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2 **LOCAL ENFORCEMENT AGENCY**
3 **FOR THE CITY OF LOS ANGELES**
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7 In the Matter of:)
8) INTERIM OPERATING AGREEMENT
9 AMERICAN WASTE INDUSTRIES) DURING AWI'S APPEAL PROCEEDINGS
10 11121 Pendleton Street, Sun Valley, CA 91352) BEFORE THE INDEPENDENT HEARING
11 FACILITY NO. 19-AR-5581) PANEL IN THE MATTER OF CEASE
12) AND DESIST ORDER AWI-06-01; AND
13) AWI'S SEPARATE APPEAL OF THE
14) FAILURE OF THE LEA TO ISSUE ITS
15) SOLID WASTE FACILITY PERMIT IN A
16 TIMELY MANNER
17

18 **INTERIM OPERATING AGREEMENT**
19

20 A. WHEREAS, the American Waste Industries ("AWI") Facility, a solid waste facility, is
21 located at 11121 Pendleton Street, Sun Valley, California 91352, owned and operated by
22 Arakelian Enterprises, Inc., a California Corporation; and
23

24 B. WHEREAS, the City of Los Angeles Environmental Affairs Department, Local
25 Enforcement Agency ("LEA") has authority to act in the capacity of enforcement agency ("EA")
26 for this Facility pursuant to Public Resource Code (PRC) §43200 et seq., and is so acting, the LEA
27

1 issued a Cease and Desist Order (AWI-06-01) on October 6, 2006 to AWI for operating a
2 construction and demolition and inert ("CDI") waste processing facility without a permit; and
3

4 C. WHEREAS, the LEA received two requests (October 19, 2006, and October 20, 2006)
5 from AWI for convening the City of Los Angeles' LEA Independent Hearing Panel ("IHP").
6 The October 19, 2006 request to convene the IHP was to hear the allegation that the LEA failed
7 to timely process a solid waste facilities permit ("SWFP"). The October 20, 2006 request to
8 convene the IHP was to appeal the LEA's issuance of the Cease and Desist Order; and
9

10 D. WHEREAS, the Cease and Desist Order is stayed until a final determination on its
11 validity is made by the IHP. The LEA will not enforce the Cease and Desist until the final
12 determination on the issues are made by the IHP, provided that the continuing operations do not
13 pose a threat to public health and the environment; and
14

15 E. WHEREAS, the IHP convened on November 30, 2006, and continued the proceedings
16 until January 25, 2007, took the following actions and issued the following orders:
17

18 a) Granted a stay of the Cease and Desist Order to remain in effect as provided by
19 State law during the appeals proceedings. The stay allows AWI to continue to operate at
20 a maximum tonnage of 400 tons per day until the environmental documentation requested
21 by the LEA are completed, provided that the operations do not pose a threat to public
22 safety, public health, and environmental health.
23

24 b) Directed AWI and the LEA to develop a mutually agreeable schedule with
25 milestones for the completion of the environmental documentation requested by the LEA.
26 Acknowledged that the LEA concluded that a focused EIR is the appropriate document to
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1 address CEQA. Further directed that the environmental analysis will be conducted at
2 both a 400 and 1,500 tons per day ("**tpd**") baseline.

3
4 c) Ordered that AWI's operational conditions shall be limited to a maximum of 400
5 tpd of construction, demolition and inert waste materials and that AWI is to operate under
6 the terms of their existing limited volume notification permit of 15 tpd of solid waste.

7
8 d) Directed AWI and the LEA to jointly draft an "Interim Operating Agreement" (the
9 "**Agreement**") which shall establish operational rules for the facility during the pendency of
10 the permit process.

11
12 e) Directed AWI and the LEA are to provide a written status report on the progress
13 of items set forth in (a)-(d) above, and to submit the progress report to the IHP in fourteen
14 (14) days from November 30, 2006 or by December 14, 2006.

15
16 f) The IHP unanimously agreed to grant an initial continuance of the IHP
17 proceeding regarding both the cease and desist order, and the appeal by AWI of the
18 LEA's failure to timely issue the permits, until January 25, 2007; and

19
20 NOW, THEREFORE, in consideration of the foregoing IHP directives, the LEA
21 has drafted and AWI agrees to the following interim operating terms and conditions for the
22 continued operations of the AWI facility while the stay of the Cease and Desist Order remains in
23 effect for the remainder of the proceedings:

INTERIM OPERATING TERMS AND CONDITIONS
FOR THE CDI OPERATIONS AT THE AWI FACILITY

1. The Permitted Hours of Operations:

- a) Material Acceptance 7:00 a.m. – 8:00 p.m., Monday - Sunday
- b) CDI Material Processing Transfer 7:00 a.m. – 8:00 p.m., Monday - Sunday

2. Permitted Maximum Tons Received per Operating Day: 400 Tons/Day

3. Total Permitted Traffic Volume per Operating Day: 100 Vehicles/Day

4. The temporary operation of the facility must remain in compliance with the operating standards as described in the State Minimum Standards for Solid Waste Handling and Disposal as determined by the LEA. [PRC, Section 44009].

5. Wastes which can be received at the AWI facility during the term of the Interim Operating Agreement are limited to "Construction and Demolition debris and Inert debris" as defined by California Code of Regulations, Title 14, Section 17381.

6. AWI is prohibited from accepting any liquid waste, sludge, non-hazardous wastes requiring special handling, designated waste or hazardous waste during the term of the Interim Operating Agreement. In the event that hazardous or suspected hazardous wastes are inadvertently brought into the facility, AWI is required to follow the procedures described in the Transfer Processing Report ("**TPR**") for obtaining information, notification, handling and disposal of such waste.

1 7. AWI is also prohibited from the following items or activities:

- 2 - Acceptance of liquid waste, containerized or not,
- 3 - Acceptance of electronic wastes,
- 4 - Acceptance of radioactive wastes,
- 5 - Scavenging or other uncontrolled or unauthorized removal of materials
- 6 - Open burning,
- 7 - Acceptance of sewage sludge, or septic tank pumpings, slurries, untreated medical
- 8 waste, dead animals.
- 9 - Acceptance of mixed solid waste in excess of what is allowed by AWI's existing
- 10 limited volume transfer operation.

11
12 8. AWI shall maintain a copy of this Interim Operating Agreement and TPR at the facility so as
13 to be available at all times to facility personnel and to Enforcement Agencies' personnel.
14 AWI shall provide training to site staff regarding the conditions set forth in this Interim
15 Operating Agreement and maintain proof of such training for each relevant employee so as to
16 be available for LEA inspections.

17
18 9. This Interim Operating Agreement is subject to review by the LEA and may be suspended,
19 revoked or modified at any time for sufficient cause, including the non-payment of fees
20 authorized by the Los Angeles Municipal Code and/or by this Agreement.

21
22 10. The LEA reserves the right to suspend or modify this Interim Operating Agreement when
23 deemed necessary due to an emergency, a potential health hazard or the creation of a public
24 nuisance.

25
26 11. AWI shall notify the LEA, in writing, of any proposed significant changes to the routine
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1 facility operation or changes in facility design during the planning stages. In no case shall
2 AWI undertake any changes unless AWI first submits a notice of said changes to the LEA as
3 provided by State law, and those changes are approved by the LEA. Any change that is
4 determined to be a significant change by the LEA would require a revision of this Interim
5 Operating Agreement and possibly, a new environmental analysis under California
6 Environmental Quality Act ("CEQA").

7
8 12. AWI must submit a written summary of all pilot projects to the LEA prior to the
9 implementation of any pilot project. The LEA must approve all pilot projects before they can
10 be implemented.

11
12 13. AWI must provide a 45-day advanced notification to the LEA with respect to any proposed
13 change in ownership or operator.

14
15 14. The site must be supervised by trained individuals with relevant experience at all times
16 during operating hours. Supervisors and managers must have the authority to commit
17 company resources to resolve emergency and non-emergency health, safety and
18 environmental issues, if such action is necessary to protect the health and safety of site
19 employees and the nearby community. Signs shall be provided to ensure orderly and safe
20 operation of the facility. AWI shall install and maintain signs at the entrance pursuant to the
21 signage requirements found in 14 CCR 17409.4.

22
23 15. Limited and reasonable monitoring for dust or other environmental impacts or conditions will
24 be conducted by qualified firms or individuals, if determined to be necessary by the LEA and
25 results will be provided to the LEA by the facility operator at AWI's expense.

1
2 16. AWI shall comply with the established Litter Control Program as outlined in the TPR. This
3 program includes tarping requirements, containment of litter, site and facility clean-up and
4 monitoring procedures. It is the responsibility of AWI to keep all surrounding streets one
5 block from the entrance used for ingress and egress free of litter resulting from the facility
6 operation.

7
8 17. AWI must provide additional dust and odor control measures upon the request of the LEA, if
9 such measures, as provided in the current TPR, prove to be inadequate.

10
11 18. Noise levels at the property boundaries shall be in conformance with the Chapter XI – Noise
12 Regulations of the Los Angeles City Municipal Code.

13
14 19. AWI shall comply with all of the requirements of all applicable laws pertaining to employee
15 health and safety.

16
17 20. AWI shall make periodic evaluations of handling operations and incoming wastes to promote
18 increasing the materials diversion rate, as feasible.

19
20 21. AWI shall keep records meeting the Disposal Reporting System requirements of the
21 Department of Public Works, Environmental Services Division, and also meet the reporting
22 and documentation requirements for disposal and diversion jurisdiction of origin from the
23 City of Los Angeles Bureau of Sanitation.

24
25 22. All unloading and processing of material and waste residue shall occur inside buildings after
26 construction is completed and the certificate of occupancy is issued. Buildings are to be
27

1 closed and secured if not in use.

2
3 23. All recyclables shall be stored within designated areas in the facility and kept in a neat and
4 orderly manner so as not to generate litter, odors, harbor vectors or pose a nuisance.

5
6 24. AWI shall maintain, at the facility, accurate daily records of the weight and/or volume of
7 materials received and number of incoming and outgoing trucks. These records shall be
8 made available to the LEA's personnel for inspection and shall be maintained on site for a
9 period of at least one year from the date of record.

10
11 25. Monthly self-monitoring reports as detailed in Attachment A shall be provided to the LEA
12 during the term of this Agreement. The monitoring reports are delinquent 30 days after the
13 end of the reporting period.

14
15 26. AWI shall provide daily sweeping two times per day of the entire transfer facility. All waste
16 receiving areas shall be clean by 8:00 p.m. of each operating day. If water is used as the
17 cleaning agent, runoff from such wash downs shall not leave the site. The public street
18 between the Pendleton entrance and Glenoaks Blvd. shall be swept once per week.

19
20 27. The entire area within the permitted boundaries of the site must have adequate drainage
21 control and be free of ponded water within 48 hours of rainfall.

22
23 28. All construction and demolition wastes received at the facility shall be processed within
24 fifteen (15) days and all residual material shall be removed within forty-eight (48) hours.

25
26 29. All wood waste, green waste and/or other organic material shall be stored in a neat and
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1 orderly manner so as not to generate odor problems, harbor vectors, pose a nuisance or be
2 allowed to exceed internal temperatures of 122 ° F.

3
4 30. Operational controls shall be established to preclude the receipt and disposal of hazardous
5 waste and volatile organic chemicals or other types of prohibited wastes. AWI shall comply
6 with the approved Hazardous Waste Load Checking Program as described in the TPR.

- 7 - In the event that hazardous or suspected hazardous wastes are brought into the
8 facility, AWI is required to follow procedures for obtaining information, notification,
9 handling and disposal as outlined in the TPR (Load Checking Program).
- 10 - Suspected hazardous wastes must be properly labeled and stored in the hazardous
11 waste containment area, if they are stored overnight.
- 12 - It is the responsibility of the facility operator to dispose of any prohibited materials
13 (hazardous or suspected hazardous materials, liquid, sludges, radioactive or medical
14 wastes) in accordance with all local, state and federal regulations.
- 15 - Incidents of unlawful disposal of prohibited materials shall be reported to the LEA
16 monthly. In addition, the following agencies shall be notified immediately, after each
17 occurrence, if applicable, of any incidents of illegal hazardous materials disposal:
 - 18 - Los Angeles County Fire Prevention Bureau, Hazardous Materials Division
 - 19 - Environmental Crimes Division, L.A. County District Attorney
 - 20 - California Highway Patrol

21
22 31. AWI shall maintain a daily log of special/unusual occurrences during the term of this
23 Agreement. If there are no special occurrences for a given day, that day's entry shall read
24 "none". This log shall include, but is not necessarily limited to:

- 25
26 a) Any loads refused entry into the facility, potentially live ammunition, fires,
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1 explosions, earthquakes, discharge of hazardous liquids or gases to the
2 ground or the atmosphere, or significant injuries, accidents, or property
3 damage.

- 4
- 5 b) Each of these log entries shall be accompanied by a summary of any
6 actions taken by AWI to mitigate the occurrence. AWI shall maintain this
7 log at the facility so as to be available at all times to site personnel and to the
8 Enforcement Agencies' personnel. Any of these specified entries made in
9 this log must be promptly reported to the LEA. Call the duty officer, City of
10 Los Angeles, Environmental Affairs Department, at (213) 978-0892,
11 Monday through Friday 8:00 AM to 5:00 PM. For after hour's incidents,
12 AWI shall call the pager number provided to them by the LEA. Only
13 authorized personnel can make entries into this log. If a situation arises that
14 cannot be handled by facility personnel, then call 911 or another outside
15 emergency agency appropriate for the situation. The LEA shall be notified
16 immediately after the appropriate outside emergency agency has been
17 notified.

18

19 32. AWI shall comply with the conditions of Cease and Desist Order No. 04-04, dated March 30,
20 2004 while the Order is in effect or unless otherwise directed by the LEA, recognizing that
21 certain requirements of the order are subject to additional permitting.

22

23 33. AWI shall comply with conditions of the Stipulated Judgment for Case Number BC 319009,
24 dated July 29, 2004 until released from the stipulated judgment and notified by the LEA.
25 The facility improvements and mitigation measures agreed to in the Stipulated Judgment is to
26 be incorporated into the TPR for the proposed transfer station TPR.

1
2 34. This Agreement in no way shall constitute a waiver of any of the AWI's rights or obligations
3 to meet any and all applicable permits and related requirements for the facility, including
4 without limitation, for a SWFP required under Title 14 and Title 27 of the California Code of
5 Regulations. The LEA and AWI shall cooperatively develop the "AWI SWFP Major
6 Milestone Task Schedule" ("**Schedule**") for the completion of necessary CEQA
7 documentation, within 45 days hereof. AWI's agrees to pursue the tasks required in the
8 Schedule on a timely basis and the LEA agrees not to unreasonably withhold or delay AWI's
9 fulfillment of any required task compliance.

10
11 35. Nothing in this Agreement shall be construed as any indication, assurance or promise that the
12 LEA will approve the Solid Waste Facility Permit or process it beyond the LEA's customary
13 procedures.

14
15 36. This Interim Operating Agreement is only valid as long as the Independent Hearing Panel
16 proceedings are ongoing. AWI does not have the right to operate a CDI processing facility
17 if its permit application is denied by the LEA or not concurred by the California Integrated
18 Waste Management Board. AWI will either have to cease operations immediately or seek
19 an appeal with the California Integrated Waste Management Board should the Independent
20 Hearing Panel uphold the Cease and Desist Order and conclude the proceedings.

21
22 37. AWI shall immediately deliver to the LEA a deposit in the form of a check in the sum of six-
23 thousand five hundred dollars (\$6,500). LEA shall be free to draw from this \$6,500 deposit
24 to reimburse the LEA for costs incurred in connection with AWI facility inspections and
25 administration of this Agreement at a rate of \$65.00 per hour, to the extent said costs exceed
26 the costs of two LEA inspections per month of the AWI facility during the term of this
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1 Agreement. LEA shall also draw from the deposit to reimburse the LEA for other actual
2 expenses plus 10% administrative charge of actual expenses such as contracted lab services,
3 professional technical assistance, and other costs incurred in the enforcement and
4 administration of this Agreement. At all times during this Agreement, AWI shall ensure,
5 upon LEA notification, that the foregoing deposit with LEA maintains a minimum balance of
6 \$1,300. All checks shall be in the name of City of Los Angeles and delivered addressed to
7 the City of Los Angeles, Local Enforcement Agency, to the attention of Mr. Wayne Tsuda,
8 200 North Spring Street, City Hall, Room 1905, California, 90012. At the termination of this
9 Agreement, any monies (including interest) remaining in this deposit, if any, shall be
10 returned to AWI.

11
12 38. To the extent any provision, term, condition, or parts thereof in this Agreement may be
13 deemed unenforceable or contrary to law by a court of competent jurisdiction, said provision,
14 term or condition shall be severed from the Agreement and the remainder of the Agreement
15 shall remain in full force and effect.

16
17 39. Since the LEA has expended substantial resources in processing this Agreement and in
18 taking steps to protect the public health and safety, the parties acknowledge that the damages
19 to the LEA and/or the City as a result of AWI's violation of this Agreement would be
20 material and very difficult and not practicable to measure.

21
22 40. The liquidated sums specified below represent a fair and reasonable approximation of the
23 damages incurred by the LEA and the City resulting from AWI's violation for this
24 Agreement.

1 41. Upon consultation with legal counsel and based on the provisions of the California Civil
2 Code Section 1671, AWI voluntarily and knowingly agrees to pay the following amounts as
3 liquidated damages during a time period when AWI is in breach or violation of this
4 Agreement: \$1,000 per day for the first breach or violation of this Agreement plus \$2,000 per
5 day for the second breach or violation of this Agreement plus \$5,000 per day for any third or
6 subsequent breach or violation of this Agreement. These liquidated damages shall be in
7 addition to, and independent of, any specific costs that AWI may have reimbursed to the
8 LEA under this Agreement, shall be cumulative for all violations, shall accrue interest at the
9 maximum rate allowable by law, and shall be in addition to any and all equitable remedies in
10 favor of the LEA. The calculation for liquidated damages shall not commence until the 31st
11 day following the LEA's issuance of a notice of either a violation of this Agreement or a
12 breach of this Agreement if such default or breach remains uncured. However, liquidated
13 damages shall not apply if AWI cures or remedies said default or breach to the LEA's full
14 and complete satisfaction within the 31-day period after the date of the LEA notice. A full
15 report of such actions undertaken will be reported to the Independent Hearing Panel by the
16 LEA.

17
18 42. AWI shall defend, indemnify and hold harmless the LEA, City of Los Angeles, their agents,
19 elected and appointed officers, employees and agents (collectively, the "Indemnified
20 Parties") from and against any all claims, demands, damages, actions, fees, costs and/or
21 expenses, including attorneys' and expert fees and costs, arising from any claim, action, or
22 proceeding to attack, set aside, void, or annul this Agreement, or arising from or relating to
23 this Agreement, except if caused by the Indemnified Parties' negligence or willful
24 misconduct as found by a court of competent jurisdiction. Notwithstanding the foregoing,
25 AWI shall be responsible to reimburse the LEA and/or the City for its costs of enforcing this
26 Agreement, except that in case of a dispute, each party will be responsible for its own
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attorneys' fees and costs. This section shall survive the expiration or early termination of this Agreement.

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

DATED: _____, 2006

AWI:

ARAKELIAN ENTERPRISES, INC., d/b/a
American Waste Industries, Inc., a California
Corporation

By: _____

ERIC HERBERT

President

DATED: _____, 2006

LEA:

CITY OF LOS ANGELES
LOCAL ENFORCEMENT AGENCY

By: _____

WAYNE TSUDA,

Director, LEA Program

Attachment A – Self-Monitoring Reports

Results of all self-monitoring programs as described in the TPR will be reported as follows:

1. The types and quantities of decomposable and inert wastes, including separated or commingled recyclables, received each day. The operator shall maintain these records on the facility's premises for a minimum of one year and made available to any Enforcement Agencies' personnel on request.
2. Quantity and types of wastes salvaged/recycled per month and the final destination of these diverted materials.
3. The quantities and types of hazardous wastes, untreated medical wastes, or otherwise prohibited wastes found in the waste stream and the disposition of these materials.
4. All incidents of unlawful disposal of prohibited materials and the operator's actions taken. Indicate those incidents which occurred as a result of the random load checking program.
5. Copies of all written complaints regarding this facility and the operator's actions taken to resolve these complaints. (Notification to the LEA within one day following the complaint is also required.)
6. Final disposal site for transferred wastes.
7. The number and type of vehicles using the facility per day.
8. Reports of all special/unusual occurrences and the operator's actions taken to correct these problems.
9. Record of receipt of a Notice of Violation from any regulatory agency. In addition, the operator shall notify the LEA **at once** following receipt of a Notice of Violation or upon receipt of notification of complaints regarding the facility, which have been received by other agencies.

The monitoring reports are delinquent 30 days after the end of the reporting period.