UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

5/13/91

In the Matter of: BROWNING-FERRIS INDUSTRIES OF SOUTH JERSEY, INC., New Brunswick, New Jersey, Respondent. Proceeding Under Sections 106(b)(1), 107(a), 107(c)(3), 122(h), and 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9606(b)(1), 9607(a), 9607(c)(3), 9622(h), and 9622(i).	ORDER ON CONSENT Index No. II-CERCLA-10109

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I. INTRODUCTION

1. This Administrative Order on Consent ("Consent Order" or "Order") is entered into by the United States Environmental Protection Agency ("EPA") and Browning-Ferris Industries of South Jersey, Inc. ("BFISJ" or "Respondent"). This Order provides for reimbursement of certain response costs incurred and to be incurred by EPA in connection with post-remedial monitoring activities at the South Brunswick Landfill Superfund Site, South Brunswick, New Jersey (the "Site"), and for settlement of EPA's claims for statutory penalties and punitive damages for past violations of EPA's Administrative Order No. II-CERCLA-90104, under which BFISJ is obligated to perform post-remedial monitoring at the Site.

II. JURISDICTION

2. This Consent Order is issued under the authority vested in the President of the United States by Sections 106(b)(1), 107(a), 107(c)(3), 122(h), and 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. Sections 9606(b)(1), 9607(a), 9607(c)(3), 9622(h), and 9622(i). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to the Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C.

3. Respondent agrees to make all payments required by the terms and conditions of this Consent Order. In any action by EPA or the United States to enforce the terms of this Consent Order, Respondent consents to and agrees not to contest the authority or jurisdiction of the Regional Administrator to issue or enforce this Consent Order, and agrees not to contest the validity of this Order or its terms.

III. PARTIES BOUND

4. This Consent Order shall apply to and be binding upon Respondent, its agents, successors, and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondent or of the Site shall alter Respondent's obligations under this Consent Order.

5. Respondent shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights, stock, or assets in a corporate acquisition are transferred.

IV. STATEMENT OF PURPOSE

6. In entering into this Consent Order, the objectives of EPA and Respondent are: (a) to provide for reimbursement of certain past response costs and future oversight costs incurred and to be incurred by EPA in connection with the Site; and (b) to settle EPA's claims for penalties and punitive damages for past violations of EPA's unilateral Administrative Order No. II-CERCLA-90104.

V. FINDINGS OF FACT

7. The BFISJ South Brunswick Landfill Superfund Site ("Site") is located along New Road approximately one-half mile northwest of U.S. Route 1 in Middlesex County, New Jersey.

8. The Site occupies an area of approximately 68 acres. A significant portion of the land surrounding the Site is wooded. A private residence is located adjacent to the Site, a school and park are located directly across New Road and a housing development has been constructed north of the Site.

9. The Site is in close proximity to Heathcote Brook which is a tributary to the Millstone River. The City of New Brunswick occasionally draws water for drinking from an intake 10 miles downstream from the Site. The nearest public groundwater supply is located approximately one mile north of the Site.

10. The Site operated for more than twenty years as a solid waste landfill and accepted municipal refuse, pesticides, chemical wastes and hazardous waste. Title to the Site property was acquired by Princeton Disposal Service, Inc., predecessor in interest to BFISJ, on or about May 31, 1973, from G & J Spilatore Excavation, previous owner and operator of the Site.

11. The Site was registered with the New Jersey Department of Environmental Protection ("NJDEP") on August 19, 1970. Pursuant to a closure order from NJDEP on July 24, 1978, the Site was officially closed on December 31, 1978.

12. In June, 1980, EPA conducted an investigation of the Site. The sampling results of this investigation revealed elevated levels of volatile organic compounds ("VOCs") in seven on-site monitoring wells as well as five on-site surface water sampling locations. The data from this sampling effort resulted in the Site being included on the Superfund National Priorities List ("NPL") in December, 1982.

13. BFISJ, as the owner and operator of the Site since 1973, was identified by EPA as a responsible party with respect to the Site, and accordingly EPA entered into negotiations with BFISJ concerning remedial efforts to be performed at the Site.

14. On April 5, 1982, Region II of EPA issued Administrative Order on Consent, Index No. RCRA-7003-20101 (the "RCRA Consent Order") to BFISJ pursuant to Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6973. Under the RCRA Consent Order, BFISJ agreed to undertake an investigation designed to disclose the extent, if any, of both on and off-site contamination at the Site, and to undertake remedial steps necessary to prevent any actual or potential leaching or migration of hazardous wastes from the Site.

15. The RCRA Consent Order outlined a three-phase work program. Phase I consisted of a hydrogeological investigation designed to determine the nature and extent of contamination related to the Site. Phase II called for development of a Remedial Plan and construction of a remedy to be selected by EPA. Phase III required a post-remedial environmental monitoring program designed to assess the effectiveness of the completed on-site remedial action.

16. The hydrogeological investigation was performed by Wehran Engineering as consultant to BFISJ in the summer of 1982. The hydrogeological investigation supported the findings of EPA's June, 1980 sampling effort. The groundwater in a shallow unconfined aquifer beneath the Site was found to be contaminated with total volatile organics ("TVOs") ranging from 80 to 1,955 parts per billion ("ppb"). Groundwater in the deeper fractured bedrock beneath the northern portion of the Site was also found to be contaminated with TVOs ranging from 23 to 494 ppb. Elevated levels of iron were also detected in both the shallow and fractured bedrock on-site monitoring wells.

17. The results of EPA's June, 1980 sampling effort and the BFI hydrogeologic investigation revealed that leachate emanating from the landfill was degrading surface and groundwater quality in the vicinity of the Site, posing a threat to human health and the environment. Therefore, EPA determined that it was necessary to implement a remedial action which would mitigate any further release of contamination from the Site.

18. Pursuant to the RCRA Consent Order, BFISJ submitted a Remedial Plan to EPA in February, 1983, which called for a leachate collection and treatment system, as well as a slurry wall, clay cap and gas venting system. The Remedial Plan was approved by EPA, and the remedial work was initiated by BFISJ in May, 1983 and was completed in September, 1985.

19. EPA issued a Record of Decision ("ROD") documenting the selected remedial action for the Site on September 30, 1987. The ROD is hereby incorporated by reference as if fully set forth herein. The ROD concluded that the remedial action had been in place and operational since September, 1985, and that the Site had been effectively remediated. However, the ROD called for on-site containment and required monitoring for a period of thirty years, and stated that should post-remedial monitoring reveal exceedances of ambient or chemical-specific applicable or relevant and appropriate requirements ("ARARs") for air, surface water and groundwater, additional remedial action may be required.

20. The purpose of the post-remedial monitoring program selected in the ROD is to evaluate the effectiveness of the completed remedial action and assess the impacts of any pre-remedial off-site migration of contaminants. An operation and maintenance program is also called for in the ROD to ensure the continued effectiveness of the remedial action.

21. In addition to the post-remedial environmental monitoring program, Section 121(c) of CERCLA requires EPA to review remedial actions that result in any hazardous substances, pollutants or contaminants remaining at the Site no less often than each five (5) years after the initiation of such remedial

action, to assure that human health and the environment are being adequately protected.

22. On June 5, 1987, BFISJ submitted to EPA for approval a Post-Remedial Environmental Monitoring Plan for the Site containing BFISJ's proposed monitoring program.

23. On September 30, 1988, and November 11, 1988, BFISJ submitted to EPA revisions of its June 5, 1987 Post-Remedial Environmental Monitoring Plan which, in EPA's judgment, failed to fully address EPA's written comments dated April 1, 1987, December 15, 1987, May 17, 1988 and September 14, 1988. The principal dispute between EPA and BFISJ during this period concerned well-casing materials.

24. As a result, EPA issued a unilateral Administrative Order pursuant to Section 106 of CERCLA, 42 U.S.C. Section 9606, to BFISJ, Index No. II-CERCLA-90104, on March 6, 1989 (the "Unilateral Order"), which required BFISJ to submit to EPA, and implement upon EPA's approval, a revised Post-Remedial Monitoring Plan specifying that all monitoring wells be constructed of stainless-steel materials. The Unilateral Order became effective by its terms thirty days following issuance, and required that BFISJ submit to EPA a written notice of intent to comply with the Unilateral Order within five calendar days of the effective date. Before it became effective, EPA agreed to an extension of the effective date of the Unilateral Order, which thus became effective on May 10, 1989, and required BFISJ to submit a notice of intent to comply by May 15, 1989.

25. BFISJ did not submit a notice of intent to comply with, and failed or refused to comply with EPA's Administrative Order No. II-CERCLA-90104. That order provides that failure of BFISJ to comply with any provision of the order may subject BFISJ to cost recovery, civil penalties of up to $25,000 per day of violation, and punitive damages of up to three times the amount of any costs incurred by EPA, pursuant to Sections 106(b), 107(a) and 107(c)(3) of CERCLA, 42 U.S.C. Sections 9606(b), 9607(a), and 9607(c)(3). That order also provides that failure of BFISJ to comply may result in EPA taking the required actions unilaterally, pursuant to Section 104(a)(1) of CERCLA, 42 U.S.C. Section 9604(a)(1).

26. As a result of BFISJ's failure or refusal to comply with EPA's Administrative Order No. II-CERCLA-90104, EPA has incurred at least $58,957.72 in response costs in carrying out response actions since April 10, 1989.

27. In April, 1990, BFISJ entered into settlement discussions with EPA for payment of past response costs as well as penalties and damages for noncompliance with EPA's Order No. II-CERCLA-90194. In May, 1990, BFI offered to comply with EPA's

Order No. II-CERCLA-90104 and implement the post-remedial monitoring plan, as approved by EPA, including the installation of all wells employing well-casing materials specified by EPA, under the terms and conditions of that order. BFISJ further offered to reimburse EPA for certain of its response costs, and to settle EPA's claims for penalties and punitive damages for past violations of that order.

28. In order to avoid expensive and protracted litigation, the parties have entered into this Consent Order.

29. This Order incorporates by reference the Findings of EPA Order on Consent No. RCRA-7003-20101 and the Findings of EPA Order No. II-CERCLA-90104 in their entirety.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

30. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

31. Wastes and constituents thereof at the Site identified in the FINDINGS OF FACT, above, are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. Section 9604(a)(1).

32. The presence of hazardous substances at the Site or the past, present, or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

33. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

34. Respondent is a responsible party under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. Sections 9604, 9607 and 9622.

35. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation, in accordance with 42 U.S.C. Sections 9604(a)(1) and 9622(a).

VII. NOTICE, APPROVAL, AND PUBLIC COMMENT

36. By providing a copy of this Consent Order to NJDEP, EPA is notifying the State of New Jersey that this Order is being issued. Issuance of this Order has received the prior written approval of the Attorney General of the United States, as required by Section 122(h)(1). The parties understand and agree that final issuance and execution of this Consent Order by the Regional Administrator is subject to the public notice and comment procedures set forth in Section 122(i) of CERCLA, 42 U.S.C. Section 9622(i).

VIII. PARTIAL REIMBURSEMENT OF PAST COSTS

37. Within fifteen (15) calendar days of the effective date of this Order, Respondent shall remit a certified or cashiers check to EPA in the amount of $58,957.72, in partial reimbursement of past response costs, including direct and indirect costs and enforcement costs, incurred by the United States in conducting response actions with respect to the Site.

38. Checks remitted pursuant to this Order shall be made payable to the Hazardous Substances Superfund and shall include the name of the Site, the Site identification number, the Regional Lock Box Number account number and the title and index number of this Order. Checks shall be forwarded to:

U.S. Environmental Protection Agency, Region II
Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251.

39. Copies of the transmittal letter and check shall be sent simultaneously to the EPA Region II Project Coordinator for the Site.

IX. PAYMENT OF PENALTIES AND PUNITIVE DAMAGES

40. Within fifteen (15) calendar days of the effective date of this Order, Respondent shall remit a certified or cashiers check to EPA in the amount of $600,000.00 in satisfaction of EPA's claims for penalties and punitive damages pursuant to Sections 106(b)(1) and 107(c)(3) of CERCLA, 42 U.S.C. Sections 9606(b)(1) and 9607(c)(3), for Respondent's alleged violations of EPA Order No. II-CERCLA-90104 from April 5, 1989 to the effective date of this Order. Remittance under this paragraph shall be made as specified in paragraphs 38 and 39, above.

X. REIMBURSEMENT OF OVERSIGHT COSTS

41. Following the issuance of this Consent Order, EPA will submit to Respondent from time to time an accounting of oversight costs incurred by the United States after the effective date of this Order with respect to work performed by Respondent under EPA Order No. II-CERCLA-90104. Such oversight costs may include, but are not limited to, costs incurred by the United States in overseeing Respondent's implementation of EPA Order No. II-CERCLA-90104, activities performed by the United States as part of any community relations activities, and any costs incurred in obtaining access. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring costs, including costs associated with the collection and analysis of split samples, inspection of site activities, site visits, disputes that may arise under this Order or EPA Order No. II-CERCLA-90194, and review and approval of reports. EPA's certified Agency Financial Management System summary data (SPUR) reports, or such other summary as certified by EPA, shall serve as the sole basis for payment demands by EPA.

42. Respondent shall, within thirty (30) calendar days of receipt of each such accounting, in the form of SPUR reports or such other summary as certified by EPA, remit a certified or cashier's check for the amount of such demanded costs. In addition to any interest and penalty payments required under Section XI, herein ("Interest and Penalties for Late Payment"), interest shall accrue on any unpaid demanded costs from the expiration of the thirty-day period specified in this paragraph, at the rate of interest on investments for the Hazardous Substances Superfund under Section 107(a) of CERCLA. Remittance shall be made as specified in paragraphs 38 and 39, above.

XI. INTEREST AND PENALTIES FOR LATE PAYMENT

43. If Respondent fails to make any payments required under this Consent Order by the dates specified herein, Respondent shall pay to the United States, remitted as provided in paragraphs 38 and 39, above, within thirty (30) calendar days of the date any such late payment is due, and by the end of each 30-day late period thereafter, the following amounts:

a. interest on the unpaid balance at the rate established by the Department of the Treasury pursuant to 31 U.S.C. Section 3717 and 4 C.F.R. Section 102.13;

b. a handling charge of one (1) percent, to be assessed at the end of each thirty-day late period; and

c. a penalty at the rate of six (6) percent per annum on the unpaid balance if Respondent has not paid in full within ninety (90) days after payment is due. This penalty charge shall be paid at the end of each 30-day late period following the initial 90-day period, but shall accrue from the date payment is due.

44. This Section does not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of Respondent's failure to comply with this Order. Payment of penalties or interest under this Section shall not alter Respondent's obligation to comply with this Order.

XII. RELEASE OF LIABILITY

45. Upon receipt by EPA of the payments required by paragraphs 37 and 40, above (partial reimbursement of response costs and payment of penalties and punitive damages), and any amounts due under paragraph 43, above, for late payment under paragraph 37 or paragraph 40, above, Respondent shall have resolved its liability to EPA for civil penalties and punitive damages pursuant to Sections 106(b)(1) and 107(c)(3) of CERCLA for any and all violations of EPA's Order No. II-CERCLA-90104 which may have occurred prior to the effective date of this Order. Pursuant to Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9622(h)(4), Respondent shall not be liable for claims for contribution for payments made under paragraphs 37 and 42, above, asserted by a party not a signatory to this Order. The parties agree that, for the purposes of this Order, the phrase "matters addressed in the settlement" in Sections 113(f)(2) and 122(h)(2) of CERCLA, shall be construed to mean only those payments made by Respondent and received by EPA under paragraphs 37 and 42, above.

46. Respondent is not released from liability, if any, for any response actions or response costs beyond the scope of this Order, including but not limited to removals, other operable units, activities arising pursuant to Section 121(c) of CERCLA, past response costs which exceed the amount of costs reimbursed pursuant to paragraph 37, above, or response actions undertaken or response costs, including oversight costs not reimbursed pursuant to paragraph 42, above, incurred by EPA after the effective date of this Order.

XIII. RESERVATIONS OF RIGHTS

47. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA for recovery of all response costs incurred by the United States at the Site, including oversight costs, that are not reimbursed by Respondent under this Order, including but not limited to: any costs

incurred in the event that EPA performs work required under EPA Order No. II-CERCLA-90104 or any portion thereof, and any past or future response costs, including oversight costs, which exceed the amount of costs reimbursed under paragraphs 37 and 42, above.

48. EPA reserves the right to bring an action against Respondent to enforce the past cost reimbursement, oversight cost reimbursement, and penalty and punitive damage payment provisions of this Consent Order, to collect any interest and late-payment penalty amounts due under paragraph 43, above, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. Section 9609 for any and all violations of this Order and for any and all violations of EPA Order No. II-CERCLA-90104 which occur after the effective date of this Order.

49. Except as expressly provided in this Order, each party reserves all rights and defenses it may have. Except as expressly provided in this Order, nothing in this Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek recovery of response costs, injunctive relief, statutory penalties, or punitive damages.

XIV. DISCLAIMER

50. By signing this Consent Order and making payments required under this Order, Respondent does not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of Respondent in this Order shall not be considered an admission of liability, and this Order shall not be admissible as evidence of liability in any judicial or administrative proceeding other than a proceeding by the United States or EPA to enforce this Consent Order, or a judgment relating to it. Respondent retains its right to assert claims against other responsible parties at the Site. However, Respondent agrees not to contest the validity or terms of this Order, or the procedures underlying or relating to it, in any action brought by the United States or EPA to enforce the terms of EPA Order No. II-CERCLA-90104 or this Consent Order.

XV. OTHER CLAIMS

51. In entering into this Order, Respondent waives any right to seek reimbursement under Section 106(b) of CERCLA for any payments made pursuant to paragraphs 37, 40, and 42 of this Order. Respondent also waives any right to present a claim under Sections 111 or 112 of CERCLA for any payments made pursuant to paragraphs 37, 40, and 42 of this Order. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA. Respondent further waives all other

statutory and common law claims against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of Respondent's performance of its obligations under paragraphs 37, 40, and 42 of this Order.

52. The parties agree and intend that, and the RCRA Consent Order No. RCRA-7003-20101 is hereby rescinded as of the effective date of this Order. In any action by EPA or the United States to enforce the terms of EPA Order No. II-CERCLA-90104 or to seek penalties or punitive damages for violations of that order which occur after the effective date of this Order, Respondent waives all defenses or counterclaims based upon any alleged rights it may have under this Order or the RCRA Consent Order. By entering into this Order, Respondent does not waive any rights it may have under Section 106(b)(2) of CERCLA for any response costs incurred by BFISJ in performance of its obligations under EPA Order No. II-CERCLA-90104.

53. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

54. Respondent shall bear its own costs and attorneys fees.

XVI. EFFECTIVE DATE AND MODIFICATION

55. The effective date of this Consent Order shall be the date it is signed by the Regional Administrator. EPA will make all reasonable efforts to notify BFISJ in a timely manner of the date of signing of this Order.

56. This Consent Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by the Chief, New Jersey Compliance Branch, Emergency and Remedial Response Division, EPA Region II. EPA Project Coordinators do not have the authority to approve or sign amendments to this Consent Order.

57. No informal advice, guidance, suggestions, or comments will be construed as relieving Respondent of its obligations under this Order.

XVII. TERMINATION AND SATISFACTION

58. This Consent Order shall terminate when Respondent has made and EPA has received all payments required under paragraphs 37, 40, 42, and 43, above, and EPA provides written notice, signed by the Chief, New Jersey Compliance Branch, Emergency and Remedial Response Division, to Respondents of such termination. Provided, however, such notice shall not be unreasonably withheld. Further, such notice shall not terminate the provisions of Sections XII, XIII, XIV, XV, XVI, and XVII of this Consent Order.

CONSENT:

BROWNING-FERRIS INDUSTRIES OF SOUTH JERSEY, INC.

by the duly authorized representative named, titled and signed hereunder, hereby consents to this Consent Order and agrees to be bound by the terms and conditions thereof:

BY: _____
NAME: Gerald K. Boiger
Title: Vice President

Date: September 26, 1990

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: _____
CONSTANTINE SIDAMON-ERISTOFF
Regional Administrator

Date: May 13, 1991