

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

BKK Corporation
2210 South Asuza Avenue
West Covina, California 91792

ID No. CAD 067 786 649

Respondent.

OAH # L2004120196

Docket No. HWCA 2004 0582

STIPULATION AND ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (DTSC) and BKK Corporation (Respondent or BKK) (collectively, the Parties) enter into this Stipulation and Order (Order) and agree as follows:

1. A dispute exists regarding the Enforcement Order issued by DTSC on November 9, 2004. (Attached as Exhibit 1.)
2. The Parties wish to avoid the expense of further litigation and to ensure prompt action to achieve the Schedule for Compliance below.
3. Respondent disputes that jurisdiction exists pursuant to Health and Safety Code section 25187 for DTSC to require Respondent to perform the acts specified in paragraphs 5.1.1, 5.1.3, 5.1.4 and 5.9 of the Enforcement Order. The Parties otherwise agree that jurisdiction exists pursuant to Health and Safety Code section 25187.
4. In furtherance of settlement, DTSC withdraws without prejudice paragraphs 2.1 through 2.1.5., 3 and 5.1.1 of the Enforcement Order.

5. The Parties reserve all of their respective rights and remedies, if any, concerning the closure/post-closure insurance policy that is referenced in paragraph 5.1.1 of the Enforcement Order.

6. Respondent waives any right to a hearing in this matter.

7. This Order shall constitute full settlement of the violations alleged in paragraphs 2.2 and 2.3 of the Enforcement Order. This Order does not limit DTSC from taking enforcement action concerning other violations, provided they are not based on the same dates and facts alleged in paragraphs 2.2 and 2.3 of the Enforcement Order.

SCHEDULE FOR COMPLIANCE

8. Respondent shall comply with the following:

8.1. Access. Respondent shall provide access to the Site pursuant to its obligations under the Right to Enter Agreement signed by the Parties on November 4, 2004, and pursuant to applicable orders, statutes and regulations. Respondent agrees to extend the term of the Right to Enter Agreement until at least June 30, 2007.

8.2. Documents and Records.

(a) Respondent shall retain and preserve all records, documents (including those in electronic form), manifests, receipts, and other information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents that are: (i) Waste-In Documents (as defined in paragraph 8.2(b) below), until these documents are moved pursuant to paragraph 8.2 (c) and/or (d) below; (ii) related to closure, post-closure, corrective action, remediation, or other similar activities at the Site; (iii) responsive to any requests for information sent by regulatory agencies such as

the U.S. Environmental Protection Agency, DTSC, and the California Integrated Waste Management Board; (iv) related in any way to ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of hazardous substances, pollutants, or contaminants at or in connection with the Site; (v) required to be maintained by permits, orders, the Resource Conservation and Recovery Act (RCRA) and State law and regulations (collectively, the "Documents and Records").

(b) Respondent shall provide to DTSC the Index setting forth the contents and segregated physical location in Respondent's warehouse of all records, documents (including those in electronic form), manifests, receipts, and other information currently in its possession, that are related to generators and waste disposal at the Site (collectively, the Waste-In Documents).

(c) Respondent shall segregate all Waste-In Documents from Respondent's other records and various other items and allow the Waste-In Documents to be placed in a segregated location. The segregated location shall be an area where the Waste-In Documents will be separated from Respondent's other property and where DTSC will control access to the Waste-In Documents. For example, DTSC may request Respondent to allow the documents to be placed in temporary buildings brought to the Site and/or in a new area in the current storage building that will be separated by a partition from the existing storage area and that will have a separate entrance controlled by DTSC. Respondent shall not unreasonably withhold its approval of segregated locations. DTSC agrees to allow Respondent's access during normal business hours to

the Waste-in Documents so long as Respondent follows DTSC's protocols to ensure continued preservation and security of the Waste-In Documents.

(d) DTSC may also eventually want to establish a different location or locations with improved utilities, environmental and other conditions (Secure Location(s)), at which DTSC also controls access and DTSC allows BKK access subject to the same terms set forth in paragraph (c) above. DTSC agrees to consult with Respondent about the physical protections and procedures that will be used to ensure that Waste-in Documents are not lost or damaged and Respondent shall not unreasonably withhold its approval of moving the Waste-In Documents to a Secure Location. Respondent understands that a Secure Location may not be on the Site and Respondent shall not withhold its approval based on the fact that a proposed Secure Location is off-Site.

(e) Respondent agrees that copies or other types of images can be made of Waste-In Documents and shall not require reviewers to pay Respondent in order to review, copy, otherwise reproduce and/or remove documents from either of the types of locations discussed in paragraphs (c) and (d) above.

(f) Neither Respondent nor DTSC shall remove the Waste-In Documents from their current location or take any of the actions set forth in this paragraph 8.2 without the express written agreement of the U.S. Environmental Protection Agency.

8.3. Minnesota Methane. Respondent shall cooperate with DTSC and its representatives in efforts to ensure that Minnesota Methane and Respondent maintain, repair and replace equipment, as necessary, pursuant to the Operation and Maintenance Agreement entered into between Respondent and Minnesota Methane.

8.4. Submittals. All submittals from Respondent pursuant to this Order shall be sent to:

Florence Gharibian, Branch Chief
Southern California Statewide Compliance Division
Department of Toxic Substances Control
1011 N. Grandview Avenue
Glendale, California 91201

8.5. Communications. All approvals and decisions of DTSC made regarding this Order will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by DTSC regarding issues addressed in this Order shall be construed to relieve Respondent of the obligation to obtain such formal approvals and decisions as may be required.

8.6. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to retain documents, obtain permits and to assure worker safety.

8.7. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

8.8. Extension Request. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may,

prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

8.9. Extension Approvals. If DTSC determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

9. Additional Enforcement Actions. By issuance of this Order, DTSC does not waive the right to take further enforcement actions.

10. Penalties for Noncompliance. Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by DTSC or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law. However, Respondent disputes whether the terms herein could be lawfully ordered pursuant to section 25187 and therefore whether penalties would apply under section 25188 for noncompliance.

11. Government Liabilities. The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

12. Parties Bound. This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees.

Dated: 5/3/05

//original signed by//
Kris Kazarian, Treasurer
BKK Corporation
Respondent

Dated: 5/4/05

//original signed by//
Florence Gharibian, Branch Chief
Southern California Statewide Compliance Division
Department of Toxic Substances Control

BKK Corporation
Exhibit 1

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STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

BKK Corporation
2210 South Azusa Avenue
West Covina, CA 91792

ID No. CAD 067 786 649

Respondent.

Docket HWCA 2004 0582

ENFORCEMENT ORDER WITH
IMMINENT AND SUBSTANTIAL
ENDANGERMENT DETERMINATION

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to BKK Corporation (Respondent).

1.2. Site. Respondent owns and is the operator of a hazardous waste landfill in West Covina, California (the Class I Landfill). The Class I landfill is part of a larger 583-acre landfill facility, at which Respondent also owns and operates a nonhazardous waste landfill (the Class III Landfill), and a

1 leachate treatment plant (LTP). The Class I Landfill, the Class
2 III Landfill, and the LTP are collectively referenced in this Order
3 as the "Site." A map showing the Site is attached.

4 1.3. Regulatory Status. In the late 1980's, Respondent
5 closed the Class I Landfill under a Closure Plan approved by the
6 California Department of Health Services and the United States
7 Environmental Protection Agency. DTSC provided acknowledgment of
8 the closure certification on June 12, 1991. The Department now
9 regulates the post-closure care of the Class I Landfill. BKK is
10 required to monitor and perform post-closure environmental care of
11 the Class I Landfill pursuant to the terms of an Interim Status
12 Document (ISD) and the Operation Plan (also referred to as the
13 "Post-closure Plan" or "Operation/Post-closure Plan", which is part
14 of BKK's Part B application for post-closure permit 04-GLN-07).
15 BKK has been operating the LTP under the terms of a hazardous waste
16 facility permit that became effective June 30, 1987 (the LTP
17 Permit). On June 30, 2004, the Department issued a consolidated
18 Hazardous Waste Facilities Permit: Leachate Treatment Plant
19 Operation and Class I Landfill Post-Closure Care (Permit No. 04-
20 GLN-07, referred to as the "2004 Permit"). BKK has appealed the
21 2004 Permit. BKK is required to continue to operate the LTP
22 pursuant to the LTP Permit issued in 1987 and conduct post-closure
23 operation, monitoring and maintenance pursuant to the Operation
24 Plan until DTSC notifies BKK that some or all of the 2004 Permit
25 conditions are in effect and/or are not stayed by the appeal.
26 BKK's activities at the Site are also regulated by the Health and
27 Safety Code and the California Code of Regulations, title 22.

1 1.4. Jurisdiction. Section 25187 of the Health and
2 Safety Code authorizes the Department to issue an order specifying
3 a schedule for compliance or correction when the Department
4 determines that any person has violated or threatens to violate
5 specified provisions of the Health and Safety Code or any permit,
6 rule, regulation, standard, or requirement issued or adopted
7 pursuant thereto.

8 DETERMINATION OF VIOLATIONS

9 2. The Department has determined that:

10 2.1. Respondent violated California Code of Regulations,
11 title 22, sections 66265.310(b)(2) and (b)(4), in that Respondent
12 failed to maintain the integrity and effectiveness of the final
13 cover on the Class I Landfill, and failed to prevent run-on and
14 run-off that might damage the final cover, as follows:

15 2.1.1. On or about March 3, 2004, there was an
16 approximately 4000 square foot depressive area in the final cover
17 on deck 1040, with about four inches of rain water accumulated in
18 it.

19 2.1.2. On or about March 3, 2004, there was a sinkhole
20 in the final cover at the southwest corner of the Class I Landfill,
21 above OP-18. As of October 14, 2004, Respondent had failed to
22 repair the sinkhole.

23 2.1.3. On or about September 23, 2004, Respondent
24 notified the Department of elevated emissions of vinyl chloride
25 from the Class I Landfill. Respondent identified the probable
26 cause of these elevated emissions as the overgrowth of vegetation,
27 particularly pampas grass, on portions of the final cover.

1 According to Respondent, this overgrowth of vegetation impeded the
2 uniform distribution of irrigation water on the final cover,
3 causing cracking that resulted in the elevated emissions.

4 2.1.4. On October 14, 2004, there were three palm trees
5 growing on the final cover, on the slope between "B" bench and "A"
6 bench toward the east of Barrier 2, creating the risk that the
7 cover will be compromised.

8 2.1.5. On or about October 14, 2004, there was an
9 approximately 5-foot by 18-foot sinkhole in the final cover, near
10 the 850 bench at the south end of the Class I Landfill.

11 2.2. Respondent violated California Code of
12 Regulations, title 22, section 66264.73, in that on or about March
13 9, 2004, Respondent failed to keep a written operating record of
14 all of the wastes treated in the LTP.

15 2.3. Respondent violated its LTP Permit, Attachment A,
16 section III C.4., in that on or about March 3, 2004, Respondent
17 failed to have a complete analysis of the leachate obtained from
18 new on-site sources prior to treatment.

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20 DETERMINATION OF THREATENED VIOLATIONS

21 3. Respondent has threatened to violate California Code
22 of Regulations, title 22, sections 66265.117 and
23 66265.310(b)(2)through (6) and (e) concerning the Class I landfill,
24 and has threatened to violate the LTP Permit, Attachment A,
25 sections III G. 1., 5. and 6. in that on October 18 and 20, 2004,
26 Respondent notified the Department that for financial reasons,
27 Respondent would no longer be able to perform any required post-

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1 closure care of the Class I Landfill, including operation of the
2 LTP, after November 17, 2004. As a result, the Department has
3 hired an emergency response contractor to ensure that critical
4 systems at the Site are operated and maintained to protect public
5 health, safety and the environment.

6 IMMINENT AND SUBSTANTIAL ENDANGERMENT DETERMINATION

7 4.1 The Department determines that the violations and
8 threatened violations associated with this Order may pose an
9 imminent and substantial endangerment to the public health or
10 safety or the environment, in that Respondent's failure to perform
11 required post-closure care at the Class I Landfill and operation
12 of the LTP presents an imminent and substantial risk that nearby
13 residents may be exposed to hazardous substances, and that the
14 hazardous substances in the Class I Landfill may contaminate the
15 environment.

16 4.2 This determination of imminent and substantial
17 endangerment is based on the nature of the hazardous substances
18 found at the Site, the health effects of the chemicals in those
19 substances, the routes of exposure, and the potential for public
20 health/environmental risk.

21 4.2.1 The Site is located in a mixed residential and
22 industrial area. Residences are located to the west and south of
23 the Site. Several homes are located within 25 to 50 feet of the
24 southwest boundary of the Site.

25 4.2.2 Over the period from 1972 to 1984, BKK accepted
26 approximately 3.4 million tons of liquid and solid hazardous wastes
27 together with large amounts of non-hazardous wastes for disposal

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1 at the Class I landfill. Wastes disposed at the Class I landfill
2 include (but are not limited to) acid and alkaline solutions and
3 sludges; cyanide waste; contaminated soils, drilling muds,
4 petroleum wastes; heavy metal solutions; oils, paint wastes;
5 plating solutions; pesticides; polychlorinated biphenyls (PCBs);
6 phenolic wastes; and halogenated solvents.

7 4.2.3 Some key contaminants of concern that have been
8 identified at the Site include: acetone, benzene, chlorobenzene,
9 chromium, copper, cyanide, lead, mercury, methane, PCBs, toluene,
10 vinyl chloride and xylenes.

11 4.2.4 The routes of exposure are inhalation and direct
12 contact. Exposure to landfill gases is possible if gas extraction
13 systems are not operated or fail, or the landfill cap is allowed
14 to degrade, which would allow the release of landfill gases.
15 Direct contact could occur due to releases caused by erosion of the
16 Class I landfill cap and runoff of hazardous substances during wet
17 weather. Failure to operate the groundwater/leachate collection
18 system could result in artesian conditions developing, which would
19 allow contaminated leachate to reach the groundwater.

20 4.2.5 There is potential for release of hazardous substances
21 to the environment from the landfills if landfill covers
22 deteriorate and allow the escape of waste materials. Air emissions
23 could lead to direct exposure of West Covina residents. Release of
24 hazardous substances resulting from cap erosion could result in
25 exposure to workers onsite. A flammable and potentially explosive
26 atmosphere may also develop if methane released from the landfills
27 mixes with ambient air. Respondent's failure to maintain storm

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1 water runoff systems has resulted in serious onsite erosion
2 problems that may result in hazardous substances being released
3 from the Class I landfill. Failure to maintain the Class I
4 landfill cap and irrigation systems may result in deterioration and
5 release of hazardous substances. Failure to operate and maintain
6 the groundwater/leachate extraction wells and the LTP will result
7 in migration of contaminated leachate from the Site and potential
8 surface releases in an area where artesian conditions exist.

9 4.2.6 The history of the Site has shown that releases from
10 the landfills will constitute an Imminent and Substantial
11 Endangerment. In July 1984, nineteen homes south and southeast of
12 the Site were evacuated due to the presence of vinyl chloride, a
13 known human carcinogen, from landfill gases inside these homes at
14 levels 90 times the ambient air standard. Relocation of the
15 affected residents was completed in 1985.

16 4.3. The Department determines that all provisions of
17 the Order are so related that the public health or safety or the
18 environment can be protected only by immediate compliance with the
19 Order as a whole.

20 SCHEDULE FOR COMPLIANCE

21 5. Based on the foregoing Determination of Violations
22 and Threatened Violations and Imminent and Substantial Endangerment
23 Determination, IT IS HEREBY ORDERED THAT:

24 5.1.1. Immediately, Respondent shall transfer any and
25 all proceeds that Respondent receives for the 2004/05 period from
26 the post-closure insurance policy for the Class I Landfill,
27 Steadfast Insurance Company No. PLC 7969053-04 to the Department

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1 5.1.5. Within five days, Respondent shall provide to the
2 Department any written standard operating plans and procedures
3 currently in use to perform post-closure care of the Class I
4 landfill and/or operate the LTP.

5 5.2. Submittals. All submittals from Respondent
6 pursuant to this Order shall be sent simultaneously to:

7 Jose Kou, Chief
8 Southern California Permitting and Corrective Action
9 Branch
10 Department of Toxic Substances Control
11 1011 N. Grandview Avenue
12 Glendale, California 91201

13 Steven Samaniego
14 Director of Environmental Management
15 City of West Covina
16 1444 West Garvey Avenue
17 West Covina, California 91732

18 5.3. Communications. All approvals and decisions of the
19 Department made regarding submittals and notifications will be
20 communicated to Respondent in writing by the Branch Chief,
21 Department of Toxic Substances Control, or his/her designee. No
22 informal advice, guidance, suggestions, or comments by the
23 Department regarding reports, plans, specifications, schedules, or
24 any other writings by Respondent shall be construed to relieve
25 Respondent of the obligation to obtain such formal approvals as may
26 be required.

27 5.4. Department Review and Approval. If the Department
28 determines that any report, plan, schedule, or other document
submitted for approval pursuant to this Order fails to comply with
the Order or fails to protect public health or safety or the
environment, the Department may:

1 5.8. Data and Document Availability. Respondent shall
2 permit the Department and its authorized representatives to inspect
3 and copy all sampling, testing, monitoring, and other data
4 generated by Respondent or on Respondent's behalf in any way
5 pertaining to work undertaken pursuant to this Order. Respondent
6 shall allow the Department and its authorized representatives to
7 take duplicates of any samples collected by Respondent pursuant to
8 this Order. Respondent shall maintain a central depository of the
9 data, reports, and other documents prepared pursuant to this Order.
10 All such data, reports, and other documents shall be preserved by
11 Respondent for a minimum of six years after the conclusion of all
12 activities under this Order. If the Department requests that some
13 or all of these documents be preserved for a longer period of time,
14 Respondent shall either comply with that request, deliver the
15 documents to the Department, or permit the Department to copy the
16 documents prior to destruction. Respondent shall notify the
17 Department in writing at least six months prior to destroying any
18 documents prepared pursuant to this Order.

19 5.9. Government Liabilities: The State of California
20 shall not be liable for injuries or damages to persons or property
21 resulting from acts or omissions by Respondent or related parties
22 in carrying out activities pursuant to this Order, nor shall the
23 State of California be held as a party to any contract entered into
24 by Respondent or its agents in carrying out activities pursuant to
25 the Order.

26 5.10. Incorporation of Plans and Reports. All plans,
27 schedules, and reports that require Department approval and are
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RIGHT TO A HEARING

7. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent. The appeal does not stay the terms of this Order.

EFFECTIVE DATE

8. This Order is effective immediately on the date of issuance indicated below, based on the Department's Imminent and Substantial Endangerment Determination.

Date of Issuance: November 9, 2004

Original Signed by Florence Gharibian

Florence Gharibian, Chief
Statewide Compliance Branch
Department of Toxic Substances Control