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December 12, 2022

VIAEMAIL

Dave Nguyen
Senior Civil Engineer
Environmental Programs Division
Department of Public Works
County of Los Angeles
900 South Fremont Avenue
Alhambra, California 91803-1331

RE: Receipt of Non-Disposal Clean Soil at Sunshine Canyon.

Dear Mr. Nguyen,

Our firm is counsel to Browning-Ferris Industries of California, Inc. (“BFIC”), the owner and operator of the Sunshine Canyon Landfill (the “Landfill”). I have been asked to respond on behalf of BFIC to your letter of November 15, 2022.

Your letter states that the Landfill has exceeded its daily tonnage capacity of 12,100 tons per day for “all materials received by the Landfill” based on Condition 21 of BFIC’s Conditional Use Permit (“CUP”) for the County portion of the Landfill.

We disagree with your interpretation of BFIC’s County CUP. The CUP is intended to place weekly and daily limits on Solid Waste disposed of in the Landfill, and the amount of Beneficial Reuse Materials and Inert Debris deposited in the Landfill. The daily tonnage limit is not intended to place a limit on clean soil used for daily cover at the Landfill or clean soil used for Landfill construction adjacent to the Landfill’s disposal cells.

To begin with, the word “capacity” when used in the CUP refers to the overall waste disposal capacity of the Landfill. Throughout the CUP the term “Landfill capacity” is used to mean the total volume of waste that may be deposited in the Landfill. See, for example, the Board of Supervisors’ Finding no. 13 which refers to the Landfill’s “combined *waste capacity* of 215 million tons,” and Finding no. 16 which refers to the combined City/County Landfill, “with an estimated *waste capacity* of 35 million tons on the County side.” Similarly, the conditions in the CUP uniformly refer to “landfill capacity” as the air space permitted within the landfill property to receive and dispose of waste. Condition 17 refers to “the *available Landfill capacity*

within the Limits of Fill depicted on Exhibit “A-2.” This condition later refers to the Technical Advisory Committee or “TAC” reporting on the “*remaining capacity of the Landfill.*” Condition 19 refers to “the *disposal capacity* of the County Project or the City/County Project.” Condition 20 B refers to the allocation of “Landfill *capacity* or disposal fees between the City and County.” Condition 25 refers to the “maximization of *available fill capacity*” of the Landfill. Condition 16 B refers to “a plan to reserve *Landfill capacity* for small commercial and private users” of the Landfill. Condition 77 F refers to the Landfill’s “Solid Waste *capacity.*” The Implementation and Monitoring Program attached to the CUP in Part X.B.1. calls for BFIC to submit monitoring reports showing the “percent of total available *capacity* used, [and] *the remaining disposal capacity* in volume and tons ...”

In short, the CUP uses the phrase “Landfill capacity” to mean the air space within the Landfill that is capable of receiving and disposing of waste materials.

Turning to condition 21, which is cited as the basis for your letter, we note that condition 21 is located in the portion of the CUP entitled “**LANDFILL CAPACITY.**” Condition 21 then provides for both weekly and daily capacity limits as follows:

Weekly Tonnage Capacity

1. *Subject to the daily tonnage limit set forth in subsection II below, when operating as a City/County Project, **the amount of Solid Waste that may be disposed of in the Landfill** shall not exceed 66,000 tons per week, and **the amount of Inert Debris and Beneficial Use Materials deposited** shall not exceed 6,600 tons per week, for an overall total of all materials of 72,600 tons. (Emphasis added.)*

Daily Tonnage Capacity

2. *When operating as a City/County Project, the daily tonnage **capacity** of all materials received by the Landfill collectively in both jurisdictions, as described in subsection I above, shall not exceed 12,100 tons on any given day, six working days per week (based on the permitted maximum intake rate of 5,500 tons per day in the City and the permitted maximum intake rate of 6,600 tons per day in the County). The Permittee may allocate that total between the jurisdictions as it deems appropriate*

Reading condition 21 as a whole, it is clear that the daily capacity limit was not intended to limit the receipt of more or different types of materials than the weekly capacity limit. This is apparent from the way the daily limit was calculated based on the weekly limit. Per condition 29 of the CUP, the Landfill is allowed to operate six days a week—Monday through Saturday. It is closed on Sundays. The daily tonnage limit in CUP condition 21 was derived simply by dividing

six days into the weekly tonnage total of 72,600 tons. That is: 72,600 tons per week divided by six days = 12,100 tons per day, which is the daily tonnage limit. Six times the daily capacity limit is the weekly capacity limit. **Therefore, the daily tonnage limit in the CUP is a limit on the amount of Solid Waste, Inert Debris and Beneficial Use Materials that may be disposed of in the Landfill each day. Clean soil used as daily cover and for construction of the toe berm on the City side of the landfill is neither Solid Waste nor is it Inert Debris or Beneficial Reuse Material being disposed of in the Landfill.**

This understanding of the CUP is bolstered by the fact that the use of clean soil as daily cover has never been considered to be landfill disposal under California law and regulations. Clean soil is not waste. Solid Waste landfill capacity or airspace has always been considered to be net of daily soil cover requirements. The attached email exchange between BFIC and the Sunshine Canyon Local Enforcement Agency and CalRecycle confirms this point.

By the same token, the toe berm being constructed on the City side of the Landfill does not use up any permitted Landfill capacity. To the contrary, **the toe berm is required to create the Landfill capacity permitted in the CUP** and is part of the combined City/County Landfill project approved by the Board of Supervisors in the CUP.

There is also a practical aspect to this issue. Unlike Solid Waste, Inert Debris and Beneficial Use Materials that are delivered to the Landfill in relatively consistent quantities day in and day out, clean soil is delivered to the Landfill sporadically as construction projects through the County generate clean soil. Clean soil is generated based on when third party construction projects occur and can vary seasonably and based on weather. Thus, a large volume of clean soil may come in one week or even on one weekday, followed by no clean soil deliveries the next week or weekday. In order to obtain enough clean soil to sustain landfill operations, the Landfill cannot afford to turn away clean soil deliveries when and if they arrive.

Ironically, application of the daily tonnage limit to the clean soil volumes needed to build the toe berm will mean that the Landfill will not be able to build the Landfill capacity the CUP authorizes—and that the Landfill needs to build to remain in operation to serve the County's disposal needs. Similarly, applying the daily tonnage limit to clean soil being used as daily cover at the working face will prevent the Landfill from bringing in enough soil to use as daily cover on Saturdays, which the County is currently requiring for odor control.

For these reasons, the position taken in your letter would result in the Landfill's inability to obtain enough clean soil for use as daily cover on Saturdays and will result in the Landfill being unable to construct the Landfill capacity authorized by the Board of Supervisors in the CUP. The phrase "Landfill capacity" has a consistent meaning when used throughout the CUP and refers to the waste disposal capacity of the Landfill. Clean soil used for daily cover or for construction of the toe berm will not use up that capacity—but, to the contrary, it will allow that

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capacity to be created and utilized. Therefore, we respectfully disagree with the assertion in your letter that clean soil delivered to the Sunshine Canyon is subject to the “Landfill Capacity” limits in CUP Condition 21.

Sincerely,



Thomas M. Bruen

Cc. Anna Gov agov@dpw.lacounty.gov
Christopher Sheppard csheppard@dpw.lacounty.gov
Michael Harmon mharmon@dpw.lacounty.gov
Gladys Rietze grietze@dpw.lacounty.gov
Dave Thompson david.thompson@lacity.org
Dorcas Hanson-Lugo dlugo@ph.lacounty.gov
Tim Fargo TIM.FARGO@lacity.org;

Subject: RE: Beneficial Reuse
Date: Friday, April 3, 2020 at 10:08:41 AM Pacific Daylight Time
From: Mills, Josh
To: david.thompson, Coyle, Chris
Attachments: image001.jpg

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Thank you Dave!

Joshua Mills

Environmental Manager

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Sylmar, California 91342

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We'll handle it from here.™

From: David Thompson <david.thompson@lacity.org>
Sent: Friday, April 03, 2020 10:05 AM
To: Mills, Joshua <JMills3@republicservices.com>; Coyle, Chris <CCoyle@republicservices.com>
Subject: Fwd: Beneficial Reuse

Note that (david.thompson@lacity.org) is an external email. Report suspicious emails by clicking on "Report Phishing"

Hello Chris and Joshua,

In regards to your question as to whether incoming clean soil would be considered as beneficial reuse, I have reviewed the regulations and according to Title 27 and Title 14 of the California Code of Regulations clean soil would not be considered as a beneficial reuse since it is not a waste. I sent this interpretation to CalRecycle and they confirmed that it would not be considered a beneficial reuse since it is not a waste material. The email exchange is listed below for your reference.

David

----- Forwarded message -----

From: **Escotto, Benjamin@CalRecycle** <Benjamin.Escotto@calrecycle.ca.gov>
Date: Thu, Mar 26, 2020 at 2:16 PM
Subject: RE: Beneficial Reuse
To: David Thompson <david.thompson@lacity.org>
Cc: Hackett, Jeff@CalRecycle <Jeff.Hackett@calrecycle.ca.gov>

Hi David,

Title 27, Section 20686 – Beneficial Reuse: *Beneficial reuse of **solid wastes** at a solid waste landfill shall include, but not be limited to, the following: alternative daily cover, alternative intermediate cover, final cover foundation layer, liner operations layer, leachate and landfill gas collection system, construction fill, road base, wet weather operations pads and access roads, and soil amendments for erosion control and landscaping.*

Clean soil is not a solid waste.

Title 14, Section 18801.1 - Use of Soil for Alternative Daily Cover, Alternative Intermediate Cover, or Beneficial Reuse: **Beneficial reuse does not include the use of clean or contaminated soil segregated prior to receipt by a landfill**; however, loads of materials reused beneficially may include small amounts of soil (such as found in construction and demolition waste loads). For the purpose of this Article, amounts of other beneficial reuse shall be reported separately from amounts of alternative daily cover and from amounts of alternative intermediate cover.

So you are correct in your interpretation that clean soil would not be considered as beneficial reuse.

-Ben

From: David Thompson <david.thompson@lacity.org>
Sent: Thursday, March 26, 2020 12:11 PM
To: Hackett, Jeff@CalRecycle <Jeff.Hackett@CalRecycle.ca.gov>; Escotto, Benjamin@CalRecycle <Benjamin.Escotto@calrecycle.ca.gov>
Subject: Beneficial Reuse

[[EXTERNAL]]

Hello Jeff and Ben,

I have been asked for clarification if incoming clean soil to a landfill would be considered as beneficial reuse. After reviewing the regulations, there is not a very clear definition as to what materials are considered to be beneficial reuse, except that they are solid wastes. In my experience this is usually applied to inert debris used as road base or green mulch used as erosion control. Clean soil would not be considered to be a solid waste, so therefore it would not be considered as a beneficial use at a landfill.

If you could please confirm if this is a correct interpretation of the regulations or not. If I am missing something, please let me know.

Thank you,
David

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David Thompson, Program Manager

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