

1 THOMAS M. BRUEN (SBN 63324)
2 ERIK A. REINERTSON (SBN 218031)
3 LAW OFFICES OF THOMAS M. BRUEN
4 A Professional Corporation
5 1990 N. California Boulevard, Suite 940
6 Walnut Creek, California 94596
7 Telephone: (925) 295-3131
8 Facsimile: (925) 295-3132
9 e-mail: tbruen@sbcglobal.net
10 ereinertson@sbcglobal.net

11 Attorneys for Petitioner BROWNING-FERRIS
12 INDUSTRIES, LLC.

13 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

14 In the Matter of the Petition of) No.:
15)
16 BROWNING-FERRIS INDUSTRIES, LLC.) PETITION TO REVIEW ACTION OF
17) REGIONAL BOARD / EXECUTIVE
18 For Review of Cleanup and Abatement Order) DIRECTOR (SAN FRANCISCO BAY
19 No. R2-2010-0092) REGION)
20)
21 California Regional Water Quality Control)
22 Board, San Francisco Bay Region)
23)
24)
25)

26 1. Petition: Browning-Ferris Industries, LLC. (“BFI” or “Petitioner”), pursuant to Water Code
27 section 13320(a), hereby petitions the State Water Resources Control Board to review an action
28 taken by the Executive Director and/or Board of the San Francisco Bay Region Water Quality
Control Board (“Regional Board”), specifically Cleanup and Abatement Order No. No. R2-2010-
0092 (“CAO”). This Petition is being filed concurrent with Petitioner’s filing of a Request for
Hearing before the Regional Board, and thus may be premature if the Regional Board or Executive
Officer take further action with respect to Petitioner’s Request for Hearing. Therefore, Petitioner is
filing this Petition to preserve Petitioner’s rights to request review of the CAO in the event that

1 further action in response to Petitioner's Request for Hearing is not taken, or if for any other reason
2 this Petition must be filed within 30 days of the issuance of the CAO.

3 2. Cleanup And Abatement Order: A true and correct copy of the CAO is attached hereto as
4 Exhibit A.

5
6 3. Request for Hearing Before Regional Board: A true and correct copy of Petitioner's
7 Request for Hearing before the Regional Board is attached as Exhibit B.

8 4. Identification of Petition: Petitioner further alleges as follows:

9 a. Petitioner Browning-Ferris Industries, LLC is a Delaware limited liability
10 company, formerly a Delaware corporation known as Browning-Ferris
11 Industries, Inc.

12 b. Petitioner's contact person and address for purposes of this Petition is:

13 Lochlin Caffey
14 Ox Mountain Landfill
15 12310 San Mateo Road
16 Half Moon Bay, California 94019
17 Phone number: (925) 890-6504

18 With a copy to:

19 Thomas M. Bruen
20 Law Offices of Thomas M. Bruen
21 Suite 940
22 1990 North California Blvd.
23 Walnut Creek, California 94596
(925) 295-3137

24
25 5. Grounds for Petition: The grounds for this petition are set forth in the letter from the
26 Petitioner to the Executive Director of the Regional Board dated August 12, 2010, attached hereto
27 as Exhibit B, and incorporated in this Petition by this reference.
28

1 6. Relief Requested: Petitioner requests that the CAO be modified as requested in Exhibit B,
2 for the reasons stated in said Exhibit.

3 7. Request That Petition Be Held In Abeyance: Due to the pendency of Petitioner's Request for
4 Hearing before the Regional Board, Petitioner asks that this petition be held in abeyance pursuant to
5 Title 23, California Code of Regulations, section 2050.5 subsection (d), until the Regional Board /
6 Executive Director has had an opportunity to consider the arguments and evidence presented in
7 Exhibit B.
8

9 8. Service: This appeal has been served on the Regional Board, the Executive Director and all
10 other persons named in this Petition.
11

12 9. Reservation Of Right To Request Hearing: Until the Executive Director and/or the Regional
13 Board have had an opportunity to respond to Exhibit B, Petitioner reserves its right to request a
14 hearing before the State Water Resources Control Board.
15

16
17 Respectfully submitted,

18 DATED: August 12, 2010

LAW OFFICES OF THOMAS M. BRUEN
A Professional Corporation

19
20
21 By: 
22 Thomas M. Bruen

23 Attorneys for Browning-Ferris
24 Industries, LLC.
25
26
27
28

Exhibit A

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER NO. R2-2010-0092

BROWNING-FERRIS INDUSTRIES (BFI)

FOR THE PROPERTY LOCATED AT:
CORINDA LOS TRANCOS (OX MOUNTAIN) LANDFILL
12310 SAN MATEO ROAD
HALF MOON BAY, CA 94019
SAN MATEO COUNTY

This Order is issued to Browning-Ferris Industries (BFI) (hereafter Discharger), based on provisions of California Water Code (CWC) sections 13304 and 13267, which authorize the Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) to issue a Cleanup and Abatement Order (Order) and to require the submittal of technical and monitoring reports.

The Assistant Executive Officer of the Regional Water Board finds, with respect to the Discharger's acts, or failure to act, the following:

1. **Purpose of Order:** This Order requires the Discharger to abate the impacts of waste discharged in violation of Regional Water Board Order No. R2-2007-0062 effluent limits for Whole Effluent Acute Toxicity (Acute Toxicity), by delineating the impacts on receiving waters and completing all necessary cleanup and/or restoration to those receiving waters. In addition, this Order requires the Discharger to eliminate the threat of future discharges creating a condition of pollution or nuisance by developing and implementing a work plan and schedule to consistently reduce toxicity of the discharge and achieve compliance with Order No. R2-2007-0062.
2. **Facility Description:** The Discharger owns and operates Corinda Los Trancos (Ox Mountain) Landfill located at 12310 San Mateo Road, Half Moon Bay, CA 94019, San Mateo County (Site). This landfill is a Class III municipal refuse disposal site, generating several types of wastewater, including leachate, truck/equipment wash water, storm water, and polluted groundwater. Order No. R2-2007-0062 addresses only extraction, treatment, and discharge of groundwater that has been polluted by the landfill. To control the migration of polluted groundwater the Discharger has installed a groundwater extraction, treatment, and discharge facility (Facility). Treated groundwater is discharged to the Corinda Los Trancos Creek, a water of the State and of the United States and tributary to Pilarcitos Creek, through a sedimentation basin. The beneficial uses of Pilarcitos Creek include cold and warm freshwater habitat, fish migration, and municipal and domestic supply.

3. **Applicable Acute Toxicity Effluent Limits:** Order No. R2-2007-0062 includes the following effluent limits for Whole Effluent Acute Toxicity (Order No. R2-2007-0062, IV.A.1.c.):

(1) Representative samples of the effluent shall meet the following limits for acute toxicity: Bioassays shall be conducted in compliance with Section V.A of the Monitoring and Reporting Program (MRP, Attachment E).

(2) The survival of organisms in undiluted combined effluent shall be a three (3) sample median value of not less than 90 percent survival, and a single sample value of not less than 70 percent survival.

(3) These acute toxicity limitations are further defined as follows.

(4) 3 sample median: A bioassay test showing survival of less than 90 percent represents a violation of this effluent limit, if one or more of the past three or less bioassay tests show less than 90 percent survival.

4. **Discharges in Violation of Acute Toxicity Effluent Limits:** In a letter dated November 24, 2009, the Regional Water Board issued a Notice of Violation (NOV) to the Discharger that identified several acute toxicity effluent limits violations during the period from May 2008 through August 2009, as well as finding that the Discharger failed to comply with accelerated monitoring and reporting requirements intended to assist the Discharger in determining and correcting the cause of the effluent limit violations. Since issuance of the NOV, the Discharger has reported over 24 additional violations of the acute toxicity effluent limits (Table 1).

Table 1. Violations of Acute Toxicity Effluent Limit Since November 2009 NOV

Date	Effluent Acute Toxicity Test Result (percent survival)	Effluent Acute Toxicity 3-sample median (percent survival)
12/8/2009	40% - violation	40% - violation
12/14/2009	0% - violation	0% - violation
12/21/2009	5% - violation	5% - violation
12/29/2009	50% - violation	5% - violation
1/5/2010	85%	50% - violation
1/12/2010	0% - violation	50% - violation
1/15/2010	90%	85% - violation
1/20/2010	80%	80% - violation
1/28/2010	0% - violation	80% - violation
2/15/2010	0% - violation	0% - violation
3/10/2010	0% - violation	0% - violation
3/16-18/2010	0% - violation	0% - violation
3/23-25/2010	95%	0% - violation
3/30-4/1/2010	0% - violation	0% - violation

5. **Basis of this Order:** CWC section 13304 contains the cleanup and abatement authority of the Regional Water Board. CWC section 13304 requires a person to clean up waste or

abate the effects of the waste discharge if so ordered by a regional board in the event there has been a discharge in violation of waste discharge requirements, or if a person has caused or permitted waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates or threatens to create a condition of pollution or nuisance. Therefore based on the above findings, the Regional Water Board is authorized to order the Discharger to cleanup and abate the effects of the discharges in violation of the acute toxicity effluent limits.

6. **Basis for Requiring Reports:** CWC section 13267 provides that the Regional Water Board may require a discharger, past discharger, or suspected discharger to furnish those technical or monitoring reports as the Regional Water Board may specify, provided that the burden, including costs, of these reports, shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
7. **Need for Technical and Monitoring Reports:** The reports and technical information required herein are necessary to determine if there is any adverse impact on the Corinda Los Trancos and Pilarcitos creeks benthic communities and to ensure compliance with this Order. The burden, including costs, of the reports required by this Order bear a reasonable relationship to the need for the reports and the benefits obtained therefrom. Accordingly, CWC section 13267 authorizes the Regional Water Board to require dischargers to submit technical and monitoring reports.
8. **Compliance with Acute Toxicity Effluent Limits is Feasible:** The Discharger has conducted a number of Toxicity Identification Evaluation (TIE) studies and found that the survival rate for rainbow trout was significantly improved (from 0 to 100%) when the effluent was filtered with one micron glass microfiber ultra-filter. The Discharger has claimed in the past that this filtration method is not economically feasible (BFI June 2009 Monitoring Report dated July 27, 2009). The Discharger has not, however, provided any cost data for different types and sizes of filter that may also be effective in addressing the Site's toxicity issues. In another November 2009 TIE, the Discharger found that the toxicity was completely removed when the effluent was adjusted to pH 3 and either extracted by C18 solid phase extraction or aerated with laboratory air (BFI February 2010 Monitoring Report dated March 25, 2010). The Discharger did not install additional treatment unit(s) such as a pH adjustment or aeration unit consistent with the above findings. Instead, the Discharger upgraded the treatment system granular activated carbon filters in January 2010. This upgrade did not provide full compliance with the acute toxicity effluent limitations requirements, and the Discharger continues to have acute toxicity violations.
9. **CEQA:** This enforcement action is being undertaken by a regulatory agency to enforce a water quality law. Such action is categorically exempt from provisions of the California Environmental Quality Act ("CEQA") according to Guidelines section 15321 in Article 19, Division 3, Title 14 of the California Code of Regulations.

DIRECTIVES

IT IS HEREBY ORDERED, pursuant to CWC sections 13304 and 13267 that the Discharger (or its agents, successors, or assigns) shall comply with the following requirements to abate the effects described in the above findings as follows:

A. CLEANUP AND ABATE DISCHARGES

Discharger shall take all correction actions¹ necessary to:

1. Investigate, cleanup waste, and abate the effect of the discharges in violation of the acute toxicity effluent limits to Corinda Los Trancos Creek; and
2. Prevent future discharges of waste that could cause a condition of pollution or nuisance by achieving consistent compliance with Order No. R2-2007-0062 acute toxicity effluent limits.

B. CORRECTIVE ACTIONS

1. Investigation, Assessment, and Cleanup

- a. By October 15, 2010, the Discharger shall submit a work plan and schedule to conduct benthic macroinvertebrate bioassessment in the Corinda Los Trancos and Pilarcitos creeks to investigate and determine the effects of past discharges in violation of acute toxicity effluent limitations. The work plan shall be consistent with the California Surface Water Ambient Monitoring Program (SWAMP) and include identification and assessment of appropriate reference monitoring location(s) (using reference monitoring location(s) in similar watersheds as Corinda Los Trancos are acceptable) and adhere to Standard Operating Procedures (SOP), as well as, comply with the following implementation schedule:
 - i. The field work completed during the appropriate index period of April 2011 through June 2011 depending on rainfall, and
 - ii. The monitoring results data available before end of 2011.

The SWAMP SOP can be found at the following link

<http://swamp.mpsl.mlml.calstate.edu/resources-and-downloads/standard-operating-procedures>.

- b. By February 28, 2012, the Discharger shall prepare and submit a bioassessment report containing the testing results and conclusions reached through the implementation of the bioassessment work plan.

¹ Corrective actions include all the phases of cleanup and abatement described in Directives B.1. and 2. of this Order.

- c. If the bioassessment report concludes that the discharges have had negative impacts to Corinda Los Trancos Creek, then the Discharger shall prepare a corrective action plan designed to restore the creek to its condition prior to the Discharger's Acute Toxicity violations. The Corrective Action Plan shall include a schedule for completing each task and all associated subtasks, including a listing of proposed completion dates and shall be submitted to the Regional Water Board for approval no later than January 14, 2013.

3. Prevent Future Waste Discharge

- a. By August 16, 2010, the Discharger shall submit a work plan and implementation schedule to assure future compliance with Order No. R2-1007-0062 acute toxicity requirements. The work plan shall identify and evaluate options for improvements/modifications to the existing treatment plant to ensure a consistent reduction of toxicity in the effluent, and for containment of wastewater for 100% reuse and cessation of discharge, as well as, identify the recommended course of action to achieve compliance. The implementation schedule shall show milestones for implementing the recommended course of action to achieve compliance as soon as practicable, but full compliance with the acute toxicity limits or cessation of discharge must be achieved no later than October 29, 2010.
- b. During any pilot projects for improving/modifying the treatment system with the goal of eliminating effluent toxicity, the Discharger shall conduct weekly acute toxicity testing while retaining samples of influent and effluent. If any bioassay survival rate is less than 70%, the Discharger shall perform a TIE on the retained samples of influent and effluent. The Discharger shall also monitor the flow rate and volume of water discharged from the basin that initially receives the treatment plant effluent prior to discharge to Corinda Los Trancos. The Discharger shall report monthly the results of these acute toxicity test, any TIEs, and basin discharge data as a supplement to its self-monitoring reports required by the Monitoring and Reporting Program of Order No. R2-2007-0062. All such acute toxicity testing will count towards compliance with the requirements of Order No. R2-2007-0062.

C. PROVISIONS

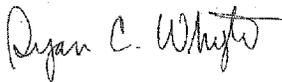
1. **Good Operation and Maintenance:** The Discharger shall maintain in good working order and operate as efficiently as possible any treatment facility or control system installed to achieve compliance with the requirements of this Order.
2. **Cost Recovery:** Water Code §13304 allows the Regional Water Board to recover reasonable expenses for overseeing the investigation and cleanup of illegal discharges adversely affecting or threatening to adversely affect the State's waters. To assure that sufficient Regional Water Board staff resources are available to conduct the necessary reviews and approvals, this Facility will be included in the Cost Recovery Program. The

Discharger has received the Regional Water Board letter dated June 2, 2010, which fully described the Reimbursement Process for Regulatory Oversight.

3. **Qualified Professionals:** The Discharger's reliance on qualified professionals promotes proper planning, implementation, and long-term cost-effectiveness of investigation, and cleanup and abatement activities. Professionals should be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of licensed professionals.
4. **Reporting of Changed Owner or Operator:** The Discharger shall file a written report on any changes in the Site's occupancy or ownership associated with the Site described in this Order. This report shall be filed with the Regional Water Board within 30 days following a change in Site occupancy or ownership.
5. **Delayed Compliance:** If the Discharger is delayed, interrupted, or prevented from meeting one or more of the completion dates specified in this Order, the Discharger shall promptly notify the Regional Water Board Assistant Executive Officer in writing with recommended revised completion dates. The Regional Water Board may consider revisions to this Order.
6. **Enforcement:** If, in the opinion of the Assistant Executive Officer, the Discharger fails to comply with the provisions of this Order, the Assistant Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Failure to comply with this Order may result in the assessment of an administrative civil liability up to \$10,000 per violation per day, pursuant to CWC sections 13268, 13350, and/or 13385. The Regional Water Board reserves its right to take any enforcement actions authorized by law.
7. **Evidentiary Hearing before the Regional Water Board:** Any person affected by this action of the Regional Water Board may request an evidentiary hearing before the Regional Water Board. The Regional Water Board's Executive Officer may elect to hold an informal hearing or a "paper hearing" in lieu of scheduling a hearing before the Regional Water Board itself. If the Discharger decides to request an evidentiary hearing, that Discharger shall send the request to the San Francisco Bay Regional Board Executive Officer, 1515 Clay Street, Suite 1400, Oakland CA 94612, with a copy to Farhad Azimzadeh, 1515 Clay Street, Suite 1400, Oakland CA 94612. The following provisions shall be carefully considered:
 - a. The Regional Water Board must receive the Discharger's request within **30 calendar days** of the date of this Order.
 - b. The Discharger's request must include all comments, technical analysis, documents, reports, and other evidence that the Discharger does wish to submit for the evidentiary hearing. However, it should be noted that the administrative record will

include all materials the Regional Water Board has previously received regarding this Site. The Discharger is not required to submit documents that are already in the record.

- c. The Executive Officer or Regional Water Board may deny your request for a hearing after reviewing the evidence.
 - d. If the Discharger does not request an evidentiary hearing, the State Water Board may prevent the Discharger from submitting new evidence in support of a State Water Board petition.
 - e. The request for an evidentiary hearing, if the Discharger submits one, does not stay the effective date of the Order, whether or not a hearing is scheduled.
 - f. A request for a hearing does not extend the 30-day period to file a petition with the State Water Board (as explained below). However, the Regional Water Board staff suggest that the Discharger asks the State Water Board to hold the petition in abeyance while the Discharger's request for a hearing is pending. (CCR Title 23 section 2050.5(d)). Additional information regarding the State Water Board petition process is provided below.
8. **State Water Board Petition:** Any person aggrieved by this action may petition the State Water Board to review the action in accordance with CWC section 13320 and Title 23, California Code of Regulations, section 2050 et al. The State Water Board, Office of Chief Counsel, must receive the petition by 5:00 p.m. 30 days after the date this Order becomes final (if the thirtieth day falls on a weekend or state holiday, the petition must be received by the next business day). Instructions for petitioning will be provided upon request or may be viewed at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml. This Order is effective upon the date of signature.
9. **Periodic Cleanup and Abatement Order Review:** The Regional Water Board may review this Order periodically and may revise it when necessary.



Dyan C. Whyte
Assistant Executive Officer

July 13, 2010
Date

Exhibit B



BROWNING-FERRIS INDUSTRIES
Ox Mountain Sanitary Landfill

August 12, 2010

Executive Officer
San Francisco Bay Regional Board
Suite 1400
1515 Clay Street
Oakland, California 94612

Re: Request for Hearing by Browning-Ferris Industries (BFI)
Ox Mountain Landfill, Cleanup and Abatement Order # R2-2010-0092

Dear Executive Officer:

By this letter Browning-Ferris Industries (BFI) is requesting an evidentiary hearing regarding the above referenced Cleanup and Abatement Order (CAO).

Procedural Status and Administrative Record.

The purpose of this request for hearing is to preserve BFI's ability to present technical information and legal authorities which we believe warrant reasonable modifications to the terms and conditions of the CAO. If at all possible, we would like to avoid the need for such a hearing by informally resolving our concerns with Regional Board staff. However, we recognize that pursuant to the Regional Board's rules of procedure this request for hearing is required to be submitted within thirty days of the date of the CAO to preserve BFI's rights to a hearing. Also, we have instructed our counsel to file a protective petition with the State Water Resources Control Board to similarly preserve our rights, and we will request that the petition be held in abeyance pending the resolution of these issues with the Regional Board.

This request for hearing is based on all of BFI's prior submissions to the Regional Board relating to the Ox Mountain Ground Water Treatment System (GWTS) described in Order No. R2-2007-0062 and NPDES No. CA 0029947, the Order and NPDES permit itself, this request, the Board's files regarding the Landfill, the results of past and pending testing and analysis of the outflows from the GWTS and the Landfill perimeter drainage system, and both inflows to and discharges from the Ox Mountain Landfill sedimentation basin, and on such other information, legal authorities and testimony as may be presented at the hearing of this matter.

Relief Requested.

The Regional Board's imposition of effluent limits under these facts should be limited to discharges from the sedimentation basin into Los Trancos Creek, and the CAO should be modified accordingly. That is, the CAO should be modified to require BFI to only demonstrate

August 12, 2010

Page 2

the required toxicity testing survival rates in waters being discharged into Los Trancos Creek rather than into the Landfill sedimentation basin.

In addition, and alternatively, the Board should not require BFI to achieve the requisite survival rates in effluent from the GWTS by October 29, 2010, because the evidence does not show that compliance with this deadline is feasible.

Finally, as discussed more fully below, BFI is conducting additional testing and analysis which are expected to contribute to the body of evidence proving that the Landfill sedimentation basin is an integral and critical component of the Landfill's treatment system for surface and treated groundwater at the Landfill. For this reason, the CAO should be held in abeyance pending the receipt of this additional testing and analysis.

Background.

The Ox Mountain Landfill occupies the Corinda Los Trancos Creek drainage. Surface water that occupied this drainage is diverted by a series of perimeter drains surrounding the Landfill waste management units to the site sedimentation basin, which discharges during winter months through a riser pipe in the basin to the creek down canyon of the Landfill. During the rest of the year there is no discharge to the creek from the basin. Groundwater also flows through a series of underdrains beneath the landfill. The GWTS at the Ox Mountain Landfill is designed to treat this mildly contaminated underdrain water and groundwater. The treated groundwater flows through a pipe into the sedimentation basin along with water from the perimeter drains. Thus, the treated groundwater and perimeter drain water either evaporates in the sedimentation basin, is used on-site for dust control, or, after residence in the basin, in wet weather conditions it discharges to the creek.

Tests conducted in 2009 and 2010 on the GWTS effluent indicated failure of acute toxicity tests using Rainbow Trout species in the majority of the sampling events. (Previous toxicity testing on a different species of fish – fathead minnow -- produced acceptable survival rates. Rainbow Trout were substituted as the species to be used in toxicity testing of the GWTS effluent in the 2007 Order and NPDES permit.) The 2009 and 2010 toxicity test samples were taken directly from the plant outflow pipe and before entering the sedimentation basin. In response to these acute toxicity failures, BFI was required to conduct a series of Toxicity Investigation Evaluations (TIEs) in an effort to identify the toxicants that are causing the Rainbow Trout toxicity test failures. Both the TIE-I and TIE-II studies conducted by Block Environmental Services (BES) were unable to isolate the source of the toxicity in the effluent affecting the Rainbow Trout test species and did not recommend further treatment measures.

BFI recognizes that continued acute toxicity test failures from the GWTS remain an ongoing issue. However, it is also important to note that acute toxicity testing of the water in the

sedimentation basin has never shown an acute toxicity test failure. Therefore, BFI does not believe that the toxicity test failures created by the GWTS effluent are indicative of any impacts to the benthic community within the Corinda Los Trancos Creek, because treated sedimentation basin waters have consistently passed these same toxicity tests.

With this background in mind, our major issues with the CAO are:

1. The Point of Compliance for Effluent Toxicity Testing to Avoid Adverse Impacts on Los Trancos Creek Should be the Discharge from the Landfill Sedimentation Basin Into The Creek.

Order No. R2-2007-0062 and NPDES No. CA 0029947 describes the "Receiving Water" as "Corinda Los Trancos Creek." The Regional Board's jurisdiction for purposes of determining and enforcing effluent limits from the Ox Mountain Landfill facility attaches under this Order and NPDES permit, and applicable law, because of the discharge of treated water from the sedimentation basin into this creek.

The CAO seeks to enforce and order corrective action for the failure of effluent taken directly from the outflow of the GWTS to pass toxicity testing on freshwater trout *before* it has resided and been treated in the Landfill's sedimentation basin. However, the sedimentation basin is part of the Landfill's water treatment system and clearly an artificial structure (not a "navigable water," "waters of the United States" or "waters of the State of California"). As the Order and NPDES recognizes, the "Receiving Water" is Los Trancos Creek and not the sedimentation basin.

The sedimentation basin is used to treat two sources of influent at the Landfill: (a) perimeter drain runoff from the Landfill and (b) outflow from the GWTS. Both sources of water require treatment before discharge into the creek. The sedimentation basin serves several beneficial purposes, the most obvious of which is the dropping out of suspended solids in the waters flowing into the basin. The residence time of waters in the basin also reduces levels of iron, other metals, hardness, and total dissolved solids, compared with each of the two sources of water flowing into the basin. There are also beneficial effects in normalizing pH levels, and we believe other beneficial effects can be demonstrated with further testing.

Therefore, the quality of water from both sources flowing into the sedimentation basin is improved due to the residence time in the sediment basin. The sedimentation basin treats all of its inflows so that the resulting discharge into the receiving waters (Los Trancos Creek) creek passes the toxicity testing for Rainbow Trout and will not adversely affect creek waters. Hence, legally and technically, the point of compliance should be the discharge from the basin to the creek, not from the GWTS to the basin.

2. The CAO Wrongly Finds that Past Testing Data Shows it is Feasible To Achieve Acceptable Survival Rates on Rainbow Trout Based on the Use of One Micron Filters and Pre-filtration Acidification of the Effluent

The CAO quotes the results of prior toxicity testing at the Landfill to find that adequate survival rates can be achieved at the groundwater treatment plant through the use of one micron filters. We respectfully disagree.

The CAO in paragraph 8 incorrectly states that significant improvement in Rainbow Trout survival rates have occurred as a result of filtering of the GWTS effluent alone through a one micron glass microfiber ultra-filter. In fact, in each TIE, the testing included initial acidification of the effluent prior to filtering (or aeration), and without acidification, the survival rate did not improve markedly. Neither TIE was able to identify a factor or toxicant responsible for the acute toxicity test failures, nor recommend a viable treatment method. Moreover, no tests have been performed to determine if the combination of one micron filters and acidification would be compliant with other NPDES limits, and it is possible that some constituents may exceed the NPDES limits following acidification of the GWTS water. A cost analysis must also be completed to determine if such process is economically feasible, especially considering that if the pH is lowered to 3.0 and then buffered back to neutral, this would require substantial amounts of acid and caustic. Considering the GWTS treats approximately 60,000-100,000 gallons per day of groundwater, the chemical costs will likely be very high.

The CAO in paragraph 8 also does not fully discuss changes to the GWTS made to address acute toxicity issues. It is true that the June 27, 2009 Monitoring Report stated that filtration was economically infeasible to implement. However, as presented above, filtration alone was not identified as the solution to the issue. The GWTS has been modified to include two 5000 pound Granular Activated Carbon (GAC) vessels in series to treat the effluent. In addition, following lower than allowable measurements of pH values, a pH adjustment was made to raise the pH above 6.5. Most recently, the GWTS pumps were modified so that the effluent is given a longer residence time within the GAC vessels before it is discharge to the sedimentation pond.

In sum, the prior TIE reports suggest that the treatment of the effluent from the GWTS using one micron filters alone produces inconsistent results in terms of survivability of Rainbow Trout. They do not recommend a treatment option, and further conclude that the constituents affecting the survival rate of these trout remain unknown. Therefore, requiring that BFI ensure the treatment plant effluent passes toxicity testing no later than October 29, 2010, is an unreasonable condition and not supported by the currently available technical data. We believe further testing and study is necessary before a treatment regime can be established with reasonable certainty to be feasible.

3. Further Testing Should Be Performed Before Final Conclusions Are Reached Regarding the Point of Compliance and Modifications to the GWTS.

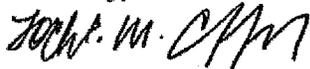
BFI has already begun an investigation of the potential sources of the acute toxicity testing failures in effluent from the GWTS. A work plan and implementation schedule for the investigation was submitted to the RWQCB on July 15, 2010. On July 22, 2010, samples were collected of the GWTS effluent, as well as in the sedimentation basin (where acute toxicity survival rates were high), and perimeter drainage water that flows into the sedimentation basin. Sample analyses included general chemistry parameters, metals, volatile organic compounds, semi-volatile organic compounds, pesticides, polychlorinated biphenyls, organic acids, gasoline and diesel range hydrocarbons, and dioxins. Further testing will be performed within the next two weeks, including, but not limited to pH adjustment and settling of solids, to simulate the treatment mechanism in the sedimentation basin. We believe the current data and further testing and analysis will support the conclusion that the sedimentation basin has a beneficial effect on water from the perimeter drainage system as well as effluent from the GWTS, and that the point of compliance should be relocated to the sedimentation basin discharge to the creek.

For all of these reasons, we continue to believe that the point of compliance for effluent limits should be the point source where water is discharged into the creek from the sedimentation basin—i.e., water entering the basin riser pipe. Furthermore, only water discharging into the creek should be tested for NPDES compliance.

The foregoing statements and opinions are made with the review and concurrence of Sarah Battelle of GLA and Dr. Alon Lebel.

We would like to arrange a meeting with Regional Board staff to present our reasoning and further technical data at your earliest convenience. Again we would like to avoid the necessity of a hearing and hope that we can resolve our concerns regarding the CAO in a cooperative and informal setting.

Sincerely,



Lochlin Caffey

cc. Farhad Azimzadeh
San Francisco Bay Regional Board
Suite 1400
1515 Clay Street
Oakland, CA 94612

1 PROOF OF SERVICE

2 I am employed in the City of Walnut Creek, Contra Costa County, California. I am over the
3 age of 18 years and not a party to the within cause; my business address is 1990 N. California
4 Boulevard, Suite 940, Walnut Creek, California 94596. On August 12, 2010, I served the
5 following document(s):
6

7 PETITION TO REVIEW ACTION OF REGIONAL BOARD/EXECUTIVE DIRECTOR
8 (SAN FRANCISCO BAY REGION)

9 *Handwritten mark*

10 I am readily familiar with my firm's practice for collection and processing of correspondence
11 for mailing with the United States Postal Service. The document(s) listed above will be
12 deposited with the United States Postal Service this same day in the ordinary course of
13 business. I placed the document(s) listed above in a sealed envelope with postage thereon
14 fully prepaid, addressed as set forth below, and placed it for collection and mailing on the
15 date set forth below, following ordinary business practices.

16 _____ by placing the document(s) listed above in a sealed envelope with postage thereon fully
17 prepaid, in the United States mail at Walnut Creek, California addressed as set forth below.

18 _____ by depositing a true copy thereof in a box or other facility regularly maintained by Federal
19 Express located at 1990 N. California Boulevard, Walnut Creek, California, in an envelope
20 or package designated by Federal Express for Priority Overnight delivery with delivery fees
21 paid or provided for and addressed as set forth below.

22 _____ by transmitting via facsimile [fax number (925) 295-3132] the above listed document(s) to
23 the fax number(s) set forth below on this date before 5:00 p.m. The facsimile machine I
24 used complied with California Rules of Court, Rule 2003.

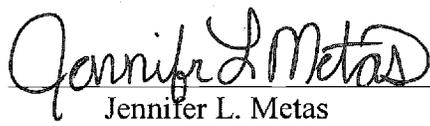
25 _____ by personally delivering the document(s) listed above to the person(s) at the address(es) set
26 forth below.

27 Regional Board
28 San Francisco Bay Regional Board
Suite 1400
1515 Clay Street
Oakland, California 94612

Executive Officer
San Francisco Bay Regional Board
Suite 1400
1515 Clay Street
Oakland, California 94612

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
2 and correct. Executed this 12th day of August, 2010 at Walnut Creek, California.

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Jennifer L. Metas