

ENFORCEMENT AND COMPLIANCE AGREEMENT

This Agreement, entered into as of August [26], 2004, is made by and between WASTE MANAGEMENT OF ALAMEDA COUNTY, INC. ("WMAC") and the BAY AREA AIR QUALITY MANAGEMENT DISTRICT ("District"), referred to individually as a "Party" or collectively as the "Parties."

ARTICLE 1 RECITALS

- 1.1 The District is the regional agency with primary responsibility for the control of air pollution from stationary sources in the San Francisco Bay Area Air Basin.
- 1.2 WMAC owns and operates a 115-acre landfill located at 7010 Auto Mall Parkway in Fremont, California, which is commonly known as the "Tri-Cities Recycling and Disposal Facility" (herein, "Facility") (Facility #A2246). The Facility receives municipal solid waste for recycling and landfill disposal. Landfill gas generated at the facility is collected and routed to an enclosed landfill gas flare for combustion. The flare, which has been operating since 1985, has been designated "A-2" in District-issued permits.
- 1.3 WMAC has received from the District and currently operates under a Major Facility Review permit (also known as a "Title V" permit) issued pursuant to District Regulation 2-6.
- 1.4 Due to the age and declining structural integrity of the existing flare, WMAC will be replacing the existing flare with a new, larger enclosed flare ("Flare Replacement Project"). The replacement flare will be located on the same foundation as the existing flare in order to use the existing deep-driven pile foundation. Once the existing flare is removed, the foundation will be modified so as to support the replacement flare, which is heavier and subject to increased overturning forces. For these and other reasons, it is not possible to complete the flare replacement project within the 5 days allotted for control system downtime under District Regulation 8-34-113. WMAC estimates that up to 8 weeks will be required to complete the flare replacement project, as measured from the time the existing flare is taken offline to the time the replacement flare is fully operational.
- 1.5 During the period of the Flare Replacement Project, WMAC will operate an open temporary utility flare. Information regarding the temporary utility flare to be used is found in the variance application materials submitted by WMAC, District Hearing Board Docket No. 3474 ("Application"). WMAC asserts -- and the District, based on its review of the Application agrees -- that the temporary utility flare will be adequate to handle the volume of gas generated at the Facility, and, if properly operated, should attain a destruction efficiency equivalent to that required by District Regulation 8-34. However, since the utility flare is not an enclosed flare, its operation will not be compliant with Regulation 8-34-301.3. Although it is not discussed in the Application, the temporary utility flare planned for use by WMAC is equipped to monitor temperature in the combustion zone, and to continuously record temperature monitoring results. Because the temporary flare is an open flare, and thus subject to external influences such as wind direction and velocity, temperature records may show results that are inconsistent with minimum temperature requirements set forth in Section VI.6. of the Facility's Major Facility Review permit.

1.6 WMAC has applied for a Temporary Permit to Operate for the temporary utility flare. The District has deemed the application complete. WMAC believes that because the low temperature limit of the combustion zone cannot be guaranteed during the use of the open flare, a temperature limit should not be included as a permit condition for the temporary open flare. The District will make a determination on this issue when it acts upon the application. In light of the recitals in Paragraphs 1.4 and 1.5 above, WMAC believes, and the District agrees, that excess emissions from operation of the temporary utility flare during the period of the Flare Replacement Project are likely to be absent or negligible, and that the planned monitoring at the temporary utility flare is sufficient to comply with District Regulation 8-34-501.3 and 8-34-507.

1.7 Because the District is vested with:

- (i) Enforcement authority for the air pollution control program in accordance with California Health & Safety Code Sections 40001, 40701, 40752, 42400 to 42421, and 42451 to 42454; and
- (ii) Discretion over the application of this enforcement authority given the facts and circumstances of each enforcement matter,

the District has determined, in view of all of the circumstances recited above, that – provided WMAC otherwise complies with the terms and conditions of this Agreement – it will not issue a Notice of Violation (NOV) or otherwise enforce District Regulation 8-34-301.3 during the term of this Agreement.

NOW, THEREFORE, based on the foregoing recitals, in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 2 UNDERTAKINGS

2.1 During the Flare Replacement Project WMAC shall install and operate a temporary utility flare of the type described in its Application for Variance.

2.2 Upon Approval of this Agreement, the District will act upon WMAC's application for Temporary Permit to Operate for the utility flare, Application Number 9789.

2.3 With the exception of the fact that the temporary utility flare is an open rather than enclosed flare and the permit condition addressing combustion zone temperature within the flare with Section VI.6. of the Major Facility Review permit, WMAC will comply with all terms and conditions of District Regulation 8-34 and the Facility's Major Facility Review permit, including requirements for flare monitoring and recordation of monitoring results.

2.4 The District agrees that, for the purposes of the certification required under District Regulation 2-2-307, compliance with the terms and conditions of this Agreement shall constitute "compliance, or [being] on a schedule of compliance," with the throughput limits established by the District in the Title V Permit for these Sources.

2.5 Execution of, and compliance with, this Agreement by WMAC shall, with respect to the hourly throughput limits identified in paragraph 1.6 of this Agreement, be deemed by the District to satisfy the requirement of: (i) District Regulation 2-6-502 to “promptly identify and report to the APCO all monitored excesses and other deviations from the requirements of” such conditions; and (ii) Section 1F of the Permit to report in writing to the District “all instances of non-compliance with” such conditions and other requirements “within 10 calendar days of discovery of the incident,” and to submit to the District a “written report including the probable cause of non-compliance and any corrective or preventative actions” with respect to such conditions and other requirements “[w]ithin 30 calendar days of the discovery of any incident of non-compliance. . . .”

ARTICLE 3 MISCELLANEOUS PROVISIONS

3.1 Scope of Agreement. This Agreement is binding upon WMAC and the District only with respect to the matters specifically addressed and does not otherwise bind WMAC and the District.

3.2 Term of Agreement. This Agreement commences effective August [26], 2004, and shall terminate on the earliest of:

Completion of the Flare Replacement Project; or

December 3, 2004.

3.3 Notices. All notices required pursuant to this Agreement shall be in writing and shall be served either by personal delivery (including by overnight delivery service); by certified or express mail (e.g., FedEx), postage prepaid; or by facsimile, to WMAC and the District at the respective addresses set forth below:

To WMAC:

Alan Blake
Tri-Cities Disposal and Recycling Facility
7010 Auto Mall Parkway
Fremont, CA 94538

To the District:

Kelly Wee
Director of Enforcement
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
Telephone: (415) 749-4760; Facsimile: (415) 928-0338

With a copy to:

Brian C. Bunger

District Counsel
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
Telephone: (415) 749-4925; Facsimile: (415) 749-5103

3.4 Headings. The title headings of the respective articles of this Agreement are inserted for convenience of reference only and shall not be deemed to be part of this Agreement.

3.5 Successors and Assigns. The terms of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective predecessors, successors, subsidiaries, partners, limited partners, agents, principals, and assigns.

3.6 Severability. If either or both of the following occur:

- (i) A Hearing Board ruling affirms the validity of any of the throughput limits; and/or
- (ii) Any provision of this Agreement or the application of this Agreement to either WMAC or the District is held by any judicial authority to be invalid;

then this Agreement will cease to be effective with regard to the affirmed limit(s) or invalid provisions and the remainder of this Agreement shall remain in force and shall not be affected thereby, unless such holding materially changes the terms of this Agreement.

3.7 Authority to Bind. Each of the undersigned represents and warrants that he has read and understands and has full and complete lawful authority to grant, bargain, convey, and undertake the rights and duties contained in this Agreement, and that he has full and complete lawful authority to bind any respective principals, successors, subsidiaries, partners, limited partners, agents and assigns to this Agreement. Each of the undersigned understands and agrees that this representation and warranty is a material term of this Agreement, without which it would not have been executed.

3.8 Understanding of Terms. WMAC and the District hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and that they have signed it voluntarily and on the advice of counsel of their own choosing. The Parties have had the opportunity to consult with their attorneys and any other consultant each deemed appropriate prior to executing this Agreement.

3.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

3.10 Enforcement Authority of the District. Nothing contained in this Agreement is intended to limit the authority of the District to fulfill its enforcement responsibilities under its New Source Review ("NSR") or Prevention of Significant Deterioration ("PSD") rules (Regulation 2, Rules 1 and 2).

3.11 Entire Agreement. The mutual obligations and undertakings of WMAC, on the one hand, and the District, on the other hand, expressly set forth in this Agreement are the sole and only

consideration of this Agreement and supersede and replace all prior negotiations and proposed agreements between WMAC and the District, written or oral, on the specific matters addressed in this Agreement. WMAC and the District each acknowledges that no other party, nor the agents nor attorneys of any other party, has made any promise, representation or warranty whatsoever (express or implied), not contained herein, to induce the execution of this Agreement. This Agreement constitutes the full, complete and final statement of WMAC and the District on the matters addressed by this Agreement.

3.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall have the same force and effect as an original, but all of which together shall constitute one and the same instrument.

3.13 Jointly Drafted. WMAC and the District have jointly prepared this Agreement. This Agreement shall be deemed to have been jointly drafted by the Parties for the purpose of applying any rule of construction to the effect that ambiguities are to be construed against the party drafting the agreement.

3.14 Amendments. This Agreement may be amended and supplemented only by a written instrument signed by both WMAC and the District or their successors-in-interest. However, such execution may be in counterparts and, when so executed, shall be deemed to constitute one and the same document.

3.15 Material Breach. Any material breach of this Agreement by either Party shall make the Agreement subject to termination upon notice by the non-breaching Party.

3.16 Waiver. The waiver of any provision or term of this Agreement shall not be deemed as a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of August 26, 2004.

WASTE MANAGEMENT OF ALAMEDA,
County INC.

By Alan Blake
Alan Blake
District Manager
TriCities Recycling and Disposal Facility

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

By Dan Kendall
for Jack P. Broadbent
Air Pollution Control Officer/Chief Executive
Officer

Approved as to form:

Adan Schwartz
Adan Schwartz
Senior Assistant Counsel