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September 24, 2018

**VIA FEDEX**

Michael W. Webb  
City Attorney  
City of Redondo Beach  
415 Diamond Street  
Redondo Beach, CA 90277

Re: Important Legal Matter--Prompt Attention Required  
Notice of Potential Liability  
BKK Landfill, West Covina, California

Dear Michael Webb:

This firm represents the BKK Working Group, which is comprised of approximately fifty-six entities that have entered into three consent decrees with the California Department of Toxic Substances Control ("DTSC") to take certain actions at the BKK Class I Landfill, a closed Class I hazardous located in West Covina, CA (the "BKK Class I Landfill"). The BKK Class I Landfill is located on an approximately 583-acre facility located at 2210 South Azusa Avenue, West Covina, California (the "Site"). The Site also contains a closed Class III municipal solid waste landfill, and related facilities including a leachate treatment plant and a landfill gas collection system. The Class I Landfill is approximately 190 acres in size and accepted waste from roughly 1962 to 1987. In total, the Class I Landfill accepted approximately five million tons of liquid and solid hazardous wastes together with substantially greater amounts of municipal and commercial wastes. BKK Corporation is the owner and operator of the Class I and Class III landfills.

Since the first entered consent decree in 2006, the BKK Working Group has continued to work with DTSC to investigate the extent and the causes of the contamination at the BKK Class I Landfill, and to perform response actions. The BKK Working Group has already incurred or is committed to incur nearly \$250 million in response costs relating to the BKK Class I Landfill. In addition, the BKK Working Group expects DTSC to conduct or compel further response actions, including, but not limited to, actions to address potential groundwater contamination.

Through its investigation, the BKK Working Group has identified City of Redondo Beach as having liability, as defined by Section 113 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. Section 9613, for actions contributing to conditions at the BKK Class I Landfill. Municipalities are explicitly included in the definition of potentially responsible persons under CERCLA, *see* 42 U.S.C. § 9601(21), and can incur CERCLA liability under Section

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City of Redondo Beach  
September 24, 2018  
Page 2

113 as either a generator, transporter, or arranger. *See id.* § 9607(a).

Courts have held that the disposal of municipal waste qualifies as the disposal of "hazardous substances" under CERCLA. *See B.F. Goodrich Co. v. Murtha*, 958 F.2d 1192, 1206 (2d Cir. 1992) (holding that municipal defendants were responsible parties under CERCLA and that municipal solid waste is a hazardous substance); *U.S. v. AlliedSignal, Inc.*, 62 F. Supp. 2d 713, 725–30 (N.D.N.Y. 1996) (finding that municipal defendants could be responsible parties under CERCLA for disposal of municipal waste); *See B.F. Goodrich Co. v. Betkoski*, 99 F.3d 505, 526 (2d Cir. 1996) (holding municipality liable under CERCLA for disposal of municipal waste as long as some of its "component parts" were hazardous substances). There is "no minimum level requirement" under CERCLA—even minute amounts of hazardous substances establish liability. *A&W Smelter and Refiners, Inc. v. Clinton*, 146 F.3d 1107, 1110 (9th Cir. 1998). At the BKK Class I Landfill, the Working Group is addressing significant quantities of hazardous waste contained within municipal waste.

Based on our research and investigation, the BKK Working Group has a good faith basis to allege that your municipality is liable under CERCLA for at least a portion of the costs that the BKK Working Group has and will incur with respect to the BKK Class I Landfill. The BKK Working Group and City of Redondo Beach entered into a tolling agreement effective September 25, 2017. The termination date of this tolling agreement is now September 25, 2020. Recently, the BKK Working Group initiated litigation against PRPs who did not enter into tolling agreements. However, the BKK Working Group prefers to reach an amicable settlement of its claims against City of Redondo Beach, rather than initiating additional litigation. To this end, the BKK Working Group is willing to seek resolution of this dispute through confidential settlement negotiations. This letter serves as the BKK Working Group's initial attempt to begin such settlement discussions. Should City of Redondo Beach be interested in resolving this dispute through settlement negotiations in lieu of litigation, please acknowledge this position in writing within 15 days of today's date, or by October 9, 2018.

I look forward to hearing from you. Please feel free to contact me directly at (213) 680-6427 or email me at [denise.fellers@morganlewis.com](mailto:denise.fellers@morganlewis.com).

Thank you for your cooperation.

Sincerely,



Denise G. Fellers

DGF