



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Office of Enforcement

1001 I Street • Sacramento, California 95814 • (916) 341-5277
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5284 • <http://www.waterboards.ca.gov>

Arnold Schwarzenegger
Governor

JULY 24, 2008

JIM GUNDERSON
BROWNING - FERRIS INDUSTRIES
12310 SAN MATEO RD.
HALF MOON BAY, CA 94019

VIA CERTIFIED MAIL
7003 3110 0003 0767 3795

No. SWB-2008-2-0004— OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF NPDES PERMIT CORINDA LOS TRANCOS (OX MOUNTAIN) LANDFILL, HIGHWAY 92, HALF MOON BAY, CA 94019 (NPDES Permit No. R2-2007-0062, WID No. 2 417053002)

Dear Facility Contact:

This letter is to notify BROWNING - FERRIS INDUSTRIES (hereinafter "PERMITTEE" or "you") of alleged violations of the California Water Code identified in the State Water Resources Control Board's (State Water Board) water quality data system and to allow the PERMITTEE to participate in the Water Boards' Expedited Payment Program for Effluent or Reporting Violations (Expedited Payment Program) to address liability which may be assessed pursuant to Water Code sections 13385 and 13385.1.

NOTICE OF VIOLATION:

Based on information in the California Integrated Water Quality System (CIWQS) as of June 2008, the State Water Board's Office of Enforcement alleges that the PERMITTEE has violated the effluent limitations, reporting violations, or Water Code provisions identified in the Notice of Violation (NOV) attached as Exhibit "A". The Permittee will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY:

Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a MANDATORY MINIMUM PENALTY of \$3,000 for specified serious and chronic effluent limit violations. The PERMITTEE is subject to discretionary administrative civil liabilities of up to TEN THOUSAND DOLLARS (\$10,000) for each day in which the violation occurs, plus TEN DOLLARS (\$10) for each gallon discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by a Regional Water Quality Control Board (Regional Water Board) or the State Water Board (collectively "the Water

Boards”), beginning with the date that the violations first occurred⁴. The formal enforcement action which the Water Boards use to assess such liability is an administrative civil liability complaint although the Water Boards may instead refer such matters to the Attorney General’s Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) per violation. In addition, the Superior Court may assess up to TWENTY FIVE DOLLARS (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM:

The PERMITTEE can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV by participating in the Water Boards’ Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the State Water Board makes this Conditional Offer. The PERMITTEE may accept this offer, waive the PERMITTEE’S right to a hearing, and pay the mandatory minimum penalty as indicated on Exhibit A, for the violations described in the NOV. If the PERMITTEE elects to do so, subject to the conditions below, the State Water Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the Notice of Violation. Accordingly, the State Water Board will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the Notice of Violation. Resolution of these violations by the State Water Board will preclude Regional Water Board action for these same violations.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in the Notice of Violation.

PERMITTEE’S OPTIONS FOR RESPONSE TO OFFER:

If you accept this offer, please complete and return the enclosed “Acceptance of Conditional Resolution and Waiver of Right to Hearing, (proposed) Order” (Acceptance and Waiver) on or before thirty (30) days from the date of this letter. The Acceptance and Waiver will be held, pending a 30-day public notice period, and then will be

⁴ Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees’ Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.) The Permittee has not been substantially prejudiced by the passage of time between the date(s) that Permittee reported the violations identified on Exhibit A and the date of this letter. The Permittee was aware of the violations at the time it reported them to the Regional Board. Regional Board staff’s limited enforcement resources and competing enforcement priorities provide a rational explanation for the delay. In fact, the delay has actually benefited the Permittee because it extended the time before payment of the mandatory minimum penalties is due. For these reasons, any delay is not unreasonable.

counter-signed by the Executive Director and returned to you with an invoice for payment.

If you contest some but not all of the violations identified in the attached Notice of Violation, the PERMITTEE may elect to reserve the right to address the contested matters and resolve any uncontested violations through the payment of the mandatory minimum penalty for each uncontested violation. If the PERMITTEE chooses this option, please communicate with the staff contact identified below to discuss the mechanism for memorializing that election on or before the due date.

If the PERMITTEE chooses to contest any of the violations alleged in the Notice of Violation, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date. The State Water Board staff will evaluate the contested violation and take one of two actions:

- 1) The State Water Board staff will determine that the violation is not supported, verify that determination with the Regional Water Board, expunge the alleged violation from the CIWQS data base once the Regional Water Board verifies the determination, take no further action against the PERMITTEE for the alleged violation, and notify the PERMITTEE of that determination;
- 2) The State Water Board staff, in consultation with the Regional Water Board staff, will determine that the alleged violation is meritorious, and will notify the PERMITTEE of that determination. The PERMITTEE will be given thirty (30) days from the date of receipt of the State Water Board staff determination, to submit a supplemental Expedited Payment for those violations. If the PERMITTEE chooses not to make a payment in response to the determination, the PERMITTEE should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor which can be considered in assessing the liability amount.

CONDITIONS FOR STATE WATER BOARD ACCEPTANCE OF RESOLUTION:

Federal regulations require the State Water Board to publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NDPES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the PERMITTEE's Acceptance and Waiver, the State Water Board staff will publish a notice the proposed resolution of the violations.

If no comments are received within the 30-day period, and unless there are new material facts that become available to the Water Boards, the Executive Director will

execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the settlement, this Offer may be withdrawn. In that case, the PERMITTEE's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the unresolved violations will be addressed in a liability assessment proceeding. At the liability assessment hearing the PERMITTEE will be free to make arguments as to any of the alleged violations, and the PERMITTEE's agreement to accept this conditional offer will not in any way be binding or used as evidence against the PERMITTEE. The PERMITTEE will be provided with further information on the liability assessment proceeding.

In the event the Acceptance and Waiver is executed by the Executive Director, payment of the assessed amount shall be due and payable to the State Water Board as specified on the invoice that will accompany the PERMITTEE's receipt of the notice of the Executive Director's execution. The payment period is thirty (30) days. Failure to pay the penalty within the required time period may subject the PERMITTEE to further liability.

Should you have any questions about the Notice of Violation or the Conditional Offer, please contact Taryn Stokell at (916) 327-8039 regarding this matter.

Sincerely,

REED SATO
Director, Office of Enforcement

Encl. – Exhibit "A" - Notice of Violation
Acceptance of Conditional Resolution

THOMAS M. BRUEN
ERIK A. REINERTSON

LAW OFFICES OF
THOMAS M. BRUEN
A PROFESSIONAL CORPORATION
1990 NORTH CALIFORNIA BOULEVARD
SUITE 940
WALNUT CREEK, CALIFORNIA 94596

TELEPHONE: (925) 295-3131
FACSIMILE: (925) 295-3132
TBRUEN@SBCGLOBAL.NET

August 20, 2008

VIA E-MAIL & U.S. MAIL

Taryn Stokell
Expedited Payment Program
Office of Enforcement
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812-0100
Email: tstokell@waterboards.ca.gov

Re. Browning-Ferris Industries of California, Inc.
(Ox Mountain landfill)
(SWB 2008-2-004; NPDES Permit No. R2-2007-0062)

Dear Ms. Stokell:

This letter is to inform you that Browning Ferris Industries of California, Inc. ("BFI"), the permittee of the Ox Mountain Landfill, hereby contests the violations contained in the Notice of Violation sent by the State Water Resources Control Board on July 24, 2008 to Jim Gunderson of BFI. BFI would also like to take this opportunity to request a meeting with Water Board Staff to discuss the issues raised in this letter and our response to the requested civil penalties.

The 20 alleged violations can be divided into four categories: (1) 8 violations for effluent vinyl chloride concentrations allegedly exceeding the site permit limit; (2) 9 are for alleged violations of the selenium effluent limit; (3) 2 are for alleged violations of cyanide limit; and (4) 1 is an alleged violation of the silver discharge limit. For the reasons explained below, these violations do not constitute illegal discharges in violation of BFI's NDPEs permit.


Vinyl Chloride

Current regulations establish that the most stringent applicable water quality criterion for vinyl chloride is 2.0 µg/L. (California Toxics Rule, 40 CFR Part 131.) As such, all but one of the alleged violations would not be considered to exceed of current Water Quality-Based Effluent Limitations ("WQBEL") for vinyl chloride. The current permit retains limitations that are much more stringent than required by the WQBLs. We believe it is arbitrary to fine BFI for violating limitations that have no rational relation to water quality standards. Regarding the one violation that exceeds the WQBEL limit, dating from August 3, 2005, a reading of 2.4 µg/L, BFI does not contest this violation and is willing to pay the Mandatory Minimum Penalty of \$3,000.

Expedited Payment Program
August 20, 2008
Page 3

BFI appreciates the State Water Board's invitation to participate in the expedited payment program. We look forward to meeting with you and/or the Regional Board staff to further explain our position that the alleged violations should not be the basis for any penalties.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas Bruen", written in a cursive style.

Thomas M. Bruen

TMB:jcf
cc: Client



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Office of Enforcement

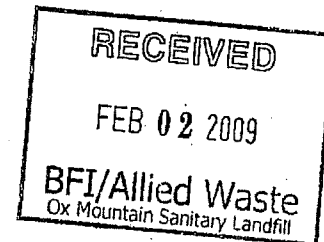
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Arnold Schwarzenegger
Governor

JANUARY 29, 2008

JIM GUNDERSON
BROWNING - FERRIS INDUSTRIES
12310 SAN MATEO RD.
HALF MOON BAY, CA 94019



RESPONSE TO REQUEST FOR ALLEGED VIOLATION REVIEW – OX MOUNTAIN LANDFILL (NPDES Permit No. R2-2007-0062, WDID No. 2 417053002)

Thank you for your letter dated August 20, 2008, responding to Offer to Participate in Expedited Payment Program No. SWB-2008-2-0004, which assessed mandatory minimum penalties (MMPs) for violations of effluent limitations. This letter addresses your comments in this regard.

First, the State Water Board has determined that the selenium, cyanide, and silver violations contained in Exhibit A are not supported. This determination has been verified with the San Francisco Bay Regional Water Quality Control Board (Regional Board) and the invalid violations will be expunged from our records.

Second, the State Water Board, in conjunction with the Regional Board, has determined that the vinyl chloride violations are justified and will be retained. While these violations occurred under the Order 93-146, which established a vinyl chloride effluent limit of 0.5 ug/L to be the level achievable by the best available treatment economically available, all of the violations post-date the 2000 issuance of the California Toxics Rule (CTR), which included a vinyl chloride water quality criterion of 2.0 ug/L (MDEL). Due to the Clean Water Act's anti-backsliding provisions, the CTR's criteria supersede existing, more stringent permit limits. The 0.5 ug/L limit was retained in the reissued permit (circa 2007) on anti-backsliding grounds, however. The Fact Sheet of the reissued permit states:

“(d) Antibacksliding. Order No. 93-146 included an MDEL for vinyl chloride of 0.5 µg/L, which is more stringent than the newly calculated MDEL and AMEL. The 0.5 µg/L limit was based on BPJ. It appears that this technology-based BPJ limit could have been established in error because 9 out of the past 22 samples have shown that the implemented technology cannot achieve that limit at this site. CWA Section 402 (o) (2) allows for exception to antibacksliding if there was a technical mistake. However, the Discharger has not provided evidence that it is operating its

treatment system as effectively as possible, or of what other technology might be necessary to meet the more stringent limit. Therefore, the previous limit of 0.5 µg/L is retained. The Regional Water Board will consider allowing backsliding for vinyl chloride if the Discharger presents evidence that the WQBELs cannot be met with the existing treatment system or with feasible upgrades."

The most recent vinyl chloride results submitted to the Regional Board, from July 2007, November 2007, and May 2008 are in compliance (results are ND or DNQ at an RL of 0.5 µg/L) which indicates that the PERMITTEE is able to meet the existing 0.5 µg/L limit.

Since the PERMITTEE requested a review of these violations, the State Water Board has established new deadlines. If you intend to participate in the Expedited Payment Program, you must sign and return the previously sent Acceptance of Conditional Resolution and Waiver of Right to Hearing form by **MARCH 1, 2008**. By signing the Acceptance and Waiver, the PERMITTEE agrees to pay the penalty as indicated on the amended Exhibit A – Notice of Violation and waives the right to a hearing.

If you do not elect to sign the Acceptance and Waiver, you will be contacted regarding formal enforcement action that will be initiated with regard to the contested violation.

Thank you for your assistance in this matter. Should you have any questions, please contact Taryn Stokell at (916) 327-8039.

Sincerely,



REED SATO
Director, Office of Enforcement

Encl. – Exhibit A – Notice of Violation (amended)



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Office of Enforcement
1001 I Street • Sacramento, California 95814 • (916) 341-5277
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
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Arnold Schwarzenegger
Governor

SWB-2008-2-0004
NPDES Permit No. R2-2007-0062

ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT TO HEARING; (proposed) ORDER

BROWNING - FERRIS INDUSTRIES
SWB-2008-2-0004
NPDES Permit No. R2-2007-0062

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Office of Enforcement of the State Water Resources Control Board (State Water Board), BROWNING - FERRIS INDUSTRIES (Permittee) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Water Board with jurisdiction over the facility to dispute the allegations of violations described in the Notice of Violation (NOV) which is attached hereto as Exhibit "A" and incorporated herein by reference.

The Permittee agrees that the NOV shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the State Water Board to assert jurisdiction over the alleged violations through its Executive Director. The Permittee agrees to pay the penalties authorized by California Water Code section 13385, as indicated on the attached invoice (Expedited Payment Amount) which shall be deemed payment in full of any civil liability pursuant to the Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the NOV.

The Permittee understands that once the Acceptance and Waiver is executed by the Executive Director of the State Water Board, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. The Permittee shall pay the Expedited Payment Amount by check payable to SWRCB. The payment shall be submitted to the State Water Board as specified on the enclosed invoice.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the Notice of Violation.

Upon execution by the Permittee, the Acceptance and Waiver shall be returned to:

Expedited Payment Program
Office of Enforcement
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

CWB 2000 2 0004
NPDES Permit No. R2-2007-0062

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the State Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Director of the State Water Board, will be published as required by law for public comment.

If no comments are received within the notice period which causes the Executive Director of the State Water Board to reconsider the Expedited Payment Amount, the Executive Director will execute the Acceptance and Waiver. Resolution of these violations by the State Water Board will preclude Regional Water Board action for these same violations.

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Water Board to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the Permittee will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Water Quality Control Board with jurisdiction over the violations or the State Water Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

The Permittee understands that once the Acceptance and Waiver is executed by the Executive Director of the State Water Board, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. The Permittee shall pay the Expedited Payment Amount in full. The payment shall be submitted to the State Water Board no later than the date indicated on an invoice which will accompany the Acceptance and Waiver after execution by the Executive Director.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver.

CORINDA LOS TRANCOS
OX MOUNTAIN LANDFILL, BFI of California, Inc.
(Name of Permittee)

By: [Signature]
(Signed Name)

2/26/09
(Date)

RICHARD E. KING
(Printed or typed name)

GENERAL MANAGER
(Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _____

By: _____
DOROTHY R. RICE
EXECUTIVE DIRECTOR
State Water Resources Control Board

Exhibit "A"
Browning-Ferris Industries
Corinda Los Trancos (Ox Mountain) Landfill
 NOTICE OF VIOLATIONS (1 January 2000 – 31 March 2008)
 MANDATORY MINIMUM PENALTIES WITHOUT ENFORCEMENT

The following table lists this facility's alleged violations of subdivisions (h) and (i) of California Water Code section 13385, from January 1, 2000 through March 31, 2008, which have not received mandatory minimum penalty assessment by the Water Boards. Final calculation of MMP amounts owed, and descriptions of the abbreviations that appear in the table are also listed below.

Occurred Date	Type	MMP Type	Violation Description
5/15/2001	CAT2	SIG	EFFL-1 Vinyl Chloride Instant Max ug/L; Max = 0.5; Reported Value = 0.83
10/16/2001	CAT2	SIG	EFFL-1 Vinyl Chloride Instant Max ug/L; Max = 1.2; Reported Value = 1.2
5/2/2002	CAT2	SIG	EFFL-1 Vinyl Chloride Instant Max ug/L; Max = 0.5; Reported Value = 1.6
6/5/2003	CAT2	SIG	EFFL-1 Vinyl Chloride Instant Max ug/L; Max = 0.5; Reported Value = 1.9
9/16/2003	CAT2	SIG	EFFL-1 Vinyl Chloride Instant Max ug/L; Max = 0.5; Reported Value = 0.67
5/19/2004	CAT2	SIG	EFFL-1 Vinyl Chloride Instant Max ug/L; Max = 0.5; Reported Value = 0.75
5/9/2005	CAT2	SIG	EFFL-1 Vinyl Chloride Instant Max ug/L; Max = 0.5; Reported Value = 0.66
8/3/2005	CAT2	SIG	EFFL-1 Vinyl Chloride Instant Max ug/L; Max = 0.5; Reported Value = 2.4

Mandatory Minimum Penalty Amount Owed for Effluent Violations

(8 Serious Violations + 0 Chronic Violations) × \$3,000 = \$24,000 to the Cleanup & Abatement Account

Mandatory Minimum Penalty Amount Owed for Reporting Violations

(0 Late Reporting Violations + 0 Deficient Reporting Violations) × \$3,000 = \$0 to the Waste Discharge Permit Fund

Definition of Acronyms & Abbreviations

CIWQS	California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities.
Violation ID	Identification number assigned to a violation in CIWQS.
Occurrence Date	Date that a violation actually occurred. For continuing violations, such as a monthly average, the last day of the reporting period is used. If the occurrence date is unknown, the date is entered as the day it was first discovered by staff, the Discharger, or a third party. For deficient or late reports, the occurrence date is the day after the report was due.
Type	Classification of a violation. Two types of violations relate to MMPs: 1) Late Reporting Violations (LREP, DREP) 2) Effluent Violations (ATOX, CTOX, CAT1, CAT2, OEV)
LREP	Late reporting violation. Every 30 days a report is late counts as one late reporting violation.
DREP	Deficient reporting violation. This will only result in an MMP if the report is so deficient as to make determination of compliance impossible for that reporting period.
ATOX	Violation of an acute toxicity effluent limitation.
CTOX	Violation of a chronic toxicity effluent limitation.
CAT1	Violation of an effluent limitation for a Group I pollutant by more than 40%.
CAT2	Violation of an effluent limitation for a Group II pollutant by more than 20%.
OEV	Violation of any constituent-specific effluent limitation not included in Group I or Group II.
MMP Type	Classification of the type of MMP violation.
CHRON	Chronic violation as defined by California Water Code section 13385 (i). To be counted as a chronic violation, there must be 3 preceding violations within a 180 day period. The fourth non-serious violation that occurs within the 180 period is an MMP violation.
SIG	Serious violation as defined by California Water Code section 13385 (h). Waste discharge exceeds the effluent limitation for a Group I pollutant by 40% or more (CAT1), or a Group II pollutant by 20% or more (CAT2). Also defined by California Water Code section 13385.1 as a failure to file a discharge monitoring report pursuant to Section 13383 for each period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.
Violation Description	Narrative description of the violation.
M	Effluent exceeds limit for monthly reporting period.
Q	Effluent exceeds limit for quarterly reporting period.
S	Effluent exceeds limit for semi-annual reporting period.
A	Effluent exceeds limit for annual reporting period.
IM	Effluent exceeds instantaneous maximum limitation.
DM	Effluent exceeds daily maximum limitation.
AW	Effluent exceeds average weekly limitation.
AM	Effluent exceeds average monthly limitation.