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WAYNE FISHBACK/CEPHEID V LLC/ABC WASTE MANAGEMENT  
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7

8 **BEFORE CALRECYCLE**  
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10 IN THE MATTER OF

11  
12 LOS ANGELES COUNTY DEPARTMENT  
OF PUBLIC HEALTH, SOLID WASTE  
13 MANAGEMENT PROGRAM, acting as  
14 LOCAL ENFORCEMENT AGENCY,

15 vs.

16 BARTON W. (WAYNE) FISHBACK,  
17 CEPHEID V LLC, ABC WASTE  
MANAGEMENT  
18

**REQUEST FOR HEARING; APPEAL OF LOS  
ANGELES LOCAL ENFORCEMENT AGENCY  
HEARING PANEL DECISION**

[California Public Resources Code §§ 45030, 45031]

LEA hearing date:

Date: August 17, 2015

Time: 9:30 a.m.

Place: 5050 Commerce Drive, Room 171  
Baldwin Park, CA 91706

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1 **I. SUMMARY**

2 ABC Waste Management (ABC) and Wayne Fishback request hearing on the Cease and Desist  
3 Order (CDO) issued by the Los Angeles Local Enforcement Agency (LEA) and the July 17, 2015  
4 decision of the LEA local Hearing Panel upholding the CDO. Exhibit 1 and 2.

5 Wayne Fishback’s vision of inert materials diverted from landfills being used to create new  
6 agricultural land is strongly promoted by modern California waste management policy. From recent  
7 CalGreen regulations in the state building code to permitting exemption under the state Integrated Waste  
8 Management Act, inert fill activities are a favored practice.

9 Wayne Fishback is actually doing it. On property located in northern Los Angeles County, just  
10 north of the State Route 118 freeway, he is using “engineered fill” to create usable agricultural land,  
11 keeping harmless “inert debris” out of precious, highly-regulated landfill disposal sites.

12 But instead of encouraging such activity and removing obstacles, the Los Angeles County LEA on  
13 April 30 issued a CDO utterly unsupported by substantial evidence or even substantial allegations. Once  
14 the grounds for the CDO are sorted through it is clear that—if anything—Fishback may need to update  
15 engineering plans and site boundaries, which he is doing. There is no need for a CDO.

16 Upon the LEA’s April 30, 2015 CDO issuance, hearing under Public Resources Code §44307 was  
17 timely requested by Fishback. Exhibit 3. His statement raised seven issues. The last two relate to  
18 contentions that the Los Angeles County LEA hearing panel is not properly appointed. Fishback also  
19 asserts that he operates a inert debris fill operation which is either not required to be approved by the  
20 LEA or if so under minimal “notification” tier approval.

21 Integral with those contentions, the materials used for fill at the location is not solid waste, as  
22 alleged by the LEA. Rather it is un-regulated, source-separated inert debris. Simply put, an engineered  
23 fill operation is not a landfill. The LEA’s presumption that the fill operation is no different than a  
24 garbage dump is incorrect as shown below by examining the CDO and the inspection on which it is  
25 based.

26 At the July 17, 2014 hearing of the three-person Los Angeles Solid Waste Hearing Panel, Fishback  
27 challenged the LEA to produce substantial evidence that the operation was not exempt from full solid  
28

1 waste facility permitting. Instead the LEA asserted that the operation was somehow *de facto* a solid  
2 waste facility because it was putting materials in the ground.

3 The LEA provided no evidence of damage to public health or of environmental detriment by the  
4 operation. The LEA’s complaint about the insufficiency of the engineering plans submitted for the  
5 operation—as required by regulation—were belied by the many months the LEA had the plans before  
6 issuing the CDO. (Regulation does not require that they be approved, only that they be stamped by a  
7 qualified engineer, which they are.)

8 The Hearing Panel’s decision was issued in writing and transmitted by email on July 27. Fishback  
9 and ABC request CalRecycle review of this important niche activity to provide direction to this and  
10 other LEAs on the specifics of the unique regulations applied.

11 The Fishback inert debris activity is safe and substantially compliant with the regulations required  
12 for exemption from solid waste permitting. The Fishback family and their nascent waste management  
13 company have invested heavily to fulfill this favored alternative to landfill disposal. They separately  
14 request an immediate stay of the CDO until hearing can be provided.

15  
16 **II. THE SITES AND THEIR WASTE DISCHARGE REQUIREMENTS**

17 The LEA’s Order pertains here to two different parcels, often referenced as “30 and 31.” The full  
18 parcel numbers are 2821-009-030 and 2821-009-030. Separate Waste Discharge Requirement (WDR)  
19 letters of exemption were issued for fill at the two parcels. WDR exemption for parcel 30 expired at the  
20 end of April—the same time that the LEA’s order was issued, and the same time fill ceased there.

21 The WDR exemption for the parcel 31 activity was issued through September 2015. After the April  
22 30 CDO was issued, the LEA notified the Regional Water Quality Control Board of discrepancies  
23 between the activity’s boundaries and those on the parcel 30 WDR exemption. Fishback will represent  
24 that they believed the variation was authorized. However, he is working intensively with the regional  
25 board to reinstate the exemption, primarily with more detailed plans and drawings requested by the  
26 regional board.

1 **III. THE LEA’S CITED LEGAL AUTHORITY**

2 The LEA’s CDO cites a laundry list of state and local code, regulation and ordinance sections as  
3 authority for its finding. The Order however noticeably fails to reference facts specific to each violation.  
4 This results in a complete lack of substantial evidence to support the action.

5 Following is a run-through of the various authority cited by the LEA.

6 **1. California Public Resources Code**

7 The LEA’s Order cites California Public Resources Code §§ 43000 *et seq.*, §44000.5, §44001,  
8 §44002, §45000, §45005, §45010, §45010.1, §45010.2, §45011, §45012, §45014, §45018, §45023,  
9 §45024, §45025.<sup>1</sup>

10 Most of these sections are inapplicable to the findings or the CDO here. A quick rundown:

11 PRC §§43000 *et seq* are those general statutes under Part 4 of the WMA concerning the permitting  
12 and operation of solid waste facilities.

13 The LEA Order cites PRC §44000.5 in particular. That section prohibits disposal of “solid waste...  
14 except at a solid waste disposal facility for which a solid waste facilities permit has been issued pursuant  
15 to this chapter or as otherwise authorized pursuant to this division and the regulations adopted by the  
16 board pursuant to this division.”

17 PRC §44001 requires that “an operator of a solid waste facility” apply for a solid waste facility  
18 permit with the LEA. The following section, §44002, subsection (a)(1) states: “No person shall operate a  
19 solid waste facility without a solid waste facilities permit if that facility is required to have a permit  
20 pursuant to this division.” (Emphasis added.)

21 The next sections cited by the LEA concern enforcement of solid waste facilities under Part 5 of the  
22 WMA. In particular §45001 provides the LEA with authority to issue corrective orders for violation of  
23 §44000.5 (where a solid waste facility permit is required), “as necessary to abate a nuisance or to protect  
24 human health and safety or the environment.”

25 PRC §45005 grants the LEA power to issue a cease and desist order (CDO) against the operator of a  
26 “solid waste facility” or “disposal site.” A CDO may also be issued for violations of a solid waste  
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28 <sup>1</sup> The LEA Order also cites PRC §44307 and §44310. These sections are those providing for the appeal of the alleged violator, under which the instant hearing is being held. They cannot therefore be in themselves violations.

1 facilities permit under this section, or when conducted “In a manner that causes or threatens to cause a  
2 condition of hazard, pollution, or nuisance.”

3 PRC §45010 is especially noteworthy. It provides for the issuance of fines to a violating “solid  
4 waste facility” but “only after all reasonable efforts pursuant to Section 45010.2 have been made by  
5 enforcement agencies to provide proper notice of violations to alleged violators as well as a reasonable  
6 opportunity to bring solid waste facilities and disposal sites into compliance with this division.”

7 PRC §45010.2, referenced above, requires that before any enforcement order is issued the LEA  
8 must specify the violations and meet with the operator to go over the violations (presumably in good  
9 faith).

10 The other PRC sections cited in the order under Article 3 apply to how civil penalties are levied and  
11 collected.

## 12 **2. California Code of Regulations Title 14**

13 The LEA’s Order cites the following sections from Title 14 of the California Code of Regulations:  
14 §17312, §17388, §17388.2, §17388.3, §18304.1 and §18304.3.

15 It is important to distinguish these sections. Section 17312 pertains to garbage—solid waste: “In all  
16 cases in which garbage and rubbish are combined, the standards for garbage shall prevail.”

17 The next citations, §17388, §17388.2 and §17388.3, pertain to definitions of non-solid-waste  
18 facilities, in particular the handling and disposition of C&D (construction and demolition) waste and  
19 “inert fill.” Here we get to the actual case considered:

20 Section 17388, subsection (k) details types of inert materials in two classes, Type A and Type B.  
21 Subsection (l) of §17388 then provides a lengthy definition of “ Inert Debris Engineered Fill Operation”  
22 (IDEFO).

23 As the IDEFO definition is key here, its substance is provided as follows: It means an activity:

- 24 • Exceeding “one year in duration in which only the following inert debris may be used: fully  
25 cured asphalt, uncontaminated concrete (including steel reinforcing rods embedded in the  
26 concrete), crushed glass, brick, ceramics, clay and clay products, which may be mixed with  
27 rock and soil.”

- 1 • “Those materials are spread on land in lifts and compacted under controlled conditions to  
2 achieve a uniform and dense mass which is capable of supporting structural loading, as  
3 necessary, or supporting other uses such as recreation, agriculture and open space in order  
4 to provide land that is appropriate for an end use consistent with approved local general and  
5 specific plans (e.g., roads, building sites, or other improvements) where an engineered fill is  
6 required to facilitate productive use(s) of the land.” Emphasis added.
- 7 • “Filling above the surrounding grade shall only be allowed upon the approval of all  
8 governmental agencies having jurisdiction.”
- 9 • “The engineered fill shall be constructed and compacted in accordance with all applicable  
10 laws and ordinances and in accordance with specifications prepared and certified at least  
11 annually by a Civil Engineer, Certified Engineering Geologist, or similar professional  
12 licensed by the State of California and maintained in the operating record of the operation.”
- 13 • “The operator shall also certify under penalty of perjury, at least annually, that only  
14 approved inert debris has been placed as engineered fill, and specifying the amount of inert  
15 debris placed as fill. These determinations may be made by reviewing the records of an  
16 operation or by on-site inspection.”

17 Further detailed requirements for the operation of the IDEFO are found in 14 CCR §13788.3. That  
18 section places IDEFO operations in the “notification” tier of regulation. That is, the LEA must be  
19 notified, certain submittals provided and operations inspected by the LEA for compliance with further  
20 standards. Furthermore, the IDEFO “shall comply with all applicable RWQCB waste discharge  
21 requirements.”

22 Under §13788.3, the IDEFO must comply with state minimum standards of operation as they  
23 apply.<sup>2</sup> These are the standards cited by the LEA’s inspection of parcel’s 30 and 31.

24 However, Fishback asserts that the operations are exempt under 14 CCR 17388.2(3).<sup>3</sup> The parcel 30  
25 activities were ceased within one year and parcel 31 will also be.

26 \_\_\_\_\_  
27 <sup>2</sup> “All inert debris engineered fill operations shall comply with the State Minimum Standards set forth in Title 27 CCR,  
28 Division 2, Chapter 3.0, Subchapter 4, Article 1 (Operating Criteria), and Article 3 (Handling, Equipment and Maintenance),  
and Article 4 (Controls) (except sections 20515, 20640, 20880, and 20890).” 14 CCR §17388.3(d).

1 An IDEFO can be required to obtain a full solid waste facility if within two years it receives three  
2 violations specified under §17388.3(h), essentially disposing of material not inert debris or failing to  
3 provide the engineer's and operates certifications required.

### 4 **3. Los Angeles County Code**

5 The LEA's order cites no authority for its power to enforce the Los Angeles County Code. The  
6 sections allegedly violated are Los Angeles County Code Title 11 §11.16.020, §12.80.440(A) and (D),  
7 §20.64.010, §20.64.020, §20.80.050, §20.80.060, §20.80.070, §20.80.080, §20.80.100, and §20.86.020.

8 Title 11.16.020 simply states that the condition of a disposal location is the responsibility of the  
9 owner. Title 12, sections 80.440(A) and (D) prohibit garbage dumping. Title 20 sections 64.010 and  
10 64.020 require a permit to engage in solid waste collection or disposal;<sup>4</sup> Title 20 sections 80.050,  
11 80.060, 80.070, 80.080 and 80.100 authorize cease and desist order for failure to have solid waste  
12 facility permit, and 86.020 provides for injunction.

13 At the Hearing Panel hearing, the LEA offered a (coincidentally) just-filed County of Los Angeles  
14 superior court action for injunction against the Fishback operation. As the allegations therein were not  
15 the basis for CDO of April 30, they are beyond the scope of the appeal here. However, just based upon  
16 the County ordinances cited by the LEA in the CDO, it appears that the Fishback operation is conducted  
17 "of right" under County of Los Angeles ordinances.

## 18 **IV. SUMMARY OF ISSUES**

19  
20 The LEA's CDO is noticeably lacking in any factual findings related to the violations alleged. The  
21 only specific allegation is the charge that Fishback is operating a solid waste facility and disposing of  
22 "solid waste." The LEA provides no substantial evidence for such a claim. None.

23 Fishback submitted the certification of the materials accepted as required under §17388.3.  
24 (Provided also at the LEA Hearing Panel.) Engineering plans—certified by a licensed engineer—were  
25

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26 <sup>3</sup> "Inert debris engineered fill activities which conclude within one year of commencement and that meet all requirements of  
27 section 17388.3 of this Article, except subsections (b) inspections, (c) Plan, (d) State Minimum Standards, (g) final cover, (h)  
scales and submittal of EA Notification."

28 <sup>4</sup> It is unclear if the ordinances require a separate County landfill permit, a field occupied by the state WMA and therefore preempted.

1 filed with the County. The LEA quibbles with the specifics of the engineering plans but cannot dispute  
2 that they were certified by a licensed engineer. The LEA has made no effort to contest the adequacy of  
3 the engineer’s certification. At the time of the CDO, the facility had been operating more than a year  
4 under WDR exemptions.

5 As discussed below, the inspection report which is the CDO’s basis contains no reference to the  
6 nature of the fill material; certainly no evidence of hazard or contamination is presented. Because there  
7 is none.

8 Instead the CDO states the operation is conducted “without the required solid waste facility permits,  
9 notifications, and/or engineering specifications, as may be applicable.” (Emphasis added.)

10 “As may be applicable?”

11 Nothing in the order states what “permits, notifications, and/or engineering specifications” are  
12 required. A simple review of the facility, the existing “notification” status of the facility, and the  
13 violations of the last LEA inspection reveal that the CDO is without substantial evidence to support it.

14 **1. Fishback is permitted as an Inert Debris Engineered Fill Operation.**

15 Fishback’s operation is listed on the CalRecycle Solid Waste Facility Database as a permitted Inert  
16 Debris Engineered Fill Operation (IDEFO). ABC Waste Management IDEFO, SWIS 19-AA-1134.<sup>5</sup>

17 The facility is permitted as a “notification” facility. That is, it must merely notify the LEA. Which it  
18 has done. All certifications of the materials accepted and engineering were provided with the original  
19 notification. The operation is permitted to accept 2,000 tons per day—a large amount.

20 While the CDO flatly states that “solid waste” is used for the fill operation, there is no factual  
21 finding stated. There is no finding, for example, that non-approved fill materials were seen at the site.  
22 No finding was stated that the inspector even looked at the materials accepted.

23 **2. No nuisance is cited in support of the LEA order.**

24 As noted above, §45001 provides the LEA with authority to issue corrective orders where a solid  
25 waste facility violates the §44000.5 requirement of a solid waste facility permit, “as necessary to abate a  
26 nuisance or to protect human health and safety or the environment.”

27 \_\_\_\_\_  
28 <sup>5</sup> <http://www.calrecycle.ca.gov/SWFacilities/Directory/19-AA-1134/Detail/>

1 Remarkably, the LEA’s CDO neither cites nor supports any nuisance or health risk from the  
2 Fishback operation. Nothing. No litter. No runoff or water discharge. The Order says that dust control is  
3 lacking, but provides no evidence of a dust problem.

4 In May, 2015, the RWQCB withdrew its Waste Discharge Requirement letter of exemption, citing  
5 Fishback fill in areas outside of the exemption previously granted. But that action neither cites nor raises  
6 a nuisance or health risk. Rather, the WDR status is a regulatory requirement that is being worked  
7 through by the parties with a specific submittal list. Indeed, such a list was arrived at with the LEA’s  
8 engineers after the CDO was issued. (The submittals are largely identical.)

9 Finally, it must be noted that the RWQCB withdrawal came after the date of the LEA CDO here,  
10 and clearly at the prompting of the LEA, as cited in the RWQCB exemption withdrawal.

### 11 **3. The December inspection**

12 The last recorded inspection by the LEA on the CalRecycle website was December 19, 2014.  
13 CalRecycle posted the inspection report on June 22, 1915, where the following comment is provided  
14 (see page 66 of the LEA submittal package to the Hearing Panel):

15 “In an email to Calrecycle staff member, Steve Levine, on 10/16/14 ABC Waste Management asked  
16 to reclassify SWIS 19-AA-1134 from and IDEFO to an IDEFA. The LEA is submitting the proper  
17 notification to CalRecycle to do this. Please keep in mind that any IDEFA to be excluded under 17388.2  
18 must discontinue and conclude fill activities within one year of commencement. It is believed that  
19 operations for this IDEFA originally started in April or early May of 2014 and the LEA has asked ABC  
20 Waste management for records to show fill amounts, type, and when the site commenced operation.  
21 IDEFA activities must follow 14 CCR Section 17388.3, except excluded sections. Additionally, the  
22 LEA will exercise 14 CCR Section 17388.2(b), and 17388(g) and 17388.3 (h), (1) Disposal of any  
23 wastes not authorized by subsection 17388(1);(2) Failure to comply with the requirements for  
24 certification by an engineer specified in subsection 17388(1);(3) Failure to comply with requirements for  
25 operator certification of materials disposed in the fill as required by subsection 17388(1). Site was not in  
26 operation at time of inspection. No site personal were present. Site was unsecured. It appears a  
27 significant amount of material has been deposited since the last site visit. Notice and Order issued to W.  
28 Fishack and Cephied V LLC on April 30 2015 for illegal disposal, enforcement pending.”

1 **4. Notes on the December violations cited**

2 The actual violations of the December LEA inspection should be reviewed in its specifics. In doing  
3 so it becomes clear that no substantial evidence supports the violations stated. Following is a rundown  
4 from the inspection checklist.

5 RWQCB issues

6 The first few violations cited are RWQCB matters. The WDR exemption withdrawal appears to be  
7 related to the boundaries of the activities, and this issue is being addressed. As fill on the parcel 30 site  
8 ceased with the expiration of the WDR exemption, this activity was allowed. Parcel 31 has a WDR  
9 exemption which Fishback is working to clear. Again, the RWQCB withdrawal of the exemption came  
10 after the LEA's April 30 CDO.

11 Record keeping

12 The next couple violations in the LEA's December inspection report relate to record keeping. The  
13 inspection report notes that there was nobody at the fill site. As the inspection was not announced, there  
14 was no opportunity to provide any records.

15 Title 14 CCR §17389(a) requires: "All records required by this Article shall be maintained in a  
16 single accessible location for at least three (3) years and shall be available for inspection by authorized  
17 representatives of the board, EA, local health agency, and other duly authorized regulatory and  
18 enforcement agencies during normal working hours."<sup>6</sup>

19 The LEA could have asked and the records would be provided.

20 The LEA inspection notes: "Operation plan has inconsistencies and LEA permitting staff are  
21 seeking clarification and corrections to plan." The inconsistencies are not specified but could apparently  
22 be clarified, which Fishback is attempting to do, working cooperatively with LEA engineers.

23 Signs and security

24 The LEA inspection cites 27 CCR §20520 and §20530 as "areas of concern." These regulations are  
25 focused on facilities open to the public—which this is not—and provide that the LEA may add  
26 conditions of signage and security, which it does not.

27 \_\_\_\_\_  
28 <sup>6</sup> 14 CCR §17388(o) states that: "The records may be maintained at any location that is easily accessible to the EA."

1        Roads

2        Title 27 CCR §20540 provides:

3        “Roads within the permitted facility boundary shall be designed to minimize the generation of dust  
4 and the tracking of material onto adjacent public roads. Such roads shall be kept in safe condition and  
5 maintained such that vehicle access and unloading can be conducted during inclement weather.”

6        The violation notes that the roads to the facility are “steep and narrow.” The inspection fails to cite  
7 their condition resulting in any harm. There was no activity at the site when the inspection was done.

8        Further below in the inspection report it cites 27 CCR §20860, requiring site traffic controls where  
9 necessary. The LEA inspection fails to point out where or why controls are necessary at a remote fill  
10 operation.

11        The report also cites a violation of 27 CCR §20800, requiring “adequate measures to minimize the  
12 creation of dust.” The inspection report simply states that dust control is inadequate without any  
13 supporting facts.

14        Grading, drainage and engineering

15        The LEA inspection report cites several related violations under grading (27 CCR §20650),  
16 drainage and erosion (27 CCR §20820).

17        County zoning ordinances are the basis for the violations, according to the inspection report. No  
18 grading plan has been submitted to the County Department of Building and Safety, and a notice of non-  
19 compliance with County zoning had been issued, according to the inspection report.

20        The LEA is a state agent. The LEA is not the County enforcement agent. Thus that issue is not  
21 before the LEA hearing panel here.

22        Furthermore, 27 CCR §20650, cited by the inspection report provides simply:

23        “Covered surfaces of the disposal area shall be graded to promote lateral runoff of precipitation and  
24 to prevent ponding. Grades shall be established of sufficient slopes to account for future settlement of  
25 the fill surface. Other effective maintenance methods may be allowed by the enforcement agency.”

26        The LEA inspection report does not cite runoff or ponding. And the fact is that there is no runoff or  
27 ponding. The LEA’s violation here seems intended only to act as building inspector, not LEA.

28

1 **5. The engineering plan deficiencies are not specified and cannot be significant.**

2 The inspection report also cites a violation under 14 CCR 173883(h) for: “Engineering plans not  
3 submitted that meet requirements for an IDEFO or IDEFA.”

4 Engineering plans were required when the fill site was approved as a notification-tier inert facility  
5 by both the LEA and CalRecycle. And they were provided, certified by a licensed engineer. There can  
6 be and there is no contention otherwise.

7 Fishback submitted further plans in response to comments back from the LEA. The revisions,  
8 additions and explanations sought by the LEA were insignificant, several simply seeking clarification of  
9 non-substantive sheet comments on such matters as the benefits of inert fill (well established in policy).

10 Fishback should at least have the chance to know specifically what is missing from the engineering  
11 and operating plans on file with the LEA already. He should be given a fair chance to cure any defects.

12  
13 **V. CONCLUSION**

14 The LEA is mandated to work through inspection violations with operators. Here instead, it issued  
15 violations without substantial evidence and summarily issued the CDO. Even more draconian, the LEA  
16 ordered “corrective action” requiring that all “solid waste” be removed at the location.

17 This is a fill operation that always was and still is operating under a valid state permit exemption. It  
18 is an operation that achieves a significant public benefit in diverting materials that would otherwise go  
19 into garbage dumps. Fishback respectfully requests a stay of the CDO, a hearing on the grounds of the  
20 CDO and the chance to work with the LEA to enter into a true “corrective action” plan that cures the  
21 (largely minor) inspection violations while he continues to provide this service.

22  
23 DATE: August 6, 2015

\_\_\_\_\_/s/\_\_\_\_\_  
KELLY T. SMITH  
Attorney for Owner/Operator  
WAYNE FISHBACK and ABC WASTE MANAGEMENT

# **EXHIBIT 1**



Los Angeles County Department of Public Health  
Solid Waste Management Program/Local Enforcement Agency  
5050 Commerce Drive, Baldwin Park, C.A., 91706  
626.430.5540

**CEASE AND DESIST AND CORRECTIVE ACTION ORDER**  
**OF THE**  
**LOS ANGELES COUNTY LOCAL ENFORCEMENT AGENCY**  
**April 30, 2015**

<b>IN THE MATTER OF:</b>	<b>CEASE AND DESIST, AND CORRECTIVE ACTION ORDER</b>
Barton W. Fishback 3106 Calusa Ave., Simi Valley, Ca., 93063-5709 Los Angeles County Assessor's Parcel Number: <b>2821-009-030</b>	California Public Resources Code Sections 43000 et. Seq., 44000.5, 44001, 44002, 44307, 44310, 45000, 45005, 45010, 45010.1, 45010.2, 45011, 45012, 45014, 45018, 45023, 45024, 45025; Los Angeles County Code Title/Sections 11.16.020, 12.80.440(A) and (D), 20.64.010, 20.64.020, 20.80.050, 20.80.060, 20.80.070, 20.80.080, 20.80.100, and 20.86.020; and California Code of Regulations Title 14, Sections 17312, 17388, 17388.2, 17388.3, 18304.1 and 18304.3

**TO: Barton W. Fishback,**

**PLEASE TAKE NOTICE THAT:**

WHEREAS, Land with Los Angeles County Assessor's Parcel Number 2821-009-030 located near Brown's Canyon Road and Ybarra Canyon Road, in Chatsworth, California 91311 which are owned, used and/or controlled by you and is currently and in the past been operated as unpermitted or illegal solid waste disposal facility; and

WHEREAS, the Los Angeles County Department of Public Health, Solid Waste Management Program, has authority to act in the capacity of the Local Enforcement Agency (LEA) for the Site(s) pursuant to California Public Resources Code ("PRC") Section 43200 et seq., and is so acting; and



1           WHEREAS, you, Barton W. Fishback is the legally responsible party for the disposal of  
2 solid waste and/or the deposition of fill that has been and/or is occurring and was observed on  
3 February 26, 2015 at this parcel without the required solid waste facility permits, notifications,  
4 and/or engineering specifications, as may be applicable, in violation of PRC Sections 44000.5,  
5 44001 and 44002(a)(1) and (2)(b), California Code of Regulations ("CCR") Title 14, Sections  
6 17388, 17388.2, 17388.3, 18304.1 and 18304.3, and Los Angeles County Code ("LACC")  
7 Sections 11.16.020, 12.80.440(A) and (D), 20.64.010, and 20.64.020; and

8  
9  
10 **THEREFORE, PURSUANT TO PRC SECTIONS 45000, 44002, 45005, and 45011, the**  
11 **California Code of Regulations, Sections 17132, 18304.1, 18304.3, and the LACC Title 11,**  
12 **Section 11.16.020, Title 12, Section, 12.80.440(A)(D) Title 20, Sections 20.80.050, 20.80.060 and**  
13 **20.80.070, 20.80.080, BARTON W. FISHBACK IS HEREBY ORDERED TO:**

- 14
- 15           1. Immediately cease and desist all on-site activities relating to stockpiling, deposition ,  
16           disposal and/or covering of solid waste on any portion of the Site(s).
  - 17           2. Immediately cease and desist the acceptance of any fill material, solid waste, and/or  
18           organic material, other than naturally occurring gravel, rock, soil, sand, or other similar  
19           material that has never been used in connection with any construction project, and/or the  
20           placement of cover material over areas where solid waste was previously  
21           disposed/deposited at any portion of the Site(s).
  - 22           3. Do not allow any pollutants, leaves, dirt, or other landscape debris to be discharged  
23           into/onto any a street, alley, catch basin, culvert, curb, gutter, inlet, ditch, natural  
24           watercourse, flood control channel, canal, storm drain, or any fabricated or natural  
25           conveyance.
  - 26           4. Do not allow any material to be discharged or allow the continued existence of a  
27           deposit of material which may create a public nuisance, or menace to the public

1 health or safety, or which may pollute underground or surface waters or the  
2 environment.

- 3 5. Submit to the LEA for review and approval a waste removal plan for all solid waste and  
4 materials deposited/disposed on the Site by June 1, 2015. The plan shall include site  
5 characterization to determine horizontal and vertical extent and type of waste and non-  
6 naturally occurring fill, method of waste removal, and a plan for properly transporting  
7 the waste to an appropriately permitted waste disposal facility or facilities, or, as  
8 appropriate, to a recycling facility. (See CCR 27, Section 21810 for full regulatory  
9 requirements.)
- 10 6. Remove any and all solid waste, inert material or materials that have been deposited  
11 and/or accumulated, or placed at the Site in accordance with the waste removal plan  
12 approved by the LEA. All solid waste and inert materials or other material shall be  
13 completely removed from the property no later than 6 months after the date the LEA  
14 approves the waste removal plan.

15  
16 **BE IT FURTHER NOTICED THAT THE FOLLOWING CONDITIONS AND/OR**  
17 **REQUIREMENTS SHALL APPLY TO BARTON W. FISHBACK, WITH REGARDS TO**  
18 **THE SITE AND RESOLUTION OF ALL SOLID WASTE COMPLIANCE ISSUES:**

19 In accordance with the P.R.C. Sections 43222, 45000, 45010, 45012, and 45024 et. al., and  
20 Los Angeles County Code Section 20.80.060, and CCR 18304.1(b)

- 21 1. Any fees and/or costs, incurred by the LEA or cost the LEA may incur to remediate the  
22 site or to complete the corrective action measures pursuant to this Order including  
23 review of all required plans, reports, studies, as well as site inspections performed by the  
24 LEA shall be the sole responsibility of Barton W. Fishback and the LEA may petition  
25 the Solid Waste Hearing Panel to recover those costs.
- 26 2. Compliance with state and local solid waste requirements does not relieve the property  
27 owner or operator from the laws and regulations of other agencies or departments of Los

1 Angeles County or the State of California as they pertain to regulated activities on said  
2 property.

3 **TAKE NOTICE THAT PURSUANT TO P.R.C. SECTIONS, AND 45010.1, 45010.2, 45014,**  
4 **45018, and LACC 20.80.100, if the above actions are not completed or complied with by the dates**  
5 **specified herein, the LEA may also administratively, impose a civil penalty up to \$5,000 per day for**  
6 **each day on which violation occurs, and \$1,000 per day according to LACC for each day a violation**  
7 **exists.**

8  
9 **PLEASE NOTE THAT, IN ADDITION TO, OR IN LIEU OF, THE LEA**  
10 **ADMINISTRATIVELY IMPOSING ANY CIVIL PENALTY UNDER P.R.C. SECTION**  
11 **45011 and LACC 20.80.100 PURSUANT TO P.R.C. SECTION 45000, 45014, AND 45023,**  
12 **45024 and 45025 and LACC Section 20.86.020 if the above actions are not completed or**  
13 **complied by the dates specified herein, the LEA will petition the courts of the State for the**  
14 **following relief:**

15 1. For injunctive relief:

- 16 a. requiring compliance with all State laws and regulations; and  
17 b. enforcing this Cease and Desist and Corrective Action Order.

18 2. For imposition of the maximum civil penalties allowed by applicable law for day of  
19 violation of applicable State Laws and regulations, not to exceed \$10,000 per day. (P.R.C. Section  
20 45023)

21 Failure to remedy the aforementioned violation by the required date may result in the  
22 LEA petitioning the Department of Resources Recycling and Recovery ("CalRecycle"), to  
23 expend available funds to perform any cleanup, abatement, or remedial work required under the  
24 circumstances set forth in P.R.C. section 45000 which, in the judgment of CalRecycle, is  
25 required by the magnitude of endeavor or the need for prompt action to protect public health and  
26 safety or the environment. If CalRecycle expends funds to perform any cleanup, abatement, or  
27

1 remedial work, CalRecycle may seek cost reimbursement from the operator or owner pursuant to  
2 P.R.C. section 45000(d).

3  
4 **PLEASE NOTE THAT IN ADDITION TO THE LEA IMPOSING ADMINISTRATIVE**  
5 **PENALITES AND/OR PETITIONING CALRECYCLE TO EXPEND FUNDS TO**  
6 **CLEAN THE SITE(S) THE LEA/COUNTY OF LOS ANGELES MAY IN**  
7 **ACCORDANCE WITH LACC SECTION: 20.80.060, PETITION THE SOLID WASTE**  
8 **HEARING PANEL TO AUTHORIZE MONEYS TO PERFORM THE CLEANUP AND**  
9 **SEEK REIMBURSEMENT FROM BARTON W. FISHBACK TO RECOVER THOSE**  
10 **COSTS.**

11  
12 **IN ACCORDANCE WITH THE P.R.C. SECTIONS 44307 AND 44310, PERSONS**  
13 **SUBJECT TO THIS ORDER ARE HEREBY NOTIFIED OF THE FOLLOWING:**

14 It is the right of Barton W. Fishback, as the subject of this Order to request a hearing to appeal this  
15 Order. Any hearing shall be initiated by persons subject to the Order by filing a written request for  
16 a hearing with a statement of the issues to the LEA, within 15 days from the date this Order is  
17 served.

18  
19 **FINALLY**, nothing in this Cease and Desist and Corrective Action Order shall constitute  
20 or be construed as a satisfaction or release from liability for any conditions or claims arising as a  
21 result of past, current, or future operations. Notwithstanding compliance with the terms of this  
22 Cease and Desist and Corrective Action Order, the owner and operator may be required to take  
23 further actions as necessary to protect the public health, safety, or the environment.

24  
25 This notice shall not supersede any other existing orders from any other agency that may  
26 have already been issued to you that directs you to remove the waste from your property.

27

1 Compliance dates from any other agencies must be met to prevent those agencies from taking  
2 legal action against you.

3  
4 The LEA shall not be liable for injuries or damages to persons or property resulting from  
5 acts or omissions by the owner or operator or related parties in carrying out activities pursuant to  
6 this Cease and Desist and Corrective Action Order, nor shall the LEA be held as a party to any  
7 contract entered into by the owner or operator or their agent(s) in carrying out activities pursuant  
8 to this Cease and Desist and Corrective Action Order.

9 This Cease and Desist and Corrective Action Order is supported by the accompanying  
10 declaration of Chris Mastro.

11 Please contact Chris Mastro or Gerry Villalobos at (626) 430-5540 if you have any questions or  
12 wish to discuss this order.

13

14 By: \_\_\_\_\_ Date \_\_\_\_\_

15 Gerardo Villalobos, Chief EHS  
16 Los Angeles County  
17 Solid Waste Management Program  
18 Local Enforcement Agency

19

20 c: Jose De LaRosa, Los Angeles County Department of Regional Planning  
21 Ron Dockery, Los Angeles County Department of Building and Safety  
22 Jeff Hackett, CalRecycle  
23 South Coast Air Quality Management District  
24 Los Angeles Regional Water Quality Control Board  
25 Grace Chang, Los Angeles County Counsel

26

27

1 Compliance dates from any other agencies must be met to prevent those agencies from taking  
2 legal action against you.

3  
4 The LEA shall not be liable for injuries or damages to persons or property resulting from  
5 acts or omissions by the owner or operator or related parties in carrying out activities pursuant to  
6 this Cease and Desist and Corrective Action Order, nor shall the LEA be held as a party to any  
7 contract entered into by the owner or operator or their agent(s) in carrying out activities pursuant  
8 to this Cease and Desist and Corrective Action Order.

9 This Cease and Desist and Corrective Action Order is supported by the accompanying  
10 declaration of Chris Mastro.

11 Please contact Chris Mastro or Gerry Villalobos at (626) 430-5540 if you have any questions or  
12 wish to discuss this order.

13  
14 By: Gerardo Villalobos Date APRIL 30, 2015

15 Gerardo Villalobos, Chief EHS  
16 Los Angeles County  
17 Solid Waste Management Program  
18 Local Enforcement Agency

- 19  
20 c: Jose De LaRosa, Los Angeles County Department of Regional Planning  
21 Ron Dockery, Los Angeles County Department of Building and Safety  
22 Jeff Hackett, CalRecycle  
23 South Coast Air Quality Management District  
24 Los Angeles Regional Water Quality Control Board  
25 Grace Chang, Los Angeles County Counsel  
26  
27



Los Angeles County Department of Public Health  
Solid Waste Management Program/Local Enforcement Agency  
5050 Commerce Drive, Baldwin Park, C.A., 91706  
626.430.5540

**CEASE AND DESIST AND CORRECTIVE ACTION ORDER**  
**OF THE**  
**LOS ANGELES COUNTY LOCAL ENFORCEMENT AGENCY**  
**April 30, 2015**

<b>IN THE MATTER OF:</b>	<b>CEASE AND DESIST, AND CORRECTIVE ACTION ORDER</b>
Cepheid V L.L.C./Charles Lee 37 West Delta Green Port Hueneme, Ca., 93041 Los Angeles County Assessor's Parcel Number: <b>2821-009-031</b>	California Public Resources Code Sections 43000 et. Seq., 44000.5, 44001, 44002, 44307, 44310, 45000, 45005, 45010, 45010.1, 45010.2, 45011, 45012, 45014, 45018, 45023, 45024, 45025; Los Angeles County Code Title/Sections 11.16.020, 12.80.440(A) and (D), 20.64.010, 20.64.020, 20.80.050, 20.80.060, 20.80.070, 20.80.080, 20.80.100, and 20.86.020; and California Code of Regulations Title 14, Sections 17312, 17388, 17388.2, 17388.3, 18304.1 and 18304.3

**TO: Cepheid V L.L.C./Charles Lee,**

**PLEASE TAKE NOTICE THAT:**

WHEREAS, Land with Los Angeles County Assessor's Parcel Number 2821-009-031 located near Brown's Canyon Road and Ybarra Canyon Road, in Chatsworth, California 91311 which are owned, used and/or controlled by you and is currently and in the past been operated as unpermitted or illegal solid waste disposal facility; and

WHEREAS, the Los Angeles County Department of Public Health, Solid Waste Management Program, has authority to act in the capacity of the Local Enforcement Agency (LEA) for the Site(s) pursuant to California Public Resources Code ("PRC") Section 43200 et seq., and is so acting; and

1           WHEREAS, you, Cepheid V L.L.C./Charles Lee is the legally responsible party for the  
2 disposal of solid waste and/or the deposition of fill that has been and/or is occurring and was  
3 observed on February 26, 2015 at this parcel without the required solid waste facility permits,  
4 notifications, and/or engineering specifications, as may be applicable, in violation of PRC  
5 Sections 44000.5, 44001 and 44002(a)(1) and (2)(b), California Code of Regulations ("CCR")  
6 Title 14, Sections 17388, 17388.2, 17388.3, 18304.1 and 18304.3, and Los Angeles County Code  
7 ("LACC") Sections 11.16.020, 12.80.440(A) and (D), 20.64.010, and 20.64.020; and  
8  
9

10 **THEREFORE, PURSUANT TO PRC SECTIONS 45000, 44002, 45005, and 45011, the**  
11 **California Code of Regulations, Sections 17132, 18304.1, 18304.3, and the LACC Title 11,**  
12 **Section 11.16.020, Title 12, Section, 12.80.440(A)(D) Title 20, Sections 20.80.050, 20.80.060 and**  
13 **20.80.070, 20.80.080, CEPHEID V L.L.C./CHARLES LEE IS HEREBY ORDERED TO:**  
14

- 15           1. Immediately cease and desist all on-site activities relating to stockpiling, deposition, and  
16 disposal and/or covering of solid waste on any portion of the Site.
- 17           2. Immediately cease and desist the acceptance of any fill material, solid waste, and/or  
18 organic material, other than naturally occurring gravel, rock, soil, sand, or other similar  
19 material that has never been used in connection with any construction project, and/or the  
20 placement of cover material over areas where solid waste was previously  
21 disposed/deposited at any portion of the Site(s).
- 22           3. Do not allow any pollutants, leaves, dirt, or other landscape debris to be discharged  
23 into/onto any a street, alley, catch basin, culvert, curb, gutter, inlet, ditch, natural  
24 watercourse, flood control channel, canal, storm drain, or any fabricated or natural  
25 conveyance.
- 26           4. Do not allow any material to be discharged or allow the continued existence of a  
27 deposit of material which may create a public nuisance, or menace to the public

1 health or safety, or which may pollute underground or surface waters or the  
2 environment.

- 3 5. Submit to the LEA for review and approval a waste removal plan for all solid waste and  
4 materials deposited/disposed on the Site by June 1, 2015. The plan shall include site  
5 characterization to determine horizontal and vertical extent and type of waste and non-  
6 naturally occurring fill, method of waste removal, and a plan for properly transporting  
7 the waste to an appropriately permitted waste disposal facility or facilities, or, as  
8 appropriate, to a recycling facility. (See CCR 27, Section 21810 for full regulatory  
9 requirements.)
- 10 6. Remove any and all solid waste, inert material or materials that have been deposited  
11 and/or accumulated, or placed at the Site in accordance with the waste removal plan  
12 approved by the LEA. All solid waste and inert materials or other material shall be  
13 completely removed from the property no later than 6 months after the date the LEA  
14 approves the waste removal plan.

15  
16 **BE IT FURTHER NOTICED THAT THE FOLLOWING CONDITIONS AND/OR**  
17 **REQUIREMENTS SHALL APPLY TO CEPHEID V L.L.C./CHARLES LEE, WITH**  
18 **REGARDS TO THE SITES AND RESOLUTION OF ALL SOLID WASTE COMPLIANCE**  
19 **ISSUES:**

20 In accordance with the P.R.C. Sections 43222, 45000, 45010, 45012, and 45024 et. al., and  
21 Los Angeles County Code Section 20.80.060, and CCR 18304.1(b)

- 22 1. Any fees and/or costs, incurred by the LEA or cost the LEA may incur to remediate the  
23 site or to complete the corrective action measures pursuant to this Order including  
24 review of all required plans, reports, studies, as well as site inspections performed by the  
25 LEA shall be the sole responsibility of Cepheid V L.L.C./Charles Lee and the LEA may  
26 petition the Solid Waste Hearing Panel to recover those costs.
- 27 2. Compliance with state and local solid waste requirements does not relieve the property  
owner or operator from the laws and regulations of other agencies or departments of Los

1 Angeles County or the State of California as they pertain to regulated activities on said  
2 property.

3 **TAKE NOTICE THAT PURSUANT TO P.R.C. SECTIONS, AND 45010.1, 45010.2, 45014,**  
4 **45018, and LACC 20.80.100, if the above actions are not completed or complied with by the dates**  
5 **specified herein, the LEA may also administratively, impose a civil penalty up to \$5,000 per day for**  
6 **each day on which violation occurs, and \$1,000 per day according to LACC for each day a violation**  
7 **exists.**

8  
9 **PLEASE NOTE THAT, IN ADDITION TO, OR IN LIEU OF, THE LEA**  
10 **ADMINISTRATIVELY IMPOSING ANY CIVIL PENALTY UNDER P.R.C. SECTION**  
11 **45011 and LACC 20.80.100 PURSUANT TO P.R.C. SECTION 45000, 45014, AND 45023,**  
12 **45024 and 45025 and LACC Section 20.86.020 if the above actions are not completed or**  
13 **complied by the dates specified herein, the LEA will petition the courts of the State for the**  
14 **following relief:**

- 15 1. For injunctive relief:
- 16 a. requiring compliance with all State laws and regulations; and
- 17 b. enforcing this Cease and Desist and Corrective Action Order.
- 18 2. For imposition of the maximum civil penalties allowed by applicable law for day of
- 19 violation of applicable State Laws and regulations, not to exceed \$10,000 per day. (P.R.C. Section
- 20 45023)

21 Failure to remedy the aforementioned violation by the required date may result in the

22 LEA petitioning the Department of Resources Recycling and Recovery ("CalRecycle"), to

23 expend available funds to perform any cleanup, abatement, or remedial work required under the

24 circumstances set forth in P.R.C. section 45000 which, in the judgment of CalRecycle, is

25 required by the magnitude of endeavor or the need for prompt action to protect public health and

26 safety or the environment. If CalRecycle expends funds to perform any cleanup, abatement, or

27

1 remedial work, CalRecycle may seek cost reimbursement from the operator or owner pursuant to  
2 P.R.C. section 45000(d).

3  
4 **PLEASE NOTE THAT IN ADDITION TO THE LEA IMPOSING ADMINISTRATIVE**  
5 **PENALITIES AND/OR PETITIONING CALRECYCLE TO EXPEND FUNDS TO**  
6 **CLEAN THE SITE(S) THE LEA/COUNTY OF LOS ANGELES MAY IN**  
7 **ACCORDANCE WITH LACC SECTION: 20.80.060, PETITION THE SOLID WASTE**  
8 **HEARING PANEL TO AUTHORIZE MONEYS TO PERFORM THE CLEANUP AND**  
9 **SEEK REIMBURSEMENT FROM CEPHEID V LLC/CHARLES LEE TO RECOVER**  
10 **THOSE COSTS.**

11  
12 **IN ACCORDANCE WITH THE P.R.C. SECTIONS 44307 AND 44310, PERSONS**  
13 **SUBJECT TO THIS ORDER ARE HEREBY NOTIFIED OF THE FOLLOWING:**

14 It is the right of Cepheid V LLC/Charles Lee, as the subject of this Order to request a hearing to  
15 appeal this Order. Any hearing shall be initiated by persons subject to the Order by filing a written  
16 request for a hearing with a statement of the issues to the LEA, within 15 days from the date this  
17 Order is served.

18  
19 **FINALLY**, nothing in this Cease and Desist and Corrective Action Order shall constitute  
20 or be construed as a satisfaction or release from liability for any conditions or claims arising as a  
21 result of past, current, or future operations. Notwithstanding compliance with the terms of this  
22 Cease and Desist and Corrective Action Order, the owner and operator may be required to take  
23 further actions as necessary to protect the public health, safety, or the environment.

24  
25 This notice shall not supersede any other existing orders from any other agency that may  
26 have already been issued to you that directs you to remove the waste from your property.

1 Compliance dates from any other agencies must be met to prevent those agencies from taking  
2 legal action against you.

3  
4 The LEA shall not be liable for injuries or damages to persons or property resulting from  
5 acts or omissions by the owner or operator or related parties in carrying out activities pursuant to  
6 this Cease and Desist and Corrective Action Order, nor shall the LEA be held as a party to any  
7 contract entered into by the owner or operator or their agent(s) in carrying out activities pursuant  
8 to this Cease and Desist and Corrective Action Order.

9 This Cease and Desist and Corrective Action Order is supported by the accompanying  
10 declaration of Chris Mastro.

11 Please contact Chris Mastro or Gerry Villalobos at (626) 430-5540 if you have any questions or  
12 wish to discuss this order.

13  
14 By: Gerardo Villalobos Date APRIL 30, 2015

15 Gerardo Villalobos, Chief EHS

16 Los Angeles County

17 Solid Waste Management Program

18 Local Enforcement Agency

19  
20 c: Jose De LaRosa, Los Angeles County Department of Regional Planning

21 Ron Dockery, Los Angeles County Department of Building and Safety

22 Jeff Hackett, CalRecycle

23 South Coast Air Quality Management District

24 Los Angeles Regional Water Quality Control Board

25 Grace Chang, Los Angeles County Counsel

Los Angeles County Department of Public Health  
Local Enforcement Agency/Solid Waste Management Program  
5050 Commerce Drive, Baldwin Park, CA., 91706  
626.430.5540

**DECLARATION  
OF  
Chris Mastro**

**COUNTY OF LOS ANGELES  
SOLID WASTE MANAGEMENT PROGRAM  
LOCAL ENFORCEMENT AGENCY**

I, Chris Mastro, hereby declare as follows:

I am employed as an Environmental Health Specialist IV for the Local Enforcement Agency (LEA) of the County of Los Angeles Solid Waste Management Program. Pursuant to Public Resources Code Section 43203, the LEA is authorized to enforce laws and regulations for solid waste handling and disposal.

I have personal knowledge of the current violations described in the foregoing Cease and Desist/Corrective Action Order dated April 30, 2015, and declares them to be true and correct. This knowledge was obtained during an inspection at parcel 2821-009-030 and 2821 009 031 February 26, 2015, and April 30, 2015 and from statements made by Charles Lee and Wayne Fishback. The disposal site is located west of Browns Canyon Road below the parking area of the Michael Antonovich Park on Browns Canyon Road and at the bottom of the road leading down to Ybarra Canyon, Chatsworth, California 91311.

Executed this date 4/29/15, at 335-A K-6 Lancaster, Ca., 93535

  
Chris Mastro, REHS

Environmental Health Specialist IV

Local Enforcement Agency, Los Angeles County

# **EXHIBIT 2**

In Re: Appeal by Barton W. Fishback and Cepheid V. LLC/Charles Lee of the Los Angeles County  
Local Enforcement Agency's Cease and Desist, and Corrective Action Orders  
regarding Los Angeles County Assessor's Parcel Numbers 2821-009-030 and 2821-009-031  
before the Los Angeles County Solid Waste Facilities Hearing Board

FACTUAL BACKGROUND

A. Petitioners Barton W. Fishback is the owner of Los Angeles County Assessor's Parcel Number 2821-009-030 ("Parcel 30") and Cepheid V. LLC is the owner of Los Angeles County Assessor's Parcel Number 2821-009-031 ("Parcel 31"). Parcels 30 and 31 will be referred to hereinafter collectively as "the Sites." On April 30, 2015, the Los Angeles County Department of Public Health, acting as a Local Enforcement Agency ("LEA"), issued Cease and Desist and Corrective Action Orders to Petitioners ordering them to, among other things, cease and desist the stockpiling, deposition, disposal and/or covering of solid waste on the Sites; and to cease and desist the acceptance of any fill material, solid waste and/or organic material and/or the placement of cover material over areas where solid waste was previously deposited anywhere on the Sites (hereafter "the April 30, 2015 Orders").

B. On May 15, 2015, Petitioners requested a hearing before the Solid Waste Facilities Hearing Board ("Hearing Board") to appeal the April 30, 2015 Orders.

C. A properly noticed hearing was commenced on July 17, 2015. Hearing Board members M. Michael Mohajer (Chairperson), Leslie N. Bittenson and Margaret Clark (Commissioners) were present for the hearing. The Petitioners were represented by Kelly T. Smith, Esq. and consultant Todd Fishback. The LEA was represented by Jason Carnevale, Esq. The Hearing Board heard testimony and arguments from both the LEA and Petitioners (hereafter, collectively, the "parties") and asked for but received no comments from members of the public who attended the hearing.

D. Prior to the hearing, the Hearing Board received documents submitted by the LEA, which included the following:

1. Petitioners' May 15, 2015 "Appeal Hearing Request";
2. Orders and Correspondence, including:
  - a. April 30, 2015 Orders relating to the Sites;
  - b. Los Angeles Regional Water Quality Control Board ("LARWQCB") correspondence to Petitioner Fishback dated April 30, 2014;
  - c. Los Angeles County Department of Regional Planning ("LACDRP") Notice of Violation dated June 16, 2014 relating to Parcel 31;
  - d. LEA correspondence to Petitioners dated June 23, 2014 stating the LEA's intention to issue enforcement orders;
  - e. California Integrated Waste Management Board ("CIWMB") Enforcement Agency Notification signed by Wayne Fishback and Todd Fishback dated July 7, 2014 relating to 30 acres at Browns Canyon Road
  - f. E-mail correspondence between the LEA and Petitioners dated July 16, 2014, January 26, 2015 and April 29, 2015 regarding treatment of the

Sites as Inert Debris Engineered Fill Activities ("IDEFA") or Inert Debris Engineered Fill Operations ("IDEFO").

- g. LARWQCB correspondence to Petitioners dated October 20, 2014;
- h. IDEFO Inspection Reports for Parcel 30 dated August 29, 2014, September 30, 2014 and December 19, 2014;
- i. LACDRP "Second Notice of Noncompliance Fee" dated December 8, 2014 relating to Parcel 30;
- j. LACDRP "Final Zoning Enforcement Order" dated December 8, 2014 relating to Parcel 31;
- k. Solid Waste Information System ("SWIS") Facility/Site/Operation Data Entry Form dated February 2, 2015 relating to Parcel 30;
- l. United States Department of Agriculture Natural Resources Conservation Service correspondence to the LEA dated May 5, 2014 relating to Petitioner Fishback;
- m. LARWQCB correspondence to Petitioners Fishback and Cepheid V/Charles Lee dated May 12, 2015;
- n. LEA Statement of Issues and Responses dated May 28, 2015
- o. LEA Notice of Hearing setting a July 17, 2015 hearing date.
- p. Complaint filed by County of Los Angeles against Petitioners dated July 6, 2015 relating to the Sites.

3. Copies of regulations.

E. Prior to the hearing, the Hearing Board received documents submitted by Petitioners, which included the following:

- 1. Petitioners' Hearing Brief dated July 16, 2015, corrected from August 17, 2015;
- 2. Various documents including:
  - a. A Solid Waste Facility Listing printed on May 15, 2015 from the CalRecycle website relating to Parcel 30;
  - b. Operator Statements signed by Petitioner Fishback dated March 19, 2015 (relating to an unspecified location) and March 24, 2015 (purporting to relate to Parcels 30 and 31);
  - c. An undated article by Dan Burgoyne entitled "Construction & Demolition (C&D) Waste Diversion in California";
  - d. Undated photographs of portions of Parcels 30 and 31;
  - e. CIWMB "Final Statement of Reasons" dated November 7, 2003;
  - f. Undated CIWMB draft of Final Statement of Reasons

F. At the hearing on July 17, 2015, the Hearing Board received into evidence the documents identified in Sections D and E above all of which are attached as Exhibits to the transcript of the proceedings. Additionally, the LEA submitted at the hearing a hard copy of the power point

presentation the LEA made at the hearing. The LEA power point presentation is included as an attachment to the transcript of the hearing.

G. At the conclusion of the day's proceedings, the Hearing Board considered the documents submitted by the parties and the arguments made by the parties and their attorneys and the testimony of Todd Fishback, Christopher Mastro and Gerald Villalobos prior to rendering their decision. The Hearing Board sustained the LEA's April 30, 2015 Orders. Additionally, the Hearing Board finds that:

1. The material on Petitioners' parcels is solid waste.  
2. The Petitioners' assertion that they are operating a facility that is exempt from regulation under Section 17381.1 of Title 14 of the California Code of Regulations ("Section 17381.1") is rejected for the reasons set forth in the LEA's May 28, 2015 response to Petitioners' notice of appeal and for the additional reason that the waste being disposed of is not 2" or less in size.

3. The Hearing Board finds that the material being disposed of is not being stored but is being disposed of in a large fill and the material is being stored in violation of the requirements of Section 17381.1. Petitioners admitted that the "recycled" material is not being sent off the parcels for reuse or recycling; and, the "recycled" material is not being returned to the economic mainstream not only because the improvement of a parcel by its owner is not "the economic mainstream" envisioned by the statute but also because it appears that none of the Petitioner's planned reuse or recycling can be accomplished within even the most generous time periods allowed under the regulation. The activities and operations of Petitioners on the Sites do not qualify as an IDEFO or IDEFA.

4. The material placed on the Sites is not consistent with a transfer station under Public Resources Code Section 40200(b)(2) because the Sites are the final disposal locations for such material.

5. The Section 17388.2 of Title 14 of the California Code of Regulations requires the LEA to consider whether a site operator is complying with local regulations and ordinances. The LEA submitted evidence that Petitioners are not complying with local regulations and ordinances. Petitioner's claim that the United States Department of Agriculture has granted Petitioner certain permits is irrelevant to the issue before the Hearing Board: whether the Petitioner is operating an illegal waste site.

6. Petitioners claim that the Hearing Board members are subject to recusal exonerates Petitioners from complying with any laws is incorrect because the Hearing Board members are not subject to recusal and even if they were, that would not exempt Petitioners from complying with all applicable statutes, regulations and ordinances.

7. The Hearing Board members are not subject to recusal or removal under Public Resources Code Section 44308.

8. The "Additional Issue" raised in Petitioners' notice of appeal was apparently abandoned as no information relating to the contention that the agency is failing to act as required by law was submitted to the Hearing Board.

ORDER

H. In light of the foregoing, the Hearing Board ordered and orders:

1. Upon a Motion brought by Commissioner Bittenson and seconded by Commissioner Clark, the Hearing Board unanimously voted to deny the May 15, 2015 Request for Appeal of Barton W. Fishback and Cepheid V/Charles Lee and sustained the LEA's April 30, 2015 orders.

Dated: \_\_\_\_\_, 2015

\_\_\_\_\_  
M. Michael Mohajer, P.E., Chair

\_\_\_\_\_  
Margaret Clark, Commissioner

\_\_\_\_\_  
Leslie N. Bittenson, Commissioner

H. In light of the foregoing, the Hearing Board ordered and orders:

1. Upon a Motion brought by Commissioner Bittenson and seconded by Commissioner Clark, the Hearing Board unanimously voted to deny the May 15, 2015 Request for Appeal of Barton W. Fishback and Cepheid V/Charles Lee and sustained the LEA's April 30, 2015 orders.

Dated: July 22<sup>nd</sup>, 2015



M. Michael Mohajer, P.E., Chair

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Margaret Clark, Commissioner

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Leslie N. Bittenson, Commissioner

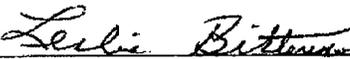
H. In light of the foregoing, the Hearing Board ordered and orders:

1. Upon a Motion brought by Commissioner Bittenson and seconded by Commissioner Clark, the Hearing Board unanimously voted to deny the May 15, 2015 Request for Appeal of Barton W. Fishback and Cepheid V/Charles Lee and sustained the LEA's April 30, 2015 orders.

Dated: \_\_\_\_\_, 2015

\_\_\_\_\_  
M. Michael Mohajer, P.E., Chair

\_\_\_\_\_  
Margaret Clark, Commissioner

  
\_\_\_\_\_  
Leslie N. Bittenson, Commissioner

H. In light of the foregoing, the Hearing Board ordered and orders:

1. Upon a Motion brought by Commissioner Bittenson and seconded by Commissioner Clark, the Hearing Board unanimously voted to deny the May 15, 2015 Request for Appeal of Barton W. Fishback and Cepheid V/Charles Lee and sustained the LEA's April 30, 2015 orders.

Dated: \_\_\_\_\_, 2015

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M. Michael Mohajer, P.E., Chair

*Margaret Clark*  
\_\_\_\_\_  
Margaret Clark, Commissioner

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Leslie N. Bittenson, Commissioner

# **EXHIBIT 3**

**APPEAL HEARING REQUEST  
MARCH 13, 2015**

**TO: Gerry Villalobos**

**PLEASE TAKE NOTICE THAT:**

This is a request for a hearing to appeal the Cease and Desist Order and Corrective Action Order (Orders) issued on April 30 by the Los Angeles County Local Enforcement Agency. The issues pursuant to the Orders and in the matters of Fishback, APN 2821-009-030 and Cephid, APN 2821-009-031 are:

**ISSUE 1**

- The material stored and/or placed as an engineered fill activity (EFA), or an inert debris engineered fill activity (IDEFA) or an inert debris engineered fill operation (IDEFO) is soil and concrete with de minimus amounts of other inerts and organic materials.
  - The above is a subset of Type A Inert Debris pursuant to 14 CCR 17381 (k)(l)
    - The above is a subset of Inert Debris as defined pursuant to 14 CCR 17381(K).
      - The above is a subset of Construction and Demolition Debris and Inert Debris pursuant to 14 CCR, Section 17381(c).
        - The above is a subset of Construction and Demolition Waste and Inert Debris pursuant to 17388(b).
          - The above is a subset of Construction and Demolition Waste pursuant to 14 CCR 17225.15.
            - The above is a subset solid waste (including construction and demolition waste) pursuant to PRC, Section 40191 "Solid Waste".
- Soil and concrete are highly restricted and specific materials, in the waste stream and many subsets removed from the general definition of solid waste (emphasis added).

**ISSUE 2**

Prior to delivery to the subject property the material is separated for reuse or source separated (pursuant to 14 CCR Sections 17381(y) and (dd) respectively) at the construction and/or demolition site where the material is generated. This handling and processing (pursuant to 14 CCR Sections 17281(j) and (v) respectively) of material to be disposed by the generator is further processed at the subject site for specific uses including: EFA, IDEFA, IDEFO, pursuant to 14 CCR 17388 (g), 17388.2a3 and 17388 (l) and 17388.3 respectively, also, materials are used for retaining walls, paving, and masonry walls. Therefore, the material is not being discarded and precludes the alleged illegal solid waste disposal facilities.

**ISSUE 3**

The material when stored is consistent with 14 CCR, Section 17381(ee) and 17381.1 as applicable to Type A Inert Debris. The storage of this construction material precludes the alleged illegal solid waste disposal facilities.

**ISSUE 4**

The transfer of material from the generator to the subject site is described in the County of Los Angeles Public Works Department Publication titled CDI Recycling: Best Management Practices at page 8. This transfer from one construction and/or demolition project to another construction project avoids

discarding the material and instead keeps the material in the economic mainstream. This is consistent with PRC, section 40200(b)(2). This precludes the alleged illegal solid waste disposal facilities.

#### **ISSUE 5**

The use of material characterized as reuse or recycled has been validated by the United States Department of Agriculture. (USDA) Natural Resource Conservation Services (NRCS) site assessment and plans and specifications which identifies the need for erosion control, all weather roads, and related facilities. The use of recycled material and material for reuse precludes illegal solid waste disposal facilities.

#### **ISSUE 6**

If issue 7 prevails, then all the other cites to state law state, regulation and local ordinances fail.

#### **ISSUE 7**

The legal standing of the LEA Hearing Board is challenged on the basis of term limits pursuant to PRC, Section 44308 and conflict of interest pursuant to Government Code, Section 1099.

#### **ADDITIONAL ISSUES**

PRC section 44307 provides for a hearing for the "failure of the agency to act as required by this part (Part 4) Part 5 and Part 6." This issues will be submitted on 5-18-2015.

# **EXHIBIT 4**



CYNTHIA A. HARDING, M.P.H.  
Interim Director

JEFFREY D. GUNZENHAUSER, M.D., M.P.H.  
Interim Health Officer

ANGELO J. BELLOMO, REHS, QEP  
Director of Environmental Health

TERRI S. WILLIAMS, REHS  
Assistant Director of Environmental Health

JACQUELINE TAYLOR, MPA, REHS  
Director, Bureau of Environmental Protection

**Solid Waste Program**  
**Gerardo Villalobos, REHS**  
Chief Environmental Health Specialist

5050 Commerce Drive  
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[www.publichealth.lacounty.gov](http://www.publichealth.lacounty.gov)

May 28, 2015

Barton W. Fishback  
316 Calusa Avenue  
Simi Valley, CA 93063

**BOARD OF SUPERVISORS**

- Hilda L. Solis  
First District
- Mark Ridley-Thomas  
Second District
- Sheila Kuehl  
Third District
- Don Knabe  
Fourth District
- Michael D. Antonovich  
Fifth District

**SUBJECT: LOS ANGELES COUNTY LOCAL ENFORCEMENT AGENCY (LEA) RESPONSE TO STATEMENT OF ISSUES PRESENTED BY WAYNE FISHBACK IN RESPONSE TO NOTICE AND ORDER DATED APRIL 30, 2015 AND SUBSEQUENT APPEAL OF THE NOTICE AND ORDER CONCERNING ILLEGAL DISPOSAL OF SOLID WASTE IN THE BROWNS CANYON AREA OF CHATSWORTH, LOS ANGELES COUNTY**

Transcribed below is the appeal request from you, Barton W. Fishback sent via email on May 15, 2015.

LEA responses follow in bold italics.

TO: Gerry Villalobos

**PLEASE TAKE NOTICE THAT:**

This is a request for a hearing to appeal the Cease and Desist Order and Corrective Action Order (Orders) issued on April 30 by the Los Angeles County Local Enforcement Agency. The issues pursuant to the Orders and in the matters of Fishback, APN 2821-009-030 and Cephid, APN 2821-009-031 are:

**ISSUE 1**

"The material stored and/placed as an engineered fill activity (EFA), or an inert an inert debris engineered fill activity (IDEFA) or an inert debris engineered fill operation (IDEFO) is soil and concrete with de minimus amount of other inerts and organic materials.

The above is a subset of Type A Inert Debris pursuant to 14 CCR 17381(k)(l)

The above is a subset of Inert Debris as defined pursuant to 14 CCR 17381(K).

The above is a subset of Construction and Demolition Debris and Inert Debris pursuant to 14 CCR, Section 17381(C).

The above is a subset of Construction and Demolition Debris waste and Inert Debris pursuant to 17388(b).

The above is a subset of Construction and Demolition Waste pursuant to 17225.15.

The above is a subset solid waste (including construction and demolition waste pursuant to PRC, Section 40191 'Solid Waste'.")

**Response to Issue 1:** The material at the subject parcels the appellant claims is being stored and/or placed is solid waste pursuant to Title 14 California Code of Regulations (CCR) Sections 17381 (e) and 17381(k), and Public Resources Code (PRC) Section 40191. The material is being disposed according PRC 40192, the definition of solid waste disposal.

#### ISSUE 2

"Prior to delivery to the subject property the material is separated for reuse or source separated (pursuant to 14 CCR Sections 17381(y) and (dd) respectively) at the construction and/or demolition site where the material is generated. This handling and processing (pursuant to 14 CCR Sections 17281(j) and (v) respectively) of material to be disposed by the generator is further processed at the subject site for specific uses including: EFA, IDEFA, IDEFO, pursuant to 14 CCR 17388 (g), 17388.2a3 and 17388 (l) and 17388.3 respectively, also, materials are used for retaining walls, paving, and masonry walls. Therefore, the material is not being discarded and precludes the alleged illegal solid waste disposal facilities."

**Response to Issue 2:** If the material that the appellant claims is being stored or placed on the subject parcels is source separated or separated for reuse, this has not been demonstrated to or verified by the Local Enforcement Agency (LEA). The material observed by the LEA on the subject parcels is fill that has been disposed. The disposed material is topped by a flat pad and has multiple levels, benches and a deck that is approximately 70-90 feet wide and approximately 300-400 feet wide and is about 45 feet high. The fill appears to have been constructed with cells and lifts and has been built over existing hillsides. A significant amount of hillside has been removed to make airspace for the disposal area to receive material. A rough estimate is that 45,000 cubic yards of material has been received and used as fill and disposal.

A small amount of broken concrete was used to construct a wall, (approximately 30 cubic yards). The LEA is not aware of any material that has been used as paving or masonry walls. The bulk of the material has been placed as fill and buried. As required by 14 CCR 17388(g) and (l), adequate engineering plans are required for an engineered fill activity, an IDEFA, or an IDEFO. The appellant has not provided adequate engineering plans.

Additionally, the exemption from waste discharge requirements (WDRs) issued by the Los Angeles Regional Water Quality Control Board on October 20, 2014 for the subject parcels was revoked on May 12, 2015, after the LEA issued the subject Notice and Order. Accordingly, pursuant to 14 CCR Sections 19388.1 and 17388(g), the appellant must also obtain an exemption from the waste discharge requirement, or possession of a.k.a. WDRs, in order to operate as an IDEFO or IDEFA, respectively.

Moreover, 14 CCR Section 17388.2(a)(3) does not apply because the appellant's activities and/or operations at the subject parcels have exceeded one year.

#### ISSUE 3

"The material when stored is consistent with 14 CCR Section 17381(ee) and 17381.1 as applicable to Type A Inert Debris. The storage of this construction material precludes the alleged illegal solid waste disposal facilities."

**Response to Issue 3:** The material on the subject parcels is not being stored, but disposed in a large fill, approximately 40 feet high, 70-90 feet wide and 300-400 feet long. The material is not being stored consistent with the requirements of 14 CCR Section 17381(ee) or 17381.1. Multiple levels of waste have been placed with benches, lifts and cells. Over the past year, the appellant has alternated between calling his activities an IDEFO or an IDEFA. Appellant is now characterizing his operation as a recycling center. Regardless, the LEA maintains that the subject parcels constitute an illegal disposal site. The subject parcels are not an exempted recycling center or other temporary storage area for inert materials. The appellant has described the subject parcels as an IDEFO or IDEFA for the final deposition of the solid waste that has been buried there. The material disposed at the subject parcels will not re-enter the economic mainstream to be reused or recycled.

#### ISSUE 4

"The transfer of material from the generation to the subject site is described in the County of Los Angeles Public Works Department Publication titled CDI Recycling: Best Management Practices at page 8. This transfer from one construction and/or demolition project to another construction and/or demolition project to another construction project avoids discarding the material and instead keeps the material in the economic mainstream. This is consistent with PRC, section 40200(b)(2). This precludes the alleged illegal solid waste disposal facilities."

**Response to Issue 4:** The operation and disposal of solid waste at the subject parcels is not consistent with PRC Section 40200(b)(2). The material at the subject parcels is being disposed as evidenced by the nature of its handling and placement. Material is deposited in lifts and cells which is then covered and graded. The subject parcels function not as a transfer

May 28, 2015

Page 3

station or to receive, store, convert, or otherwise process waste that has already been separated for reuse, but as a final disposal site for the material. PRC Section 40200(b)(2) is not applicable as evidenced by the activity observed at the subject parcels.

#### ISSUE 5

"The use of material characterized as reuse or recycled has been validated by the United States Department of Agriculture. (USDA) Natural Resource Conservation Services (NRCS) site assessment and plans and specifications which identifies the need for erosion control, all weather roads, and related facilities. This use of recycled material and material for reuse precludes illegal solid waste disposal facilities."

**Response to Issue 5: This is not relevant. The LEA is legally authorized to enforce state and local laws and regulations with respect to solid waste.**

#### ISSUE 6

"If issue 7 prevails, then all other cites to state law state, regulation and local ordinances fail."

**Response to Issue 6: Please see the LEA's Response to Issue #7 (below). Additionally, Appellant's objection under Issue #7 does not exempt him from complying with statutory and regulatory requirements pertaining to his activities and operations.**

#### ISSUE 7

"The legal standing of the LEA hearing panel is challenged on the basis of term limits pursuant to PRC Section 44308 and conflict of interest pursuant to Government Code, Section 1099."

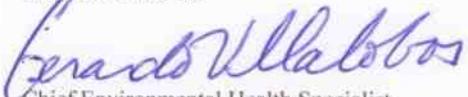
**Response to Issue 7: This objection was addressed in a ruling issued by the Solid Waste Facilities Hearing Panel on May 18, 2015, pursuant to the hearing on Appellant's appeal of the LEA's Notice and Order to cease and desist from, and take corrective actions relating to, activities occurring at Assessor's Parcel Numbers 2821-002-023 and -025.**

#### ADDITIONAL ISSUES

PRC section 44307 provides for a hearing for the "failure of the agency to act as required by this part (Part 4) Part 5 and Part 6." This issues [sic] will be submitted on 5-18-2015.

#### Noted

Gerardo Villalobos



Chief Environmental Health Specialist