

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0506

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

This Administrative Civil Liability Complaint (hereafter Complaint) 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 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. 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 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 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. 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, 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 (FCP) 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, which specified a 1 November 2004 due date for landfill closure. The letter requested that the Discharger submit an updated closure plan schedule by 12 February 2004. The Discharger failed to submit the requested plan. The results of subsequent 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 FCP 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.

11. As of the date of this Complaint, the Discharger has failed to submit the FCP. 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.
12. By failing to submit a revised FCP 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>

13. 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.*

14. As of 31 January 2005, the Discharger has been in violation of the CDO for 77 days for failure to submit the revised FCP. The maximum liability for this CDO violation is three hundred and eighty five thousand dollars (\$385,000). The minimum liability for this violation is seven thousand and seven hundred dollars (\$7,700).
15. As of 31 January 2005, the Discharger has been in violation of the CDO for 62 days for failure to install LFG monitoring wells at the site. The maximum liability for this CDO violation is three hundred and ten thousand dollars (\$310,000). The minimum liability for this violation is six thousand and two hundred dollars (\$6,200).
16. The maximum total liability for both CDO violations is six hundred and ninety five thousand dollars (\$695,000). The minimum total liability for both violations is thirteen thousand and nine hundred dollars (\$13,900).
17. 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.”*
18. 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 minimum required and maximum allowed liability under Section 13350(e)(1)(B), a review of the factors set forth in CWC Section 13327 cited in Finding No. 17 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.
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**.

Original Signed By

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. R5-2005-0506 (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. R5-2005-0506" 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)