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9 PALA BAND OF MISSION INDIANS

10 **BEFORE THE CALIFORNIA DEPARTMENT OF**  
11 **RESOURCES RECYCLING AND RECOVERY**

12 PALA BAND OF MISSION INDIANS,

13 Petitioner,

14 v.

15 SAN DIEGO COUNTY DEPARTMENT  
16 OF ENVIRONMENTAL HEALTH, SOLID  
17 WASTE LOCAL ENFORCEMENT  
18 AGENCY,

19 Respondent.

**PETITIONER'S REPLY BRIEF**

**(PUBLIC RESOURCES CODE  
SECTIONS 44307, 45030)**

20 **I. Introduction**

21 The LEA's expressed but contradictory positions in its Opening Argument can be  
22 boiled down to this: if the Barrier Debris is illegally disposed solid waste, the LEA has a  
23 mandatory obligation to take enforcement action to stop that illegal activity, but Petitioner  
24 does not have the right to force the LEA to comply with that continuing mandatory  
25 obligation because Petitioner's Requests for Hearing were untimely. (See LEA Opening  
26 Argument at 10, 11). This troubling discrepancy and absurd result demand that CalRecycle  
27 not only (1) reject the LEA's obtrusively narrow interpretation of Public Resources Code  
28 Section 44310 as barring Petitioner's ability to force the LEA to perform its continuing  
legal duties, but also (2) resolve the underlying substantive issues and find that the Barrier  
Debris is a "solid waste" that is deemed to have been illegally disposed on the Gregory  
Canyon Ltd. LLC ("GCL") property by statute and by CalRecycle's regulations.

## 1           **II.     CalRecycle Should Reject the LEA’s Policy Arguments**

2           The LEA’s contradictory arguments do not stop there. Rather, the LEA describes  
3 Section 44307 as providing the “general public unusually broad access to an administrative  
4 challenge process” (*id.* at 2: 6-7), and as granting Petitioner an “extraordinary right” to  
5 administratively challenge any LEA determination. (*Id.* at 5: 17-18). But instead of  
6 providing a welcoming open door to the public and Petitioner, the LEA wields the 30-day  
7 period in Section 44310 as a shield barring the Pala Band’s claims and allowing the LEA to  
8 continue unimpeded and unchallenged in its indefensible decision that allows the illegal  
9 disposal of solid waste to continue unabated at the GCL property.

10           Here, the LEA’s argument that the Pala Band’s claims are barred by Section 44310  
11 boils down to its statement that “*for years after that debris was in place, the LEA did not*  
12 *require that the debris be removed.*” (*Id.* at 2: 22-23). That is the LEA’s argument: we  
13 allowed it, you should have seen it, we are not going to do anything about it and,  
14 notwithstanding state law regulating the management of construction debris, and you can’t  
15 make us. As shown below, the LEA has treated other sites where construction debris has  
16 been stored illegally for much shorter periods with something other than the kid gloves it  
17 saves for GCL.

18           The LEA makes a number of the “sky is falling” policy arguments to warn that, if  
19 CalRecycle agrees that the continuing violation doctrine means that the LEA will have to  
20 enforce state law against GCL, all bets will be off. Such a decision, the LEA complains,  
21 would mean that “no determination by an LEA would be final” and that “any decision to  
22 issue a permit or either include or not include a condition in a permit, could be challenged  
23 by anyone, after any amount of delay.” (*Id.* at 4: 1, 4-5). This result, the LEA argues, would  
24 irreparably disrupt its ability to practice “graduated enforcement” or set enforcement  
25 priorities.” (*Id.* at 4: 6-7). Those types of “policy” arguments regarding Section 44307 have  
26 been rejected as illusory because the intent was to strengthen public participation.  
27 *Sustainability of Parks, Recycling and Wildlife Legal Defense Fund v. County of Solano*  
28 (2008) 167 Cal.App.4th 1350, 1362-1363).

1 To support the argument that an adverse ruling would impair the finely tuned  
2 graduated enforcement policy of the LEA, footnote 4 of the LEA's Opening Argument cites  
3 to LEA documents filed with and LEA testimony before the LEA Hearing Panel. In that  
4 footnote, the LEA argues that it "does not typically immediately initiate enforcement with a  
5 Cease and Desist Order requiring the immediate removal" of debris, but rather exercises  
6 "enforcement discretion and graduated enforcement methods." For the Hearing Panel, the  
7 LEA provided a chart describing the actions taken with respect to non-GCL facilities where  
8 construction and inert debris issues had arisen which is included as Exhibit 8 to Exhibit A  
9 of the LEA's Opening Argument. Through a Public Records Act request, Petitioner  
10 obtained the documents referred to in that chart.

11 A brief review of the underlying documents for some of the matters identified in the  
12 chart is revealing. For example, after a June 5, 2014, site visit, the LEA issued a Cease and  
13 Desist Order less than one month later on July 2, 2014, alleging that the owner was illegally  
14 operating a solid waste facility without a permit by its operation of a small volume CDI  
15 debris processing site. (Exhibit A). The Order required the removal of all debris from the  
16 site and threatened administrative penalties.

17 Similarly, after investigating a complaint sent to the LEA on April 11, 2014,  
18 regarding the "stockpiling of unprocessed inert debris," the LEA stated in a July 23, 2014,  
19 letter, that it had visited the site and observed "large quantities of unprocessed and  
20 processed inert debris" on the site as shown in the photographs enclosed with the letter.  
21 (Exhibit B). The LEA's letter also stated that this unprocessed inert material "does not  
22 appear to have been generated as part of on-site construction and is not being actively used  
23 in the course of construction work, but rather is collectively stockpiled on-site." The first  
24 page of that letter stated that unprocessed inert debris stored for more than six months that  
25 was not generated or used during the course of carrying out "construction work . . . shall be  
26 deemed to have been unlawfully disposed and therefore subject to enforcement action."  
27 The letter also required the owner to provide specified information regarding the debris.  
28 An August 29, 2014, response from the property owner indicated that the debris would be

1 processed because it was “integral” to construction work “on the property.” The status of  
2 this site is unknown.

3 At a site in Chula Vista, the LEA took photographs of debris in late December of  
4 2013. (Exhibit C). The LEA then issued a Corrective Action Order on April 18, 2014,  
5 finding that, because the debris had exceeded the allowed six-month storage period, it was  
6 deemed to be illegally disposed. The Order established specific timelines for processing  
7 and reuse or removal of the debris by the end of August. Perhaps if the owner had argued  
8 that the debris was there to prevent access to the building in the photograph, the LEA  
9 would have been considered the debris to be reused as a barrier and not a solid waste.

10 Finally, after an inspection on May 24, 2011, the LEA determined that another  
11 facility was receiving construction demolition and inert debris for processing, handling, and  
12 storage. Less than one month later on June 1, 2011, the LEA issued a Cease and Desist  
13 Order requiring those activities to cease. (Exhibit D).

14 These may be examples of the LEA’s “graduated enforcement” policy that the Pala  
15 Band’s action allegedly is threatening. But, what the examples appear to show is the  
16 LEA’s “other than GCL” enforcement policy concerning construction debris. Unlike at the  
17 GCL site, where the LEA has allowed the Bunker Debris and the Barrier Debris to be  
18 stored on site for approximately five years, in each of the instances discussed above, the  
19 LEA took an enforcement approach quickly. That difference in the LEA’s enforcement  
20 posture is troubling, and in reality the Pala Band’s actions do not threaten the LEA’s  
21 graduated enforcement policy, but seek to have it applied to GCL as well.

22 A decision by CalRecycle that the Pala Band’s actions were timely will not limit the  
23 LEA’s discretion in enforcing the law as it claims. Rather, such a decision would make  
24 clear that the public has the right to keep the LEA’s “feet to the fire” when it abuses that  
25 discretion as it has done here. Under the LEA’s interpretation of the law, anyone driving  
26 past the piles of debris on the non-GCL properties discussed above already has  
27 automatically been barred from requesting a hearing to try and force the LEA to enforce the  
28

1 law. For these reasons alone, CalRecycle should reject the LEA’s position that the Pala  
2 band’s actions are time barred.

3 The cases discussed above and cited by the LEA also raise significant questions  
4 concerning why the LEA believes that the Barrier Debris (but not the debris involved in  
5 those cases) is a “low priority for enforcement by any LEA.” (LEA Opening Argument at  
6 5: 8-9). While the Pala Band has and will continue to challenge the proposed landfill at  
7 every opportunity, that fact is irrelevant to the LEA’s enforcement obligations. (*Id.* at 5: 1-  
8 5). Likewise, the LEA’s arguments that no enforcement action is needed because the  
9 Barrier Debris is an “insignificant part of the proposed project” and is simply concrete that  
10 was “already present on the property” are puzzling at best. (*Id.* at 5: 5-7). Not surprisingly,  
11 the LEA cites no legal support for allowing it to use factors such as the ratio of the material  
12 or that it already was on the site to ignore the clear structure of state law governing the  
13 management of construction debris.

14 Similarly, the LEA’s argument that the Barrier Debris is “doing no harm” is based  
15 on non-expert testimony at the Panel Hearing, and there is no evidence that the LEA  
16 conducted any analysis of the possible environmental effects of allowing the Barrier Debris  
17 to remain on the GCL property indefinitely. For example, does the Barrier Debris provide  
18 habitat for vectors or other pests that could impact the endangered or other sensitive species  
19 known by the LEA to be present on the GCL property? Whereas the debris on the other  
20 sites where the LEA took nearly immediate enforcement actions appears to have been on  
21 disturbed and vacant urban lands, the area where the LEA has allowed the Barrier Debris to  
22 be disposed for years is known by the LEA to be within the critical habitat of four  
23 endangered species.

24 The LEA’s final arguments continue to be the real reason for its immutable  
25 intransigence on the issue: the Barrier Debris “will eventually be used in landfill  
26 construction” and the LEA determined it is not subject to the LEA’s jurisdiction because it  
27 is not a “solid waste.” (*Id.* at 5: 8). As to the first argument, the possible future use of the  
28 Barrier Debris in the proposed landfill does not allow the debris to be retained on the GCL

1 property indefinitely as shown in Petitioner’s Opening Brief. As to the second argument,  
2 the LEA presents no legal support for its argument that the Barrier Debris is not a solid  
3 waste because it is being “reused” as a vehicle barrier, and the LEA effectively asks  
4 CalRecycle to resolve the issue, something the Pala Band also has requested. (*Id.* at 5: fn.  
5 8). In truth, the LEA’s primary argument that the Barrier Debris is not a “solid waste” is  
6 that “GCL stated in 2010 that the Barrier Debris was being used to increase site security,  
7 and would later be used during landfill construction, and therefore was not a waste.” (*Id.* at  
8 6: 19-20).<sup>1</sup> Not only was the result wrong, but it was a questionable enforcement policy for  
9 the LEA to allow the regulated entity (GCL) to determine if the Barrier Debris was a solid  
10 waste or not.

### 11 **III. The LEA’s Responses to Petitioner’s Letters Triggered the 30-Day Period**

12 The LEA once again argues that the passing reference to the construction debris in  
13 the LEA Inspection Reports and the alleged visibility of the Barrier Debris from State  
14 Route 76 bar the Pala Band’s claims and absolve the LEA from its obligation to enforce the  
15 law. But where no noticed hearing has been held, and no written decision has been issued  
16 by the LEA concerning a permit condition, the issuance, denial, or revocation of a permit,  
17 or other matters controlled by the LEA such as the issuance of an enforcement action, the  
18 30-day limit in Section 44310 cannot apply. That 30-day limit was not intended to be a  
19 way for a recalcitrant LEA to avoid enforcing the law. Because there was no formal  
20 determination made by the LEA regarding the Bunker Debris or the Barrier Debris until the  
21 LEA responded to the Pala Band’s letters, and issued the Official Notice in August of this  
22 year, the Pala Band’s actions were timely. The LEA acknowledges that Petitioner filed its  
23

24  
25 <sup>1</sup> An LEA Inspection Report dated January 22, 2008, stated that GCL had placed concrete barriers  
26 near the “old bridge” by the San Luis Rey River “to better block access to the interior houses on  
27 the property.” (LEA Opening Argument, Exhibit D, Exhibit 9). Given that access across the river  
28 had already been put in place (perhaps illegally) by 2008, the addition of the Barrier Debris two  
years later was unnecessary as it allowed access through it to the point where the barrier had been  
placed in 2008.

1 Requests for Hearing before the LEA Hearing Panel within 30 days of the LEA’s responses  
2 identified above.

3 Moreover, there is no argument that the Petitioner’s failure to seek a hearing before  
4 the LEA stated its position publicly prejudiced either the LEA or GCL. GCL has benefited  
5 from being allowed to retain the Barrier Debris on the site for years, even though the facts  
6 show that it is ineffective and unnecessary as a vehicle barrier. By being able to avoid  
7 complying with the law for all those years, GCL avoided the cost of properly managing the  
8 Barrier Debris in accordance with state law. Requiring GCL to finally comply with the law  
9 would not be prejudice but simply compliance.

10 **IV. The Continuing Violation and Accrual Doctrines Make the Actions Timely**

11 The LEA argues that Petitioner’s “radical suggestion” that the LEA’s continuing  
12 obligation to enforce the law means that a new action accrues daily is supported only by  
13 case law “limiting the application of generic Statues of Limitations in Public Trust  
14 situations.” (LEA Opening Argument at 3: 15-17.) But the LEA’s analysis of the opinion  
15 in *California Trout v. State Water Resources Control Board* (1989) 207 Cal.App.3d 585  
16 ignores the striking similarities between the factual situation in that case and in this one.  
17 CalRecycle should reject the LEA’s attempt to distinguish the case by improperly bandying  
18 about the word *dicta* to those portions of the decision with which the LEA disagrees.

19 In *California Trout*, the appellate court made clear that no statute of limitations  
20 barred the petitioner’s claim that the State Water Resources Control Board (“Water Board”)  
21 was required by law to include certain conditions in licenses to divert water, even though  
22 the licenses had been issued years before any applicable statute of limitations periods had  
23 expired. The clear and repeated basis for the appellate court’s decision was that the  
24 petitioner had shown there was a “*continuing duty* of the Water Board to apply Section  
25 5946 to the licenses.” (*Id.* at 626.) The appellate court rejected the Water Board’s argument  
26 that provisions of the Water Code or other statutory limitations periods barred the  
27 petitioner’s claims.

28

1           The appellate court’s determination that the Water Board had a continuing duty to  
2 enforce the law was not *dicta* as the LEA argues, but was rather the clear holding of the  
3 case. One court has defined *dicta* as consisting of “observations and statements  
4 unnecessary to the appellate court’s resolution of the case.” (*Garfield Medical Center v.*  
5 *Belshe* (1998) 68 Cal.App.4th 798, 806). In *California Trout*, the appellate court’s  
6 conclusion that the Water Board had a continuing duty to enforce the law was not just an  
7 unneeded observation or statement: it was central to the appellate court’s decision. The  
8 appellate court’s holding that an agency’s failure to enforce the law is a continuing  
9 violation that continually gives rise to a new cause of action, is exactly the principle that  
10 applies to the LEA’s failure to require the removal of the Barrier Debris. The LEA’s  
11 argument that the *California Trout* court did not reach the issue that is before CalRecycle is  
12 simply wrong.

13           The LEA also argues at length, but without success, that the “*Hoadley* Rule  
14 controlled the *California Trout* case,” even while admitting that the *California Trout*  
15 decision never mentioned *Hoadley*. (LEA Opening Argument at 13: 1, fn. 15). In *Hoadley*,  
16 the Supreme Court held that a private party could not gain control over property dedicated  
17 to public use by adverse possession. (*Hoadley v. City and County of San Francisco* (1875)  
18 50 Cal. 265, 275-276). Not only did *California Trout* not concern adverse possession, but  
19 the appellate court’s discussion of the public trust doctrine came after the court already had  
20 held that the continuing violation doctrine applied.

21           In fact, the appellate court described the public trust doctrine as simply “another way  
22 of viewing the matter” which leads to the same conclusion. (*California Trout, supra*, 207  
23 Cal.App.3d at 629). Notably, the appellate court only addressed the public trust issue  
24 because the Water Board had argued that the “enforcement of Section 5937” (the statutory  
25 condition provision) was within the Water Board’s “ongoing duty to ensure the reasonable  
26 use of water and the protection of public trust values in water allocation decisions.” (*Id.* at  
27 626). In effect, the Water Board’s argument was that it, and not the court, had the  
28 discretion to determine how best to protect the public trust and allowing petitioner’s claims

1 to proceed would force the Water Board to “look backward and review its past decisions  
2 which had become final by the passage of time.” (*Id.* at 627). The appellate court rejected  
3 that argument because the remedy would be “wholly perspective and ministerial in effect.”  
4 (*Id.*) The LEA makes the same “discretion” claim here, and the same rejection by  
5 CalRecycle is appropriate.

6 A reading of the appellate court’s discussion of the public trust doctrine shows that  
7 most of it addressed the application of the doctrine to various watercourses rather than its  
8 role in preserving the petitioner’s claims. In addition, the discussion of the public trust  
9 issue came after the appellate court had held that the action was not barred based on the  
10 continuing violation doctrine and ended with the court repeating its rejection of the Water  
11 Board’s statute of limitations arguments.” (*Id.* at 631.) While the court in *Marin*  
12 *Healthcare Dist. v. Sutter Health* (2002) 103 Cal.App.4th 861, 886, may have described the  
13 decision in *California Trout* as a “public trust” case, that is because the plaintiff cited the  
14 case for that proposition. The *Marin Healthcare* court’s description of the holding in  
15 *California Trout* is a true example of *dicta*.

16 It is clear that the basis of the *California Trout* court’s holding that the petitioner’s  
17 claims were not barred was its conclusion that the Water Board had a continuing legal duty  
18 to include the statutory conditions in the licenses. The LEA has a similar continuing legal  
19 duty to ensure that GCL does not operate an illegal solid waste disposal facility by retaining  
20 the Barrier Debris on the site. In the LEA’s August 2014 “Official Notice,” it came to that  
21 very conclusion regarding the Bunker Debris, finding that retaining the Bunker Debris on  
22 the site constituted the illegal operation of a disposal facility. That same legal logic applies  
23 to the Barrier Debris, and the LEA should require that it be removed as well.

24 The LEA also dismisses two other cases cited by Petitioner as being neither “binding  
25 nor persuasive.” (LEA Opening Argument at 14: 13-18.) But while the discussion of the  
26 continuing violation theory to bar both statute of limitations and laches defenses in the  
27 *Santa Monica Municipal Employees Association v. City of Santa Monica* (1987) 197  
28 Cal.App.3d 1538 case is short, it reaffirms the position taken by Petitioners here.

1 In addition, the more fulsome discussion of the continuing violations doctrine in the  
2 *Appalachian Voices v. McCarthy* (D.C. Cir. 2013) 989 F.Supp.2d 30 case also supports  
3 Petitioner’s position. While the LEA argues without any support that the analysis of the  
4 continuing violation and continuing accrual doctrines in *McCarthy* was unnecessary  
5 because EPA’s statutory obligations to review its rules renewed every three years, if that  
6 discussion was unnecessary it is unlikely that the D.C. Circuit Court of Appeals would have  
7 included such a lengthy analysis of the issue. One of the key relevant points in the  
8 *McCarthy* court’s analysis is that when the text of a pertinent law imposes a continuing  
9 obligation to act or to refrain from acting, a party “can continue to violate it until that  
10 obligation is satisfied and the *statute of limitations will not begin to run until it does*.  
11 [Citations omitted].” (*Id.* at 44-45). Given that conclusion, the *McCarthy* court held that  
12 the continuing violation doctrine “applies to determine *when a claim accrues*.” (*Id.* at 45).

13 In this case, Section 44002 states that if is operating a solid waste facility without  
14 proper approval, an LEA “shall immediately issue a cease and desist order pursuant to  
15 Section 45005 ordering the facility to immediately cease all activities for which a solid  
16 waste facility’s permit is required and desist from those activities until the person obtains a  
17 valid solid waste facilities permit authorizing the activities or has obtained other  
18 authorization pursuant to this division.” As in *McCarthy*, the language of this statutory  
19 provision is “unambiguous in its command” and “contains no limitation ending the EPA’s  
20 [LEA’s] obligation” under the relevant statute.” (*Id.*). While the decision of the D.C.  
21 Circuit may not be precedent in state court, the analysis of the continuing violation doctrine  
22 and its emphasis on the accrual of the cause of action is persuasive given that the court’s  
23 analysis applies to a federal statute governing the management of solid waste.

24 Critically, the analysis of the continuing violation/continuing accrual doctrine in  
25 *McCarthy* mirrors the analysis of those doctrines in *Aryeh v. Canon Business Solutions*  
26 (2013) 55 Cal.4th 1185, and the application of those doctrines in *Howard Jarvis Taxpayers*  
27 *Association v. City of La Habra* (2001) 25 Cal.4th 809. Both of those cases are discussed at  
28 length in Petitioner’s Opening Brief, and that discussion is not repeated here. But all of the

1 cases cited by Petitioner, including *California Trout*, support the argument that every day  
2 the LEA fails to take the required action to require GCL to cease the illegal operation of a  
3 solid waste disposal facility constitutes a new breach of its duty to enforce the law and a  
4 new failure to act as required by law. Because of this continuing violation, on each day, a  
5 new action accrues and consequently the Pala Band's Requests for Hearings were timely.

6 **V. Conclusion**

7 The LEA has and continues to violate the law by allowing GCL to retain the  
8 Barrier Debris on site. CalRecycle should find that the Pala Band's Requests for Hearing  
9 were timely and that the Barrier Debris is being illegally disposed, and CalRecycle should  
10 direct the LEA to require its immediate removal or take that action itself.

11  
12 DATED: November 19, 2014

PROCOPIO, CORY, HARGREAVES &  
SAVITCH LLP

13  
14  
15 By:   
16 Walter Rusinek  
Attorneys for Appellant  
Pala Band of Mission Indians

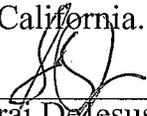
## PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On **November 19, 2014**, I served the within documents:

### PETITIONER'S REPLY BRIEF

- by transmitting via facsimile a copy of said document(s) listed above to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.
- by electronic mail.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 530 "B" Street, San Diego, California 92101 in the ordinary course of business on the date of this declaration.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **November 19, 2014**, at San Diego, California.

  
\_\_\_\_\_  
Sarah DeJesus

**SERVICE LIST**

<p>Kristen Laychus, Deputy County of San Diego Office of County Counsel 1600 Pacific Highway, Room 355 San Diego, CA 92101  kristen.laychus@sdcounty.ca.gov</p>	<p>Rodney F. Lorang, Esq. County of San Diego Office of County Counsel 1600 Pacific Highway, Room 355 San Diego, CA 92101  Rodney.lorang@sdcounty.ca.gov</p>
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**EXHIBIT A**



COPY

# County of San Diego

ELIZABETH A. POZZEBON  
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH  
SOLID WASTE LOCAL ENFORCEMENT AGENCY  
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AMY HARBERT  
ASSISTANT DIRECTOR

## SOLID WASTE LOCAL ENFORCEMENT AGENCY

### NOTICE AND ORDER No. 2014-03 (Cease and Desist Order)

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**IN THE MATTER OF:**

Construction Demolition & Inert Debris  
Processing  
3757 Bancroft Drive  
Spring Valley, CA 91977  
Assessor Parcel Number (APN)  
504-301-09-00

**NOTICE AND ORDER  
ISSUED PURSUANT TO:**

California Public Resources Code (PRC),  
Division 30, Part 5, Chapter 1, Article 2 §45005  
and Title 14 of the California Code of  
Regulations (14 CCR), Chapter 5,  
Article 4, §18304

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**TO FACILITY OWNER/OPERATOR:**

Mr. and Mrs. Roger Casper  
1230 Burris Drive  
El Cajon, CA 92019

The County of San Diego Department of Environmental Health is the designated Solid Waste Local Enforcement Agency (LEA) for the County of San Diego (excluding the City of San Diego) and is responsible for the regulation of solid waste facilities and operations under the authority of the Public Resources Code (PRC) and Titles 27 and 14 of the California Code of Regulations (CCR). In accordance with section 45005 of the PRC, the LEA has authority to issue cease and desist orders to persons operating a solid waste facility without a solid waste facility permit.

The LEA has determined that a Small Volume Construction Demolition and Inert (CDI) Debris Processing operation is being operated at 3757 Bancroft Drive, Spring Valley, CA (APN No. 504-301-09-00) in violation of PRC 44002 (operation of a solid waste facility without a permit) and in violation of 14 CCR Section 17383.4. This site is receiving CDI debris from off-site sources, processing, consolidating and transferring the wastes for further processing and/or disposal.

**LEA FINDINGS:**

1. On June 5, 2014, Mr. Anthony Torres with the LEA conducted a site visit to the above mentioned property after observing evidence of CDI processing activities at the site from an adjacent property. Based on conversation with Mr. Keith Moore and observations of the piles of debris accumulated onsite, the LEA finds that this site is receiving loads of CDI debris from off-site sources for processing, sorting and consolidation into roll-off containers that are hauled to other facilities for further processing or disposal.

Based on the facts set forth above, the LEA has determined that the following violation has occurred:

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**VIOLATION:**

1. Operation of a Solid Waste Facility without a Solid Waste Facility Permit

**APPLICABLE**

**STATUTE/REGULATION:**

PRC §44002(a)(1) No person shall operate a solid waste facility without a solid waste facilities permit if that facility is required to have a permit pursuant to this division.  
14CCR §17383.4 Small Volume CDI Debris Processing Operations

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**ORDER**

It is hereby ordered that owner/operator of property at 3757 Bancroft Drive, Spring Valley, CA (APN No. 504-301-09-00):

1. Immediately cease and desist operating a Small Volume CDI debris processing operation and/or other operations requiring a solid waste facility permit.
2. Immediately direct haul all waste to a permitted disposal or materials handling facility.
3. If you desire to operate a Small Volume Construction Demolition and Inert debris operation the following items are required to be submitted to the LEA for review and approval:
  - a. An EA Notification for a Small Volume Construction Demolition and Inert debris processing operation filed pursuant to 14CCR §18103.1 (CIWMB Form 169 attached for your convenience);
  - b. A Small Volume CDI Processing Operation Plan in accordance with 14CCR §17383.4(f);
  - c. DEH-LEA application (DEH: LEA-990) including associated fees for LEA review of application package. For a single application, this fee is \$568.00 plus the filing cost for the California Environmental Quality Act Notice of Exemption (\$50.00).

Under an EA Notification, the site would be subject to routine unannounced quarterly inspections and an annual Health Permit Fee (currently \$2,259 for Fiscal Year 2013-2014) in addition to the application fees.

**PLEASE TAKE FURTHER NOTICE THAT:**

1. Pursuant to PRC Section 45011, the LEA has authority to administratively impose a civil penalty not to exceed five thousand dollars (\$5,000) for each day on which the violation occurs if compliance is not achieved within the time schedule set forth in the Notice and Order 14-03 to immediately Cease and Desist.
2. Pursuant to PRC Section 45014, 45023, and 45024, upon failure to comply with this Notice and Order 14-03 to Cease and Desist, the LEA may petition the Superior Court to impose, assess, and recover civil penalties not to exceed ten thousand dollars (\$10,000) per day against any person who:  
  
Owns or operates a solid waste facility and who intentionally or negligently violates or causes or permits another to violate the terms and conditions of a solid waste facility permit or a standard, requirement, or order applicable to a solid waste facility;

Nothing in this Notice and Order shall constitute or be construed as a satisfaction or release from liability for any condition or claims arising as a result of past, current or future operations of the Owner/Operator. Notwithstanding compliance with the terms of this Notice and Order, the Owner/Operator may be required to take further actions as are necessary to protect human health and safety and the environment.

This Notice and Order does not relieve the Operator and/or Owner from complying with all other local, state, and federal requirements.

This Notice and Order may only be amended in writing by an appropriate representative of the County of San Diego Solid Waste Local Enforcement Agency.

This Notice and Order is supported by the accompanying declaration of Anthony Torres, Environmental Health Specialist III for the County of San Diego Solid Waste Local Enforcement Agency.

You have the right to appeal this order to the County Solid Waste Hearing Panel, pursuant to sections 45002, 44307 and 44310 of the Public Resources Code and Article LIV (sections 960 and following) of the County Code of Administrative Ordinances. It is the County's position that an appeal to this body is required before any judicial challenge to these orders may be made. However, if you intend to appeal or to judicially challenge these orders, we recommend you seek the advice of an attorney concerning your options.

If you have any questions, please contact me at (858) 495-5799.

Sincerely,



KARILYN A. MERLOS, Supervising Environmental Health Specialist  
Solid Waste Local Enforcement Agency

Enclosures

ec: Elizabeth Pozzebon, Director, DEH  
Rodney Lorang, Office of County Counsel  
Megan Fisher, CalRecycle  
Gary Hartnett, APCD  
John Odermatt, RWQCB

## DECLARATION

I, Anthony Torres, declare under penalty of perjury that the following is true and correct:

1. I am currently, and was at the time referenced herein, employed as an Environmental Health Specialist III, with the Solid Waste Local Enforcement Agency for the County of San Diego.
2. The allegations of the foregoing Notice and Order No. 2014-03 are known to me of my personal knowledge to be correct. This knowledge was obtained by observing conditions at the site during **the site inspection and onsite interview with Mr. Moore.**

Executed at 5500 Overland Ave, Suite 110 San Diego, California on July 2, 2014

By Anthony Torres  
ANTHONY TORRES, Environmental Health Specialist III  
County of San Diego, Department of Environmental Health  
Solid Waste Local Enforcement Agency

## **EXHIBIT B**



# County of San Diego

ELIZABETH A. POZZEBON  
ACTING DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH  
SOLID WASTE LOCAL ENFORCEMENT AGENCY  
5500 OVERLAND AVENUE, SUITE 170, SAN DIEGO, CA 92123  
Phone (858) 694-2888 Fax: (858) 495-5004  
www.sdcdeh.org

AMY HARBERT  
ACTING ASSISTANT DIRECTOR

July 23, 2014

International Industrial Park Inc.  
C/o David Wick  
5440 Morehouse Dr., Suite 4000  
San Diego, CA 92121

RE: INERT DEBRIS STOCKPILES ON ASSESSOR PARCEL NUMBERS 648-040-49-00 and 648-040-11-00.

Dear Mr. Wick,

The County of San Diego, Department of Environmental Health (DEH), Solid Waste Local Enforcement Agency (LEA) regulates solid waste activities throughout the County of San Diego (except for within the City of San Diego) pursuant to Public Resources Code (PRC) and Titles 14 and 27 of the California Code of Regulations (CCR). Under this authority, the LEA is responsible for the inspection and enforcement of solid waste handling activities at sites to ensure compliance with state laws and regulations for public health, safety and the environment.

On April 11, 2014, the LEA initially investigated a complaint received regarding the stockpiling of unprocessed inert debris on properties located on the west and east sides of Alta Road in south San Diego County. The LEA visited the sites and observed large quantities of unprocessed and processed inert debris on Assessor Parcel Number (APN) 648-040-49-00 (Photos 1-6). One of the unprocessed stock piles was observed with municipal solid waste mixed in with the material. Another parcel, APN 648-040-11-00, was also observed with large quantities of unprocessed inert debris on-site (Photos 1-6). During follow up site checks on June 3, 2014 and July 15, 2014, it appeared that additional inert debris had been added to the debris pile on APN 648-040-11-00. The unprocessed inert material observed on both parcels does not appear to have been generated as part of on-site construction and is not being actively used in the course of construction work, but rather is collectively stockpiled on-site.

A site that receives only inert debris and which meets the requirements of 14 CCR Section 17381.1 shall be classified as an inert debris recycling center. Recycling centers handling only inert debris must comply with requirements of Article 5.9 of Chapter 3 of Division 7 of 14 CCR, Section 17381.1, *Activities That Are Not Subject to the Construction and Demolition/Inert Debris Regulatory Requirements*. Pursuant to 14 CCR §17381.1(e), Inert debris stored for more than 6 months that has not been processed and sorted for resale or reuse (and is not generated or used in the course of carrying out "construction work" as specified in 14CCR Section 17380(g)), shall be deemed to have been unlawfully disposed and therefore subject to enforcement action.

To qualify as an inert debris recycling center pursuant to Article 5.9, materials received must meet conditions outlined in 14 CCR17381.1(b) for residual and putrescible wastes, and must be processed and used or removed from the site in accordance with 14 CCR §17381.1(e) storage requirements.

Pursuant to 14 CCR 17381.1(e)(5), at the LEA's discretion, storage time limits for sorted and processed materials may be extended to the time specified in a land use entitlement for the site that has an express time limit for the storage of materials. In addition, 14 CCR Section 17381.1(e)(6) states inert debris recycling center storage limits may be extended for a specified period, if the operator submits to the EA a storage plan as described in section 17384(b) and if the EA finds, on the basis of substantial evidence, that the additional time does not increase the potential harm to public health, safety and the environment.

In order to evaluate if LEA oversight will be required for these activities, please provide a written response to the LEA by August 31, 2014 with the following information:

- Sources of the inert debris received on-site
- Quantity in cubic yards of the inert debris on-site,
- Description of the proposed method and/or equipment to be used to process the inert debris
- Planned final disposition or intended use of the inert debris
- Proposed time-lines to comply with processing and storage requirements described in section §17381.1(e) for the inert debris observed on parcels 648-040-49-00 and 648-040-11-00.

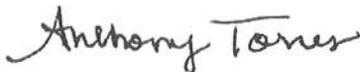
Upon receipt of the written response, the LEA will make a determination if the two parcels are subject the construction and demolition and inert debris regulatory requirement and/or LEA regulatory oversight pursuant to the San Diego County Code of Regulatory Ordinances.

Please note that 14 CCR Section 17381.1(f) expressly states that section 17381.1 does not preclude the LEA from inspecting the site to verify that it is and has been operating in a manner that meets the requirements of this section, or from taking any appropriate enforcement action. The LEA will continue to monitor site activities at the above parcels to ensure compliance with inert debris regulatory requirements.

The LEA's findings do not relieve you from seeking approval from other regulatory agencies with oversight on these project activities.

If you have any questions, please contact me at (858) 694-2608.

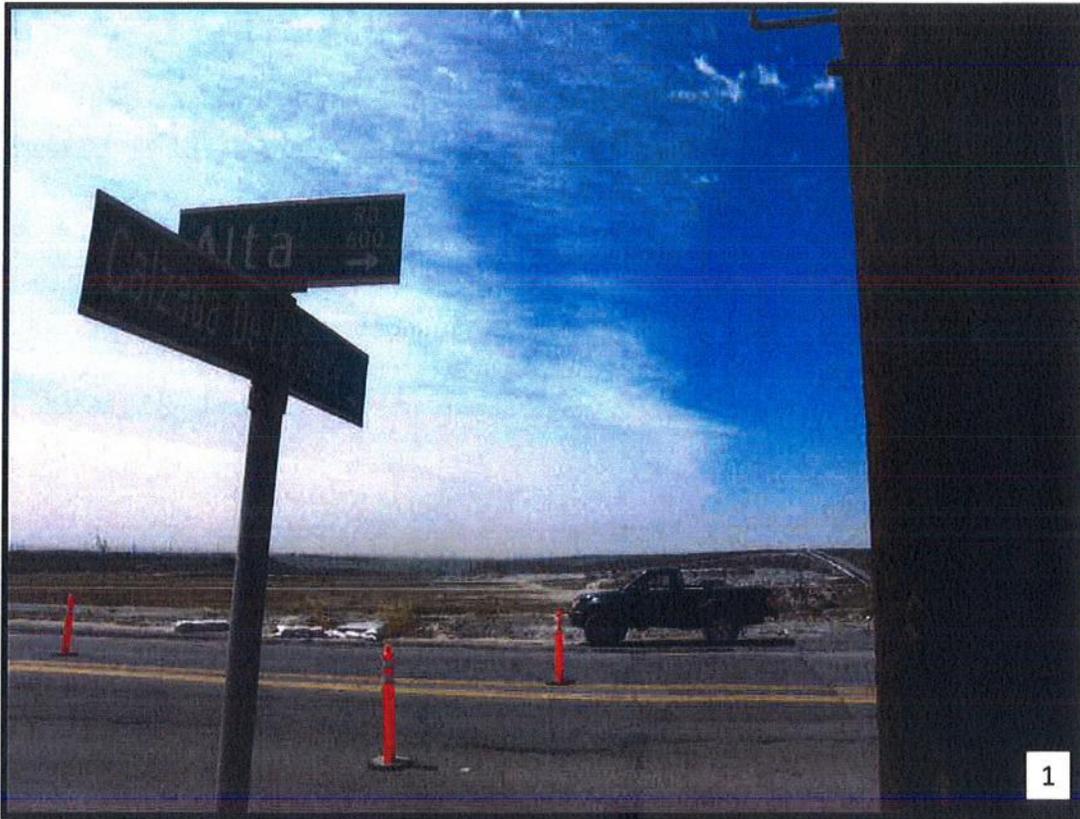
Sincerely,



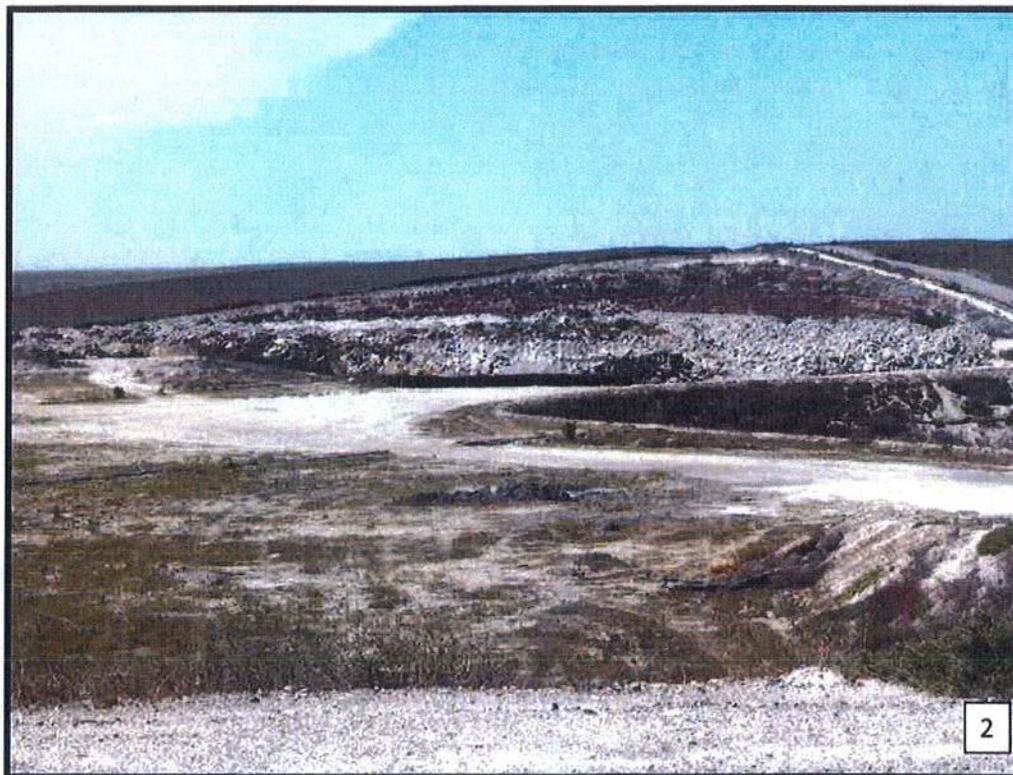
Anthony Torres, Environmental Health Specialist III  
Solid Waste Local Enforcement Agency

Attachment: Site Photos

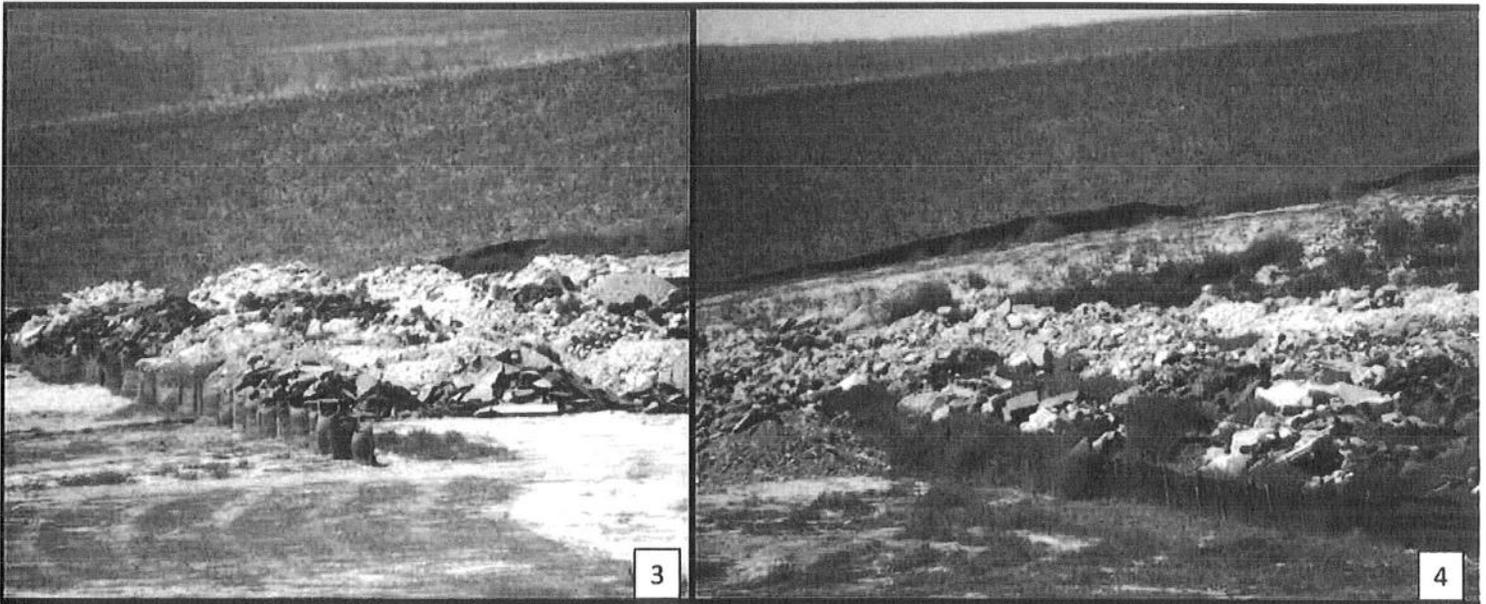
Ec: Gary Hartnett, APCD (w/out attachment)  
Jarrett Ramaiya, County Planning Development Services (w/out attachment)  
KariLyn Merlos, LEA Supervisor (w/out attachment)  
Rebeca Lafreniere, Community Health Division Chief (w/out attachment)  
Rod Lorang, Office of County Council (w/out attachment)  
LEA file



Unprocessed inert debris was observed on a parcel along the west side of Alta Road in South San Diego. Photo #1 looking west.

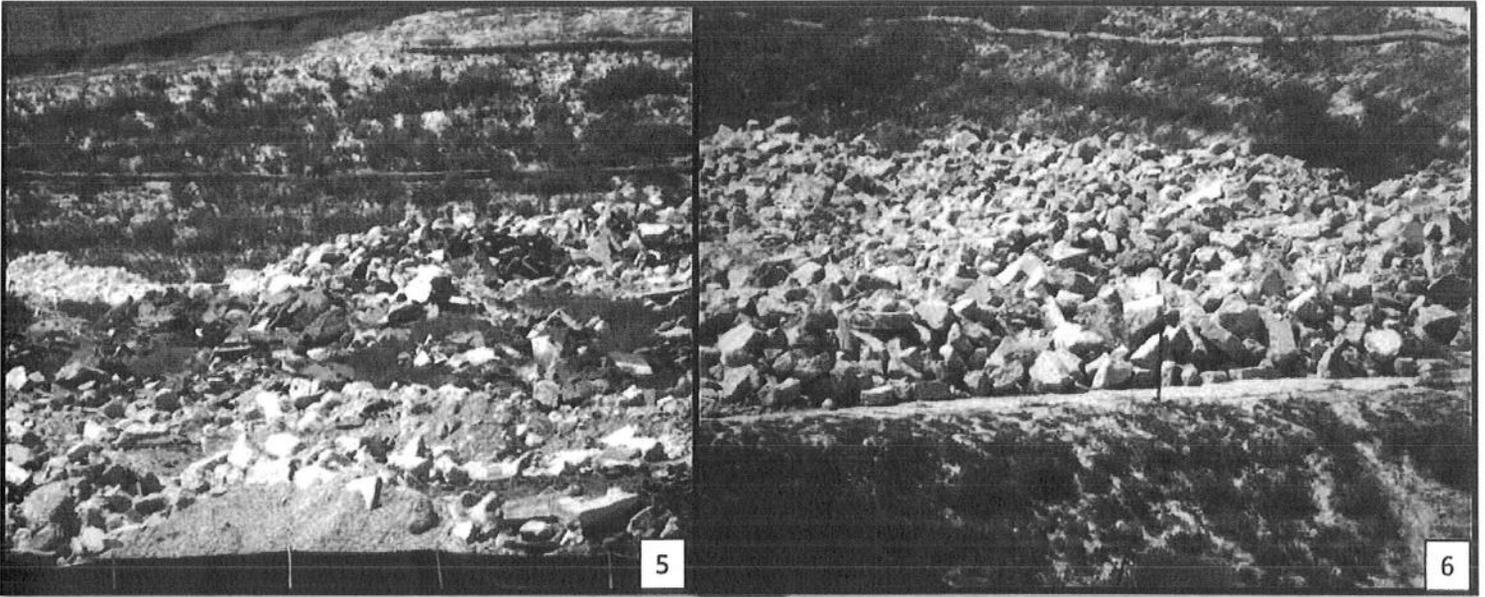


A large amount of unprocessed inert debris was observed along the northwest side of the parcel. Photo #2 looking west.



A close up photo of the southern section of the unprocessed inert debris. Photo #3 looking west.

A close up of the southern central section of the unprocessed inert debris. Photo #4 looking west.



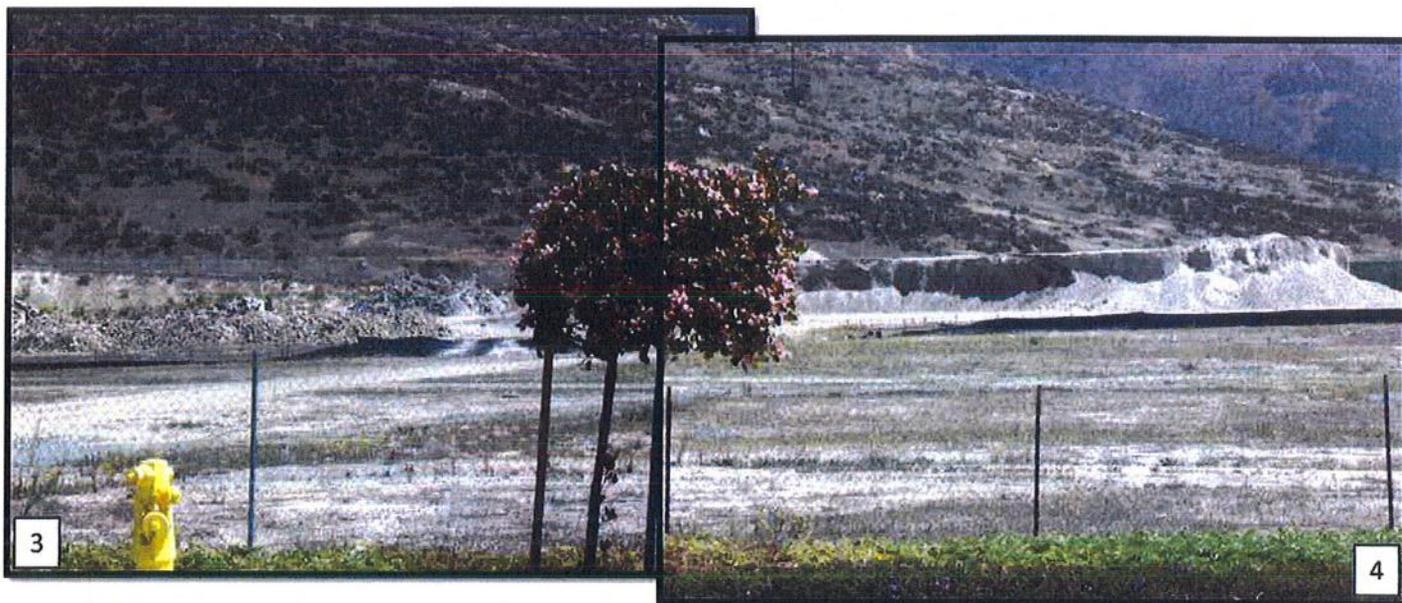
A close up photo of the northern central section of the unprocessed inert debris. Photo #5 looking west.

A close up of the northern section of the unprocessed inert debris. Photo #6 looking west.



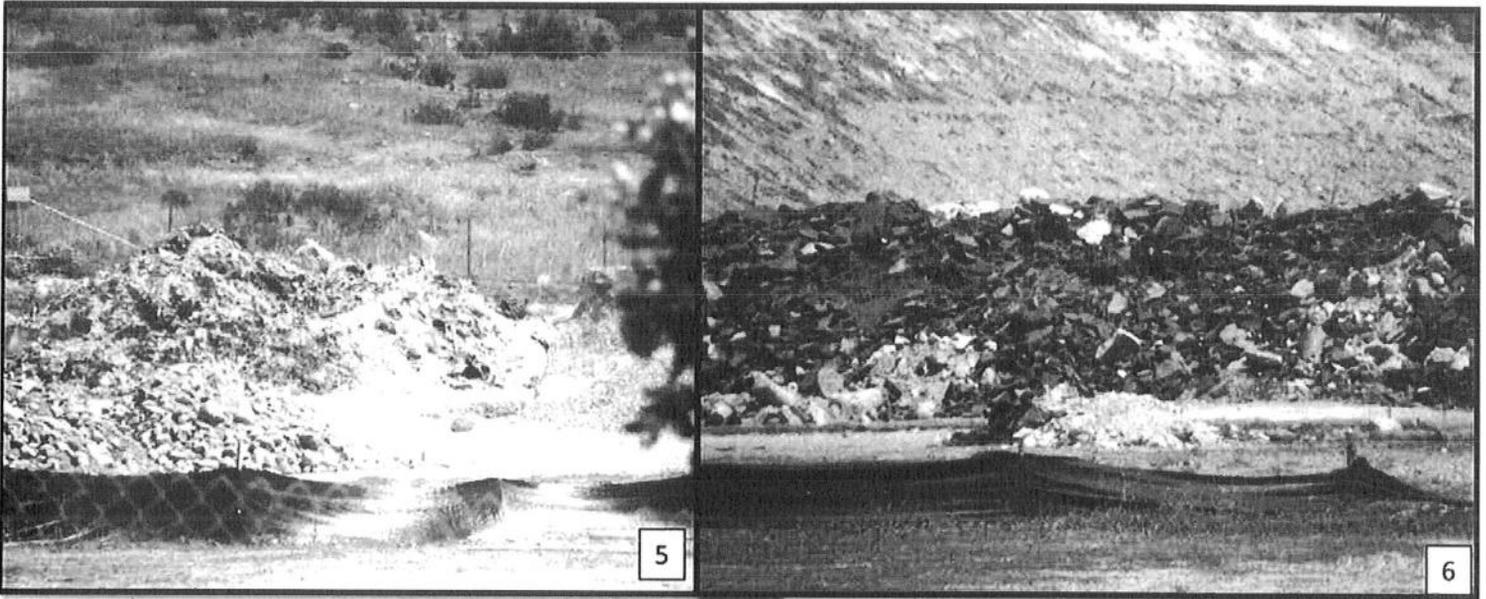
A large amount of unprocessed inert debris was observed along the northeast side of the gated parcel. Photo #1 looking east.

Unprocessed and processed inert debris was observed along the northeast side of the parcel. Photo #2 looking east.



Unprocessed inert debris was also observed along the central portion of the parcel in various pile sizes. Photo #3 looking east.

A large pile of processed inert material was observed along the southern portion of the parcel. Photo #4 looking southeast.



A close up photo of a unprocessed inert debris stock pile that appeared to have municipal solid waste mixed into the pile. Photo #5 looking east.

A close up photo of a unprocessed inert debris stock pile near the northern portion of the parcel. Photo #6 looking east.

# International Industrial Park, Inc.

August 29, 2014

Mr. Tony Torres  
Environmental Health Specialist III  
Solid Waste Local Enforcement Agency  
5500 Overland Avenue, Suite 170  
San Diego, CA 92123

**RE: Stockpiled Materials**

Dear Tony:

We are in receipt of your letter dated July 23, 2014, regarding the stockpiles on our property in Otay Mesa.

We have been working closely with the County of San Diego from the onset of the stockpiling process and subsequent storage of said materials.

These stockpiled materials were generated from the demolition of the San Ysidro Port of Entry renovation project. The materials were collected in order to crush into base material and surface our finished, graded pads for future salvage yard and recycling tenants. Therefore, they are an integral part of our "construction work" on the property.

On August 12, 2014, we contracted with a crushing company, Norberg Crushing, Inc., who has commenced the crushing operations, in compliance with the required Best Management Practices. Norberg Crushing, Inc. has set-up a loader, crusher, conveyor belt, generator, water source, etc. onsite to facilitate this operation. The crushing operation will persist continuously until all of the stockpiles are exhausted.

5440 Morehouse Drive, Suite 4000, San Diego, CA 92121

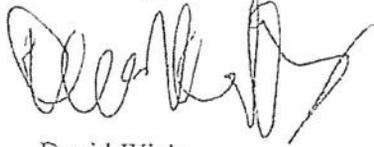
(858) 623-9000 Fax (858) 623-9009

Mr. Tony Torres  
August 29, 2014  
Page 2 of 2

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Please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Wick', with a stylized flourish at the end.

David Wick  
Vice President  
International Industrial Park, Inc.  
(858) 623-9000, ext. 700  
[dwick@natent.com](mailto:dwick@natent.com)

## **EXHIBIT C**



FILE COPY

# County of San Diego

ELIZABETH A. POZZEBON  
ACTING DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH  
SOLID WASTE LOCAL ENFORCEMENT AGENCY  
5500 OVERLAND AVENUE, SUITE 170, SAN DIEGO, CA 92123  
Phone: (858) 694-2888 Fax: (858) 495-5004  
www.sdcdeh.org

AMY HARBERT  
ACTING ASSISTANT DIRECTOR

## NOTICE AND ORDER (Corrective Action) No. 14-02

April 18, 2014

Certified Mail: 7010 1670 0001 7488 5126

R Family Properties I LLC.  
C/o Don Rowland  
2197 Corte Anacapa  
Chula Vista, CA 91914

ILLEGAL DISPOSAL OF INERT DEBRIS ON ASSESSOR PARCEL NUMBER  
644-040-80-00

Dear Mr. Rowland:

The County of San Diego, Department of Environmental Health (DEH), Solid Waste Local Enforcement Agency (LEA) regulates solid waste activities throughout the County of San Diego (except for within the City of San Diego) pursuant to Public Resources Code (PRC) and Titles 14 and 27 of the California Code of Regulations (CCR). In accordance with §45000 and §45011 of the PRC, the LEA has authority to issue orders to the owners or operators of disposal sites to take corrective actions as necessary to abate a nuisance or to protect public health and safety or the environment.

The LEA has observed inert debris recycling activities occurring on Assessor Parcel Number (APN) 644-040-80-00 located at the 4900 block of Main Street in Chula Vista. Inert debris (concrete) has been received at this facility dating back to 2012. To qualify as an approved inert debris recycling center, materials must be processed and removed from the site in accordance with state regulations:

14 CCR §17381.1 (e) - The following storage limits apply to inert debris recycling centers:

- (1) Inert debris stored for more than 6 months that has not been processed and sorted for resale or reuse shall be deemed to have been unlawfully disposed and therefore subject to enforcement action, including the use of a Notice and Order as provided in section §18304.
- (2) Inert debris that has been processed and sorted for resale, or reuse, but remains stored on site for more than 18 months, shall be deemed to have been unlawfully disposed and therefore subject to enforcement action, including the use of a Notice and Order as provided in section §18304.

The inert debris received at APN 644-040-80-00 since 2012 does not meet the requirements outlined in Title 14 of the California Code of Regulation and therefore is deemed to be unlawfully disposed.

The attached photos illustrate the unprocessed inert debris has exceeded the six month storage time.

The LEA finds that waste has been disposed of at this site in an unauthorized manner in violation of 14 CCR §17381.1(e)(1) and Public Resources Code §44000.5:

§44000.5(a) With respect only to solid waste disposed of in this state, a person shall not dispose of solid waste, cause solid waste to be disposed of, arrange for the disposal of solid waste, transport solid waste for the purpose of disposal, or accept solid waste for disposal, except at a solid waste disposal facility for which a solid waste facility permit has been issued pursuant to this chapter or as otherwise authorized pursuant to this division and the regulations adopted by the board pursuant to this division.

§44000.5(b) A violation of this section is an unlawful act.

On April 11, 2014, the LEA spoke with you by phone and you stated the inert material is proposed to be processed in the near future and used on-site as part of a grading project. You are currently working with the local planning and land use agency on renewing the permit to move forward with the proposed permitted activities. The LEA has considered this information when determining the time-lines for complying with the below corrective action requirements.

You are hereby ordered to perform the following corrective actions on APN 644-040-80-00 to comply with this Notice and Order:

1. Process and reuse all the inert debris on-site or remove all inert debris on-site (whether processed or unprocessed) by August 30, 2014. Any materials that you do not sell must be transferred to other legal facilities or operations for further processing, recycling or disposal. This transfer of material must be completed by August 30, 2014.
2. Contact the LEA in writing by May 30, 2014 to identify the time-lines for processing and reuse of all inert materials on-site or identify which facility or operation you intend to transport materials to for confirmation that the facility is approved for the receipt and processing of your material. The manifests/receipts for this transfer or sale of material to customers or a legal facility or operation must be provided to the LEA by September 15, 2014 as proof that the material has been properly managed.
3. Cleanup the site to meet requirements of 14 CCR §17384.1 Final Site Cleanup, which includes machinery, structures and other materials related to the operation. This cleanup is required to be completed by September 15, 2014 and is subject to LEA review and findings of compliance prior to this Notice and Order being completed.

The LEA will conduct unannounced inspections monthly during normal working hours Monday – Friday, 8:00 am – 5:00 pm or on an as needed basis until the LEA has determined the site has met final cleanup standards.

This Notice and Order may only be amended in writing by an appropriate representative of the County of San Diego, Solid Waste Local Enforcement Agency.

The LEA's directives do not relieve you from seeking approval from other regulatory agencies with oversight on these project activities.

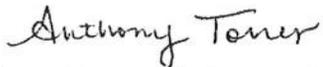
Please be advised, the LEA has the authority under the PRC 45010.1 to administratively impose a civil penalty not to exceed five thousand dollars (\$5,000) for each day on which each violation occurs if compliance is not achieved.

Pursuant to PRC Section §44307, an owner/operator has the right to appeal the Notice and Order to the LEA hearing panel within 15 days of receipt of the notice.

This Notice and Order is supported by the accompanying declaration of Anthony Torres, Environmental Health Specialist for the County of San Diego, Solid Waste Local Enforcement Agency.

If you have any questions, please contact me at (858) 694-2608.

Sincerely,



Anthony Torres, Environmental Health Specialist III  
Solid Waste Local Enforcement Agency

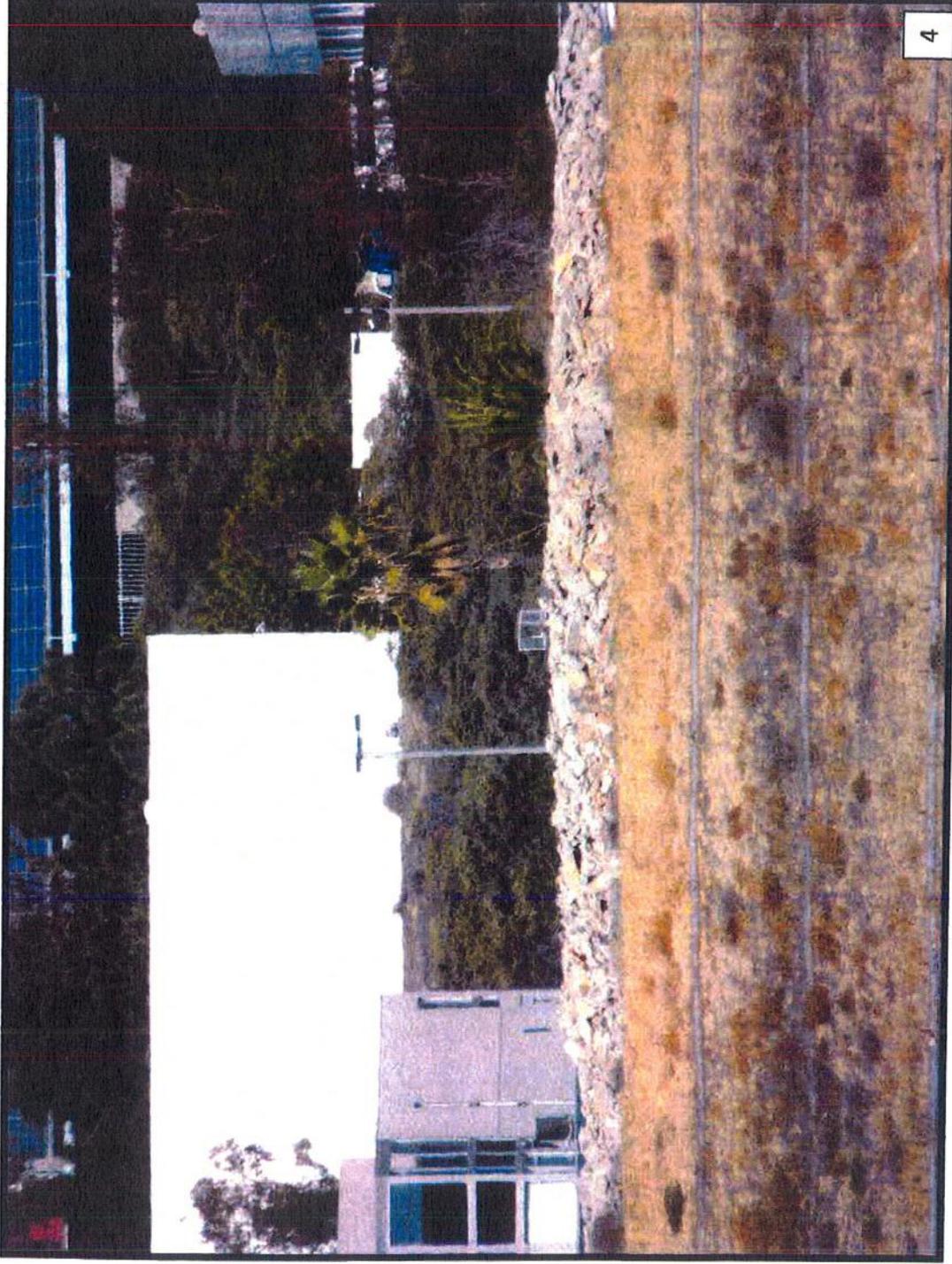
Photos Attached

Cc: Virginia Rosales, CalRecycle  
John Odermatt, RWQCB  
Gary Hartnett, APCD  
Jim Sandoval, City Manager City of Chula Vista  
Gary Halbert, Director City of Chula Development Services  
LEA File

ec: KariLyn Merlos, LEA Supervisor  
Rebecca Lafreniere, CHD Chief  
Rod Lorang, Office of County Council



Photograph of the west side of the unprocessed inert material. The section of unprocessed inert debris with an arrow can also be seen in earlier photos dated 7/17/13 and 2/1/13 below. Photo #3 dated 12/21/13 looking north.



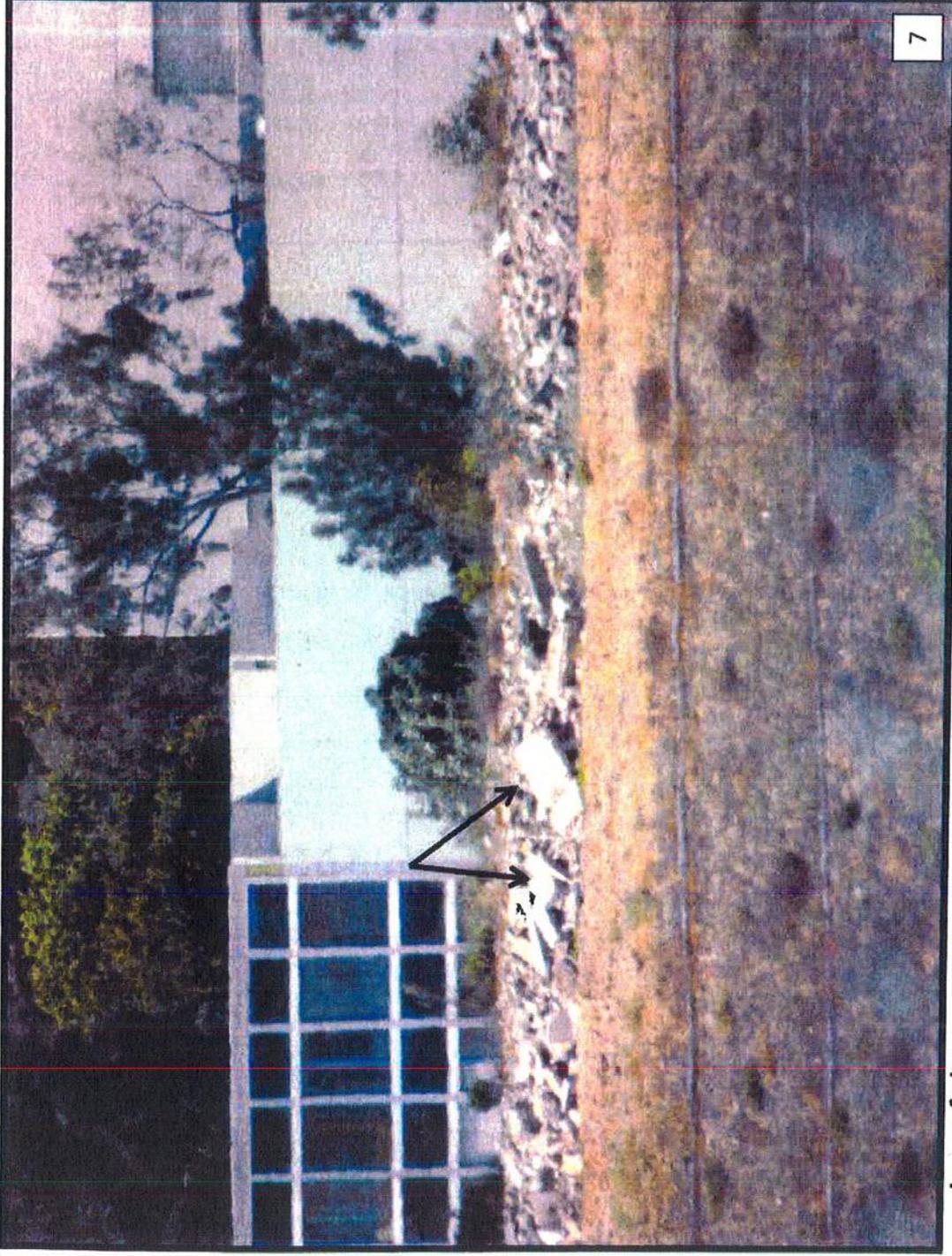
Photograph of the east side of the unprocessed inert material. Photo #4 dated 12/21/13 looking north.



Photograph of the processed inert material on-site. Photo #5 dated 12/21/13 looking northeast.



Distant view of the unprocessed inert material on-site. Photo #6 dated 7/17/13 looking north.



Close up view of the west side of the unprocessed inert material on-site. The section of unprocessed inert debris with an arrow can be seen in photos dated 12/21/13 and 2/1/2013. Photo #7 dated 7/17/13 looking north.

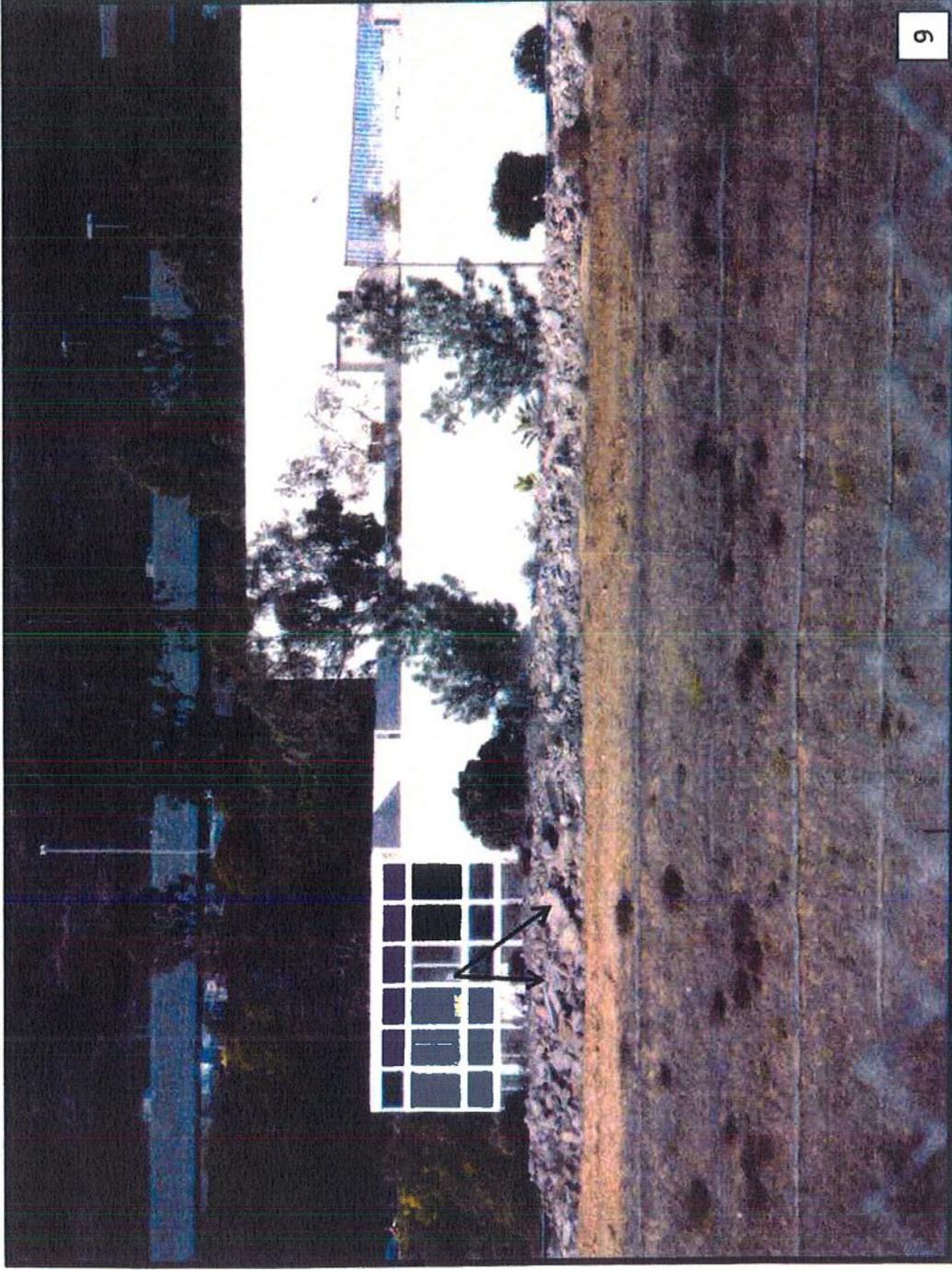
Photos by Anthony Torres

Page 7 of 9

7/17/2013



Distant view of the unprocessed and processed inert material on-site. Photo #8 dated 2/1/13 looking north.



Close up of the west side of the unprocessed inert material on-site. The section of unprocessed inert debris with an arrow can be seen in photos dated 12/21/13 and 7/13/2013. Photo #9 dated 2/1/13 looking north.

## **EXHIBIT D**



## County of San Diego

JACK MILLER  
DIRECTOR

**SOLID WASTE LOCAL ENFORCEMENT AGENCY**  
5500 OVERLAND AVE, SUITE 110 SAN DIEGO, CA 92123  
(858) 694-2888 FAX (858) 495-5004  
1-800-253-9933  
[www.sdcdelh.org](http://www.sdcdelh.org)

ELIZABETH POZZEBON  
ASSISTANT DIRECTOR

### **NOTICE AND ORDER 11-01 (CEASE AND DESIST ORDER)**

Certified Mail 7001 0320 0000 7437 5515

June 1, 2011

Mr. Tom Stenvall  
1254 Delaware Street  
Imperial Beach, CA 91932

The San Diego County Department of Environmental Health is the designated Solid Waste Local Enforcement Agency (LEA) for the City of Chula Vista and is responsible for the regulation of solid waste facilities and operations under the authority of the Public Resources Code (PRC) and Title 14, California Code of Regulations (14 CCR).

This is a **Cease and Desist Order** notifying you, as owner and operator of Amswede Recycling located at 149 Reed Court Chula Vista, CA 91911, that your business is in violation of section 44002 of the PRC and 14 CCR Division 7 Chapters 3.0 and 3.1. You are processing construction demolition and inert debris ("CDI"), which is not an excluded activity as defined in 14 CCR 17382, and you have not satisfied applicable requirements for any operating tier as defined in 14 CCR 17381.2. In addition, you are handling green waste, which is a compostable material, which is not an excluded activity as defined in 14 CCR 17855, and you have not satisfied the applicable requirements for any operating tier as defined in 14 CCR 17856 to 17862.1.<sup>1</sup> **You are hereby ordered to Cease and Desist operations until such time as you have obtained approval and/or permits from the LEA. This Order is effective immediately.**

You must remain closed until you come into compliance with state law. As we have discussed with you previously, there are several options for complying with state law potentially available to you, depending on the nature and size of your activity at the site. Based on prior discussions the regulatory options that are most likely to be feasible and appropriate for you are option 2 below for CDI debris and option 3 below for green waste. Meeting the requirements to satisfy those options may not be difficult for you. However, you have not completed the steps necessary to operate as described in those options, and are operating illegally. All waste management activity at this site must therefore cease.

Regulatory options potentially available to you include the following:

- (1) You could choose to limit your operations to excluded activities as described in 14 CCR 17382 for CDI and 14 CCR 17855 for green waste. This is unlikely to be consistent with your business

<sup>1</sup> Although you are not physically chipping and grinding green waste, the regulatory definition of a "chipping and grinding operation" includes any operations that "otherwise engages in the handling of compostable material."

intentions. You have operated in excess of those limitations in the past and have told us you intend to do so in the future.

- (2) For CDI debris, you could submit an adequate CDI EA Notification Tier or Registration Tier package to the LEA, and receive formal written confirmation from the LEA that you qualify for the tier you propose. This may be a viable option for your CDI operation. It would limit the nature and size of your future CDI operations but we understand that you believe you could operate commercially within those limits. Note that a CDI Notification Tier or Registration Tier status alone would not allow you to handle green waste. To handle green waste in addition to CDI debris, you would also need to implement option 3 below.
- (3) For green waste, you could submit an adequate compostable material EA Notification Tier or Registration Tier package to the LEA, and receive formal written confirmation from the LEA that you qualify for the tier you propose. This may be a viable option for your green waste operation. It would limit the nature and size of your future green waste operations but we understand you believe you could operate commercially within those limits. If you notify the LEA that you intend to qualify for EA Notification Tier or Registration Tier status for both CDI debris and green waste / compostable material, you should plan to physically separate those operations at your site, and to maintain separate records. You would receive two LEA acknowledgments, pay two fees, and be inspected under two sets of requirements.
- (4) You could apply to the LEA for a permit for a solid waste processing and transfer facility. The types of operations and the volumes of waste you could handle would then be determined by this permit. This is a more involved process than an EA Notification Tier or Registration Tier submission, and it would involve a discretionary decision by the LEA that would be subject to the California Environmental Quality Act. In addition, you would be required to demonstrate compliance with any applicable local land use approval requirements.

## FINDINGS

- A. On March 9, 2011 an office meeting was held to discuss your intentions to operate a construction demolition and inert debris (CDI) processing operation. The LEA discussed both the Enforcement Agency (EA) Notification and Registration Permit Tier requirements with you and your paralegal Ms. Elizabeth Scott.
- B. On April 28, 2011 Elizabeth Scott on behalf of Amswede Recycling submitted a draft EA Notification application and operations plan for review and comment.
- C. On May 3, 2011, Ms. Pam Raptis with the LEA provided Ms. Scott with comments identifying the deficiencies in the draft EA Notification application package which included a peak loading of daily tonnage that exceeds the notification tier limit and would require a Registration permit based on proposed tonnage per 14 CCR.
- D. On May 24, 2011, Mr. Anthony Torres with the LEA conducted a site visit at Amswede Recycling located at 149 Reed Court in Chula Vista. Mr. Torres spoke with you about the EA Notification approval process since the LEA had not yet received or approved the Amswede Recycling operation application. Mr. Torres, observed that your facility had received construction, demolition and inert debris, green waste, mixed municipal solid waste, and electronic waste for processing, handling and storage. You stated to Mr. Torres that Amswede Recycling has been operating continuously and the permit application had been submitted to the LEA.

## **VIOLATIONS**

Based on the facts set forth in Findings A through D, the LEA has determined you are operating a CDI Processing Operation in violation of PRC 44002, operation of a solid waste facility without a permit, and in violation of 14 CCR Section 17380 (e).

Based on the facts set forth in Findings A through D, the LEA has determined you are handling green wastes, a compostable material, in violation of PRC 44002, operation of a solid waste facility without a permit, and in violation of 14 CCR 17856 to 17862.1.

## **ORDER**

It is hereby ordered that Mr. Tom Stenvall, as owner and operator of Amswede Recycling, located at 149 Reed Court, Chula Vista, California:

1. Immediately cease and desist operating a small volume construction demolition and inert debris operation and/or other operations requiring a solid waste facility permit.
2. Submit to the LEA an application for approval and/or permit under the appropriate solid waste regulatory tier (depending on planned operations, waste streams and proposed tonnage levels), considering options 1-4 outlined on the previous page. If you propose to handle volumes of CDI that exceed Notification Tier limits, submit a Registration Tier application instead. If you propose to exceed Registration Tier volumes, submit a full permit application including CEQA documentation and evidence of compliance with local land use permit requirements.
3. Submit DEH-LEA application (DEH: LEA-990) to include associated fees for LEA review of application package. For a single application, this fee would be \$568.00 plus the filing cost for the California Environmental Quality Act Notice of Exemption (\$50.00). This cost would double if submitting two applications for review and processing.

### **PLEASE TAKE FURTHER NOTICE THAT:**

1. Pursuant to PRC Section 45011, the LEA has authority to administratively impose a civil penalty not to exceed five thousand dollars (\$5,000) for each day on which the violation occurs if compliance is not achieved within the time schedule set forth in the Notice and Order 11-01 to immediately Cease and Desist.
2. Pursuant to PRC Section 45014, 45023, and 45024, upon failure to comply with this Notice and Order 11-01 to Cease and Desist, the LEA may petition the Superior Court to impose, assess, and recover civil penalties not to exceed ten thousand dollars (\$10,000) per day against any person who:
  - (a) Owns or operates a solid waste facility and who intentionally or negligently violates or causes or permits another to violate the terms and conditions of a solid waste facility permit or a standard, requirement, or order applicable to a solid waste facility;
  - (b) Operates a solid waste facility without a solid waste facilities permit.
3. Pursuant to PRC Section 44307, an operator/owner has the right to appeal the Notice and Order to the LEA Hearing Panel within 15 days of receipt of the Notice and Order.

Mr. Tom Stenvall

June 1, 2011

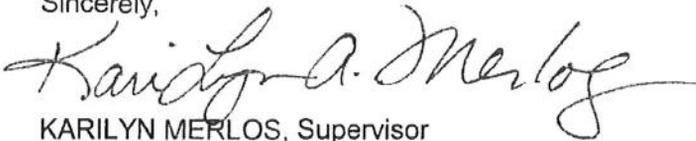
Nothing in this Notice and Oder shall constitute or be construed as a satisfaction or release from liability for any condition or claims arising as a result of past, current or future operations of the Owner/Operator. Notwithstanding compliance with the terms of this Notice and Order, the Owner/Operator may be required to take further actions as are necessary to protect human health and safety and the environment.

This Notice and Order does not relieve the Operator and/or Owner from complying with all other local, state, and federal requirements.

This Notice and Order may only be amended in writing by an appropriate representative of the County of San Diego Solid Waste Local Enforcement Agency.

If you have any questions or wish to meet with the LEA regarding this Cease and Desist Order please contact me at 858-495-5799.

Sincerely,



KARILYN MERLOS, Supervisor  
Local Enforcement Agency

Enclosure: EA Notification form CIWMB 169  
LEA Application form DEH-LEA-990  
Request for Hearing form LEA-108

cc Doug Leeper, Code Enforcement Manager, City of Chula (without enclosures)  
Virginia Rosales, CalRecycle (without enclosure)  
Gary Hartnett, APCD (without enclosure)  
Robert Morris, RWQCB (without enclosure)  
LEA File

Ec: Elizabeth Scott, (eesparalegal@sbcglobal.net) (without enclosure)  
Rod Lorang, County Counsel (without enclosure)  
Rebecca Lafreniere, Chief DEH (without enclosure)