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9  
10 **BEFORE THE HEARING BOARD OF THE**  
11 **BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
12 **STATE OF CALIFORNIA**

13  
14 In the Matter of the  
AIR POLLUTION CONTROL OFFICER of the  
15 BAY AREA AIR QUALITY MANAGEMENT  
DISTRICT

16 Petitioner,

17 vs.

18 INTERNATIONAL DISPOSAL CORP. OF  
19 CALIFORNIA and BROWNING-FERRIS  
INDUSTRIES OF CALIFORNIA, INC., a/k/a  
20 Newby Island Resource Recovery Park,

21 Respondents.  
22

23 Re: Newby Island Resource Recovery Park  
24 [Facility Id. No. 9013]

Docket No. 3772

**AIR POLLUTION CONTROL  
OFFICER'S REPLY TO RESPONDENTS'  
ANSWER**

Hearing Date: June 9, 2026  
Time: 9:30 am  
Place: Hearing Board  
Bay Area Air Quality  
Management District  
375 Beale Street, 1<sup>st</sup> Floor  
San Francisco, CA 94105

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26 The purpose of this Reply is to address the claims raised in the Answer to ensure clarity and  
27 accuracy of the issues before the Hearing Board.

28 First, Respondents pending permit application to expand Newby landfill is not before the

1 Hearing Board, and the implication that the Air District should issue an air permit for a landfill  
2 expansion because “every other agency with jurisdiction over the proposed landfill expansion” has  
3 already issued related permits, see Answer at p. 1, ignores the multitude of air quality violations the  
4 Air Pollution Control Officer presented in the Petition. Permitting an expansion that would allow  
5 an additional 7.9 million cubic yards of waste amid the persistent and ongoing violations at Newby  
6 landfill is prohibited by law. See Rule 2-1-304 (forbidding the Air Pollution Control from issuing  
7 permits if “the subject of the application would not or does not comply with any emission  
8 limitations or other regulations of the District . . . or with applicable permit conditions”).

9 Second, Respondents claim the Air Pollution Control Officer’s public nuisance claims are  
10 “legally and scientifically deficient.” Answer at p. 3. These assertions are unfounded. The Air  
11 Pollution Control Officer possesses broad enforcement authority and is authorized to enforce “[a]ll  
12 orders, regulations, and rules prescribed by the district board.” Health and Saf. Code, § 40752.  
13 This includes the authority to enforce violations that are public nuisances under Health and Safety  
14 Code section 41700 and Rule 1-301.

15 Respondents were issued Notices of Violations (“NOVs”) for public nuisance odors  
16 occurring at the landfill and the Materials Recovery Facility (“MRF”).<sup>1</sup> The Air District refers odor  
17 complaints that trace back to Newby’s composting operation to the Department of Resources  
18 Recycling and Recovery (CalRecycle) and the City of San José’s Code Enforcement Division as  
19 required by Health and Safety Code section 41705.

20 Respondents also incorrectly assume that the absence of recent public nuisance NOVs  
21 amounts to a “decision” by the Air Pollution Control Officer to “forego enforcement action.”  
22 Answer at p. 3. The Air District is not obligated to repeatedly cite a recalcitrant facility for a  
23 continuous and ongoing violation. Once an NOV is issued, the noncomplying facility is on notice  
24 that a violation was observed and has an opportunity to correct it. See Rule 1-401 (describing the  
25 information conveyed in an NOV). Here, Respondents have been on notice about Newby’s public  
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28 <sup>1</sup> See NOVs A11922, A26693, A52021, A52022, A52025, A53968, and A55724. In 2022, the Air District settled five of these NOVs for a \$17,000 civil penalty payment.

1 nuisance odors for many years by the Air District and other affected parties.<sup>2</sup>

2 Finally, there is ample evidence that attributes the noxious odors blanketing the South Bay  
3 to Newby. In the last 12 years, the Air District has received 12,866 odor complaints about Newby  
4 and more than 400 of these complaints have been confirmed by agency staff with appropriate  
5 training and equipment to make these verifications. There is also the 2019 South Bay Odor  
6 Attribution Study which quantified odor concentrations from Newby and two other facilities,  
7 developed a unique odor fingerprint for each facility based on its operations, and pinpointed the  
8 source of specific odors in the community.<sup>3</sup> The study concluded that: Newby’s landfill gas was  
9 responsible for the majority of odors in the surrounding region (*id.* at p. xv); Newby’s landfill  
10 working face “was a key odor source” (*id.* at p. 3-16); and Newby had the highest concentration  
11 levels of sulfur compounds among the surveyed facilities (*id.* at pp. ES-4, ES-7, and 3-17).

12 *Third*, Respondents attempt to excuse its violative conduct by citing regulatory provisions  
13 that do not apply to its circumstances and therefore do not void or nullify the violations documented  
14 by the Air District.

15 Respondents claim that continuous operation of the landfill gas collection system is “neither  
16 a regulatory mandate nor a practical reality.” Answer at p. 5. Rule 8-34-301 requires landfill gas  
17 collection systems to be “operated continuously.” Continuous operation is achieved “when all wells  
18 within the landfill gas collection system are operating under vacuum and the collected landfill gas is  
19 being processed 24 hours per day.” Rule 8-34-219 (simplified). Respondents cite to Rule  
20 8-34-113, which allows landfill flares and gas collection system to go down “during inspection and  
21 maintenance . . . provided the . . . gas collection and emission control systems are not shutdown for  
22

23 <sup>2</sup> In May 2015, the City of Milpitas passed a resolution declaring Newby’s operational activities a  
24 public nuisance. In July 2012, residents of the City of Milpitas filed a class action lawsuit filed  
25 against Respondents for odor and dust emissions and reached a settlement in August 2016.  
26 Respondents are also members of the South Bay Odor Stakeholder Group, which formed in 2015 to  
identify and resolve odor issues in the South Bay Area. Newby’s odor issues have been the central  
focus of the group.

27 <sup>3</sup> Bay Area Air Quality Management District, South Bay Odor Attribution Study (2024) at p. xv,  
28 [https://www.baaqmd.gov/~/media/files/technical-services/south-bay-odor-study/baaqmd-odor-attribution-study\\_final-report\\_0823\\_combined-pdf.pdf?rev=7a5a1ffb3f6f46e081ab49696fa23891&sc\\_lang=en](https://www.baaqmd.gov/~/media/files/technical-services/south-bay-odor-study/baaqmd-odor-attribution-study_final-report_0823_combined-pdf.pdf?rev=7a5a1ffb3f6f46e081ab49696fa23891&sc_lang=en).

1 more than 240 hours in any calendar year.” But Respondents were neither inspecting nor  
2 maintaining the landfill flares or gas collection system during the 74 shutdown violations discussed  
3 in the Petition.

4 Rule 8-34-305 requires landfill wells to adhere to specific mandatory operating parameters.  
5 To avoid a violation, the facility operator must discover and either repair the noncomplying wells or  
6 expand the gas collection system within the timeframe prescribed in Rule 8-34-414. There were  
7 119 instances where Respondents failed to comply with the requirements in Rule 8-34-414 that  
8 would have prevented these violations.

9 Rules 8-34-301.2 and 303 prohibit methane leaks that exceed 1,000 ppm from any  
10 component in the gas collection system that contains landfill gas and 500 ppm of methane from the  
11 landfill surface, respectively. Respondents cite the exception in Rule 8-34-415, but that exception  
12 only applies when “the landfill surface leak has been discovered by the operator.” Rule 8-34-303.  
13 The 90 methane leaks discussed in the Petition were discovered by agency staff during routine  
14 compliance inspections of the landfill.<sup>4</sup>

15 Fourth, the 42 temperature violations at the flares were identified based on the criteria in 40  
16 C.F.R. § 63.1975, which excludes time associated with certain events (e.g., startups, shutdowns, and  
17 malfunctions) from calculation of the flares’ average temperatures during a 3-hour block.

18 Fifth, Respondents’ recent compliance with hydrogen sulfide emission limits for Newby  
19 landfill does not void or nullify the emission exceedances documented by the Air District. To  
20 ensure compliance with the facility’s permit conditions and accurate reporting of emission data, the  
21 Air Pollution Control Officer now requires Respondents to install continuous emission monitors to  
22 track the landfill’s hydrogen sulfide emissions. Respondents are working cooperatively with Air  
23 District staff to meet this requirement.

24 And sixth, Respondents claim it is not operating the MRF without a permit. See Answer at  
25 pp. 11-12. That is factually incorrect. The facility’s current Title V permit does not authorize any  
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27  
28 <sup>4</sup> A recent tentative ruling in a lawsuit filed by the Air District against a landfill in Contra Costa  
County Superior Court upholds the agency’s interpretation that methane leaks discovered by the Air  
District are treated differently under the regulations from methane leaks discovered by the facility.

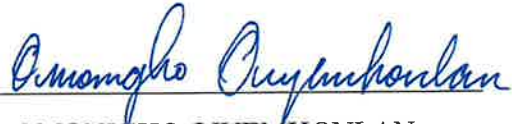
1 installations or operations at the MRF. Since 2012, Respondents have installed and operated new  
2 equipment at the MRF without any authorization whatsoever from the Air District.

3 In sum, the compliance challenges at Newby are serious and warrant an Order for  
4 Abatement that enjoins Respondents from further violations of the Air District's regulations, rules,  
5 and permit conditions.

6 Dated: May 11, 2026

Respectfully submitted,

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11 By: 

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13 Assistant Counsel II

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15 *Bay Area Air Quality Management District*

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24 [Facility ID No. 9013]

Docket No.

**CERTIFICATE OF SERVICE**

25  
26 I, Omonigho Oiyemhonlan, declare as follows:

27 I am over the age of 18, not a party to this action and am employed in the City and County  
28 of San Francisco at 375 Beale Street, Suite 600, San Francisco, California 94105. On April 9, 2026,

1 I served the following document described as **AIR POLLUTION CONTROL OFFICER'S**  
2 **REPLY TO RESPONDENT'S ANSWER** in the following manner:

3  By causing the above document to be sent to the person at the electronic notification  
4 address below:

5 Thomas Bruen, Esq.  
6 Law Offices of Thomas M. Bruen, P.C.  
7 1990 N. California Blvd., Suite 608  
8 Walnut Creek, CA 94596  
9 [tbruen@tbsglaw.com](mailto:tbruen@tbsglaw.com)

10 I declare under penalty of perjury under the laws of the State of California that the foregoing  
11 is true and correct. Executed on May 11, 2026, at San Francisco, California.

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13 \_\_\_\_\_  
14 Omonigho Oiyemhonlan

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