

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL ORDER NO. R5-2005-0071

ADMINISTRATIVE CIVIL LIABILITY ORDER
IN THE MATTER OF
FLORIN PERKINS LANDFILL, INC.
FLORIN PERKINS LANDFILL
SACRAMENTO COUNTY

This order for Administrative Civil Liability (hereafter Order) is issued to Florin Perkins Landfill, Inc. (hereafter referred to as Discharger), based on a finding of failure to submit technical reports pursuant to California Water Code (CWC) Section 13267, and based on provisions of CWC Section 13267(b)(1) and Sections 13268(a) and (b), which authorize the imposition of an Administrative Civil Liability.

The California Regional Water Quality Control Board, Central Valley Region, (Regional Board) finds, with respect to the Discharger's acts and failure to act, the following:

1. Florin Perkins Landfill, Inc. operated the Florin Perkins Landfill, a 106-acre unclassified landfill in the City of Sacramento, from 1993 to February 2005. The site comprises 160 acres, including the landfill, a transfer station, a materials recovery facility, and associated access roads and structures. The facility also includes chip and grind and soil blend operations in the central portion of the landfill which has not yet been filled.
2. The site property is owned by a group of family trusts: Nancy C. Cleavinger, Trustee of the Nancy C. Cleavinger Revocable Trust; Audrey A. Hunt, Trustee of the Audrey A. Hunt Revocable Trust; Janet E. Harvey, Trustee of the Janet E. Harvey Revocable Trust; Sally R. Davis, and Successor In Trust, Trustee of the Sally R. Davis Trust; Audrey A. Hunt and Nancy C. Cleavinger, Trustees, under a Testamentary Trust for Sally R. Davis under the terms of the will of Robert Earl Davis as established by Decree of Distribution entered on March 28, 1991; Virginia A. Palmer, Trustee of the Virginia A. Palmer Revocable Trust; and Gail Christine Brown, Trustee of the Donald Bruce Brown and Gail Christine Brown Revocable Trust.
3. Both operator and owners are named as Discharger in Waste Discharge Requirements (WDRs) Order No. 95-196 and a California Water Code Section 13267 Order issued by the Executive Officer on 22 August 2003. Violation of the CWC Section 13267 Order is the basis for this Complaint.
4. A written agreement with the owners grants to Florin Perkins Landfill, Inc. the exclusive right to conduct landfill operations on the property without direction or control by the owners. Because the WDRs and CWC Section 13267 Order violations described in this Complaint relate to landfill operations under the exclusive control of the operator, the owners are not named as a Discharger under this Complaint.
5. The landfill was developed in a former gravel quarry pit and is unlined. The landfill is regulated under Waste Discharge Requirements (WDRs) Order No. 95-196 issued pursuant to CWC

Section 13263 and Title 27 California Code of Regulations (CCR) Division 2. The WDRs limit the discharge to specified types of inert solid wastes, including construction and demolition wastes, shredded vehicle tires, and inert industrial wastes. Previous WDRs Order Nos. 80-062 and 89-202 also included this limitation on the discharge. Approximately half of the total landfill disposal area has been developed, primarily along the northern, eastern and southern perimeter of the site.

6. The maximum depth of waste is estimated to be about 38 feet below ground surface (11 feet above mean sea level). Boring logs for monitoring wells at the site indicate that the landfill is underlain by a 10 to 20 foot thick cobble and gravel layer, and then by a sand layer extending well into the saturated zone. The groundwater table is about 30 feet below the base of the landfill (69 feet bgs, - 9 feet MSL). The groundwater gradient direction is generally to the south-southeast.
7. There are currently six groundwater monitoring wells at the site, including two upgradient wells (MWs-A and E), one side gradient well (MW-B), and three down gradient wells (MWs-C, D and F). MW-D is in the central part of the landfill and MWs-C and F are compliance wells along the southern perimeter of the landfill. MRP No. 95-196 requires that all six wells be sampled semiannually for volatile organic compounds (VOCs), general minerals and dissolved iron. The MRP was also revised in 1999 to require interwell monitoring (i.e. the use of upgradient wells as background).
8. Groundwater monitoring data for the site shows historically elevated concentrations of general minerals, including total dissolved solids (TDS) and bicarbonate, in downgradient monitoring wells compared to background (i.e. Well A). In May 2004, for example, TDS was detected at 670 mg/L in downgradient Well F, compared to 270 mg/L in upgradient Well A. Bicarbonate was detected in Well F at 400 mg/L during this period compared to 84 mg/L in Well A. Elevated TDS and bicarbonate have also been historically detected in Wells C, D, E, and to a lesser degree Well B. Carbon dioxide from landfill gas can dissolve into groundwater and cause elevated TDS and bicarbonate levels.
9. Monitoring results submitted by the Discharger on 25 October 2002 (see Alisto Engineering report *Well Installation and First Semiannual Groundwater Monitoring Report, 2002*) confirmed the presence of the volatile organic compound trichlorofluoromethane (TCFM), also know as Freon 11, in groundwater at the site. TCFM was detected in one well, Well F, at a concentration of 8 µg/L. Similar concentrations of TCFM have been detected in Well F in each semiannual monitoring period since its installation in 2002 but no TCFM has been detected in the other onsite wells.
10. The WDRs and Title 27 regulations require that the Discharger, after confirmation of a release, prepare and submit to the Regional Board an Evaluation Monitoring Program (EMP plan) to define the nature (i.e. constituents, concentrations and source) and extent of the release. The Discharger has 90 days to implement the EMP plan, complete assessment of the release, and

submit the EMP report. Concurrent with the EMP report, the Discharger must submit to the Regional Board:

- a. An engineering feasibility study (EFS) that identifies and evaluates corrective action options to address the release; and
 - b. A proposed corrective action program (CAP), including proposed corrective action measures to reduce concentrations to background levels and monitoring plan to monitor the progress of corrective action.
11. In a 9 December 2002 letter, Regional Board staff requested that the Discharger submit the required EMP work plan to investigate the release (or alternative demonstration that the release is from an offsite source) per the MRP and 1993 Standard Provisions. The Discharger subsequently submitted the EMP work plan (*Proposed Work Plan for Evaluation Monitoring Program* prepared by Alisto Engineering), which proposed the following tasks:
- a. Sampling and analysis of a landfill gas (LFG) monitoring probe near Well F to assess whether Well F may have been affected by VOCs in LFG;
 - b. Semiannual monitoring of all six wells for VOCs (Revised MRP No. 95-196 specifies annually);
 - c. Extended development of Wells D, E and F prior to sampling to verify these wells are free of sediments from completion activities;
 - d. A review of available well information and historical water quality data for nearby offsite wells immediately east of the site on land owned by Teichert Land Company; and
 - e. Sampling of the Teichert wells after obtaining well access to assess the down gradient extent of the release and spatial changes in the groundwater chemistry.

No optional demonstration report was submitted with the EMP.

12. In a 6 March 2003 letter, Regional Board staff conditionally approved the EMP plan proposed by the Discharger and requested that the Discharger submit an Engineering Feasibility Study (EFS), EMP report and a proposed corrective action plan by 23 June 2003. The Discharger failed to submit these reports. In a 7 July 2003 letter, Regional Board staff notified the Discharger that the EFS, EMP report and CAP were past due and that the failure to submit the past due reports by 30 July 2003 would result in a formal order for the reports under CWC Section 13267. The Discharger failed to submit the reports.

13. CWC Section 13267 reads, in part, as follows:

(b)(1) ...the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters within

its region, shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires....

14. On 22 August 2003, the Regional Board's Executive Officer issued a CWC Section 13267 Order to the Discharger ordering submittal of the EFS, including the EMP report and proposed CAP, by 29 August 2003. The Order warned that failure to submit technical reports within the time periods specified may lead to additional enforcement activities, including the imposition of administrative civil liability under CWC Section 13268.
15. Regional Board staff subsequently received a 28 August 2003 letter from the operator stating that it would be unable to submit the EFS by the 29 August 2003 due date due to a change in consultants. The letter indicated that the EMP had not yet been implemented (except for monitoring of existing onsite wells) and was being forwarded to the new consultant for review. The letter stated that a schedule for "commencement and completion" would be submitted on or about 2 September 2003. Regional Board staff concurrently received a letter from the operator's attorney requesting an extension of the 29 August 2003 Order due date. The letter referenced the same reasons stated in the operator's letter (i.e. change in consultants, EMP not yet implemented). No EMP implementation schedule was subsequently received from the Discharger. In an 18 September 2003 letter, Regional Board staff denied the extension request stating that the Discharger had been allowed ample time to prepare the EFS.
16. Regional Board staff review of the 2003 Annual Monitoring Report (*Annual Groundwater Monitoring Event Report, January 21, 2004*) submitted by the Discharger on 4 February 2004 found that the report did not include a discussion of the downgradient extent of the release. A compliance record summary is required to be included in the Annual Report under the MRP. In a 15 March 2004 letter, Regional Board staff notified the Discharger of this reporting deficiency and requested that this information be submitted in an addendum to the report. The addendum (submitted by the Discharger's consultant on 19 May 2004) failed to provide this information but stated that negotiations for access to the offsite Teichert monitoring wells were in progress.
17. In a 27 April 2004 telephone discussion with Regional Board staff, the operator was not able to provide an estimated date as to when the EFS would be submitted. On 18 May 2004, in response to a request from the owner's attorney, Regional Board staff issued a letter to the Discharger (owner's attorney) summarizing outstanding compliance issues at the site, including the failure to submit the EFS. On 1 November 2004 Regional Board staff issued an enforcement letter to the Discharger stating that the EFS had not been received and warning of further enforcement action for violation of the CWC Section 13267 Order. Similar notice and warnings were repeated in a second Notice of Violation issued to the Discharger on 20 January 2005 for this and other continuing WDR violations.

18. In violation of the CWC Section 13267 Order, the Discharger failed to submit the EFS. CWC Section 13268 states:

(a) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

19. On 3 March 2005, the Executive Officer issued a \$50,000 ACL Complaint (No. R5-2005-0503) to Florin Perkins Landfill, Inc. for violation of the CWC Section 13267 Order. The ACL Complaint named only the operator because, as noted in Finding 4 herein, information provided by the owners in response to the complaint indicated that the operator was, by contract, in exclusive control of site operations and that the CWC Section 13267 Order violation was the result of Florin Perkins Landfill Inc.'s inaction. ACL Complaint No. R5-2005-0503 was not paid or settled.
20. As of 28 April 2005, the Discharger has been in violation of the 22 August 2003 CWC Section 13267 Order for 608 days. The maximum liability for the nonsubmittal of this technical report is six hundred and eight thousand dollars (\$608,000). No minimum liability is required to be imposed under Section 13268(b)(1).
21. CWC Section 13327 states: *"In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."*
22. The Regional Board has determined the following with respect to the factors in CWC Section 13327 and the CWC Section 13267 Order violation:

The nature of the violation is the failure to submit a technical report required under a CWC Section 13267 Order. The CWC Section 13267 Order specified a due date of 29 August 2003 for the report. The operator failed to submit the EFS (i.e. including evaluation monitoring results, an evaluation of remedial options and a corrective action plan) within this time period and to date has not submitted the EFS.

The extent of the violation is that as of 28 April 2005, the EFS was 608 days past due.

The circumstances are that monitoring confirmed a release to groundwater at the site in 2002. The operator was aware of its obligation under the WDRs and Title 27 regulations to investigate the release and propose remedial measures. The operator submitted, and Regional Board staff approved, an evaluation monitoring program (EMP) work plan to investigate the release. The operator failed to implement the investigation except for routine onsite groundwater monitoring. As a result, the operator failed to submit the required EFS report (including evaluation monitoring results, an evaluation of remediation options and a corrective action plan). The operator was also aware of the due dates for the EFS as set in staff enforcement letters and the CWC Section 13267 Order. Notwithstanding, the operator failed to submit the EFS in violation of the Order.

The gravity of the violation is that because the operator did not implement the EMP and did not submit the groundwater investigation results, the nature and extent of the release is still unknown. Because the operator did not prepare and submit the EFS, remedial options have not been identified and evaluated. As a result, groundwater impacts continue at the site with no plan for corrective action.

With respect to the violator, it has not been demonstrated that there is an inability to pay or to continue in business. The operator was informed of the opportunity to provide such information when it received the ACL Complaint.

With respect to voluntary cleanup efforts, this factor is not directly relevant as implementation of evaluation monitoring and submission of the EFS are required under WDRs.

With respect to degree of culpability, as landfill operator Florin Perkins, Inc. had exclusive control of site operations and has a long history of WDRs violations for discharging non-inert wastes to the landfill. The operator also has a history of noncompliance with the Local Enforcement Agency for accepting non-inert wastes at its other site operations (e.g. transfer station, materials recovery facility, soil blend operation, and chip and grind facility). The groundwater impacts detected in compliance wells at the site, such as Freon 11 and elevated TDS, are from non-inert wastes, or landfill gas generated by non-inert decomposable wastes. These wastes were not allowed to be discharged under the WDRs.

The operator was also aware of the due date for the EFS when the EMP was approved and was aware that the EMP needed to be implemented before the EFS could be prepared. The operator knowingly failed to implement the EMP and failed to submit the EFS by its original 23 June 2003 due date. The operator was made aware of the due dates for the EFS in staff enforcement letters subsequently issued and in the CWC Section 13267 Order. To date, the EFS has not been submitted and is about 20 months past due.

With respect to economic savings, the operator received economic benefit by failing to investigate the release and prepare the required EFS report. It is estimated that the operator accrued interest savings of about \$2,500 by deferring costs associated with implementing the EMP investigation and preparing the EFS report. The operator also accrued cost savings from delayed implementation of corrective action measures (i.e. landfill gas controls). These savings are assumed to be a minimum of \$5,000. The total estimated cost savings accrued by the operator

by delay is estimated to be a minimum of \$7,500. Further, it should be noted that the delays, in part, resulted in eviction of the operator by the owner, potentially saving the operator the entire cost of remedial investigation and cleanup.

Staff expended approximately 160 hours, or \$12,800 in staff costs, in generation of the ACL Complaint and preparation of the agenda material for the Regional Board presentation.

The operator has a long history of violations of its WDRs, including, but not limited to, the following:

- a. Discharge of unauthorized wastes to the landfill, including non-inert solid wastes (e.g. green waste, wood, levee grout, and ash) and semi-solid/liquid wastes (e.g. cement slurry and mud);
- b. Failure to remove unauthorized wastes from the landfill;
- c. Failure to conduct groundwater monitoring;
- d. Failure submit groundwater monitoring and technical reports;
- e. Discharge of wastes to ponded water; and
- f. Failure to maintain precipitation and drainage controls.

Some of these are continuing violations (e.g. discharge of non-inert clay, ponding, and failure to grade site for drainage). Also, during the past year and a half, the same operator was in violation of its WDRs and a subsequent Cease and Desist Order for the adjacent Jackson Road landfill. These violations are the subject of a separate ACL Order.

23. A \$250,000 Administrative Civil Liability is appropriate based upon the determination in Finding 20 and a review of the factors in Finding 22.
24. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.
25. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with Section 2050 through 2068, Title 23, California Code of Regulations. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions are available at http://www.waterboards.ca.gov/wqpetitions/wqpetition_instr.html and will also be provided upon request.

IT IS HEREBY ORDERED that the Regional Water Quality Control Board, Central Valley Region, imposes upon Florin Perkins Landfill, Inc. administrative civil liability in the amount of \$250,000 in accordance with California Water Code Section 13268 and Section 13323. Payment shall be made within 30 days of the date of this Order, and shall be in the form of a certified check made payable to the *State Water Pollution Cleanup and Abatement Account*. The check shall have written upon it the number of this Order.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 29 April 2005.

Original Signed By

THOMAS R. PINKOS, Executive Officer