# California Regional Water Quality Control Board
## Central Valley Region
Robert Schneider, Chair

Alan C. Lloyd, Ph.D.
*Secretary for Environmental Protection*

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Arnold Schwarzenegger
*Governor*


3 March 2005

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Ken Whitmire
Florin Perkins Landfill, Inc.
P.O. Box 276430
Sacramento, CA 95827

***ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2005-0503, FLORIN PERKINS LANDFILL, SACRAMENTO COUNTY***

Enclosed is Administrative Civil Liability (ACL) Complaint No. R5-2005-0503 issued to Florin Perkins Landfill, Inc. (hereafter referred to as "Discharger") for violation of a California Water Code Section 13267 Order. The violation consists of the failure to submit an engineering feasibility study report, including an evaluation monitoring program report and a proposed corrective action plan, concerning a groundwater release at the Florin Perkins Landfill. The Section 13267 Order was issued on 22 August 2003 after the Discharger failed to submit these reports as required under Waste Discharge Requirements Order No. 95-196 for the landfill and failed to submit the reports in response to subsequent Regional Board staff enforcement letters.

The ACL Complaint names only the operator. The violations described in the Complaint relate to landfill operations and information provided by the attorney for the property owners (Nancy C. Cleavinger, Trustee et al.) indicates that site operations were, by written agreement, under the exclusive control of Florin Perkins Landfill, Inc. as operator. The Complaint proposes that the Discharger pay $50,000 in administrative civil liability.

The Discharger may agree to pay the civil liability and waive a Regional Board hearing on the matter. If the Discharger waives a Board hearing, then a duly authorized person shall sign the waiver and remit both the waiver and a $50,000 check, made out to the *State Water Resources Control Board Waste Discharge Permit Fund,* to this office by **31 March 2005**. The resulting settlement of this ACL Complaint will not become final until after a 30-day public comment period, which began on the date of the Complaint. Additionally, the Executive Officer may decide to schedule the complaint for a hearing consistent with California Water Code Section 13323(b).

If you choose not to pay the civil liability, a hearing on this matter will be scheduled for **28/29 April 2005** in accordance with Section 13323 of the California Water Code. You will be provided specific notice about this meeting and its procedures at a later date.

If you intend to claim an inability to pay this Administrative Civil Liability Complaint, please be advised that you must submit a statement of financial conditions by **31 March 2005** that substantiates your claim. If you disagree with any findings in the Complaint, you must submit your written comments by **31 March 2005**.

Any other persons who have an interest in this matter should also submit comments to the Regional Board, attention John Moody, by **4 April 2005**.

If you have any questions, please contact Steve Rosenbaum at (916) 464-4631 or John Moody at (916) 464-4641.

Thomas R Pinkos

THOMAS R. PINKOS
Executive Officer

Enclosure: Administrative Civil Liability Complaint Order No. R5-2005-0503

cc w/ enclosure:
Regional Board members
Frances McChesney, Office of Chief Counsel, State Water Resources Control Board, Sacramento
John Norton, Enforcement Unit, State Water Resources Control Board, Sacramento
Gino Yekta, California Integrated Waste Management Board, Sacramento
Charles Stone, Department of Toxic Substances Control, Sacramento
Tammy Derby, Sacramento County Environmental Management Department, Sacramento
Robert Tokunaga, City Attorney, City of Sacramento, Sacramento
Louis A. Gonzalez, Attorney, Weintraub Genshlea Chediak Sproul, Sacramento
Jeffory J. Scharff, Attorney, Sacramento
Nancy C. Cleavinger, Trustee, Sacramento
Bob Hamel, Teichert Land Company, Sacramento
Mike Lien, L and D Landfill Limited Partnership, Sacramento

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0503

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

This Administrative Civil Liability Complaint (hereafter Complaint) 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 Executive Officer of 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. operates the Florin Perkins Landfill, a 106-acre unclassified landfill at the corner of Florin Perkins Road and the Jackson Highway in the City of Sacramento. 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 owner trustees 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 22 August 2003 as described in Finding 14 herein. Violation of the 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 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:

c. 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;
d. Semiannual monitoring of all six wells for VOCs (Revised MRP No. 95-196 specifies annually);
e. Extended development of Wells D, E and F prior to sampling to verify these wells are free of sediments from completion activities;
f. 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
g. 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 (CAP), 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 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 FPL 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 indicated 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 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. As of 31 January 2005, the Discharger has been in violation of the 22 August 2003 CWC Section 13267 Order for 521 days. The maximum liability for the nonsubmittal of this technical report is five hundred and twenty one thousand dollars ($521,000). No minimum liability is required to be imposed under Section 13268(b)(1).

20. 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."*

21. Issuance of this Complaint 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.

FLORIN PERKINS LANDFILL, INC. IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of fifty thousand dollars ($50,000). The amount of the liability proposed is based upon the maximum allowed liability under Section 13268(b)(1), a review of the factors set forth in CWC Section 13327 cited in Finding No. 20 above, and upon consideration of the economic benefit or savings resulting from the violations.

2. A hearing shall be held on **28/29 April 2005** unless the Discharger agrees to waive the hearing and pay the imposed civil liability in full and no hearing is otherwise warranted.

3. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the hearing, please check and sign the waiver and return it and the amount of civil liability in a check made payable to the State Water Resources Control Board Waste Discharge Permit Fund, to the Regional Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114, by **31 March 2005**.

/ Thomas R Pinkos

THOMAS R. PINKOS, Executive Officer

3 March 2005
(Date)

JDM: 3/3/05

## WAIVER OF HEARING FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Florin Perkins Landfill, Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2005-0503 (hereinafter the "Complaint");

2. I am informed of the right provided by Water Code Section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;

3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and

4. Without admitting liability for the matters alleged in the Complaint, I otherwise agree to remit payment for the civil liability imposed in the amount of fifty thousand dollars ($50,000) by check, which contains a reference to "ACL Complaint No. R5-2005-0503" and is made payable to the "*State Water Resources Control Board Waste Discharge Permit Fund.*"

5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.

6. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

_____
(Name)

_____
(Title)

_____
(Date)