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██████████ III
PARTNER

February 23, 1989

██████████
U.S. Department of Energy
Oak Ridge Operations
Technical Services Division
P.O. Box 2001
Oak Ridge, TN 37831-8723

Dear Bill:

In connection with our ongoing discussions regarding the presence of FUSRAP radioactive material at the Seaway landfill operated by our client, Niagara Landfill, Inc. (a subsidiary of Browning-Ferris Industries, Inc.), I would like to reiterate certain points.

As you know, Niagara Landfill has been prohibited from using certain portions of the Seaway landfill for over 10 years. This prohibition was instituted at DOE's request to facilitate your Department's study of radioactive materials deposited there which were apparently generated as part of the Manhattan Project.

The time is fast approaching when there will be no space at the facility which is not subject to this prohibition. Under the circumstances, continued delay in access to these areas is likely to result in substantial financial injury to Niagara Landfill and its affiliates, and to create a substantial potential for an exacerbated solid waste crisis in Western New York.

As we have previously advised you, Niagara Landfill and its affiliates are responsible on a direct or indirect basis for disposal of approximately 75% of the municipal solid waste in Erie and Niagara Counties, a waste stream which approximates 3,000 tons per day. If the unrestricted space at Seaway is exhausted before the DOE-induced restrictions are lifted, there is a substantial risk that Niagara Landfill and its affiliates will be unable to satisfy their contractual obligations to handle this material and that proper disposal of Western New York's waste will be severely dislocated.

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These risks have of course been reviewed with you orally on several occasions, and were also described in my September 22, 1988 letter to Congressman John J. LaFalce, a copy of which you received.

As we have stated previously, Niagara Landfill and its affiliates will look to the Department of Energy to reimburse them for any and all losses associated with these circumstances. It should be clear that these losses are likely to be extremely substantial from a financial perspective, and that the injuries would be not only to Niagara Landfill and its affiliates but also the citizens of Western New York.

In addition to the immediate problem just described, you should be aware that documents associated with Niagara Landfill's operating permit from the State of New York contemplate completion of landfilling operations at this facility by 1994. If the current delays associated with resolution of the concerns over the restricted area lead to Niagara Landfill's inability to use its entire permitted air space prior to termination of its permit rights, Niagara Landfill will again suffer extremely serious financial injury which it will look to your Department to rectify.

By way of illustration, Niagara Landfill currently estimates the value of the restricted air space in the tens of millions of dollars. The lost value of this air space would be in addition to any claim Niagara Landfill or its affiliates would have by virtue of their inability to fulfill various contractual obligations. The potential losses associated with these contractual obligations could easily equal or exceed the value of the air space itself.

Finally, I note that your Department is currently contemplating a resolution of this problem which would leave the FUSRAP material in place with a cover of solid waste. As we have advised you previously, Niagara Landfill could support this option if it can be satisfied that the material in the landfill remains the responsibility of DOE and that Niagara Landfill and its affiliates will not be subjected to any obligation, liability or cost associated with the continued presence of this material at the facility. In this regard, we will submit under separate cover a document addressing this result.

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I wish to stress that Niagara Landfill and its affiliates remain committed to working with you to resolve the problems discussed in this letter, as they have done consistently to date. I also want to make it clear, however, that the continued delays in resolving this problem are threatening increasingly severe consequences for my clients. Prompt action on the part of DOE is in the interest of all concerned.

HWK:dms

CC: Hon. John J. LaFalce
Esq.