

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2004-0138

REQUIRING

FLORIN PERKINS LANDFILL, INC.; 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; GAIL CHRISTINE BROWN, TRUSTEE OF THE DONALD BRUCE BROWN AND GAIL CHRISTINE BROWN REVOCABLE TRUST

JACKSON ROAD LANDFILL
SACRAMENTO COUNTY

TO CEASE AND DESIST FROM VIOLATING AND THREATENING TO VIOLATE WASTE DISCHARGE REQUIREMENTS

The California Regional Water Quality Control Board, Central Valley Region, (hereafter Regional Board), finds that:

1. On 25 April, the Regional Board adopted revised Waste Discharge Requirements (WDRs) Order No. R5-2003-0075 for closure of the Jackson Road Landfill. The WDRs required the Discharger to monitor for landfill gas by the third quarter of 2003 and to close the landfill, i.e. grade the landfill for drainage and cover it with clean soil, by 1 November 2004 in accordance with the Final Closure Plan for the facility. The Discharger violated its WDRs because it failed to monitor for landfill gas and assess its effect on water quality and threatens to violate its WDRs because it failed to start closure construction at the landfill and cannot meet its closure date.
2. The Jackson Road Landfill is a 25-acre, unlined, unclassified landfill in the City of Sacramento where construction and demolition debris was discharged. Florin Perkins Landfill, Inc. operates the landfill. The property is owned by 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; Gail Christine Brown, Trustee of the Donald Bruce Brown and Gail Christine Brown Revocable Trust. The operator and property owners are named as Discharger in this Order and in WDR Order No. R5-2003-0075.

3. The landfill operated from 1979 to 1994 under previous waste discharge requirements (WDR Order Nos. 78-37, 80-062 and 89-201). The facility was permitted to accept inert, non-hazardous waste such as construction and demolition debris. Prior to 1989 the landfill was also allowed to discharge up to 10 percent by volume of wood, metal and paper. Wood and paper waste can create landfill gas as it decomposes. In 1994, the Regional Board adopted closure WDRs (Order No. 94-261) that prohibited discharge of additional waste to the landfill. The 1994 WDRs included a schedule for submittal of a Final Closure and Post-Closure Maintenance Plan and closure of the landfill. The Discharger did not comply with this schedule. The landfill has not accepted waste since 1994 but has not yet been closed.
4. WDR Order No. R5-2003-0075 prescribed requirements for closure and postclosure maintenance and monitoring of the landfill. The WDRs provided a new schedule for completion of a Final Closure Plan (FCP) and closure of the landfill. WDR Provision H.12 stated:

The Discharger shall close of the landfill in accordance with the following schedule:

Task	Due Date
a. <i>Submit complete final design report, CQA plan, construction specifications and drawings to the City of Sacramento and Regional Board</i>	<i>15 May 2003</i>
b. <i>Begin construction of final cap and detention basin</i>	<i>Within 20 Days of Receiving Permits and Approvals From the City of Sacramento and Sacramento County Environmental Management Department</i>
c. <i>Winterize site and submit annual winterization report</i>	<i>Per MRP (Section H.2)</i>
d. <i>Submit project status report</i>	<i>15 November 2003</i>
e. <i>Complete of final cap and detention basin</i>	<i>1 November 2004</i>
f. <i>Submit Closure Certification Report</i>	<i>15 December 2004</i>

5. The Discharger submitted the required final design report for landfill closure to the Regional Board on 15 May 2003 (*Final Design Report*, prepared by Kleinfelder Inc.) in accordance with WDR Provision H.12a. On 26 August 2003, Sacramento County Environmental Management Department, the Local Enforcement Agency, approved a waste acceptance plan for landfill closure and authorized commencement of closure activities in accordance with the Final Closure Plan and WDRs. Regional Board staff approved the Final Closure Plan for the landfill on 2 September 2003.
6. WDR Provision H.12 required the Discharger to begin closure construction within 20 days of receiving permits and approvals from the City of Sacramento. The City of Sacramento received a copy of the closure plan, but not a grading permit application, as referenced in Finding 9 herein, or application fee to initiate review of the document.

7. Due to the scope of the project, the FCP proposed closing the landfill in phases over a two-year period. The first phase consisted of filling and grading the site to establish a foundation for the landfill cover. The FCP provided that this work would be conducted in 2003 and would require approximately 74,000 cubic yards of inert fill material, most of which would need to be imported from offsite. The second phase would include construction of the landfill cover and a storm water detention basin. The FCP provided that this work would be conducted in 2004 and would require approximately 81,000 cubic yards of imported clean soil.
8. The 2 September 2003 FCP approval letter also requested that the Discharger submit a report on the status of applications for permits and approvals from the City of Sacramento and the LEA. In response, the Discharger stated, in an 11 September 2003 letter, "*[G]rading plans, as prepared by Kleinfelder, Inc., have been submitted to the Planning Department for the City of Sacramento. Florin-Perkins is awaiting their response.*"
9. A 5 November 2003 site inspection conducted by Regional Board staff indicated that closure construction had not yet begun at the site. A 21 November 2003 project status letter submitted by the Discharger under WDR Provision H.13d (see Finding 4) stated "*[W]e have not yet received a response from the City Building Department on our grading permit application which was submitted on or about May 10, 2003.*"
10. In response to the 5 November 2003 inspection results and 21 November 2003 project status report, Regional Board staff issued a 10 December 2003 enforcement letter to the Discharger noting that the project was behind schedule and that the failure to initiate closure construction in 2003 constituted a threatened violation of WDR Provision H.12. The letter requested that the Discharger submit a revised closure schedule as an addendum to the FCP by 12 February 2004. The Discharger failed to submit a FCP addendum or revised closure schedule for the project.
11. The Discharger threatens to violate WDR Order No. R5-2003-0075 because it failed to start closure construction activities and therefore it will fail to complete closure by 1 November 2004 as specified in WDR Provision H.12.
12. Groundwater monitoring data indicates elevated concentrations of total dissolved solids and bicarbonate in one of the landfill compliance wells. WDR Order No. R5-2003-0075, Provision H.13 requires the Discharger to investigate whether these elevated concentrations are the result of landfill gas (LFG). WDR Provision H.13 provides:

The Discharger shall conduct an investigation to determine whether the landfill generates landfill gas (LFG), whether LFG may be causing or contributing to elevated concentrations of TDS and bicarbonate in the groundwater, and whether LFG controls are needed to protect water quality. The investigation shall be conducted in accordance with the following schedule:

<i>Item</i>	<i>Due Date</i>
a. <i>Submit investigation work plan and schedule for the installation and sampling of gas monitoring probes/wells consistent with the MRP.</i>	<i>1 July 2003</i>
b. <i>Install gas monitoring probes/wells per work plan schedule</i>	<i>1 September 2003</i>
c. <i>Initiate sampling of gas monitoring probes/wells per work plan schedule</i>	<i>Third Quarter 2003</i>
d. <i>Submit monitoring results in monitoring reports</i>	<i>Semiannually Per MRP</i>
e. <i>Complete LFG investigation, submit report</i>	<i>1 September 2004</i>
f. <i>Conduct long term LFG monitoring as necessary</i>	<i>Per MRP</i>

13. The Discharger submitted the 30 June 2003 report *Landfill Gas Assessment Workplan*, prepared by Kleinfelder, Inc. in response to WDR Provision H.13a. Regional Board staff provided comments on the LFG work plan to the Discharger in a 22 July 2003 letter. The letter requested that the Discharger submit a revised work plan in response to the comments by 12 August 2003. The Discharger failed to respond to this letter and a revised LFG work plan was not submitted.
14. On 20 November 2003, Regional Board staff issued an enforcement letter to the Discharger requesting that the Discharger submit the past due project status report required under WDR Provision H.12d (see Finding 4 herein) forthwith. The letter requested that the report include the status of the LFG investigation. The progress report received from the Discharger in response to this letter, dated 21 November 2003, did not address the status of the gas investigation.
15. Monitoring and Reporting Program (MRP) No. R5-2003-0075, a part of WDR Order No. R5-2003-0075, required that the Discharger monitor landfill gas probes or wells for specified LFG parameters (e.g. carbon dioxide and volatile organic compounds), and include the results in the semiannual monitoring reports submitted under the MRP. WDR Provision H.13c required that the Discharger initiate gas sampling in the Third Quarter 2003 and report the results semiannually per the MRP. The Second Half 2003 and Annual monitoring report (*Annual Groundwater Monitoring Event Report*, prepared by Earthtec Ltd), submitted by the Discharger on 4 February 2004, did not include this information. On 30 March 2004, Regional Board staff issued a letter to the Discharger notifying the Discharger that monitoring report was incomplete. The letter identified the information items that were missing from the report, including LFG monitoring results, and requested that the Discharger submit the information by 20 April 2004. The Discharger failed to provide LFG monitoring results.
16. On 4 March 2004 Regional Board staff conducted a site inspection of the landfill but was unable to locate any landfill gas monitoring wells at the site. Landfill staff stated during the inspection that the wells had not been installed.
17. On 15 March 2004 Regional Board staff issued a Notice of Violation (NOV) to the Discharger for violation of WDR Provisions H.13b (failure to install gas probes/wells), H.13c (failure to initiate LFG sampling) and H.13d (failure to report results per MRP). The NOV requested a plan

and schedule for returning to compliance by 2 April 2004. The Discharger failed to respond to the NOV and failed to submit a plan or schedule for returning to compliance with Provision H.13. A 25 May 2004 follow up inspection by Regional Board staff found that no landfill gas monitoring wells or probes were installed at the site.

18. The Discharger violated WDR Order No. R5-2003-0075 because it failed to install LFG monitoring probes/wells, failed to conduct LFG monitoring, and failed to submit LFG monitoring results as specified in WDR Provision H.13.
19. The beneficial uses of ground water in the vicinity of the site include domestic, municipal, industrial, and agricultural supply, as specified in the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*.
20. As a result of the events and activities described in this Order, the Regional Board finds that the Discharger has caused or permitted waste to be discharged in violation and in threatened violation of Waste Discharge Requirements Order No. R5-2003-0075.
21. California Water Code Section 13301 states, in part, that:

“When a regional board finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action.”

22. California Water Code Section 13267 states, in part, that:

“In conducting an investigation specified in subdivision (a), 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. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

23. California Water Code Section 13268 states, in part, that:

“(a)(1) 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).” and,

“(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.”

24. The technical reports required by this Order are necessary to assure compliance with WDR Order No. R5-2003-0075 and to assure protection of public health and safety. The Discharger owns and operates this facility, and is responsible for the discharge of waste at this facility.

25. California Water Code Section 13350 states, in part, that:

“(a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e) . . .

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

1. The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs . . .

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.”

26. 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 Title 14, California Code of Regulations, Section 15321(a)(2).

27. Any person adversely affected by the action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action. The petition must be received by the State Board within 30 days of the date the Regional Board adopted this Cease and Desist Order. Copies of the law and regulations applicable to filing petitions will be provided on request.
28. On 15 October 2004, in Sacramento, California, after due notice to the Discharger and other affected persons, the Regional Board conducted a public hearing at which the Discharger appeared and evidence was received concerning the discharge.

IT IS HEREBY ORDERED that pursuant to California Water Code, Section 13301, Section 13267, and Section 13350, Florin Perkins Landfill, Inc., 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; Gail Christine Brown, Trustee of the Donald Bruce Brown and Gail Christine Brown Revocable Trust, their agents, assigns and successors shall cease and desist from violating and threatening to violate the requirements of WDR Order No. R5-2003-0075 forthwith, and in no case later than as set forth in the following time schedules:

I. Landfill Closure Construction

<i>Task</i>	<i>Due Date</i>
a. Submit revised FCP with updated closure construction schedule, including project milestones, consistent with due dates in this order.	15 November 2004
b. Begin Phase I cover construction – filling, grading and foundation layer	15 May 2005
c. Complete Phase I cover construction - filling, grading and foundation layer	1 November 2005
d. Submit project status reports	15 June 2005 15 November 2005 15 June 2006 15 November 2006
e. Begin Phase II cover construction – final cap and detention basin	15 May 2006
f. Complete of final cap and detention basin	1 November 2006
g. Submit Closure Certification Report	15 December 2006

II. Landfill Gas Investigation

<i>Item</i>	<i>Due Date</i>
a. Submit a complete landfill gas investigation work plan that responds to Regional Board staff comments on the 30 June 2003 report as described in Finding 13 of this Order. The work plan shall include an updated schedule for the installation and sampling of gas monitoring probes/wells consistent with the due dates in this Order.	1 November 2004
b. Install gas monitoring probes/wells	30 November 2004
c. Initiate sampling of gas monitoring probes/wells per work plan schedule	Fourth Quarter 2004
d. Submit gas monitoring results in monitoring reports	Semiannually Per MRP
e. Complete LFG investigation, submit report	1 November 2005
f. Conduct long term LFG monitoring as necessary	Per MRP

IT IS FURTHER ORDERED that, pursuant to California Water Code Section 13223, if, in the opinion of the Executive Officer, the Discharger violates this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability.

Failure to comply with this Order may result in the assessment of Administrative Civil Liability (ACL) up to \$1,000 per day of the violation pursuant to CWC Section 13268, and up to \$5,000 per day of the violation pursuant to the CWC Section 13350, depending on the violation. The Regional Board reserves its right to take any enforcement actions authorized by law.

I, THOMAS PINKOS, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 15 October 2004.

THOMAS R. PINKOS, Executive Officer

JDM 10/15/04