

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL ORDER NO. R5-2005-0070

ADMINISTRATIVE CIVIL LIABILITY ORDER
IN THE MATTER OF
FLORIN PERKINS LANDFILL, INC.
JACKSON ROAD 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 findings of violations of Cease and Desist Order (CDO) No. R5-2004-0138 and provisions of California Water Code Section 13350 that authorize the imposition of 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 Jackson Road Landfill, a 25-acre unlined landfill in the City of Sacramento, from 1993 to February 2005.
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. R5-2003-0075 and CDO No. R5-2004-0138 for the facility. Violations of the CDO are the basis for this Order.
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 violations described in this Order relate to landfill operations under the exclusive control of the operator, the owners are not named as a Discharger under this Order.
5. Previous waste discharge requirements (Order Nos. 78-37, 80-062 and 89-201) authorized the landfill to accept construction and demolition debris and limited amounts of metal and decomposable wastes such as wood and paper. The landfill stopped accepting waste in 1994 but was not closed (i.e., graded and capped).

6. The Regional Board adopted closure waste discharge requirements (WDRs Order No. 94-261) for the landfill in 1994. The Discharger did not comply with the closure schedule in Order No. 94-261. In April 2003, the Regional Board adopted revised WDRs Order No. R5-2003-0075 based on a Final Closure Plan submitted by the Discharger. WDRs Order No. R5-2003-0075 included a closure schedule that required the Discharger to close the landfill by 1 November 2004.
7. WDRs Order No. R5-2003-0075 also required the Discharger to implement a landfill gas (LFG) investigation to evaluate whether LFG may be impacting groundwater water quality at the site and whether LFG controls are necessary. The WDRs required the Discharger to install LFG wells at the site by 1 September 2003, initiate LFG monitoring in the Third Quarter 2003 and report the results semiannually beginning with the Second Half 2003 report due by 31 January 2004.
8. The Discharger failed to comply with the closure schedule in WDRs Order No. R5-2003-0075. A 5 November 2003 Regional Board staff site inspection determined that the Discharger had failed to start closure construction at the site. On 10 December 2003, Board staff issued an enforcement letter notifying the Discharger that the failure to implement closure was a threatened violation of the WDRs. The letter requested that the Discharger submit an updated closure plan schedule by 12 February 2004. The Discharger failed to submit the requested plan. Subsequent Board staff inspections of the facility on 4 March 2004, 25 May 2004 and 27 September 2004 revealed that closure construction had not been initiated at the site.
9. The Discharger also failed to implement the LFG investigation required by WDRs Order No. R5-2003-0075. On 4 March 2004 Regional Board staff conducted a site inspection that determined that the Discharger had failed to install LFG monitoring wells or probes at the site. The Discharger subsequently failed to respond to a 15 March 2004 Notice of Violation issued for violation of the 1 September 2003 due date for installation of these wells. Follow-up inspections of the facility on 25 May 2004 and 27 September 2004 revealed that no LFG monitoring wells or probes had been installed at the site. Groundwater monitoring data indicate elevated concentrations of total dissolved solids (TDS) and bicarbonate compared to background and nearby wells. Carbon dioxide from LFG can dissolve into groundwater and cause elevated TDS and bicarbonate levels.
10. On 15 October 2004 the Regional Board issued CDO No. R5-2004-0138 to the Discharger (i.e., parties named in the WDRs) for the failure to implement landfill closure and the failure to initiate the LFG investigation in violation of WDRs Order No. R5-2003-0075. The CDO provided revised compliance schedules for landfill closure and the LFG investigation, including a 15 November 2004 submittal date for the revised Final Closure Plan and a date of 30 November 2004 for installation of the LFG monitoring wells. The Discharger did not comment on the revised schedule nor contest the adoption of the CDO. Nevertheless, the Discharger subsequently failed to perform any of the scheduled tasks under the CDO.

11. On 4 February 2005, the Executive Officer issued a \$50,000 Administrative Civil Liability (ACL) Complaint No. R5-2005-0502 to the Dischargers named under the CDO (Florin Perkins Landfill, Inc., and Nancy C. Cleavinger, Trustee et al.) for the CDO violations, including failure to submit a revised final closure plan and failure to install landfill gas monitoring wells at the site.
12. On 3 March 2005, the Executive Officer withdrew Order No. R5-2005-0502 and re-issued a \$50,000 ACL Complaint (No. R5-2005-0506) naming only the operator Florin Perkins Landfill, Inc. This revision was made after the owner provided the information noted in Finding 4 herein that the operator was, by contract, in exclusive control of site operations and responsible for complying with all permit requirements. The re-issued ACL Complaint was for the same CDO violations as the original complaint. ACL Complaint No. R5-2005-0506 was not paid or settled.
13. As of the date of this Order, the Discharger has failed to submit the Final Closure Plan. Further, based on the findings of a 10 January 2005 Regional Board staff site inspection, no LFG monitoring wells have been installed at the site.
14. By failing to submit a revised Final Closure Plan with an updated closure schedule, and by failing to install LFG monitoring wells at the site for the LFG investigation, the Discharger has violated CDO Order No. R5-2004-0138, which reads, in part, as follows:

I. Landfill Closure Construction

<i>Task</i>	<i>Due Date</i>
<i>a. Submit revised FCP with updated closure construction schedule, including project milestones, consistent with due dates in this order.</i>	<i>15 November 2004</i>

II. Landfill Gas Investigation

<i>Item</i>	<i>Due Date</i>
<i>b. Install gas monitoring probes/wells</i>	<i>30 November 2004</i>

15. California Water Code (CWC) 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.

16. As of 28 April 2005, the Discharger has been in violation of the CDO for 164 days for failure to submit the revised Final Closure Plan. The maximum liability for this CDO violation is eight hundred and twenty thousand dollars (\$820,000). The minimum liability for this violation is sixteen thousand and four hundred dollars (\$16,400).
17. As of 28 April 2005, the Discharger has been in violation of the CDO for 149 days for failure to install LFG monitoring wells at the site. The maximum liability for this CDO violation is seven hundred and forty-five thousand dollars (\$745,000). The minimum liability for this violation is fourteen thousand and nine hundred dollars (\$14,900).
18. The maximum total liability for both CDO violations is one million five hundred and sixty five thousand dollars (\$1,565,000). The minimum total liability for both violations is thirty-one thousand and three hundred dollars (\$31,300).
19. 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.”*
20. The Regional Board has determined the following with respect to the factors in CWC Section 13327 and the CDO violations:

The nature of the first violation is the failure to submit a technical report (a revised Final Closure Plan) in violation of a CDO. The operator failed to implement closure in accordance with the schedule in the original closure plan and WDRs. The CDO allowed the Discharger up to two additional years to complete closure. A revised closure plan was

necessary to show that the operator had a current plan and schedule for returning to compliance.

The nature of the second violation (failure to install gas monitoring wells) is the failure to conduct an investigation necessary to protect water quality. The WDRs and CDO required the Discharger to install gas monitoring wells to determine if LFG is impacting groundwater quality at the site and whether LFG controls are needed as a corrective action measure.

The circumstances are such that the operator did not contest adoption of the CDO and was aware of the due dates for submission of the revised closure plan and installation of the gas wells. Notwithstanding knowledge of the CDO requirements, the operator failed to complete both tasks.

The extent of the first CDO violation is that, as of 28 April 2005, the revised Final Closure Plan has not been submitted and is a total of 164 days late. The extent of the second CDO violation is that, as of 28 April 2005, LFG monitoring wells or probes have not been installed at the site and their installation is 149 days past due.

The gravity of the first violation is that the operator failed to implement closure construction in violation of the WDRs and was two years behind schedule at the time the CDO was issued. The CDO provided the Discharger with an additional two years to close the landfill and required the revised closure plan to assess the operator's plan to meet the closure schedule in the CDO. The Discharger's failure to submit the revised closure plan could further delay landfill closure, allowing surface drainage at the site to continue to seep into landfill waste and impact groundwater.

The gravity of the second violation is that, due to the Discharger's failure to implement the LFG investigation at the site, information that might have resolved whether LFG is causing the elevated TDS and bicarbonate in the groundwater is not available, delaying implementation of any necessary corrective measures such as LFG controls. The result of such delay could be continued groundwater degradation.

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 notified of the opportunity to provide such information when the ACL Complaint was issued and has not submitted any information to date.

With respect to voluntary cleanup efforts, since the ACL Order is for the failure to submit a technical report and install monitoring wells, this factor is not directly relevant. The operator has not undertaken any voluntary activities at the site to close the landfill or conduct an LFG investigation.

With respect to degree of culpability, the operator had, pursuant to the contract with the owner, exclusive control of landfill operations. The operator was aware of the CDO requirements for submitting a revised closure plan and chose not to comply. Revising the closure plan to include an updated closure schedule should have taken minimal effort and time, given that the substantive plan had been previously approved and incorporated into the WDRs and CDO and that the CDO included due dates for completion of closure plan tasks. The operator was also aware of the CDO requirement to install LFG monitoring wells but failed to complete the work plan and install the wells. The operator is therefore fully culpable for the violations.

With respect to economic savings, the operator has benefited by delaying the expenditure of funds necessary to complete the required technical report (i.e. revised closure plan) and by delaying closure construction, which cannot begin until the revised closure plan is approved. The total cost saving accrued by the operator for delaying submission of the revised closure and delaying closure of the landfill is estimated to be a minimum of \$8,095.

The operator has realized economic savings by delaying the expenditure of funds necessary to install and monitor the LFG monitoring wells and by deferring the cost of installing LFG controls, should they have been determined to be necessary. The total cost savings accrued by the operator for delaying the LFG investigation 149 days is estimated to be a minimum of \$7,085.

The total estimated cost savings accrued by the operator for both violations is estimated to be a minimum of \$15,180. Further, the delays, in part, resulted in eviction of the operator by the owner, potentially saving the operator the entire cost of landfill closure, the LFG investigation and any necessary LFG controls.

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

The operator has a long history of violations for failure to implement closure at the site. Prior to violating the closure schedules in the current WDRs and CDO, the operator was in violation of the previous closure WDRs for failing to submit a Final Closure Plan and failing to implement closure at the site. Staff enforcement letters were issued for these violations in 1997, 1999, and 2000 and a Notice of Violation was issued on 19 September 2002.

21. A \$650,000 Administrative Civil Liability is appropriate based upon the determinations in Findings 16 through 18 and a review of the factors in Finding 20.
22. 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.

23. 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 \$650,000 in accordance with California Water Code Section 13350 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 Resources Control Board Waste Discharge Permit Fund*. 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