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May 17, 2023

VIA FEDERAL EXPRESS, U.S. MAIL & EMAIL

Amy J. Bodek, AICP, Director
Alex Garcia, Supervising Regional Planner
Attention: Zoning Enforcement Special Projects
Department of Regional Planning
County of Los Angeles
320 West Temple Street
Los Angeles, California 90012
Email: abodek@planning.lacounty.gov
Email: agarcia@planning.lacounty.gov

Edgar De La Torre, Investigating Planner
Los Angeles County Department of Regional Planning
County of Los Angeles
320 West Temple Street
Los Angeles, California 90012
Email: edelatorre@planning.lacounty.gov

Re. Notice of Appeal and Appeal by Browning-Ferris Industries of California, Inc. dba
Sunshine Canyon Landfill; Request for Hearing.

Dear Department of Regional Planning Representatives:

Our law firm is counsel to Browning-Ferris Industries of California, Inc., dba Sunshine Canyon Landfill (“BFIC”). On behalf of our client, BFIC hereby appeals the attached Notice of Violation issued by Regional Planning to BFIC, dated May 2, 2023 (“NOV”).

BFIC contends the NOV misconstrues terms and definitions of the County Conditional Use Permit (“CUP”) for the Sunshine Canyon Landfill. Specifically, BFIC disagrees with the NOV’s interpretation of CUP Condition 21 concerning the CUP’s limit on waste disposal receipts at the Landfill.

The Daily Tonnage Limit on Waste Receipts in CUP Condition 21 Does Not Apply to Clean Soil Used as Daily Cover at the Landfill’s Disposal Area.

The CUP places limits on the weekly and daily tonnage receipts of three categories

of waste materials (Solid Waste, Inert Debris and Beneficial Reuse Materials) that use up the waste disposal or “fill” capacity of the Landfill. The following is the relevant excerpt from Condition 21:

LANDFILL CAPACITY

21. The maximum tonnage capacity to be received by the Landfill shall be as follows:

A. The City/County Project:

Weekly Tonnage Capacity

- I. 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.

Daily Tonnage Capacity

- II. 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.

The terms “Solid Waste,” “Beneficial Reuse Materials,” and “Inert Debris” are defined in the CUP. **These definitions do not include clean soil used as “daily cover” at the disposal area of the Landfill;** that is, clean soil that is placed and then compacted on top of waste at the Landfill’s disposal area at the end of an operating day. Therefore, clean soil used as daily cover is not subject to the weekly or daily fill limits in the CUP.

The Landfill uses a synthetic material called “Envirocover” to cover the disposal area on weekdays, but clean soil is still used each weekday to facilitate the application of Envirocover. Moreover, the Landfill is required by the County to use only clean soil (i.e., not Envirocover) on Saturdays to cover the disposal area. In order to comply with the Sunshine Canyon Landfill

Local Enforcement Agency (“SCL-LEA”) mandated and County-approved daily cover requirements for the Landfill’s disposal area, the Landfill requires the import of adequate quantities of clean soil from third parties each week every week during the year. This is only possible if the fill limits on the Landfill’s waste receipts do not include clean soil used as daily cover. For this reason, the CUP’s definitions for the categories of waste subject to the weekly and daily tonnage limits on “fill” do not include clean soil used as daily cover at the Landfill’s disposal area.

The CUP definitions of waste materials that count towards the weekly and daily tonnage limits are:

"Solid Waste" shall mean all putrescible and non-putrescible solid and semi-solid wastes, such as Garbage, Rubbish, paper, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wasteis, and other discarded solid and semi-solid wastes. "Solid Waste" excludes materials or substances having commercial value which may be salvaged for reuse, recycling, or resale. Solid Waste includes Residual Waste received from any source.

"Beneficial Use Materials" shall mean: (1) Solid Waste that has been source-separated or otherwise processed and put to a beneficial use at the Facility, or separated or otherwise diverted from the waste stream and exported from the Facility, for purposes of recycling, and shall include, but not be limited to, green waste, wood waste, asphalt, concrete, or dirt; or (2) Clean Dirt imported to cover and prepare interim and final fill slopes for planting and for berms, provided that such importation of Clean Dirt has been shown to be necessary and has been authorized by the Department of Public Works. (Emphasis added.)

"Inert Debris" shall mean Solid Waste and/or recyclable materials that are source-separated or separated for recycling, reuse, or resale that do not contain: (1) hazardous waste, as defined in California Code of Regulations, Title 22, section 66261.3; or (2) soluble pollutants at concentrations in excess of state water quality objectives; and (3) do not contain significant quantities of decomposable waste. Inert Debris shall not contain more than one percent (by weight) putrescible wastes. Inert Debris may be commingled with rock and/or soil.

The Sunshine Canyon Landfill Local Enforcement Agency (“SCL-LEA”) has confirmed that the California Department of Recycling and Resource Recovery does not consider clean soil used for daily cover at a landfill’s working face to be “Solid Waste.” (See Exhibit A attached here.) The CUP’s definition of “Solid Waste” closely tracks the definition of Solid Waste in the

California Public Resources Code, at § 40191.

Regardless of CalRecycle's definition, clean soil used for daily cover at the disposal area of the Landfill does not constitute Beneficial Reuse Materials under the CUP definition. The CUP definition of Beneficial Use Materials specifically describes what uses of clean dirt qualify as Beneficial Reuse. That is: "clean dirt imported to cover and prepare interim and final fill slopes for planting and for berms." It intentionally included these three specific uses and intentionally did not include clean soil used for daily cover in the definition.

Daily cover at the working face is scraped away as much as possible when disposal operations start the following working day, as is standard industry practice, and does not constitute interim or final fill slopes. But because of the unavoidable loss of soil quantities when soil is used as daily cover, the need for more clean soil for daily cover never lets up.

Therefore, 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 for interim and final slopes. Clean soil used for daily cover at the working face is not "Solid Waste" as defined in the CUP, nor is it Beneficial Reuse Materials or Inert Debris deposited in the landfill as "fill" as defined in the CUP.

The Landfill Has Not Exceeded Its Weekly or Daily Limits on Waste Receipts.

The fact that clean soil used for daily cover at the disposal area is not subject to the CUP's weekly and daily waste receipt limits in Condition 21 is critical to understanding BFIC's appeal. This is because there have not been any exceedances of the CUP's weekly or daily disposal limits at the Landfill if clean soil used for daily cover at the disposal area is not added to the total tons received at the Landfill for calculating the CUP's fill limits. Yet, that is what the County has done in issuing the subject NOV.

The Position Taken in the NOV Would Prevent BFIC From Complying with its County CUP, State Law, the Landfill's Solid Waste Facilities Permit.

Making clean soil used for daily cover at the disposal area subject to the CUP's limits on weekly and daily landfill disposal tonnage would prevent BFIC from complying with the County's directive under the CUP to use clean soil to cover the Landfill's disposal area on Saturdays, and potentially the application of Envirocover throughout the week-- if there is not enough material coming in each day to make up for the days where no clean soil is brought in at all. If the Landfill cannot use Envirocover on Saturdays and cannot take in enough clean soil to cover the disposal area with soil on Saturdays, this would not only place the Landfill in violation of the County directive requiring the working face be covered at the end of each operating day, but it would also cause BFIC to violate (a) State regulations requiring that daily cover be placed on the Landfill's working face at the end of

Amy J. Bodek, AICP, Director

May 17, 2023

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each day and (b) also the Landfill's Solid Waste Facilities Permit, which requires the Landfill adhere to state minimum standards for disposal operations (27 Cal. Code of Regulations § 20690.)

This is, in part, also because incoming soil loads do not arrive on a predictable, steady basis. The Landfill's incoming tonnage of clean soil is highly variable since it depends on the existence and timing of third-party excavation projects in the County, which are seasonal. Soil deliveries cease entirely during periods of rainy and inclement weather.

Because of the variability of clean soil receipts at the Landfill, the Landfill needs to accept and stockpile clean soil for covering the disposal area on Saturdays and to aid in the application of Envirocover on weekdays. But because some weeks have no or very minimal soil receipts, the Landfill needs flexibility during some weeks to have enough clean soil on hand for use as daily cover. So even if the Landfill received 1,100 tons of clean soil each and every day (which would max out the Landfill's weekly six-day limit of 6,600 tons on all Beneficial Reuse Material and Inert Debris) this would not be close to meeting the Landfill's weekly needs for daily cover material. Hence, applying the CUP's fill limits to clean soil used to cover the disposal area will prevent the Landfill from complying with the County directive to use six inches of compacted soil to cover the working face on Saturdays as well as fulfilling the Landfill's regulatory obligations under state law.

Conclusion.

For the foregoing reasons, BFIC asks that the Notice of Violation be promptly withdrawn. If it is not withdrawn, BFIC asks for a hearing on this appeal.

Furthermore, before any such hearing occurs, this issue should be directed for resolution by the combined City/County Technical Advisory Committee (the "TAC") pursuant to "The Sunshine Canyon Combined City/County Landfill Planning Issues Memorandum of Understanding," because it impacts operations on both the City and County portions of the Landfill. The TAC should consult on this issue with the Sunshine Canyon City/County Local Enforcement Agency. This should ensure that the County will not take enforcement action without consulting with the City and the Joint City/County LEA, which is responsible for the enforcement of state minimum regulatory standards for disposal sites.

Sincerely,



Thomas M. Bruen
Counsel for Browning-Ferris Industries of
California, Inc.

NOTICE OF VIOLATION

May 02, 2023

Browning Ferris Industries of California, Inc.
Republic Services, Inc.
ATTN: Michael Stewart
14747 San Fernando Rd
Sylmar, CA 91342

Code Enforcement Case Number: RPZPE2023000609
Conditional Use Permit: 00-194

Dear Property Owner/Tenant:

A review of Conditional Use Permit (CUP) 00-194 and associated reports for the landfill operation located at 14747 San Fernando Road, Los Angeles, CA 91342, disclosed the following violation(s):

1. **Conditional Use Permit Violation**

One or more conditions of an approved Conditional Use Permit are not being met (Los Angeles County Zoning Code: 22.242.020; 22.242.030)

Condition 21: The maximum tonnage capacity to be received by the Landfill shall be as follows:

A. The City/County Project:

Weekly Tonnage Capacity

I. 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.

Daily Tonnage Capacity

II. When operating as a City/County Project, the daily tonnage capacity of all materials received by the Landfill collectively in both

Case Number:
RPZPE2023000609

Permit Number:
00-194

Zone:
A-2-2

Investigating Planner:
Edgar De La Torre

Email:
edelatorre@planning.lacounty.gov

Phone Number:
213-974-6483
Monday - Thursday

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.

Los Angeles County Public Works has reviewed the Monthly Tonnage Reports from Republic for the months of July 2022 to March 2023 and have found that the landfill has exceeded the daily tonnage capacity of 12,100 tons for all material on numerous days each month.

**July 2022 – Total days of exceedances was 6.
August 2022 – Total days of exceedances was 7.
September 2022 – Total days of exceedances was 13.
October 2022 – Total days of exceedances was 18.
November 2022 – Total days of exceedances was 12.
December 2022 – Total days of exceedances was 9.
January 2023 – Total days of exceedances was 5.
February 2023 – Total days of exceedances was 10.
March 2023 – Total days of exceedances was 4.**

In order to abate this violation and comply with Condition 21, SCL must immediately stop exceeding the permitted daily tonnage capacity limits detailed in Condition 21.

Please consider this an order to comply with the provisions of CUP 00-194. Failure to correct the violation(s) as provided in Condition 11 of the CUP shall result in the imposition of the penalty in the amount of \$1,000 per violation.

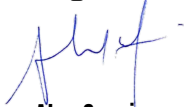
As also provided by Condition 11 of the CUP, you may appeal this notice of violation to a Hearing Officer pursuant to Section 22.242.070(C)(1) [formerly, Section 22.60.390(C)(1)] of the Los Angeles County Code within fifteen (15) days of receipt of this notice.

Furthermore, continued noncompliance may also cause this matter to be referred to the District Attorney or County Counsel at any time with the request that a criminal complaint be filed if compliance is not achieved.

For any other inquiries please contact the investigating planner directly as noted by the contact information listed in the right-hand column on page 1.

Sincerely,

**Amy J. Bodek, AICP
Director,
Regional Planning**



**Alex Garcia
Supervising Regional Planner
Zoning Enforcement Special Projects**

Ref: RPZPE2023000609

Page 2 of 2

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

This Message Is From an External Sender

This message came from outside your organization.

Report Suspicious

Thank you Dave!

Joshua Mills

Environmental Manager

14747 San Fernando Road

Sylmar, California 91342

e jmills3@republicservices.com

o (818) 362-2154 c (510) 691-4337

f (818) 362-5484 w RepublicServices.com



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,

EXHIBIT A

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

Local Enforcement Agency Program
Los Angeles Department of Building and Safety

221 N. Figueroa St. Suite 1250
Los Angeles, CA 90012
Office: 213-252-3932
david.thompson@lacity.org

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David Thompson, Program Manager

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Los Angeles Department of Building and Safety

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