



Air Pollution Control Board	
Greg Cox	District 1
Dianne Jacob	District 2
Pam Slater-Price	District 3
Ron Roberts	District 4
Bill Horn	District 5

August 18, 2011

## SETTLEMENT OFFER

RAY PURTEE  
CITY OF SAN DIEGO ENV SRV DEPT  
9601 RIDGEHAVEN CT #310  
SAN DIEGO CA 92123

Via Email and USPS Regular Mail

RE: **NOTICE OF VIOLATION NUMBERS 222166, 222167 & 222168**

Location of Violations: 5180 Convoy St., San Diego, CA 92111

Dear Mr. Purtee:

During an inspection at the Miramar Landfill on December 8, 2010, the District inspector detected a Landfill Gas (LFG) surface leak of 2450 ppmv as methane near the West Phase I-75 well. As a result, staff from the San Diego Air Pollution Control District (District) issued Notice of Violation (NOV) No. 219844 to Fortistar. Fortistar has refused to settle this NOV. Fortistar claims that the City is responsible for surface leaks at West Phase I. The District, therefore, has issued NOV 222166 to the City for this alleged violation.

During an inspection at the Miramar Landfill on June 4, 2009, the District inspector detected an LFG transfer path leak of 1800 to 3200 ppmv from a capped pipe near the West Phase I-93 well. As a result, District staff issued NOV 221051 to Fortistar. Fortistar has refused to settle this NOV. Fortistar claims that the City is responsible for abandoned piping not connected to the LFG collection system. The District, therefore, has issued NOV 222167 to the City for this alleged violation.

During an inspection at the Miramar Landfill on June 9, 2010, the District inspector detected a LFG surface leak of 4900 ppmv as methane near the West Phase II-18 well. As a result, District staff issued NOV 219827 to Fortistar. Fortistar has refused to settle this Notice of Violation. Fortistar claims that this well was not in service and the City was the only entity that could stop the leak (by adding soil). The District, therefore, has issued NOV 222168 to the City for this alleged violation.

Penalties for violations are determined according to the California Health & Safety Code and can include civil penalties of up to \$25,000 for each day of each violation. The monetary amount of the Air Pollution Control District's settlement offer specified below takes into account the magnitude and severity of the violation, as well as the prior history of violations of a similar nature. The District also considers, if relevant, how well equipment was maintained, whether control equipment was unproven or innovative, and any action taken to mitigate the violation (including any quick cleanup or construction). For more information on the District's Violation Settlement Program, please see <http://www.sdapcd.org/info/facts/settle.pdf>.

The District has received the City's email dated July 8, 2011 stating that NOVs 222166 and 222168 are Fortistar's responsibility. Fortistar, however, has refused to settle these two NOVs. Fortistar, as noted above, claims that the City is responsible for these two NOVs. The District's option,

therefore, is to seek civil penalties from the City as the owner of the landfill. If the City desires, it can seek reimbursement from Foristar.

The District offers to settle Notice of Violation Nos. 222166, 222167, and 222168 on the following terms:

1. Payment of a civil penalty in the amount of \$3,600.
2. Upon receipt of the payment, Foristar shall be released from any and all claims by the District for civil or criminal penalties arising out of the incidents referred to in the Notices of Violation.
3. Settlement of this matter shall not constitute an admission of liability in any administrative or judicial proceeding, nor shall evidence of the settlement be admissible in any such proceeding.
4. However, the District reserves the right to prove the alleged violations in connection with any petition for a variance, permit revocation, or abatement order before the District Hearing Board, or to rely on the alleged violations in connection with the determination of the appropriate penalty in the event similar Notices of Violation are issued in the future. Similarly, at any such time you may raise any defenses or contrary proof you may have concerning the facts of the alleged violations.

The following table breaks out the settlement offer for each Notice of Violation:

NOV to City	NOV to Foristar	Issued to Foristar	Allegation	Current Offer
222167	221051	06/16/09	LFG transfer path leak 1800 to 2200 ppmv from capped pipe near West Phase I-93 well	\$1,200
222168	219827	06/09/10	LFG surface leak 4900 ppmv next to West Phase II-18 well	\$1,200
222166	219844	12/16/10	LFG surface leak 2450 ppmv near West Phase I-75 well	\$1,200
<b>CURRENT TOTAL OFFER</b>				<b>\$3,600</b>

Please write the reference number, 2011-NOV-000400/401/402, on your check. You may use the enclosed yellow postage prepaid envelope to send payment to:

San Diego County Air Pollution Control District  
10124 Old Grove Road  
San Diego, CA 92131  
Attention: Accounting

If you would like to pay by American Express or Discover card, please call (858) 586-2600, ask for the accounting division and reference 2011-NOV-000400/401/402.

If we do not hear from you within 25 days from the receipt of this notice, this case will be referred for legal action. If you have any questions regarding this matter, please contact me (858) 586-2658 or at joseph.zechman@sdcounty.ca.gov.

Ray Purtee  
City of San Diego

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August 18, 2011

Sincerely,

  
JOSEPH A. ZECHMAN  
Civil Actions Investigator

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IF YOU HAVE ANY LEGAL QUESTIONS REGARDING SETTLEMENT, PENALTIES, OR  
PROCEDURES, YOU MAY SEEK THE ADVICE OF AN ATTORNEY.

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Reference No.: 2011-NOV-000400/401/402

cc: Stephen Grealy via email