

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Violation of the New York State Environmental Conservation Law (ECL) by

LAND RECLAMATION, INC.  
Indian Road  
Cheektowaga, New York

(Erie County)

ORDER  
ON  
CONSENT

FILE NO. 94-24

R9-4174-94-08

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Respondent

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WHEREAS:

1. Article 27 of the Environmental Conservation Law of the State of New York (hereinafter "ECL") sets forth certain requirements governing the collection, treatment and management of solid waste and empowers the Department of Environmental Conservation (the "Department") to adopt and promulgate rules and regulations governing the collection, treatment and disposal of solid and hazardous waste.

2. Respondent owns, operates, and/or maintains control of a solid waste management facility (the "landfill") located at Indian Road, Cheektowaga, New York, which Facility is subject to the aforesaid laws, codes, rules and regulations.

3. The landfill is owned and operated by Land Reclamation, Inc. a New York Corporation. Land Reclamation, Inc. is a wholly owned subsidiary of Browning-Ferris Industries, Inc. a Delaware Corporation.

4. Respondent's landfill commenced operation in 1965. The landfill ceased accepting waste in 1984. Final cover was applied

to the landfill from 1983-1985, and certification for closure was submitted by the Respondent to the Department in January 1986.

5. The site is currently listed under the authority of Article 27, Title 13 as a Class 3 site in the New York Inactive Hazardous Waste Disposal Site Registry. A Phase II Field Investigation of the site was conducted by the Department from 1988 to 1990 and a report was issued in 1991. The report was the basis for a Class 3 listing.

6. The Department identified deficiencies in the closure certification and has not approved the closure certification for the landfill.

7. The Department alleges that the deficiencies identified by the Department in the Respondent's closure certification have not been adequately addressed by the Respondent and that the Respondent has failed to close the landfill in accordance with 6 NYCRR Part 360, effective December 31, 1988.

8. The Department alleges that the Respondent, in violation of 6 NYCRR Part 703.5, has contravened the groundwater standards of said regulation in that monitoring of overburden and bedrock groundwater wells indicates that the landfill is contributing to groundwater contamination for volatiles, semivolatiles, and metals.

9. Respondent without admitting any violation affirmatively waives its rights to notice and hearing in this matter as provided by law and consents to the issuing and entering of this Order and agrees to be bound by the provisions, terms and conditions contained herein.

NOW, having considered this matter and being duly advised, it is ORDERED:

I. THAT Respondent shall be bound by the terms and conditions as set forth in Schedule A attached to this Order and made a part hereof upon receipt of a fully executed copy of the Order.

II. THAT Browning-Ferris Industries, Inc. (BFI) agrees that in the event Respondent declares Bankruptcy, ceases to do business, or fails to perform closure and/or post-closure in accordance with this Order, BFI will accept responsibility for ensuring that the requirements of this Order and Schedule A are met. This responsibility may be assigned or transferred with prior Department approval.

III. THAT all reports and submissions herein required shall be made to the Regional Solid Waste Engineer of the Region 9 Office of the Department at 270 Michigan Avenue, Buffalo, New York 14203.

IV. THAT communication to be made by the Department to the Respondent shall be sent to the District Manager, Land Reclamation, Inc., 5600 Niagara Falls Boulevard, Niagara Falls, New York 14304-1532.

V. THAT the provisions, terms and conditions of this Order and Schedule A shall be deemed to bind Respondent and in their corporate capacities, its officers, directors, agents, servants, employees, successors and assigns.

VI. THAT if for any reason Respondent desires that any provisions of this Order be changed, Respondent shall make written application to the Department's Region 9 Regional Director setting

forth reasonable grounds for the relief sought. The Regional Director shall not unreasonably deny any such request. No change or modification of this Order shall be made or be effective except as may be specifically set forth in writing by the Department.

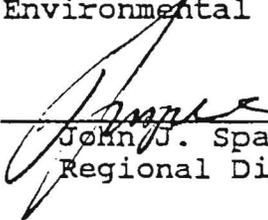
VII. THAT Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action for any remedy or relief if Respondent can not comply with any requirement of this Order because of an act of God, war, or riot or because of any condition or event beyond the reasonable control of Respondent or its agent or agents carrying out Respondent's obligations under this Order. Respondent shall provide verbal notification immediately and shall notify the Department in writing within five business days of the date when Respondent obtains knowledge of any such condition and Respondent shall request an appropriate extension or modification of this Order which such request shall not be unreasonably denied by the Department.

Dated: Buffalo, New York

*July 17*, 1995

MICHAEL D. ZAGATA, Commissioner  
New York State Department of  
Environmental Conservation

by:

  
\_\_\_\_\_  
John J. Spagnoli  
Regional Director

SCHEDULE A

Respondent, shall on or before the dates indicated:

<u>Item</u>	<u>Date</u>
1. Submit Final Draft Closure Plan and Post Closure Maintenance and Monitoring Plan for Department review and approval.	December 30, 1994
2. Submit request for variance from 6 NYCRR Part 360 closure requirements for gas venting, barrier protection and topsoil layers as specified in 360-2.13(p), 2.13(r)(2)(iii) and 2.13(S) respectively. (P.360 effective December 31, 1988)	November 30, 1994
3. Install perimeter gas monitoring probes and additional overburden groundwater monitoring well at northern property boundary, and remove existing well #79-101-1 in accordance with the Department approved plans.	April 15, 1995
4. Incorporate the gas monitoring probes and new groundwater monitoring well into the routine environmental monitoring currently being conducted.	April 15, 1995
5. Commence construction of landfill closure items in accordance with the Department approved closure plan.	Within 90 days of receipt of Dept. approval of Closure Plan.
6. Implement environmental monitoring program in accordance with the Department approved post closure maintenance and monitoring plans.	Within 30 days of receipt of Dept. approval of Post Closure Plans
7. Conduct post closure maintenance and monitoring in accordance with Department approved post closure plan.	Minimum of 30 years following Dept. acceptance of closure certification

8. Provide a financial surety instrument acceptable to the Department to cover 30 years post-closure maintenance and monitoring costs and conversion of the gas venting system to an active system. Within 90 days of approval of the post-closure cost estimate
9. Complete the final closure of landfill in accordance with the Department approved closure plan. July 31, 1997
10. Submit closure certification report, signed by a NYS Licensed Professional Engineer. Within 45 days of completion of closure activities

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained therein.

Respondent Browning-Ferris Industries, Inc.

By [Signature]  
Hugh J. Dillingham, III  
Title Sr. Vice President, Processing & Disposal

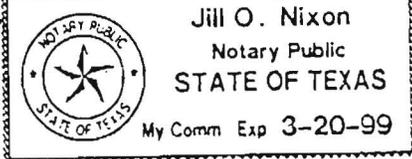
Date May 26, 1995

(Seal)

Corporate

State of Texas )  
County of Harris )

On this 26th day of May, 1995, before me  
Hugh J. Dillingham, III personally came to me  
known, who being by me duly sworn did depose and say that  
he resides at 5231 Rothchilde, Houston, Texas  
that  
he is the Vice President of Browning-Ferris Industries, Inc. the  
corporation described in and which executed the foregoing  
instrument; and that he signed his name as authorized by said  
corporation.

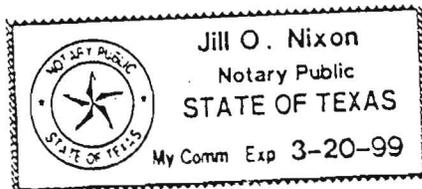


[Signature]  
NOTARY PUBLIC

Individual

State of TEXAS )  
County of HARRIS )

On this 26th day of MAY, 1995, before me came  
Hugh J. Dillingham, III, to me known  
and  
known to me to be the individual described in and who executed  
the foregoing consent and he duly acknowledged to me that he  
executed the same.



[Signature]  
NOTARY PUBLIC

CERTIFICATE OF ASSISTANT SECRETARY

The undersigned, Assistant Secretary of Browning-Ferris Industries, Inc., a Delaware corporation (the "Company"), does hereby certify on behalf of the Company, that pursuant to the Company's Limits of Authority Policy as amended at a Regular Meeting of the Executive Committee of the Company held on January 23, 1995, the Chairman, Vice Chairman, President, Chief Financial Officer or Treasurer of the Company has the authority to approve and execute any guaranty pertaining to the obligations of subsidiaries or affiliates of the Company to the extent of the Company's interest therein and any obligations with unrelated third parties up to \$200,000, and any indemnification agreement entered into by the Company or any one of its subsidiaries or affiliates. However, the Senior Vice President, Processing and Disposal, must approve any guaranty or indemnification agreement involving CERCLA or landfill operations.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand this 26<sup>th</sup> day of May, 1995.

  
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Eileen S. Schuler,  
Assistant Secretary

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained therein.

Respondent Philip Herzbrun  
By PHILIP HERZBRUN  
Title VP  
Date 6/1/95

(Seal)

Corporate

State of New York )  
County of Niagara )

On this 1<sup>st</sup> day of June, 1995, before me Philip Herzbrun personally came to me known, who being by me duly sworn did depose and say that he resides at 5600 Niagara Falls Blvd., Niagara Falls, NY that he is the Vice President of Land Reclamation Inc. the corporation described in and which executed the foregoing instrument; and that he signed his name as authorized by said corporation.

Judith Ann Zauner  
NOTARY PUBLIC

JUDITH ANN ZAUNER  
Notary Public, State of New York  
#4946030  
Qualified in Niagara County  
My Commission Expires January 27, 1997

Individual

State of )  
County of )

On this        day of        , 199 , before me came        , to me known and known to me to be the individual described in and who executed the foregoing consent and he duly acknowledged to me that he executed the same.

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NOTARY PUBLIC