills comply with existing laws and procedures that protect water quality from the impacts of landfill operations.

- 7) *The East Otay Mesa Recycling Collection Center and Landfill*. More than a decade ago, San Diego County voters approved a county-wide initiative to allow for the construction and operation of a landfill and recycling center in East Otay Mesa. In 2011, a proposal submitted for a class III solid waste landfill occupying approximately 340 acres of the 450-acre site. The remaining 110 acres would remain undeveloped with an additional 1000-foot buffer. The proposed project is located in the unincorporated area of south San Diego County, approximately one and one-half miles from the City of San Diego, two

and one-half miles from the City of Chula Vista, and one-quarter mile from the United States/Mexico border. If this bill passes, this proposed landfill in East Otay Mesa would not be able to receive a waste discharge permit from the Regional Water Board.

- 8) *San Diego's land-fill capacity.* San Diego has 12 facilities that process waste: eight recycling and transfer stations and four landfills: Otay Mesa Landfill, Miramar Landfill, Sycamore Landfill, and Borrego Landfill. Two of the largest landfills (Miramar and Otay) are set to close by 2030.

On September 20, 2022, CalRecycle approved the Five-Year Review Report for the Countywide Integrated Waste Management Plan for the County of San Diego. The report indicates that the county has enough capacity with existing landfills to last through 2053. However, this scenario assumes the Sycamore Landfill will apply for three expansions to their daily permitted capacity. Sycamore Landfill has complete California Environmental Quality Act (CEQA) for these landfill expansions; however, there has been no application to the Local Enforcement Agency to revise the Solid Waste Facility Permit. The disposal projection scenario also assumes the county will meet aggressive recycling and organic waste targets, thereby diverting a greater rate of organic materials from the landfills.

As noted above, the report references that Miramar and Otay are estimated to close by 2030. This closure date may happen earlier, opponents argue, since, to date, diversion targets have not been met. "If that does happen, Sycamore may not be fully prepared or even authorized to accept higher inflows," according to opponents.

- 9) *CalEnviroScreen.* In order to address the cumulative effects of both pollution burden and these additional factors, and to identify which communities might be in need of particular policy, investment, or programmatic interventions, the Office of Environmental Health Hazard Assessment (OEHHA) developed and now maintains and updates the CalEnviroScreen tool on behalf of CalEPA. The tool applies a framework, developed by OEHHA in 2010, for assessing cumulative impacts. According to OEHHA cumulative impacts refer to exposures and public health or environmental effects from all sources of pollution in a geographic area. Cumulative impacts also take into account groups of people that are especially sensitive to the effects of pollution and socioeconomic factors. The CalEnviroScreen tool's framework is based in large part on input from a statewide working group on environmental justice that pointed out the unmet need to assess cumulative burdens and vulnerabilities affecting California communities. According to CalEnviroScreen 4.0, Otay

Mesa, the site of the proposed landfill, has a score in the 90-100% (which is the most polluted percentile).

## **Comments**

- 1) *Purpose of Bill.* According to the author, “Border communities already face some of California’s most pressing environmental justice challenges. The Tijuana River is already one of the most polluted watersheds in the nation. Allowing developers to build an unnecessary landfill in that watershed would further impact local communities that are already enduring ecological disasters. SB 1208 will protect vulnerable Californians by prohibiting a landfill that would further pollute the waters of the Tijuana River and threaten local residents.”
- 2) *Is the landfill needed?* As discussed above, Tijuana River contamination is a persistent environmental and public health threat for the nearby communities. The author contends that citing a solid waste landfill at East Otay Mesa would increase the pollution burden of already overburdened border communities.

The author further maintains that the East Otay Mesa landfill is “not necessary as the County of San Diego has found the current landfill capacity will last through 2053.” Proponents of the proposal argue that with efforts to meet aggressive state goals and continued improvements in recycling, “there is a significant potential for increased waste diversion, which would extend landfill capacity over an even longer term.” While this may be true, as noted previously, the projections of San Diego’s landfill capacity are predicated on the anticipated expansions of Sycamore Landfill.

It is worth noting that the proposed East Otay Mesa landfill includes a recycling center (RCC) and organic waste processing and composting facility. The RCC would contain a materials recovery facility which would be used to separate recyclable materials to be hauled off-site.

- 3) *Negates Regional Water Board authority and expertise.* SB 1208 would prohibit the San Diego Regional Water Board from issuing a waste discharge permit for the proposed landfill in East Otay Mesa, thereby stopping the project from moving forward. This approach, however, negates the existing decision-making authority and expertise of the Regional Water Board, whose job it is to ensure landfills comply with existing laws and procedures that protect water quality from the impacts of landfill operations. Board approval of a waste discharge permit for a new Class III landfill, such as East Otay Mesa, is an extensive, project specific process. State regulations specify general



construction criteria, criteria for containment structures, liners, leachate collection and removal systems, subsurface barriers, precipitation and drainage controls, as well as requirements for water quality monitoring.

Once a permit applicant submits a Report of Waste Discharge (ROWD), a yearlong Board staff review of the application begins, followed by staff preparation of the draft WDRs. The completion of the draft WDRs triggers a public review and comment process. Then, the draft WDRs is publicly noticed for consideration by the Regional Water Board. The Board can vote to approve the WDRs, deny, or grant limited approval if any outstanding concerns cannot be mitigated. If approved, the Regional Water Board has authority to enforce all aspects of the WDRs, including groundwater monitoring requirements. Importantly, current law states that all discharges of waste into waters of the state are privileges, not rights.

The San Diego Regional Water Board has not received a ROWD for the proposed East Otay Landfill. According to the Board, “at a minimum, Regional Board approval would be contingent on prohibitions of surface discharges to any drainages offsite in both the Waste Discharge Requirements (WDRs) themselves as well as the Industrial and Construction Storm Water Permit Enrollments. Groundwater controls would be extensive and monitored onsite and offsite, if approved.”

- 4) *Overburdening existing landfills?* Stopping the East Otay Mesa landfill from moving forward could also result in increased demands on San Diego’s existing waste disposal infrastructure and landfills. Opponents of this measure argue that SB 1208 would “effectively extend the life and heights of existing landfills that are known to be harming residents,” noting that Sycamore landfill, the landfill that is anticipated to be expanded, is located less than a half mile away from a residential area, increasing the likelihood for potential exposures to methane emissions. Further, opponents argue that the bill would inappropriately “undermine the will of San Diego County voters” and impede “ongoing and rigorous environmental review of a proposed recycling and landfill facility – effectively undermining the California Environmental Quality Act (CEQA).”
- 5) *Question before the committee.* While it is clear that TJRE is severely contaminated by untreated sewage and that this has created a public health crisis at the border, it is less clear what potential impacts a new landfill at East Otay Mesa will have on the Tijuana River watershed and neighboring communities. These impacts are currently being evaluated through the CEQA process. Further, without this bill, the potential water quality impacts of the

project would be vetted through the Regional Water Board.

The question before the committee is whether the potential health and environmental impacts to overburdened border communities warrant a blanket prohibition on new landfills in the TJRE, thereby stopping a voter-approved local project, or if it is more appropriate to let CEQA process currently underway and the anticipated Regional Water Board regulatory process play out. The latter option would enable the Board to assess the specific impacts of the proposed landfill and require appropriate mitigation measures to protect water quality.

***Should the committee wish to advance this proposal, the committee and author may wish to consider amending the bill to provide an exception to the prohibition if a regional water board makes a finding that the WDRs protect water quality, meet water quality objectives, and protect beneficial uses.***

- 6) *Could this bill shelve the Nelson Sloan Quarry reclamation project?* According to the information provided by the author, the aim of this bill is to prohibit the construction the proposed East Otay Mesa landfill and recycling center. The bill seeks to accomplish this by prohibiting the a Regional Water Board from issuing “a waste discharge permit for a new landfill that is used for the disposal of nonhazardous solid waste if the new landfill is to be located within the Tijuana River National Estuarine Research Reserve or within an area that is tributary to the Tijuana River.” However, while the proposed East Otay Mesa site is within an area that is tributary to the Tijuana River (via Mexico and Rio Alamar), it is *not* within the Tijuana River National Estuarine Research Reserve. A concern has been raised by the San Diego Regional Water Board that another significant project, described as core to the Tijuana River Valley recovery, which *is* located in the Tijuana River National Estuarine Research Reserve, could be stalled by this proposal (i.e., prohibiting the Regional Water Board from considering a waste discharge permit for the project).

The Nelson Sloan Quarry Restoration and Beneficial Reuse of Sediment Project (Project) represents a multi-jurisdictional agreement developed over the past decade. One of the first projects identified in the Tijuana River Valley Recovery Strategy, the Project is an effort to restore an abandoned sand and gravel quarry within the Tijuana River National Estuarine Research Reserve with sediments dredged from the Goat Canyon Sediment Basin and the pending Tijuana Estuary Tidal Restoration Project, a key climate adaptation strategy for the Estuary. The sediment management and restoration activities proposed is anticipated to improve water quality within the watershed as well as improve recreational access and quality of life for downstream communities.



In addition, the long-term goals of the project include the enhancement of upland habitat on site and riparian and estuarine habitats in the valley, and reduced flooding hazards throughout the valley.

The California Department of Parks and Recreation (CDPR) received \$1.2 million in state grants to develop the project through the final design and environmental review. CDPR certified the CEQA environmental impact report in June 2023 and submitted it to the Regional Water Board. Staff are reviewing it at this time. CDPR will also be submitting the ROWD to the Board for review soon.

According to the San Diego Regional Water Board, “The Nelson Sloan Quarry Restoration and Beneficial Reuse of Sediment Project is an important environmental restoration effort identified within the TJ River Recovery Strategy in 2012 and is critical to CA State Parks protection and restoration of the Tijuana River National Estuarine Research Reserve. This Project will also help address transboundary flows of sewage, trash, and sediment, into the Tijuana River Valley and out to the Pacific Ocean.”

***If the committee chooses to advance this proposal, to ensure the Regional Water Board is not precluded from considering the Nelson Sloan Quarry Project, the committee and author may wish to consider clarifying that the bill’s prohibition shall not apply to a public agency restoration and beneficial reuse project for abandoned sand and gravel mining quarries located within the Tijuana River National Estuarine Research Reserve or areas tributary to the Tijuana River.***

- 7) ***Committee amendments. Staff recommends the committee adopt the bolded amendments contained in comments 5 and 6 above.***

### **Related/Prior Legislation**

AB 2601 (Garcia, 2022) would have prohibited a Regional Water Board from issuing a waste discharge permit for a new landfill, or a lateral expansion of an existing landfill, that is used for the disposal of nonhazardous solid waste if the land is located within three miles of the United States border with Mexico. This bill was held on suspense in the Assembly Appropriations Committee.

SB 1383 (Garcia, Chapter 395, Statutes of 2016) establishes methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants including to reduce the disposal of organic waste 75 percent below 2014

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levels by 2025 and to recover 20 percent of edible food for human consumption that is currently landfilled by 2025.

**SOURCE:** Author

### **SUPPORT:**

California Coastal Protection Network  
California Coastkeeper Alliance  
Californians Against Waste  
Center for Biological Diversity Inc.  
Cleaneearth4kids.org  
Climate Action Campaign  
Endangered Habitats League  
Environmental Center of San Diego  
Protect Otay Foothills  
San Diego Audubon Society  
San Diego Coastkeeper  
San Diego Count Democrats for Environmental Action  
SanDiego350  
Surfrider Foundation San Diego Chapter  
Surfrider Foundation San Diego County  
Wildcoast  
129 Individuals

### **OPPOSITION:**

California Building Industry Association  
Councilmember Marni von Wilpert, City of San Diego  
Councilmember Moreno, City of San Diego  
National Enterprises, INC.  
1 Individual

**ARGUMENTS IN SUPPORT:** According the San Diego Coastkeeper, Surfrider Foundation of San Diego County, and Protect Otay Foothills, “This legislation addresses our grave concerns about a new private landfill proposed to be developed in that tributary system in the upper Tijuana River Watershed in the Otay Mountain Foothills.

“The project could impair water and air quality throughout the Tijuana River Watershed, including the Tijuana River Valley and Estuary, causing negative health impacts to downstream communities in a region already burdened by one of the worst ongoing public health and environmental justice crises in the country.

“Fundamentally, there is no need for a new landfill in San Diego County, as the County has more than adequate assured disposal capacity as documented in the County’s detailed analysis of the region’s landfill capacity. We applaud Senator Padilla’s recognition that “we all live downstream”, and pointedly that an unnecessary landfill developed in the watershed of the already impaired Tijuana River, could adversely affect water and air quality in the lower watershed and exacerbate the ongoing pollution issues from which our border cities and communities have suffered for decades.”

**ARGUMENTS IN OPPOSITION:** According to National Enterprises, Inc., “While we share in your concern and appreciate your steadfast leadership on the restoration of the Tijuana River, SB 1208 would also effectively extend the life and heights of existing toxic landfills that are known to be harming residents in your district, require your residents pay even more for waste and recycling, and undermine the will of San Diego County voters. Furthermore, SB 1208 inappropriate impedes on ongoing and rigorous environmental review of a proposed recycling and landfill facility – effectively undermining the California Environmental Quality Act (CEQA).

“SB 1208 undermines San Diego County Voters Approval of Environmentally Superior Alternative located outside of the Tijuana River NERR [National Estuarine Research Reserve]. In 2010, County of San Diego voters approved, with 84.49%, Proposition A to allow for the construction and operation of a recycling collection center and class III solid waste landfill on the East Otay Mesa project site...

“In contrast to existing facilities, the project is currently going through stringent environmental review by the San Diego Solid Waste Local Enforcement Agency (LEA) and a Draft Environmental Impact Report (EIR) is being prepared. This is the appropriate process for studying any potential impacts to the Tijuana River watershed and identifying any necessary mitigations.”

**-- END --**