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Attorney for Petitioner, Arakelian Enterprises, Inc.,
d/b/a American Waste Industries, Inc. _____.

INDEPENDENT HEARING PANEL

LOCAL ENFORCEMENT AGENCY FOR THE CITY OF LOS ANGELES

AMERICAN WASTE INDUSTRIES, INC.;
FACILITY NO. 19-AR-5581

Petitioner,

vs.

CITY OF LOS ANGELES SOLID WASTE
FACILITY LOCAL ENFORCEMENT
AGENCY,

Respondent.

**STIPULATION BY AND BETWEEN
ARAKELIAN ENTERPRISES, INC.,
d/b/a AMERICAN WASTE
INDUSTRIES, INC. AND THE CITY OF
LOS ANGELES LOCAL
ENFORCEMENT AGENCY**

Hearing Date: November 30, 2006
Hearing Time: 10:00 a.m.

STIPULATION

This Stipulation ("**Stipulation**") is executed by ARAKELIAN ENTERPRISES, INC. ("**Arakelian**"), d/b/a AMERICAN WASTE INDUSTRIES, a California Corporation ("**AWI**") AND the CITY OF LOS ANGELES LOCAL ENFORCEMENT AGENCY ("**LEA**"), with reference to the following:

RECITALS

WHEREAS, Arakelian acquired all right, title and interest in certain assets and rights used or useful in the conduct of AWI's business, pursuant to that Asset Purchase Agreement ("**Purchase Agreement**") dated September 24, 2006 by and among Arakelian, AWI and AWI's then sole

1 shareholders, Mego Godjamanian and Hutch Der Stepanian, each of whom is a natural person
2 residing in California. As such, Arakelian is the new owner of the waste recycling facility located at
3 11121 Pendleton Street, Sun Valley, CA 91352 ("**Facility**") and has assumed all the liabilities and
4 obligations arising from the permits obtained from governmental entities in relation to the Facility;
5 and

6 WHEREAS, the Los Angeles City Planning Department prepared a Proposed Mitigated
7 Negative Declaration (MND-98-0143-CUZ) on September 30, 1998 ("**1998 MND**") for the Facility.
8 The 1998 MND including the Initial Study Checklist and the Initial Site Assessment for Traffic
9 Impacts described the conditional use as "depositing 1,500 tons/day" of "mixed waste products of
10 C&D materials (only non hazardous and non toxic)" involving "Phase I – C&D Recycling" and
11 "Phase II – Mixed Waste Recycling & Transfer Station." Estimated trip generation and other impacts
12 were determined based upon the 1,500 tons/day limit. Mitigation measures to reduce potential
13 adverse environmental effects of such activity were prepared, reviewed and made a condition to the
14 Conditional Use Permit approval; and

15 WHEREAS, the City Department of Building and Safety approved a Conditional Use Permit
16 ("**CUP**") for AWI which authorized the "establishment, use and maintenance of a Recycling
17 Materials Process and Sorting Facility (Recycling Center) ... for mixed waste, construction and
18 demolition waste ...for the purpose of depositing, sorting, processing and transfer of sorted waste in
19 the M2-1G Zone" on January 25, 1999. Condition No. 5(b) of the CUP provided that recycling
20 materials to be processed and sorted at the facility "shall be limited to paper, cardboard, glass, metal
21 plastic and other items that are deemed appropriate by the department of Building and Safety, Bureau
22 of Sanitation, and Fire Department"; and

23 WHEREAS, the Los Angeles City Planning Department finalized the MND on February 9,
24 1999, prepared a Notice of Determination ("**NOD**") on February 18, 1999 and filed the NOD with the
25 City Clerk on March 31, 1999. The NOD stated that an MND was prepared for the Facility and that
26 the Zoning Administrator of the City of Los Angeles determined such Facility "will not have any
27 significant effect on the environment" and which will not require a "statement of overriding
28 considerations"; and

1 WHEREAS, the California Integrated Waste Management Board ("CIWMB") adopted new
2 regulations requiring operators of C&D recycling centers to apply for and obtain a solid waste
3 facilities permit ("SWFP") effective August 2003. See CAL. CODE REGS., tit. 14, §§ 17380-86
4 (2003). The new regulations allowed existing operators, such as AWI, to obtain a "temporary
5 registration permit" to continue operations while obtaining the new required C&D permits. AWI
6 chose to pursue a large volume transfer processing facility permit rather than the temporary permit
7 for C&D processing; and

8 WHEREAS, the LEA prepared a Mitigated Negative Declaration (ENV-1998-143-MND) for
9 the SWFP application on December 8, 2004 ("2004 MND"). The document was published on
10 December 9, 2004 for public comment through January 10, 2005 and was received by the State
11 Clearinghouse (SCH 2005011080) for review on January 18, 2005 with a review completion date of
12 February 16, 2005. The proposed 2004 MND and the Initial Study and Checklist described the
13 project as an "expansion of an existing 400 ton per day Construction and Demolition waste
14 processing and recycling operation" into a 1,500 tons per day "Large Volume Transfer/Processing
15 Facility"; and

16 WHEREAS, on March 30, 2006, the LEA approved the 2004 MND for the SWFP application
17 and submitted it to the CIWMB for its review and concurrence. Based upon public input, the
18 CIWMB expressed concern about the adequacy of the 2004 MND and, at the request of AWI, the
19 MND was returned to the LEA for further consideration; and

20 WHEREAS, Counsel for AWI subsequently asserted that the draft 2004 MND was inaccurate
21 because under Applicable CEQA doctrine, including but not limited to, *Fairview Neighbors v.*
22 *County of Ventura*, 70 Cal. App. 4th 238 (1999), the environmental "baseline" should have been the
23 original capacity of 1,500 tons per day that was analyzed and permitted in 1999, rather than 400 tons
24 per day; and

25 WHEREAS, on May 12, 2006, to allow the CIWMB and the LEA additional time to consider
26 the above-referenced permits, application, and to supplement the supporting CEQA documents, AWI
27 requested that the permit be returned to LEA for additional consideration and review; and
28

1 WHEREAS, the LEA issued a Cease and Desist Order (AWI-06-01) on October 6, 2006 for
2 violation of PRC §§ 44002 and 44005 and Cal. Code. of Regs, Title 14, § 18304.3(a) for operating a
3 solid waste facility without a valid permit.

4 WHEREAS, the LEA received two requests from AWI for convening the City of Los
5 Angeles' LEA Independent Hearing Panel based on the following grounds: (1) to hear the LEA's
6 failure to timely process a SWFP [filed on October 19, 2006]; and (2) to appeal the LEA's issuance of
7 the Cease and Desist Order [filed on October 20, 2006]. These requests effectively stayed the Cease
8 and Desist Order, and the LEA will not enforce the Order, until a final determination on the validity
9 is made by the Independent Hearing Panel, provided that the continuing operations do not pose a
10 threat to public health and the environment; and

11 WHEREAS, AWI granted the LEA a one week extension of time to file its response to AWI's
12 appeal and Statement of Issues with respect to the Cease and Desist Order; and

13 WHEREAS, LEA filed its response to AWI's appeal and Statement of Issues with respect to
14 the Cease and Desist Order on November 22, 2006; and

15 WHEREAS, AWI did not respond to the LEA's November 22, 2006 filing, but nonetheless
16 did not waive its rights to contest the assertions and statements contained therein; and

17 WHEREAS, AWI and the LEA are desirous of amicably settling the issues raised by the
18 appeal and response to the Cease and Desist Order; and

19
20 NOW, THEREFORE, in consideration of the foregoing, the parties to this Stipulation hereby
21 stipulate and irrevocably and unconditionally agree as follows:

22 **A. AWI Commitments:**

23 (1) AWI agrees to work with LEA to develop a mutually agreeable schedule with
24 milestones for the completion of the necessary CEQA documentation required by the LEA, and to
25 agree to such schedule within 45 days hereof, or such other time as is mutually agreed to by AWI and
26 the LEA.

1 (2) AWI acknowledges that the LEA has determined that a focused environmental impact
2 report ("EIR") is the appropriate vehicle under CEQA to analyze the environmental impacts of and
3 propose mitigation for the SWFP application.

4 (3) In recognition of AWI's and the LEA's legitimate disagreement as to the appropriate
5 baseline under CEQA (and without waiving or otherwise compromising its claims with respect to the
6 appropriate baseline or the LEA's ability to impose mitigation for impacts related to a 1,500 ton/day
7 project), AWI acknowledges that the focused EIR shall analyze the impacts of the SWFP, and develop
8 measures to mitigate such impacts, assuming both a 400 tons per day and a 1,500 tons per day
9 baseline.

10 (4) AWI agrees to limit the operations at the facility to 400 tons per day of construction
11 and demolition and inert waste, as defined by California Code of Regulations ("CCR"), Title 14,
12 § 17831, and as the same may be amended from time to time, and to operate under the terms of the
13 existing limited volume notification permit of 15 tons per day of solid waste, while the focused EIR
14 for the SWFP is being prepared and the SWFP is being considered for approval.

15
16 **B. LEA Commitment.**

17 (1) LEA agrees to work with AWI to develop a mutually agreeable schedule with milestones
18 for the completion of the necessary CEQA documentation, and to agree to such schedule within 45
19 days hereof, or such other time as is mutually agreed to by AWI and the LEA.

20 (2) LEA agrees to promptly review and process the focused EIR prepared in connection with
21 the SWFP, which EIR shall analyze the impacts of the SWFP, and develop measures to mitigate such
22 impacts, assuming both a 400 tons per day and a 1,500 tons per day baseline as provided for under
23 the existing CUP.

24 (3) LEA acknowledges that AWI is expressly continuing to assert its position that the
25 appropriate baseline with respect to some impacts is 1,500 tons/day.
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1 **C. Mutual Commitments of AWI and LEA:**

2 (1) AWI and LEA acknowledge that the Independent Hearing Panel-issued stay of the Cease
3 and Desist Order (AWI-06-01) issued on October 6, 2006 shall remain in effect until the permit
4 process is completed and this appeals proceeding is concluded, to allow AWI to operate at a
5 maximum tonnage of 400 tons per day of construction and demolition and inert waste, as defined by
6 CCR Title 14, § 17831, and as the same may be amended from time to time, and to allow AWI to
7 operate under the terms of the existing limited volume notification permit of 15 tons per day of solid
8 waste; and

9 (2) AWI and LEA agree that the Interim Operating Agreement, attached hereto as Exhibit A
10 and incorporated herein by reference, sets forth mutually agreed-upon terms and conditions for the
11 continued operations of the AWI facility while the stay of the Cease and Desist Order remains in
12 effect. LEA agrees to implement and AWI agrees to adhere to the Interim Operating Agreement; and

13 (3) AWI and LEA agree that the Independent Hearing Panel ("IHP") will review and monitor
14 ongoing efforts to complete the permitting process. To facilitate the review, AWI and LEA agree to
15 submit a written status report on the progress of negotiations and CEQA document preparation to the
16 IHP by December 14, 2006 and to submit a schedule and permitting time line to the IHP by January
17 25, 2007, on which date both the LEA and AWI shall appear before the IHP to present a progress
18 report, and request such further continuance as is necessary to complete the agreed-upon permit
19 schedule; and

20 (4) If at any time the parties cannot proceed with the permitting process because of a failure
21 of either party to diligently complete its obligations or a failure to agree on a schedule for CEQA
22 review, AWI and LEA agree that either party can notify and reconvene the IHP for a hearing, with no
23 prejudice or loss of rights, to consider the disposition of the original appeal enforcement order and
24 hearing request filed on October 19, 2006 by AWI.

25
26 **[SIGNATURES FOLLOW ON THE NEXT PAGE]**
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28

1 **IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date(s)
2 set forth below.

3
4 DATED: 12-15, 2006

AWI:

5 ARAKELIAN ENTERPRISES, INC., d/b/a American
6 Waste Industries, Inc., a California corporation

7
8
9 By: 

10 ERIC HERBERT
11 President

12 DATED: 12-19, 2006

LEA:

13 CITY OF LOS ANGELES LOCAL ENFORCEMENT
14 AGENCY

15
16
17 By: 

18 DETRICH ALLEN, GENERAL MANAGER BY
19 WAYNE TSUDA, DIRECTOR LEA PROGRAM

EXHIBIT A

INTERIM OPERATING AGREEMENT