BEFORE THE HEARING BOARD OF THE

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

In the Matter of SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT Petitioner, vs. ARAKELIAN ENTERPRISES, INC. dba ATHENS SERVICES [Facility ID# 54159] Respondent.	CASE NO. 5655-2 FINDINGS AND DECISION FOR PETITION FOR AN ORDER FOR ABATEMENT District Rules 203, 402 Hearing Date: July 24, 2008

FINDINGS AND DECISION OF THE HEARING BOARD

A petition for entry of an Order for Abatement pursuant to California Health and Safety Code, Section 42451 was heard on November 28; December 5 and 6, 2007; January 10, 22, and 31; February 7 and 28; March 6, 12, 13, 18, and 19; April 1, 3, 22, 23, and 24; May 6, 8, 13, and 15; June 10, 12, 17, 18, 24, 25, and 26; July 9, 10, 17, and 24, 2008 pursuant to notice and in accordance with the provisions of California Health and Safety Code Section 40823 and District Rule 812. The following members of the Hearing Board were present: Edward Camarena, Chair; Laurine E. Tuleja, Vice-Chair; Joseph D. Auerbach, M.D.; Marti L. Klein; and Barry Read (any member absent on a hearing day reviewed the transcript and/or audio tape for that hearing). Petitioner, Executive Officer, was represented by Carol L. Engelhardt, Senior Deputy District

Prosecutor (Kurt Wiese, District Counsel, substituted for Senior Deputy District Prosecutor Engelhardt on June 18, 2008; Joseph Panasiti, Senior Deputy District Prosecutor, substituted for Senior Deputy District Prosecutor Engelhardt on June 24, 25 and 26, 2008). Respondent, ARAKELIAN ENTERPRISES, INC. dba ATHENS SERVICES, ("Respondent") was represented by Patrick W. Dennis and Thomas A. Manakides of the firm Gibson, Dunn & Crutcher LLP; Jeffrey Dintzer also appeared on behalf of Respondent on July 9, 2008, only. The public was given the opportunity to testify. The matter was submitted and evidence received.

ORDER FOR ABATEMENT PROCEEDINGS

California Health and Safety Code Section 42451 provides that the Hearing Board "may, after notice and a hearing, issue an order for abatement whenever it finds that any person ... is in violation of Section 41700 or 41701 or of any order, rule or regulation prohibiting or limiting the discharge of air contaminants into the air." District Rule 806 requires the Board to reach three conclusions before it may issue an order for abatement:

> (1) That the respondent is in violation of Section 41700 or 41701, Health and Safety Code, or of any rule or regulation of the South Coast Air Quality Management District Board;
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> (2) That the order of abatement will not constitute a taking of property without due process of law; and
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> (3) That if the order of abatement results in the closing or elimination of an otherwise lawful business, such closing would not be without a corresponding benefit in reducing air contaminants.

The Health and Safety Code further directs that when a Hearing Board issues an order for abatement, the order "shall be framed in the manner of a writ of injunction requiring the respondent to refrain from a particular act. The order may be conditional

and require a respondent to refrain from a particular act unless certain conditions are met." Health and Safety Code Section 42452. An injunction may be issued "to restrain acts of the same type or class as those unlawful acts" where such acts were found to have been committed, "and whose commission in the future, unless enjoined, would be clearly violative of the public interest as expressed in the applicable legislation." [Woods v. Corsey, 89 Cal. App. 2d 105, 113 (1948)].

The Hearing Board must find that Petitioner met its burden of proof by a preponderance of the evidence. [See Skelly v. State Personnel Bd., 15 Cal.3d 194, 204 & n. 19 (1975); Petitioner's Memorandum of Points and Authorities (filed May 27, 2008) at 8; Athens Services' Post Evidentiary Hearing Opposition (filed June 4, 2008) at 1.]

Hearing Board Rule 8(b) (2) governs the treatment of evidence in an Order for Abatement hearing, and is modeled on the comparable section in the Administrative Procedure Act [Cal. Gov. Code sec. 11513(c) & (d)].[1]

> "The hearing shall not be conducted according to technical rules relating to evidence and witnesses except for rules relating to privilege .... Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs .... Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil action, or unless the District Prosecutor's Office and the petitioner or respondent so stipulate."

On the first day of hearings in this matter, the District stipulated that its case starts with March 2007, and that the District would not address odor complaints prior to that period. (Transcript, 11/28/07 at 27:22-23, 29:2-30:1) Thus, although these Findings briefly

[1] Health & Safety Code section 40807 authorizes air district hearing boards to adopt rules for the conduct of their hearings, which, "so far as practicable, shall conform to the rules for administrative adjudication by state agencies ...."

address factual matters prior to that time as background information, the Board's Findings and Conclusions are based on incidents that occurred since March 2007.

The Hearing Board finds and decides as follows:

FINDINGS OF FACT

1. Petitioner South Coast Air Quality Management District ("District") is a body corporate and politic established and existing pursuant to Health and Safety Code §40400, *et seq.*, and is the sole and exclusive local agency with the responsibility for comprehensive air pollution control in the South Coast Basin.

2. Respondent is a corporation that operates a large solid waste transfer and materials recovery facility ("Facility") at which trash and other solid wastes[2] are sorted to extract recyclable materials, with the remainder transferred into truck trailers for delivery to solid waste disposal sites. The Facility is located at 14048 Valley Boulevard, City of Industry, California 91716-0009. The mailing address for the Facility is P.O. Box 60009, City of Industry, California 91716-0009.

BACKGROUND

3. The Facility site is approximately fifteen acres in size. (Transcript, 2/28/08 at 1178:21-25, 1179:1) The Facility is located on level terrain in a highly urbanized area that includes a mixture of residential, industrial and commercial land uses. Residences are located primarily to the west and south of the Facility. The areas to the north and to the east are primarily mixed light industrial and commercial use. (Ex. A at 3, Ex. II at 17)

4. The operations at the Facility are conducted in a single 135,000 square foot building that is effectively divided into two sections that serve two different

[2] The words "trash," "garbage," and "refuse" were used in the hearing to refer to the same or similar material. For consistency, the word "trash" will be used in this Order, unless the context requires a different term. Trash is distinguishable from other types of municipal waste, such as "green waste" (trimmings and residue from vegetation).

purposes – the transfer station/tipping floor ("tipping floor") and the materials recovery facility ("MRF"). (Transcript, 2/28/08 at 1237:5-8) In the tipping floor area, trucks containing trash collected from residential and commercial customers are emptied onto the floor. The trash is then loaded by heavy equipment onto large conveyors that transfer the trash to the MRF, where recyclable materials are removed from the mixed trash. The recyclable materials are segregated and transferred to end users. The non-recyclable materials are returned to the tipping floor, where they are pushed by bulldozers into large, open transfer trailers that have been driven into a transfer tunnel ramp below the tipping floor. These trailer-loads of non-recyclable trash are then taken to a landfill. (See generally, Transcript 2/28/08 at 1237:5-1254:10; Ex. A at 17-24; Ex. II at 6-13) Operations are conducted in two shifts per day, eighteen hours per day, between 6:00 a.m. and midnight, Monday through Friday, with only limited operations on Saturday and Sunday. (Transcript, 1/10/08 at 719:7-21; 2/28/08 at 1253:5-6; 3/18/08 at 1687:5-6; 1696:21-25; 1697:1-12)

Permits and Settlement Agreement

5. Prior to and during 2004-2005, the Facility operated under a Los Angeles County Department of Regional Planning ("County") Conditional Use Permit ("CUP") that authorized the Facility to handle up to 1,920 tons per day ("tpd") of refuse. In 2005, the Facility received County CUP, Case No. 97-060-(1), and a permit issued by the Local Enforcement Agency of the California Integrated Waste Management Board ("LEA"), which authorized an increase in materials handled at the Facility ("throughput") in two phases (Phases 2 and 3), based on the installation of emission and odor-control systems and other improvements at the Facility. Phase 2 authorized an increase to 4,000 tpd; Phase 3 authorized an increase to 5,000 tpd. (Transcript, 3/18/08 at 1595:19-22, 1596:6-25, 1597:1-10, 1669:14-20; 1670:6-11)

6. Respondent and the District entered into a Settlement Agreement in April 2005 (Exhibit D) to resolve enforcement issues involving the emission of odorous compounds from the Facility. The Settlement Agreement provided, *inter alia*, that the tipping floor (which was approximately 53,000 square feet in size and previously operated with one side of the large building open to the atmosphere) would be enclosed "in a fully enclosed completely walled, floored and roofed structure," and that Respondent would "construct an air ventilation system, which is designed to induce inward face velocity through each opening in the tipping floor through which air can enter the tipping floor, and shall route the air to an odor control device or devices approved by the SCAQMD." (Ex. D at 7, para. 3) The construction of the enclosure of the tipping floor and of the ventilation and odor control system were to be completed no later than March 31, 2007. (Ex. D at 8, para. 4.c.) The Settlement Agreement also provided that "[t]here shall be no increase in the existing 1,920 tons of permitted material including trash and recyclables handled per day at the Facility until the tipping area is fully enclosed and the air vented to the odor control device(s)." (Ex. D at 7, para.4.a.)

7. District Rule 201 requires that a permit to construct ("PTC") be issued by the District before an applicant may construct or install an air pollution control device. In October 2005, Respondent submitted an application for a District PTC, application number ("A/N") 450235, to construct an odor control system in the MRF and tipping floor. In response to a District request, the project was divided between two applications. Application number 456963 was submitted to construct six odor control systems in the existing and new tipping floor, while the four odor control systems in the MRF remained under A/N 450235.

8. On December 14, 2006, the District approved PTC A/N 450235, which described the complete enclosure and the filtration and exhaust systems for the MRF.

(Ex. 4) On the same day, the District approved PTC A/N 456963, which described the complete enclosure and the filtration and exhaust systems for the tipping floor. (Ex. 5) Respondent did not file a petition for Hearing Board review of the action of the Executive Officer in issuing the PTC, although California Health and Safety Code, Section 42302.1 authorized Respondent to seek such review within thirty days of the Executive Officer's action.

9. In brief, the permits described a ventilation and odor control system using ten separate fans (four in the MRF and six in the tipping floor) to draw air from the interior of the building. (Exs. 4 and 5)

10. Each PTC described the ventilation systems to be installed in the Facility, including the size and flow capacity of the exhaust fans. The fans were intended to draw air into the building(s) (the "inward velocity") through the doors and other openings in order to prevent odors from escaping. The air is then ventilated through a series of filters prior to being emitted through vents in the roof. (Exs. 4 and 5, Condition 4) The documentation submitted by Respondent in support of the PTC applications indicated the specific design dimensions of the ductwork for the odor control system. (Transcript, 11/28/07 at 152:23-153:5, 154:10-155:3) If the fans' flow rates are insufficient, if the fans are not operating properly, or if the components of the systems are not built as designed, the inward velocity would be less than required by the PTCs. These deficiencies could result in uncontrolled odors escaping from the building. (Transcript, 11/28/08 at 158:13-159:19)

11. Each PTC described the filtration system, which is designed with three particulate filters (prefilter module, secondary filter module and tertiary filter module)

that lead to and a carbon filter. (Exs. 4 and 5, Equipment Description 2) The three particulate filters are intended to capture particles and matter in the ventilated air that would otherwise pass through to the carbon filter, compromising or shortening the effective life of the carbon filter. (Transcript, 11/28/08 at 158:3-158:11) The carbon filter is designed to control the emission of potentially odorous compounds in the ventilated air by causing those compounds to be adsorbed onto carbon granules. (Transcript, 11/28/08 at 158:12; Transcript 12/5/08 at 278:14-20, 281:15-21) Each PTC required that whenever transfer/tipping operations are being conducted in the building(s), all vented exhaust fans shall vent the air in the building through a filtration system that is in full operation. (Exs. 4 and 5, Condition 4)

12. Each PTC specified that differential pressure gauges shall be installed and maintained across each prefilter, secondary filter and tertiary filter module in the filter systems and that a specified pressure drop be maintained, monitored and recorded on a daily basis. (Exs. 4 and 5, Condition 8)

13. The PTCs contained conditions affecting the operation of the Facility, including minimum total exhaust flow rates, daily pressure differential measurements for the particulate filters, and twice weekly testing of the carbon to determine whether the filters were effective or had become saturated and required replacement. (Exs. 4 and 5, conditions 4, 8, and 12, respectively[3])

Enclosure and Installation of the Odor Control System

14. Respondent installed the ten air ventilation and odor control systems by March 31, 2007. Due to space limitations on the Facility floor, the fans, filters, and

[3] The two PTCs contain identical or similar conditions that are identified by the same numeral.

associated ductwork were designed to be suspended from the ceiling of the building, forty feet above the floor. There was no fixed means of access to this equipment for inspection and servicing. The equipment could only be accessed by a portable lift. (Transcript, 12/5/07 at 325:18-326:4; 11/28/07 at 193:25-195:11; 3/6/08 at 1332:6-17; Ex. A at 25, Ex. II at 14, Ex. 9A at 1, photograph no. 1)

15. On April 6, 2007, following the March 31, 2007 deadline in the CUP, Respondent represented to the County that "We have completed enclosure of the facility, completed construction of the tipping floor enclosure/addition and other required mitigations, and placed the filtered exhaust ventilation system into operation," and gave notice that it had met the preconditions for increasing the throughput at the Facility. (Ex. 19) The County responded that "[t]he Facility is in substantial compliance" with the conditions for expanding throughput to the Phase II 4,000 tpd level. (Ex. EE)

16. As of April 6, 2007, however, the enclosure of the building was still incomplete and the odor control systems still did not function correctly or as designed, due to electrical, structural and other problems. These operational problems continued through the ensuing months:

a) The fast-closing doors did not operate correctly as initially designed and installed, and were not modified to operate correctly until July 2007; (Transcript, 1/10/08 at 711:12-712:6; 2/28/08 at 1156:21-1158:5)

b) For the first three to four months following April 1, 2007, four to five of the ten fans were not working most of the time. (Transcript, 3/6/08 at 1321:11-25, 1322:1, 1373:10, 1374:1) The exhaust fans did not operate effectively due to electrical problems with a component associated with each of the ten (10) exhaust fans known as

the "variable frequency drive" ("VFD") that was installed to allow the fan speeds to be adjusted to reduce electricity demand and costs. The VFDs burned out frequently, making the operation of the exhaust fans unreliable. In September 2007, Respondent disconnected the VFDs, allowing the fans to be operated without fan speed adjustments. (Transcript, 1/10/08 at 712:7-715:23; 2/28/08 at 1158:10-1161:21)

c) The enclosure of the tipping floor was not air-tight in that there were doors in the building that were frequently opened and closed to allow entrance and exit of trash vehicles, bins, staff and other activities. A permanently open area remains on the east side of the MRF in which three large open-topped containers are parked to receive wood, green waste, and metal separated from the trash. In addition, there is no door on the east (exit) side of the transfer truck tunnel. (Transcript, 4/23/08 at 2376:5-14, 2436:13-2437:3; 4/24/08 at 2461:4-7, 2474:11-17, 2520:20-25; Ex. A at 21, 22)

d) Respondent conducted a test of two carbon filters in August 2007 that showed that the tested carbon had no effective life remaining. Additional carbon tests conducted in November 2007 using a different testing methodology indicated that a majority of the effective life of the carbon in the tested filters had been exhausted. Respondent changed the carbon in the filter systems for the first time at the end of December 2007. (Transcript, 1/10/08 at 716:11-718:5)

e) A test of the fan flow rates conducted by Respondent on February 14, 2008 indicated that the total volumetric flow of the fans was 104,914 cfm, or slightly less than half of the total minimum exhaust flow rate of 214,400 cfm (144,000 cfm in the tipping area and 70,400 cfm in the MRF) required by the PTCs. (Exhibits 4 and 5, condition 4; Ex. FFF and Transcript, 4/22/08 at 2170:17 – 2171:17)

f) In April 2008, Respondent determined that seven of the fans had been wired incorrectly so that they rotated backwards, which reduced the ability of the fans to draw the air into the filters. (Transcript, 4/22/08 at 2175:14-25, 2176:1-20)

g) Although the drawings and specifications for the fans required them to be balanced, the fans had not been balanced during installation. The failure to balance the fans caused vibration that damaged the ductwork in the exhaust system. By February 2008, the ductwork had deteriorated, with some holes exceeding half a square foot in size. (Transcript, 4/2/08 at 2174:21-25, 2175:1-4)

i) After the wiring was corrected, the ductwork on fan no. 6 was replaced, and the fans were balanced. A second set of tests was conducted by Respondent in April 2008. This test indicated that the total volumetric flow of the ten fans was 171,281 cfm, or approximately 80 percent of the required total minimum exhaust flow rate of 214,400 cfm. (Transcript 4/22/08 at 2175:14-25, 2176:1-20, 2177:1-14; Ex. FFF)

j) In April 2008, Respondent determined that the as-constructed ducts in the exhaust system were smaller than the design specifications. (Transcript, 4/22/08 at 2134:10-21)

k) Respondent modified the particulate filters by completely eliminating the tertiary filter and changing the type and form of filter media used in the secondary and carbon filters. Respondent did not seek or obtain a PTC for this modification, as required by District rules. (Transcript, 3/18/08 at 1682:10-1685:9; 4/1/08 at 1939:7-1941:18)

Permits and Throughput Limits

17. On April 9, 2007, Respondent began steadily increasing the throughput above 1,920 tpd. (Ex. 10 at 1) In September 2007, throughput was averaging well over

2,000 tpd on over fifty percent of the operating days, Monday through Friday. (Ex 10) In March and April 2008, throughput averaged 2,907 tpd, with an all-time daily high of 3,571 tpd. (Ex. 10)

18. By July 2007, Respondent was aware that the Facility was not complying with all of the conditions of the PTCs, particularly regarding the operation of the fans and the sampling of the filter carbon. (Transcript 1/31/08 at 871:5-25, 872: 1-25, 873:1-12)

Current Status of Permits

19. District Rules 201 and 209 prohibit the alteration of permitted equipment without the issuance of a written authorization (i.e., a PTC) from the District.

20. The installed odor control systems have been altered and do not match the descriptions in the PTCs (Ex. FF at 6 "Standard Evaluation for Equipment Operating Without a Permit"; Transcript, 11/28/08 at 156:7-15, 165:18 – 166:9) Therefore, the PTCs are void. (District Rule 209; Transcript, 4/22/08 at 2133:20-2134:21; 5/6/08 at 2619:21 – 24; 5/8/08 at 2804:8-10)

21. District Rule 205 provides that "a permit to construct shall expire one year from the date of issuance unless an extension of time has been approved in writing." The PTCs for the MRF and tipping floor were issued on December 14, 2006 (Exs. 4 and 5) and expired December 14, 2007.

22. In January 2008, Respondent submitted two applications for Permits to Operate ("PTO") the previously installed odor control systems and requested that PTCs A/N 450235 and A/N 456963 be inactivated. (Ex. FF; Transcript 4/22/08 at 2135:9-2136:11, 2167:11-21) Pursuant to Rule 202(c), the applications for the two previously installed odor control systems serve as temporary permits to operate.

ODOR NUISANCE

23. On October 4, 2007, the District petitioned the Hearing Board for issuance of an Order for Abatement directed to Respondent. The petition sought an Order for Abatement with respect to District Rules 203(b) (Permit to Operate), 402 (Nuisance), and 410 (Odors from Transfer Stations and Material Recovery Facilities). The District did not put on any evidence with respect to Rule 410 in its case in chief, and the Board declined to allow the District to offer such evidence in the rebuttal phase of the evidentiary hearing. In its oral closing argument to the Board, the District stated that because Respondent's PTCs had become void, the District was no longer asking the Board to issue an order with respect to Rule 203(b). Therefore, the only issues presented for decision are whether Respondent is in violation of Rule 402, and, if so, the content of an order that the Hearing Board should issue to abate the violation.

24. District Rule 402 is a nuisance rule that is specifically tailored to address nuisances caused by discharges of air contaminants. It provides as follows:

> A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.

25. The handling and processing of trash in the Facility creates odors. These odors are made up of a variety of individual constituents and compounds, but the "trash odors" are recognizable by Respondent's employees, Facility personnel, neighboring residents and District inspectors.

26. There are other sources of odors, or potential odors, in the general area surrounding the Facility, including an assortment of animal management facilities, a sewage treatment plant, industrial facilities, and residential trash receptacles. These other odors are sufficiently different in character, intensity, and point of origin that they can reasonably be distinguished by a person with an ordinary sense of smell from the odors originating at the Facility.

a) District inspector Carmelita Benitez testified that she can identify the odor associated with Respondent's operations, and that she can distinguish the trash odor associated with the Facility from other odors in the vicinity, including goat slaughtering operations, horse stables, manure, and portable toilets. (Transcript 12/5/07 at 345:12-346:18)

b) District inspector Kim Bolander testified that she has personally smelled odors associated with horse manure, portable toilets, plastic odors, diesel exhaust, food manufacturing and food smoking operations, and she can tell the difference between all those odors and the trash odor she has smelled at Respondent's facility. (Transcript 1/31/08 at 938:16–942:13) She also testified that she previously worked at the Los Angeles Sanitation District sewage treatment facility and is very familiar with the odor, or lack thereof, associated with that facility. To the extent there is any odor associated with that facility, Inspector Bolander testified that it is not a trash odor. (Transcript 1/31/08 at 956:9–957:8)

c) Respondent presented photographs that it asserts represent other potential odor sources in the general area of Respondent's facility. (Ex. II at 18-20) The photographs were taken in February and March, 2008, by Ben Idemundia (who did not

testify), a paralegal working for Respondent's counsel, and Duane McDonald, Respondent's Director of Environmental Services. (Transcript 3/18/08 at 1723:25–1724:4; 3/19/08 at 1760:13-18, 1871:13-19, 1885:20-22) The photographs included household trash bins on the street on trash day, horse properties, animal sheds, the United Pumping facility, and other objects. (Transcript 3/19/08 at 1753-1759) Mr. McDonald testified that he remained in his vehicle while the photographs were being taken and did not know "specifically" if there were odors emanating from competing sources or how far and in what direction those odors may have traveled from their respective sources. Among the competing odor sources identified by Respondent is a facility at the end of Oranut Avenue. Mr. McDonald identified this facility as another trash company. (Transcript, 3/19/08 at1753:19-25, 1754:1-21) On April 25, 2008, District Inspect Cavoto inspected that same facility (Southern California Environmental), conducted an odor survey upwind, downwind and across from that facility, and did not smell any trash or garbage-related odors. (Transcript, 5/6/08 at 2734:1-25, 2735:1, 2736:3-18)

d) Respondent argued that competing odors come from the United Pumping facility truck yard, which is adjacent to the Facility. A variety of equipment is parked in the United Pumping truck yard, including waste-hauling containers and portable toilets. District inspectors testified that they could distinguish the odors associated with the United Pumping truck yard from odors at the Facility. (Transcript 12/5/07:346 at 5-18; 1/31/08 at 945:3-15, 946:18-947:3; 3/19/08 at 1872:16-25, 1873:1-6, 1874:2-4)

e) The Puente Hills Landfill handles materials similar to some of the materials handled at the Facility. There was no demonstration on the record that the Puente Hills Landfill has caused or contributed to trash odors detected in the vicinity of

the Facility. Inspector Bolander testified that she is familiar with the odors, if any, associated with the Puente Hills Landfill, and that those odors do not smell like the odors at the Facility. She characterized the landfill odors as landfill gas or green waste odors. (Transcript 1/31/08 at 971:4-18, 975:6-13)

27. The District inspects facilities on a routine, periodic basis, as well as in response to specific concerns, incidents, or complaints. Members of the public can call the District to complain about odors. An operator logs the time that the District received the call. A supervisor or dispatcher contacts an inspector, who drives to the complainant's location to investigate the odor complaint. (Ex. H) Because the inspector is rarely at the complainant's location at the time when the complainant makes the phone call, there is usually a time lag between the time when the resident calls to complain and the time when the inspector arrives on the scene. (See, e.g., Exs. I, J, K and L) During this time interval, wind speed and direction can change, and operating conditions at the facility may also change.

28. It is not necessary to enter a facility to rule it out as a source of odors. When investigating nuisance complaints, District inspectors ruled out other sources by walking around the boundaries of other facilities to determine if they were possible sources of the trash odors detected in the community. (Transcript 5/6/08:2754 at 10-22)

29. On September 22, 2007, District Inspector John Anderson was in the vicinity of the facility (Ex. 39), responding to complaints from residents that had been called in to the District by telephone. (Transcript 2/7/08 at1052:2-18) Inspector Anderson noted odors in the neighborhood that he characterized as "faint, intermittent garbage odors" in two locations, one on Proctor Avenue and a second on Merville Drive,

and as "faint to moderate intermittent garbage odors" in another location on Merville Drive. (1054:1–25, 1055:1) Inspector Anderson determined that the odors he was detecting were from the Facility. (1055:11-1056:11)

30. On September 26, 2007, Inspector Benitez was in the vicinity of the Facility in the morning and again in the evening (Exs. I and L), responding to complaints from residents that had been called in to the District by telephone. (Transcript, 12/5/07 at 343:14-22) Inspector Benitez went to complainants' residences on Proctor Avenue, Fourth Avenue and Merville Drive (349:3-5) and detected odors in the vicinity of the residences. (344:21-24; 348:7-11; 349: 6-8) She described the odor as "a smell of trash," (345 at 21), and as "slight to strong," depending on wind conditions (349:9-12). She noted that the strongest odors were detected on Merville Drive, which is a cul-de-sac. (349:12-15) Data from Respondent's meteorological station showed that the winds were calm (zero to 1 mph) during each of those periods. (Ex. T at 211)

31. On September 28, 2007, the District issued Notice of Violation ("NOV") No. P-51505 to Respondent for violation(s) of District Rule 402 that occurred on September 26, 2007. (Ex. 14)

32. On October 8, 2007, Inspector Benitez was in the vicinity of the Facility (Ex. J), responding to complaints from residents that had been called in to the District by telephone. (Transcript, 11/28/07 at 350:9-15) In the vicinity of Proctor Avenue, Fourth Avenue, and Merville Drive, Inspector Benitez detected odors that she identified as originating at the Facility. (Transcript, 12/5/07 at 350:1-11) Data from Respondent's meteorological station showed wind speeds were calm, between zero and one mph,

during the times when the residents were calling and when the inspector was detecting the odors (Ex. H, Ex. J, Ex. T at 220)

33. On October 16, 2007, the District issued NOV No. P-51506 to Respondent for violation(s) of District Rule 402 that occurred on October 8, 2007. (Ex. 15)

34. On October 25, 2007, District Inspector Bolander was in the vicinity of the Facility during the morning hours (Ex. K), responding to complaints from residents that had been called in to the District by telephone. (Transcript 1/31/08 at 898:11-15) Inspector Bolander noted odors in the vicinity of Fourth Avenue, Merville Drive and Proctor Avenue. (898:16-25, 899:1), and she identified the odors as originating at the Facility. (Transcript 1/31/08 at 899:21-25, 900:1-23) She further characterized the intensity of the odors she smelled in the residential neighborhood as varying with changes in the wind, but persisting throughout her inspection, and ranging from mild to moderate in intensity. (901:22-25, 902:1-7)

35. On October 25, 2007, Inspector Anderson was in the vicinity of the Facility in the evening hours (Ex. 40), responding to complaints from residents that had been called in to the District by telephone. (Transcript, 2/7/08 at 1059:14-25, 1060:1-4) Inspector Anderson was not able to confirm the existence of odors originating at the Facility on this occasion. (1060:12-15)

36. On October 27, 2007, Inspector Anderson was in the vicinity of the Facility (Ex. 41), responding to complaints from residents that had been called in to the District by telephone. (Transcript, 2/7/08 at 1061:11-21) Inspector Anderson went to three locations on Merville Drive, and noticed "a faint intermittent garbage odor" at one

location. (1062:1-10; Exhibit 41) Inspector Anderson determined that the source of the odor was the Facility. (1062:11-25, 1062:1-5)

37. On November 13, 2007, Inspector Benitez was in the vicinity of the Facility, responding to complaints from residents that had been called in to the District by telephone. (Transcript, 11/28/07 at 351:12-22) In the "same streets, the same area" that she had testified to regarding the previous visits to the Facility in Fact Findings 30 and 32, above (i.e. the vicinity of Proctor Avenue, Fourth Avenue, and Merville Drive), Inspector Benitez detected odors that she identified as originating at the Facility. (Transcript, 12/5/07 at 352:6-15, 21-24) Data from Respondent's meteorological station showed the wind speeds as zero during the period when the residents were calling to complain and during the time when the inspector was detecting odors at residences near the Facility. (Ex. H, Ex. T at 249, Ex. 16)

38. On November 16, 2007, the District issued NOV No. P-51507 to Respondent for violation(s) of Rule 402 that occurred on November 13, 2007. (Ex. 1)

39. On December 6, 2007, Inspector Anderson was in the vicinity of the Facility (Ex. 42), responding to a complaint from a resident that had been called in to the District by telephone. (Transcript 2/7/08 at 1063:14-25, 1064:1-10) Inspector Anderson did not identify any odors associated with the Facility at the complainant's location. (1064:11-13)

40. On January 8, 2008, Inspector Bolander was in the vicinity of the Facility responding to a complaint. (Transcript, 1/31/08 at 902:8-11) She noticed a "slight trash odor" on Siesta Street. (902:13-20)

41. At hearings before the Hearing Board held on November 28, 2007, January 10, 2008, and March 12, 2008, eighteen individuals who are residents of neighborhoods in the vicinity of the Facility testified that odors originating from the Facility were causing them detriment, nuisance and annoyance. (The following descriptions include only brief, pertinent summaries of the witnesses' testimony.)

a) Alfredo de la Cruz, 248 Merville, (Transcript 11/28/07 at 62-64; 3/12/08 at 1431-1434) testified that he had been affected by an odor that he attributed to the Facility, that he keeps the doors and windows in his house shut due to the odor, that the odors cause his furniture to stink, that he was prevented from enjoying activities in his yard, and that the odors were continuing.

b) Wesley Ojala, 206 Merville, (Transcript 11/28/07 at 71-78) testified that the odors are bad in his area, that Respondent does not control its odors, that the odor controls do not work, that the odor affects his furniture and upholstery, and that he had filed complaints with the District about the odor in the days prior to the hearing. Mr. Ojala further testified (Transcript 3/12/08 at 1428) that at 7:30 Monday morning, March 10, "that odor was so bad it burns [sic] your eyes when you went outside."

c) Carlos Vallejo, 13935 Proctor, (Transcript, 1/10/08 at 619-627, 3/12/08 at 1478-1481) testified that "The problem there with Athens is...their smell," and that his grandchildren cannot play outside his house because of the odor.

d) Lisa Vallejo, 13935 Proctor, (Transcript 1/10/08 at 627-632) testified that the odor from Respondent prevents her children from playing outside, that she has to keep the windows to her house closed against the odor, and that the odor permeates her house.

e) Michael Bravo, unspecified address on Merville Drive, (Transcript, 3/12/08 at 1429-1431) testified that the odors from Respondent "are not minor odors, but extremely strong in nature," and characterized the odors as "rotting garbage rotting trash odors." He testified that the odors were extremely strong and "life-altering," and that when the odors were strong, they forced him to close the windows **in** his house.

f) Thomas Lohff, 14030 East Don Julian Road, (Transcript, 3/12/08 at 1435-1437) testified that there is an occasional weak trash odor at his residence, but that the odor is stronger in the vicinity of Valley Boulevard and Fourth and Fifth Streets, and of Proctor Avenue and Fourth and Fifth Streets. He testified that on March 3, 2008, he went to a transmission shop on Fourth Avenue, and "the garbage smell was so bad, I couldn't even conduct business."

g) Jeff Divers, 14063 Proctor, (Transcript, 3/12/08 at 1443-1447) testified, describing a smell he attributed to the Facility as a "sour smell, trash." He testified that "[i]t's on the weekends I notice it's really, really bad, the smell." Mr. Divers works from 7:30 a.m. to 5:00 p.m., Monday through Friday, and also on Saturdays, and consequently is home on Sundays and occasionally on Saturday afternoons, although he testified that during a week of vacation he noticed "odor during the week, you know, on and off." He also testified that "in the mornings when I'm leaving work, I leave the house approximately 7:05 or so and it's — you get the smell. It's not every day, but particular days, it's very strong." He testified that guests to his home have noticed and commented on the odor.

h) John King, 245 South Siesta Avenue, (Transcript, 3/12/08 at 1423-1427) testified that odors from the Facility affected outdoor activities at his residence. He

testified that he had lived in the neighborhood since 1993, had been inside the Facility, and could distinguish its odors from other odors. He further testified that odors increase in the summer, and that the odors affect the use of his yard and swimming pool by his family, church groups, and guests.

i) Nadine Munguia, unspecified address on Guinea Drive, (Transcript, 3/12/08 at 1447-1450) testified that she smells a trash odor at her home, particularly when she is in her yard in the evenings. Ms. Munguia is a teacher, and notices the odor more in the summer when she is home during the day. She also testified that she smells a strong trash odor in the vicinity of Workman Mill Road and Valley Boulevard.

j) Francisco Pena, 14160 Proctor, (Transcript, 3/12/08 at 1453-1456) testified that the odor was worse in the summer – "In summer, you know, you cannot stand the smell." The odors from the Facility had improved, "but you can still smell it."

k) John Ortega, 13937 East Prichard Street, (Transcript, 3/12/08 at 1456-1459) testified that odors affected his use of his backyard and pool at his residence north of Valley Boulevard. He testified that the odors were worse in the summer.

l) Lydia Gilliam, 254 S. Fourth Avenue, (Transcript, 3/12/08 at 1459-1461) testified that she could smell odors from the Facility in different parts of her yard; "It's – it's very unpleasant to smell, just like a passing trash truck."

m) Jose Carlos, 331 Fourth Avenue, (Transcript, 3/12/08 at 1461-1463) testified that "the main problem continues to be the smell," which is worst during the summer, but also present in the winter months. He notices the odors primarily in the morning and evening hours. He testified that the smell limited his enjoyment of outdoor activities at his home.

n) Alexander Huang, 207 Oranut Lane, (Transcript, 3/12/08 at 1465-1468) testified that "when the wind come from the trash company, so we – we smell a lot. It's very poor, the air quality, so we cannot open the window. We have to close the door and window."

o) Jin Ye Chen, 203 Oranut, (Transcript, 3/12/08 at 1468-1470) testified that she has to keep the doors and windows to her home closed because of the odor. She stated that the odor from the Facility is "sour and stinks," and that she had detected the same odors near Respondent.

p) Maria Bonillas, 227 South Fourth Avenue, (Transcript, 3/12/08 at 1470-1472) testified that the odor problem began when the Facility was built, and that the odors are present in the mornings and afternoons, and worse in the summer. She is unable to be outside her home, or to keep her home open, when the smells are present. She also associates the odors with allergies that she and her husband suffer.

r) Russell Gilliam, 254 South Fourth Avenue, (Transcript 3/12/08 at 1475-1478) testified that "the air we breathe is contaminated by putrid, pungent odors emanating from Athens at any time of day," (1475:17-20) and [t]he operation of their business at that facility is an obnoxious nuisance that interferes with my family's physical comfort and disturbs our peace of mind and enjoyment of life." (1475:13-16) Gilliam testified that the odor masking agent used by Respondent to mask the smell from the Facility "doesn't get rid of it. In fact, it just makes it worse. It just adds to the stink, in a chemical sort of way." (1475:20-23)

s) Jocefina Arce, 242 Merville Drive, (Transcript, 3/12/08 at 1485-1486) testified that she notices the odors most strongly in the mornings, and in the summer. She stated that the odors prevent her from being outside, and causes headaches.

42. The resident public witnesses described in Fact Findings 41(a) through (s) are credible witnesses who gave first-hand, current accounts of the odors emanating from the Facility and the effect of those odors on their lives and property.

43. Duncan McKee, the representative of the neighborhoods of Avocado Heights, La Puente, North Whittier and Basset on the District's Hacienda Heights, La Puente, Avocado Heights Environmental Justice Council, (Transcript, 3/12/08 at 1437-1443) testified that he receives reports of odors from businesses in the vicinity of the Facility. "But the truth of the matter is," he testified, "that the odors are there. They're very strong. There's a big problem, and we need to fix it." (1439:2-4) He has investigated the reported odors and determined that they originate at the Facility. In the two months preceding his testimony, he had also detected odors at Basset High School, three-fourths to one mile from the Facility, and followed the odors to the Facility: "I traced them directly back to Athens. I circled the facility, and it's pretty obvious where the odors were coming from." (Transcript, 3/12/08 at 1439: 13-15)

44. Don Moss, 14051 Lomitas, (Transcript, 3/12/08 at 1481-1485) testified that Quemetco, a nearby industrial facility, is the most serious threat to health in the vicinity, and that he does not smell odors at his home that he attributes to the Facility.

45. Eight Facility employees testified at the March 12, 2008 hearing that they noticed no odors emanating from the Facility, or that the odors were minor or had stopped at some point in the past. (Transcript, 3/12/08 at 1412-1421, 1450-1453, 1463-

1646) (The following descriptions include only brief, pertinent summaries of the witnesses' testimony.)

a) Josefa Robles, 516 Fourth Street (1412-1413), testified that she had lived at that address nine years, had worked at the Facility for two years, eight months, and "Athens was my neighbor there and I never had an odor."

b) Rafael Sanchez, 362 Vineland (1413-1415), testified that he had been "living there for two years already and I never smelled anything." He testified that he had been working at the Facility for eight months.

c) Jaime Contreras, 259 Fifth Street (1415-1416), testified that he had lived in the area three years and that when he is at his house or in the community "I have no problems," by which he was understood to mean that he did not smell odors from the Facility. He testified that "when I come to the park, I smell urine coming from the animals." Mr. Contreras works at the Facility.

d) David Cruz, unspecified address on Bassetdale (1416-1419), testified that he had been living at that address five years and that the filters at the Facility are working because "I hardly smell anything." He testified that "there's no smell or anything. I don't smell it. Only when you get near the factory, that's when you smell it." Mr. Cruz also testified that there is a "horse smell" near Avocado Heights Park. Mr. Cruz is the weigh master at the Facility.

e) Willberth Flores, 217 Bassetdale (1419-1421), testified that there was a bad odor from the Facility previously, but that it had been getting better. He also testified that there were other odors in the neighborhood, particularly animal odors. Mr. Flores had worked at the Facility for a year and two months.

f) Juan Pulido, 403 Orange Blossom (1421-1423), testified that he had been working at the Facility for seven "going on eight" years. He testified that changes to the Facility have controlled odors and that "when I pass by on my way to the market or wherever I'm going, I have not smelled any of the trash."

g) Manuel Estrada, 151 S. Orange Blossom (1450-1452), testified that he had been living at that address twenty-seven years, and working at the Facility for three years. He testified that "There's no smell outside. It's not a bad smell." He noted that the Puente Hills Landfill is nearby, but testified that he had not smelled "either one, either Athens or Puente Hills."

h) Nohemi Revilla, 424 Fifth Avenue, (1463-1464) testified that she had lived at that address for six years, and works at the Facility. She noted the odor control efforts at the Facility and testified that "it does not smell like it used to about three, four years ago." She also noted that there are odors, flies and dust associated with animals in the neighborhood.

46. Respondent's general manager acknowledged that he has detected "the smell from the MRF" in the vicinity of Fourth Avenue and Proctor Avenue (Transcript, 3/6/08 at 1381:5-10)

47. Reactions to odors may vary from individual to individual. Some may find a particular odor offensive, rising to the level of a nuisance, while others may find the same odor inoffensive or even undetectable. For an odor nuisance to exist, as defined by District Rule 402, it is not necessary that perception of the odor as a nuisance be universal or unanimous. Rather, it is only necessary that a considerable number of persons perceive the odor as injurious, detrimental, a nuisance, or annoying.

48. Individuals who are exposed to particular odors on a regular basis, such as in their workplace, may be less likely to perceive those odors than individuals who are exposed to those same odors on a less frequent or less continuous basis. This is commonly referred to as "olfactory fatigue." Consequently, when one witness testifies to detecting an odor or to finding an odor a nuisance while a second witness testifies that they did not detect an odor or that the odor was not a nuisance, both witnesses may be considered credible. (Transcript, 4/22/08 at 2107:10-22; 4/23/08 at 2384:6-2385:22)

a) Respondent assigns shift supervisors, who work in the MRF, to conduct odor surveys in the neighborhood twice a day. In addition to these regular odor surveys, Respondent conducts an immediate survey if it becomes aware that a District inspector is investigating a complaint. The supervisors drive around the neighborhood and make notes on a form created for that purpose regarding whether they detect odors, and if so, the type of odor detected. (Transcript, 3/6/08 at 1342:8–1343:7; Ex. AA)

b) On September 26, 2007, residents called in complaints between approximately 6:30 am and 9:30 a.m., and Inspector Benitez detected trash odors in the vicinity of residences between approximately 9:10 a.m. and 9:15 a.m. Residents called in complaints again between approximately 7:30 p.m. and 10:00 p.m., and Inspector Benitez detected odors in the vicinity of the residences between 9:40 p.m. and 10:20 p.m. (Exs. H, I & L)

c) Respondent's employees conducted four odor surveys on September 26, 2007. The first three surveys were conducted between 7:45 a.m. and 8:05 a.m., between 10:11 a.m. and 10:25 a.m., and between 6:07 p.m. and 6:19 p.m. Respondent's employees did not detect odors of any kind during these surveys. The fourth survey was

conducted between 11:05 and 11:15 p.m. During that survey, Respondent's employee detected trash odors, as well as wood and manure odors. (Ex. AA at Athens00396-Athens00400; Transcript, 3/6/08 at 1354:14–1358:14)

d) Because of olfactory fatigue, during the same time on the same day Respondent's employees could have been truthfully noting that they smelled no trash odors in the neighborhood, while residents and the District inspector did smell such odors in the community, emanating from the Facility.

e) Olfactory fatigue may also explain why Respondent's employees testified that they detected animal odors in the neighborhood, but not trash odors. [Fact Findings 45(c), (d), (e), and (h)] Respondent's expert acknowledged that Respondent's employees could be more likely to notice animal odors than the trash odors that they are "around all the time." (Transcript 4/23/08 at 2385:12-22)

Meteorological Conditions

49. The data from the meteorological station located on the roof of the Facility indicate that wind speeds were "calm," or less than one knot per hour, for approximately fifty-five percent of the time during the period 2005-2007. (Ex. II, page 41A, Transcript, 4/23/08 at 2333:8-25; see also Exs. N, O and II at pp. 21, 23A, 25-28, 34-35, 40, and 42A) When winds are calm or very light, the wind direction can change abruptly, as is common in the vicinity of the Facility. (Transcript, 1/31/08 at 951:13-21; 4/23/08 at 2334:1-10)

50. During calm or light wind conditions, odorous compounds emitted from a facility will tend to remain close to the source of emissions, and to disperse more slowly

than during periods of moderate or stronger winds. (Transcript, 4/23/08 at 2335:7-25, 2336:1-15)

51. Respondent asserts that the wind data do not support a nuisance finding. For example, Respondent asserts that wind data, "compiled as wind roses," as well as specific wind data, show that on days when NOVs were issued, the winds were blowing away from the residences. However, Respondent's expert acknowledged that the wind roses do not show wind speed or direction during periods when winds are calm. Respondent's expert further acknowledged that since winds were calm 70 percent or more of the time on days when NOVs were issued, the wind roses were of little value in determining wind conditions when residents were complaining of odors. (Transcript, 4/23/08 at 2367:10-18) District inspectors responding to complaint calls detected odors at times when winds were calm at the homes of significant numbers of residents located close to the Facility. The detection of odors near the Facility under calm wind conditions is consistent with the views of Respondent's expert that odors would tend to linger near the facility under calm wind conditions.

52. Respondent claimed that its wind data contradicted the claims of inspectors who had detected odors in the community that the inspectors attributed to Facility. For example, Respondent's general manager testified that wind data for September 26, 2007 showed that the wind was blowing away from the community; he further testified that he attempted to show this wind data to the inspector, and was frustrated when she nevertheless insisted that his facility was the source of odor she detected in the community. (Transcript, 3/6/08 at 1337:3-10, 1339:1–1340:19. However, the wind data do not support Respondent's assertion.

53. On September 26, 2007, the residents called in complaints between 6:35 a.m. and 9:39 a.m. (Ex. H) Inspector Benitez detected trash odors in the vicinity of Proctor, Fourth Avenue, and Merville Drive between 9:10 a.m. and 9:15 a.m. (Ex. I) Respondent's wind data shows that wind speed was zero during this time. (Ex. T at 211) Respondent asserts that the wind was from the south, away from the community during this period. (Transcript, 3/6/08 at 1339:18-1340:3) However, when the wind speed is zero mph the air mass tends to remain in place and the wind direction becomes insignificant, except when periodic gusts of wind occur that may register a wind direction. In the afternoon, wind speeds picked up, but decreased in the early evening, reaching zero at 7:30 p.m. and remaining calm throughout the evening. (Ex. T at 211) At exactly 7:30 p.m., residents began calling again and complaining. (Ex. H) The inspector also detected offsite odors during this period. (Ex. L)

OPERATING CONDITIONS

54. The effectiveness of particulate filters is determined by ongoing measurement of the differential pressure ("pressure drop") across the filters. The differential pressure must be maintained within a specified range. Data indicate that the particulate filters at the Facility may operate effectively at a differential pressure approaching 0.0 inches of water column when a new or cleaned filter is installed. (Ex. QQQ, Ex. RRR) Over time, as the filters capture particulate matter, the pressure differential increases, but drops again to near 0.0 inches with the installation of a new or cleaned filter. (Ex, QQQ, Transcript 5/8/08 at 2934:15-2936:25, 2939:22-2940:5) The upper limit of the pressure differential for particulate filters is a function of the structural strength of the filter and its ability to withstand high pressure. The particulate filters at

the Facility were designed for an upper pressure differential limit of 1.0 inches of water column. (Transcript, 5/8/08 at 2937:1-2939:20, 2940:6-24; Ex. II at 50). The appropriate range for both the prefilter and the secondary filter at the Facility must be a minimum of 0.0 inches of water column and a maximum of 1.0 inches of water column. To insure that the appropriate pressure drop across each particulate filter bank is maintained, Respondent must monitor and record on a daily basis the pressure drop across each filter bank. The filters in each filter module that have exceeded the upper limit of 1.0 inches of water column must be replaced. The operator must record the date and type of the filter replacement.

55. A device must be installed on each system to continuously and permanently record the speed at which each fan operates during tipping and transfer operations in order to verify the proper operation of the fans and ventilation system. (Transcript, 5/6/08 at 26544 – 2656, 5/8/08 at 2805:15-2806:10, 2858:7-11)

56. The filters currently installed at the Facility consist of bonded coconut shell–type panels approved by the District. (Transcript 5/6/08 at 2630:21-2631:4 and 2632:2-5) Respondent is interested in using a different type of carbon. A different type of carbon may not be as effective as the carbon already approved by the District. For example, as a result of faulty installation or vibration, a loose, non-bonded granular carbon may shift within its holder resulting in "a hole where there's no carbon" thereby allowing the air to pass through freely. (Transcript 5/6/08 at 2631:19-23, 5/8/08 at 2797:8-2798:8) There is little or no chance of shifting by bonded, panel type carbon thereby avoiding the creation of holes that allow the air to pass through freely. (Transcript 5/8/08 at 2798:9-12) In order to use a different type of carbon, Respondent

must go through proper permitting procedures and obtain District approval. Transcript 5/6/08 at 2631:2-14) This is so that the District can evaluate the performance of the different type of carbon that Respondent proposes to use. (Transcript 5/6/08 at 2630:20-2632:5) Any alteration in the type and/or form of the carbon filters described in the applicable PTCs or PTOs without written approval by the District could result in the installation of less effective filters and a reduction in the ability to control odors. (Transcript, 5/6/08 at 2630:20-2632:5)

57. When newly installed, the filter panels should have an initial capacity to adsorb odorous compounds, measured as a capacity to adsorb carbon tetrachloride ("CTC") of not less than 60% as measured by ASTM Method D34677-99, or, alternatively, a butane activity number of not less than 23.5% as measured by ASTM Method 5228-92. (Transcript, 5/6/08 at 2630:20-2631:14)

58. In order to ensure that the carbon filters continue to function properly, these filters need to be tested according to a schedule to determine the remaining service life of the carbon and whether the carbon panels require replacement. Respondent's sampling data indicate that the carbon approaches saturation in approximately three months. (Transcript 4/23/08:2351 at 3–2353 at 4; Ex AAA; Ex. GGG at 68-69) It takes approximately ten days after carbon samples have been sent for testing for Respondent to receive the results. To account for the time needed to obtain sample results, testing must be performed by sampling a panel from each fan unit no later than 50 days following the date of replacement of the saturated carbon in that unit with fresh carbon. Subsequent sampling of each fan unit must be conducted once every three weeks thereafter until all carbon panels have been replaced by fresh carbon.

59. As discussed above, Respondent's employees have been conducting odor surveys in the residential neighborhood surrounding the Facility twice per day. However, Respondent has assigned this duty to shift supervisors who work in the MRF. (Transcript, 3/6/08 at 1342:8-1343:7) Because of the phenomenon of olfactory fatigue, it is reasonably likely that these individuals would be unable to detect trash odors in the neighborhood, even if residents or other individuals who do not work in the MRF detected trash odors in the neighborhood at the time of the odor survey. (Transcript, 4/22/08 at 2107:10-22; 4/23/08 at 2384:6-2385:22) For this reason, it is reasonable to require that the odor surveys be conducted by individuals who do not work in the MRF.

60. Respondent must maintain records and submit periodic written reports to the District to document the operation of the odor control system and to verify compliance with each condition of this Order.

a) The records must document the cleaning of conveyor belts, walking floors and bins; the results of odor surveys conducted in the vicinity of the Facility; and the wind speed and direction data from the Facility's wind station. These records should be retained for a period of two years, and made available to District personnel upon request.

b) The periodic written reports must include readings of fan motor speed, air flow, and pressure drop; the dates when particulate filters are cleaned or replaced; the results of initial and final carbon tests; and evidence of housekeeping practices. These records supporting these reports should be retained for a period of two years, and made available to District personnel upon request.

61. Based on the results of odor panel testing, odorous air is exiting Respondent's enclosure through the east side transfer tunnel exit, which does not have a

door on it. For this reason, it is likely that there will be a decrease in odors exiting the building if this exit opening is enclosed. Respondent will need to obtain multiple permits before it can construct this enclosure. Respondent estimates it will take up to 120 days to complete the construction after all permits are received. (Transcript, 4/22/08 at 2199:3-2202:17)

62. There could be a reduction in odors exiting the building if Respondent reduces the size of the recycle load-out area on the east side of the MRF. Two trailers and a roll-off bin are currently located in an unenclosed opening in the east side wall, where they sit partially outside the facility. Transcript, 4/22/08 at 2200:16-2201:20.

63. Since September 2007, Respondent has taken the following steps to reduce the risk of odor problems: (1) changed the type of carbon used in its induction/filtration system (Transcript 4/22/08 at 2142:13-2143:20); (2) rewired seven fans such that they now run in the proper direction; (3) balanced the fans; and (4) replaced the duct work on fan no. 6. (Transcript, 4/22/08 at 2175:14-2177:11)

64. Although significant improvements have been made to the odor control system, some problems remain to be solved. (Transcript 4/22/06:2133 at 5-17) For example, enclosing the east side transfer tunnel exit may not be accomplished for many months because of permitting requirements and construction time. (Transcript 4/22/08:2202 at 6-2204 at 17) In addition, based on the April 14, 2008 test data, the fans overall were operating at approximately 80 percent of the flow rate required in the void PTCs (Exs. 4 & 5, cond. 4 & Ex. FFF) As a result, some work may still be needed on the fans and ducts. Further testing, with verification by the District, needs to occur to determine if all required repairs have been effective.

Throughput

65. Starting on April 9, 2007, Respondent began steadily increasing its throughput to levels above 1,920 tpd, even though it knew at that time that its fans were not working properly. (Ex. 10 and Transcript 1/31/08 at 871-873; 4/22/08 at 2175:14-25, 2176:1-20) Respondent continued to seek new customers and increase its throughput after June 2007, by which time Respondent knew it was violating its PTCs. (Transcript 1/31/08 at 871:11-18; 4/3/08 at 2053:13-18; Ex. 10)

66. With an increase in throughput, there is an increase in the amount of trash inside the facility. (Transcript, 3/19/08 at 1916:3-19) For example, there has been a fifty percent increase in the amount of trash in the stockpile during the evening shift. (Transcript, 3/19/08 at 1916:21–1917:10) An increase in the amount of trash handled at the facility leads to an increase in the odorous substances that are released inside the building. (Transcript 5/6/08: 2669 at 12-2670:24)

67. Whether there is an increase in odorous substances released outside the building depends on whether the odor control system is functioning correctly. (Transcript 5/6/08 at 2673:7-12) As of May 6, 2008, Respondents' odor control system was still not fully operational, but it was impossible to estimate the percent effectiveness of the system. (Transcript 5/6/08 at 2674:20-2675:3)

68. For the month of November 2007, the weekly average throughput at the Facility (Monday through Friday, only) was approximately 13,225 tons. The daily maximum throughput (Monday through Friday, only) was approximately 3,000 tons. The Facility's maximum throughputs on a Saturday or Sunday in November 2007, was 882 tons and 35 tons, respectively. (Ex. LL at 1)

HARM

69. As of November 28, 2007 when this proceeding began, Respondent knew that (1) it was the subject of an enforcement proceeding; (2) it was violating its PTCs, and (3) the District was seeking an order to require Respondent to limit its throughput. Respondent continued to solicit new business and increase its throughput while these proceedings were pending, and while it knew that it was violating its PTCs and that its ventilation system was experiencing serious failures.

70. Respondent presented no credible, non-hearsay evidence that either it or any other entity would suffer serious harm if the Hearing Board ordered it to reduce its throughput.

71. The mayors of Covina and West Covina testified that their cities use Respondent's services to comply with AB 939, the state law that requires cities to divert fifty percent of their solid waste from landfill disposal. However, these mayors provided no evidence that their cities could not comply with AB 939 if the Hearing Board ordered Respondent to limit the amount of trash handled, and Respondent offered no evidence that any other cities would violate AB 939 if Respondent reduced the amount of material handled. (Transcript, 4/3/08 at 1981:5-2008:20)

(a) Although the mayors testified that they did not personally know what their cities would do without their contracts with Respondent, they acknowledged that they lack this knowledge because they rely on staff to handle contracting matters for them. Covina's mayor explained that Covina's elected officials are essentially part-time volunteers who "rely heavily on our staff. We have professionals who look at and compare rates and structures and go out and do the shopping ...because we don't have

the expertise or the time." (Transcript, 4/3/08 at 1993:10-21) Similarly, West Covina's mayor explained that she was not aware of alternatives to Respondent's services because "staff would have to look into that for us and give us some kind of answer ...." (Transcript, 4/3/08 at 2004:11-16)

(b) Covina has contracted with Respondent since at least 1997, and West Covina has contracted with Respondent since at least 2006. Both cities have complied with AB 939 since they became Respondent's customers. (Transcript, 4/3/08 at 1984:4-1985:14, 2008:12-20) These cities were complying with AB 939 before April 2007, and there is no evidence that they would begin violating AB 939 if Respondent were limited in the quantity of trash it handled.

(c) Even if some cities had to seek other trash contractors if Respondent were required to limit the amount of trash it handles, Respondent is not the only trash company serving the San Gabriel Valley. Respondent acknowledged that there may be "dozens" of other trash companies serving that region, and Respondent has no knowledge that any San Gabriel Valley city using another trash contractor is violating AB 939. (Transcript, 3/19/08 at 1865:8-10; 4/3/08 at 2076:6-19) Respondent produced no evidence that the customers it has acquired since November 2007 were violating AB 939 before they became Respondent's customers, and there is no evidence that any of those cities would violate AB 939 if they returned to using the service provider they were using before contracting with Respondent.

72. Respondent's witnesses testified that because it is a privately held company, they had no company-wide information about its gross revenues, or the profit

Respondent makes per ton of trash handled (Transcript, 3/19/08 at 1834:22–1835:6; 4/1/08 at 1960:4-16; 4/3/08 at 2053:13-22, 2055:5-25).

73. Respondent has not demonstrated what, if any, harm it would suffer if it were required to limit its throughput.

74. Respondent's consultant presented hearsay evidence of revenue losses Respondent would allegedly suffer per ton if the Hearing Board ordered a throughput cutback. (Transcript 4/22/08 at 2238:15 – 23, 2241:23-2242:21; Ex. JJJ) However, Respondent's witnesses (including the individual cited as the source of information for the revenue losses described in Ex. JJJ) repeatedly asserted that they did not have access to revenue information and refused to provide such information in answer to questions. (Transcript 3/19/08 at 1834:22–1835:6; 4/1/08 at 1960:4-16; 4/3/08 at 2053:13-22, 2055:5-25)

75. Respondent asserts that if the Hearing Board limits Respondent's throughput, Respondent may suffer harm related to fulfilling its contractual obligations. However, each of Respondent's contracts contains a clause requiring Respondent to operate the Facility in compliance with all applicable laws and regulations. (Transcript, 4/3/08 at 2050:5-2051:12)

76. Respondent offered evidence that it pays four monthly fees to various LA County Departments, totaling $2.31 per ton, and amounting to approximately $100,000 per month at its current operating level. (Transcript 4/1/08 at 1934:9-1935:11) If the purpose of this testimony was to assert that the County would suffer harm if Respondent's throughput were limited in some way, the evidence does not make that demonstration. No evidence was provided regarding whether other trash haulers pay

similar per ton fees to the County. Therefore, there is no way to determine whether the County would receive similar amounts of revenue if Respondent's customers transferred their accounts to other trash haulers.

CONCLUSIONS

1. Based on the testimony of the resident Public Witnesses described in Fact Finding 41(a) through (s), the corroborating testimony of Don McKee described in Fact Finding 43, the corroborating testimony of the District Inspectors described in Fact Findings 29 through 40, the Hearing Board concludes that since September 2007 the Facility has been the source of air contaminants – and specifically of odors – that have caused and continue to cause detriment, nuisance, or annoyance to a considerable number of persons, and which endanger the comfort and repose of such persons.

2. The District seeks to have the Hearing Board restrict the quantity of trash received at the Facility. The District claims that the increase in throughput is associated with an increase in the generation of odors inside the Facility as trash is dumped, moved, and processed. (Petitioner's Closing Brief at 7). Further, the District claims that an increase in throughput at the Facility since May 2007 has been associated with an increase in the number of nuisance odor complaints filed in the last two and one-half years regarding the Facility. (Petitioner's Closing Brief at 7) Specifically, the District seeks to have the Hearing Board impose a throughput limit of 1,920 tpd, based on the limit that was contained in the County CUP, the Settlement Agreement, and the prior PTCs for the Facility. (Petitioner's Memorandum of Points and Authorities at 11-12)

Respondent argues, however, that there is no causal relationship between throughput and odor, nor is there a correlation between throughput and the number of

nuisance odor complaints. Respondent further argues that the District presented no evidence that a throughput limitation of 1,920 tpd would be likely to prevent nuisance odors. (Respondent's Post-Evidentiary Hearing Opposition to Petitioner's Memorandum of Points and Authorities at 5-6)

The lead witnesses for both parties on the issue of throughput and odors, Mr. Hower for Respondent and Mr. Chen for Petitioner, testified that the generation of odors inside the Facility would increase with an increase in the quantity of trash processed in the Facility. In Mr. Hower's words:

> "[I]t is likely that the odor generation rate inside the facility is higher when it is operating than when it is not, and somewhat higher when it is operating at higher throughputs that lower throughputs." (Transcript, 5/8/08 at 2926:16-20)

(See also Mr. Chen's testimony at Transcript, 5/6/08 at 2669:12 – 2671:21) The primary issue between the parties is not whether more trash generates more odors, but whether the odor control system at the Facility is effective in controlling the release of those odors and in preventing the creation of an odor nuisance outside of the Facility.

In evaluating the effect of throughput on nuisance odors outside the Facility, both parties relied on evaluations that related throughput to the number and timing of complaints concerning odors received by the District. (Petitioner's Closing Brief at 7-8; Respondent's Post-Evidentiary Hearing Opposition to Petitioner's Memorandum of Points and Authorities at 5-7) These analyses are based on the same flawed premise – that the number of complaints received is an appropriate measure of the existence, extent, and frequency of nuisance odors in the vicinity of the Facility. Although it is logical to assume that the existence of nuisance odors would precede the making of a complaint call

to the District, there are other significant factors that can affect an individual's decision to make such a call to the District. These include the individual's experience with the complaint system, how they perceive the District's and the Respondent's respective responses to prior complaints, the influence of peers and neighbors, and very individual factors such as language proficiency and competing demands for an individual's time and attention. In brief, the relationship between throughput and nuisance odors cannot be satisfactorily evaluated simply by examining the District complaint log.

A more reliable analysis rests on the testimony of Mr. Chen and Mr. Hower, cited above, that an increase in the materials received at the Facility will result in an increase in the generation of odors inside the Facility. The following premise is that if these odors are retained in the Facility, either through enclosure of the work areas or through the successful operation of an odor control system, then odors of sufficient intensity to cause a nuisance should not be present outside the facility at any throughput level anticipated in the CUP. The Facility has not operated successfully, however. There has been a series of problems with the design, installation and operation of the odor control system that has continued from April 2007 [see Fact Findings 16 (a) through (k)]. On the last day of the evidentiary hearing in this matter in May 2008, the odor control system was still not operating as designed. (Transcript, 5/8/08 at 2927:1-7)

Based on this analysis, it is reasonable to conclude that, until the odor control system at the Facility is fully installed and operating successfully, any increase in the throughput at the Facility is likely to result in an increase in the intensity of odors inside the Facility and the frequency of nuisance odors outside of the Facility.

Based on the record before the Hearing Board, there is no level of throughput for which it can be said with confidence that the creation of an odor nuisance outside of the Facility will be prevented. The throughput limit of 1,920 tpd proposed by the District was not included in the CUP and the Settlement Agreement because operation at that level would preclude nuisance, but merely because that level reflected Respondent's maximum capacity prior to April 2007. (Transcript, 1/10/08 at 710:13-24)

Rather than attempt to establish a throughput limit based on an elusive "zero-nuisance" threshold, it is reasonable to establish a throughput limit that constrains Respondent from expanding its operation in the face of evidence that the odor nuisance created by the Facility is continuing. [See Fact Finding no. 41 (a) through (s)] This limit should also reflect the testimony that, while the odor control system at the Facility is not fully operational and additional improvements are required, certain difficulties were overcome and odor control was improved between April 2007, and the commencement of these hearings in November 2007. Consequently, a throughput limit based on the average quantity of material received weekly during the month of November 2007 is considered a reasonable beginning balance that constrains the expansion of throughput through the Facility, while recognizing the improvements in odor control achieved by that date.

It is appropriate for the Hearing Board to review the throughput level for the Facility at intervals in order to consider the effect of further developments, such as the improvement of odor control operations at the Facility, anticipated action by the District on the permit applications filed by Respondent, and testimony concerning the existence of nuisance odors in the vicinity of the Facility. The Hearing Board may

modify this Order as to the throughput limit, or as to any other condition of the Order, based on evidence presented at a subsequent hearing.

3. The Hearing Board conducted 33 days of hearings in this matter, giving opportunity for all parties to submit testimony, documentary evidence, and legal argument, and to cross-examine witnesses. These hearings, therefore, provided Respondent with ample due process. Therefore, the issuance of this Order for Abatement will not constitute a taking of property without due process of law.

4. In issuing this Order for Abatement, the Hearing Board is not ordering the closure or elimination of Respondent's business. To the extent that the Order may require a reduction in throughput at the Facility, such reduction serves to abate the odor nuisance in the neighborhood surrounding the Facility. Thus, in the event that any part of this Order is determined to constitute a closing or elimination of an otherwise lawful business, such closing would not be without a corresponding benefit in reducing air contaminants.

5. The adoption of the conditions set forth hereinafter is likely to result in lawful operations by Respondent with respect to complying with District rules and regulations.

6. It would not be reasonable to allow Respondent to benefit from having solicited new business while it knew it was continuing to violate District rules and while it was causing, and continues to cause, a public nuisance.

7. District Rule 402 is a nuisance rule specifically tailored to address nuisances caused by discharges of air contaminants. It provides as follows:

> A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or

> annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.

Although the District has adopted guidelines for gathering evidence in nuisance cases (Ex. F), these guidelines do not provide the legal definition of public nuisance. (Transcript, 2/7/08 at 1046:4-1047:5) The legal standard for defining a nuisance is provided by the language of District Rule 402.

Respondent argues that to make a nuisance finding, the Hearing Board must find that a considerable number of persons were annoyed at the same time by odors from its Facility. [Athens Services' Post Evidentiary Hearing Opposition to Petitioner's Memorandum of Points and Authorities ("Athen's Opposition") at 10 (filed June 5, 2008)] Respondent relies, as authority for its argument, upon District Rule 402, as well as California Health and Safety Code Section 41700, the state statute prohibiting nuisances associated with air contaminants that are virtually identical to Rule 402. Respondent also relies on Civil Code Section 3480. [See Athens' Opposition at 10, n. 9]

Neither District Rule 402 nor California Health and Safety Code Section 41700 require a considerable number of persons to be affected "at the same time" by the discharge of air contaminants in order for a nuisance to occur within the meaning of state and local law. Although Civil Code Section 3480 defines a public nuisance as one which affects "at the same time an entire community or neighborhood," the District did not bring this action under Civil Code Section 3480, nor did the District file this action as a common law tort action. Civil Code Section 3480 is a general statute that was enacted in 1872 and was last amended in 1873. By contrast, the legislature adopted Health and Safety Section 41700 in 1975 as a specific statute addressing nuisances associated with

discharges of air contaminants. In adopting this new, specific nuisance statute, the legislature chose not to include the Civil Code Section 3480 language that a nuisance must affect persons "at the same time." In 1976, the District's Governing Board's adopted Rule 402, enacting language virtually identical to that in Health and Safety Code Section 41700. The Hearing Board must give effect to the decisions of the legislature and the District Governing Board to adopt air pollution statutes and rules that differ from the nineteenth century Civil Code provision.

Respondent also relies on *People v. General Motors Corp.*, 116 Cal. App. 3d Supp. 6, 11 (1980). (Athens' Opposition at 10, n. 9) In *General Motors*, the defendant, after being charged with creating an odor nuisance by emitting odors from its paint baking oven that annoyed "a considerable number of nearby residents," challenged the constitutionality of Health and Safety Code Section 41700. (116 Cal. App. 3d Supp. at 9) Defendant attacked the phrase "annoyance to any considerable number of persons" in Section 41700 as "void for vagueness." (Id. at 10) The Court noted that although neither party pointed to the existence of any device to measure odor, "this is not to say that the state may not regulate the discharge of air contaminants to prevent the annoyance of nearby residents from the odors of those contaminants." (Id.) The Court mentioned the use of the phrase "any considerable number of persons" in Civil Code 3840, but the Court did not discuss the use of the phrase "at the same time" in that Code section. The Court went on to uphold the constitutionality of Health and Safety Code Section 41700, but did not hold that a nuisance, within the meaning of that section, must also affect a community "at the same time," as provided in Civil Code Section 3480. *General Motors* concluded that the defendant should have been aware that the release of paint odors from its oven

"could annoy and be a nuisance to those people residing nearby where the fumes would travel in the air." (Id. at 11)

Respondent argues that the Hearing Board did not hear credible testimony from enough people to constitute "a considerable number of persons" within the meaning of District Rule 402. Although *General Motors* did not define what constitutes a "considerable number of persons," the decision noted in *dicta* that in *Wade v .Campbell*, 200 Cal.App. 2d 54 (1962), that Court held that the eleven plaintiffs who complained about the defendant's operation qualified as a "considerable number" within the meaning of the nuisance statute. (*General Motors* at 11-12) In the current matter, the existence of a nuisance created by the Facility was testified to by a "considerable number of persons," specifically the eighteen individuals who reside on the streets nearest the Facility. [Fact Finding 41 (a) through(s)] While neither *General* Motors nor *Wade* provides a clear definition of "considerable number," it is noteworthy that the above-referenced eighteen individuals exceed the number of complainants that *Wade* held to constitute a "considerable number of persons." The residents' testimony was corroborated by District inspectors who testified that they traced odors they detected in the nearby residential neighborhood to the Facility (Fact Findings 29 through 40), as well as by Respondent's general manager who acknowledged that he has detected odors from the Facility in the nearby residential neighborhood. (Fact Finding 46)

Respondent asserts that the Hearing Board cannot find their operation to be a nuisance because other odor sources also exist in the neighborhood. In *Wade*, plaintiffs sought to enjoin odors and other annoyances associated with a dairy, which also maintained pigs, horses, donkeys, and burros. As in the matter before the Hearing Board,

the *Wade* defendants argued that there were other possible odor sources in the neighborhood (namely, other property owners who also kept animals). (*Wade*, 200 Cal.App.2d at 61) The court held that "[t]he fact that other sources of possible discomfort to the plaintiff existed in the neighborhood of his property is no defense to an action of this kind." (*Id.*) Here, too, the existence or non-existence of other odor sources is not relevant to determining whether odors attributable to Respondent's operations are causing a nuisance in violation of Rule 402.

Respondent asserts that the Hearing Board cannot make a finding of nuisance because some residents acknowledged that whether they are affected by odors from the Facility depends on "wind or seasonal conditions." [Athens Services' Post Evidentiary Hearing Opening Brief (filed May 27, 2008) at 12:11-12] However, Respondent points to no authority holding that Rule 402 does not apply if the existence of a nuisance depends on wind conditions.

District Rule 402 turns on whether a considerable number of persons have been adversely affected by odors, not whether a considerable number of persons have called in complaints to the District. Given the exigencies of daily life, it is likely that not all the persons affected contemporaneously by an odor will make complaint phone calls at the same time, on the same day, and to the same government agency. In odor nuisance cases such as the present case, *General Motors*, and *Wade*, it is logical to conclude that since fumes must travel through the air to reach a complainant, it is likely that more than one person will be affected by odors when those odors are detected in the community. Eighteen community residents testified credibly that they continue to be adversely affected by odors from the Facility. Whether or not those individuals made complaint

phone calls to the District on the same day is irrelevant to whether they are affected by odors from the Facility. Their testimony was corroborated by the credible testimony of District inspectors, who personally detected trash odors at the homes of residents and traced those odors to the Facility. The Hearing Board therefore concludes that Respondent's operation of its Facility constitutes a nuisance within the meaning of District Rule 402.

ORDER

THEREFORE, subject to the aforesaid statements and good cause appearing, Respondent is hereby ordered to cease and desist conducting operations at the Facility that result in noncompliance with District rules, or to comply with the conditions set forth below:

1. Effective July 28, 2008, Respondent shall not receive trash at the Facility in quantities greater than:
   a. 13,225 tons per week (Monday through Friday);
   b. 3,000 tons per day (Monday through Friday);
   c. 882 tons on any Saturday; and
   d. 35 tons on any Sunday.

2. By August 15, 2008, Respondent shall submit application(s) for all necessary permits including AQMD permit(s), for alterations necessary to reduce the opening size of the east side wall at the recovered material load out area to no more than 400 square feet. Respondent shall demonstrate that it has expedited the permitting process to the extent possible by sending a request to all permitting agencies (with copy to Carol Engelhardt or designee) for expedited processing.

3. Respondent shall complete the eastside wall area reduction no later than 120 days after the issuance of all permits required for that enclosure.

4. Respondent has submitted a permit application to the Los Angeles County Department of Regional Planning to construct an enclosure with a fact-acting, automatic, roll-up door for the exit side of the transfer truck tunnel. Once approval is granted, Respondent shall, within five (5) days, submit the necessary permit applications to other Los Angeles County departments and any other necessary agencies to construct the door. Respondent shall submit a permit to construct (PTC) application to the District for the fast-acting, automatic, roll-up door on or before August 15, 2008. Respondent shall demonstrate that it has expedited the permitting process to the extent possible by sending a request to all permitting agencies (with copy to Carol Engelhardt or designee) for expedited processing. Respondent shall promptly respond to any request for information and fully cooperate with the processing of all applications.

5. Within 120 days of the receipt of all necessary permit(s) for the fast acting, automatic, roll-up door for the exit side of the transfer truck tunnel Respondent shall complete construction of the enclosure for the transfer truck tunnel exit and begin operation of the automatic roll-up door on the truck tunnel.

6. All doors and louvers and which can currently be closed, including doors for vehicle entrances and exits at tipping areas, transfer tunnel, processing areas, and loading docks shall remain closed at all times except when a door or opening is actively in use for its intended purpose(s). In addition, no more than two roll-up doors in the MRF shall be open at any one time.

7. All tipping, transfer, and material recovery operations shall be conducted in enclosed buildings which have odor control systems in full operation pursuant to valid District permits to operate. Baled plastic shall be stored in an enclosed building.

8. Each roll-up door in the tipping area shall be equipped with a sensor to automatically open and close the door for vehicle entry or exit.

9. Duct work repairs and/or replacements shall be completed no later than August 15, 2008, such that the fan capacities are restored to their respective design capacities, and the total combined flow rate is not less than 200,000 cfm.

Fan Speeds

10. Whenever transfer, tipping or material recovery operation are being conducted, all building exhaust fans shall be operated to maintain inward face velocity and shall be vented through the filtration system which is in full use and maintained in good operating condition.

(a) Whenever transfer, tipping or material recovery operations are being conducted, Respondent shall run all ten (10) fans at 100% speed;

(b) When none of the activities listed in 10(a) are occurring, and if all doors are completely closed, Respondent may reduce the speed of some or all of the ten (10) fans to no less than 75% of full capacity, except as provided in subparagraph 10(c), below; and

(c) Respondent shall schedule all fan maintenance when no transfer, tipping or material recovery operations are occurring. No more than two (2) fans shall be taken out of service at any one time for maintenance. Unless maintenance is actively in progress, each fan shall be in operation as specified in 10(a) or 10(b) above.

(d) No later than September 15, 2008, Respondent shall install a device satisfactory to the District [Attn: Jay Chen, Senior AQ Engineering Manager, Telephone No. (909) 396-2664 or designee] which continuously monitors and permanently records the individual motor speeds of all ten (10) fans at all times. The recordings shall include a reading at least once every fifteen (15) minutes. Respondent shall maintain records of the motor speeds and shall report them to the District pursuant to Condition No. 25 and

upon request by the District.

12. Respondent shall immediately notify the District [Attn: Carmelita Benitez, AQ Inspector II, Telephone No. (909) 396-3061 or designee] using the procedures and time frames listed in Rule 430 of any event that causes an unexpected shut down of a fan or renders a filter or an automatic roll-up door inoperable.

13. Respondent shall conduct flow readings on all ten (10) fans used in the forced air ventilation system once per month. Respondent shall take flow readings following the method already approved by the District staff, and shall report them to the District pursuant to Condition No. 25.

14. Respondent shall maintain a ribbon indicator on each fan, satisfactory to the District (to provide an easily visible verification that the fans are running), until the variable frequency drive (VFD) and its associated recorder (as required by Condition No. 11) are installed and operating properly for each fan. Respondent shall establish and maintain a daily written log, satisfactory to the District (Attn: Carmelita Benitez or designee) of the fans operating and not operating, and shall make that log available to the District upon request.

Prefilters

15. Respondent shall install and maintain a digital differential pressure device with a read-out at the control panel to continuously measure and indicate the differential pressure in inches of water column across each prefilter and secondary filter bank in each of the ten (10) fan units.

When a fan is operating, the pressure drop across each filter bank serving that fan shall be maintained within the following ranges:

PRESSURE DROP (inches of water column)

Prefilter	0.0 – 1.0
Secondary Filter	0.0 – 1.0

16. Respondent shall clean and replace any filter in any filter module that has exceeded the maximum pressure drop listed in the table within three (3) operating days (defined as any day solid waste is received at the facility).

17. Respondent shall monitor and record pressure drop on the prefilters and secondary filters for all ten (10) fan systems each day between 8:00 am and 11:00 am, and shall submit the records to the District pursuant to Condition No. 25.

18. Respondent shall keep records of when each prefilter or secondary filter is changed out or cleaned, and shall submit the records to the District pursuant to Condition No. 25.

Carbon

19. Respondent shall use activated carbon in all carbon filters in the odor treatment system. The carbon shall be of bonded coconut-shell type panels and shall have an initial Carbon Tetrachloride Activity (CTC) number not less than 60% as measured by ASTM Method D3467-99, or a butane activity number of not less than 23.5% as measured by ASTM Method 5228-92, unless another type of carbon or other standard or method is approved in advance in writing by the District (Attn: Jay Chen or designee).

20. Respondent shall maintain and store spent carbon removed from the system in a rigid, tightly-covered, container located in the MRF or on the tipping floor prior to removal from the facility. Respondent shall remove the carbon from the facility for disposal within 48 hours of removal from the fan system.

21. Respondent shall conduct carbon activity tests on the bonded carbon panels or other District-approved carbon in accordance with an AQMD-approved protocol and the following:

(a) Sampling of a panel from each fan unit shall be commenced no later than 50 days following the date of replacement with fresh carbon in that fan unit;

(b) Sampling of each fan unit shall be conducted once every three (3) weeks thereafter until the carbon is replaced with fresh carbon;

(c) Respondent shall transport each sample in a sealed container, protected from direct sunlight and heat, and shall send it for testing by the end of the next business day to determine whether or not the carbon has become saturated;

(d) Respondent shall deliver the initial results of the testing to the District (Attn: Kim Le and Carmelita Benitez or designees) no later than three (3) calendar days after each sample result is received; and

(e) Respondent shall submit the final carbon test reports to the District pursuant to Condition No. 25. The carbon tests shall include, at a minimum, the identification of the units tested, the date when a new set of carbon panels was installed at the unit, sampling and test dates, test methods, CTC test results (or CTC equivalent), chain of custody, and actions taken, if applicable.

22. Whenever the CTC (or CTC-equivalent) initial test result of a carbon filter unit is 25 or less, all carbon panels (or other District-approved segment of that filter unit) shall be replaced with new ones within three (3) days of receipt by the Respondent of the initial test results conducted pursuant to Condition No. 21(c).

General Requirements

23. The exposed floor shall be power swept twice per day. The east half of the tipping floor shall be completely emptied of all trash every Saturday before midnight. The floor shall be cleaned and photos shall be taken of the clean, emptied floor. The photos shall be identified as to date and time in a manner satisfactory to the District and shall be transmitted to the District [Attn: Carmelita Benitez], via e-mail cbenitez@aqmd.gov by the following Tuesday.

24. The MRF conveyor belts and walking floors and bins shall be thoroughly cleaned on a weekly basis. A record of each cleaning shall be maintained and provided to the District upon request.

25. Respondent shall submit in writing to the SCAQMD in writing, copies of the following required reports or records as set forth in the table below:

	Condition	Report or Record	Due Date	*Recipient
a	11	Fan motor speeds	7th of each month beginning after installation of motor speed monitoring/recording device	Jay Chen
b	13	Flow readings	7th of each month	Kim Le and Carmelita Benitez
c	17	Pressure drop	7th of each month	Kim Le and Carmelita Benitez
d	18	Filter cleaning/change out	7th of each Month	Kim Le and Carmelita Benitez
e	21(d)	Initial carbon test results	Three calendar days following receipt	Kim Le and Carmelita Benitez
f	21(e)	Final carbon testing reports	7th of each month	Kim Le and Carmelita Benitez
g	23	Photos of cleaned floors	Every Tuesday	Carmelita Benitez
h	24	MRF conveyor belts, walking floors and bin cleaning records	Per District request	per request
i	27	Odor surveys	Per District request	Kim Le and Carmelita Benitez
j	28	Wind speed/direction	Per District request	per request
k	29	Record required by this Abatement Order	Per District request	per request

*One copy each shall be submitted to the attention of each recipient (or designee) in the table above at the following address:

South Coast Air Quality Management District
Engineering and Compliance
21865 Copley Drive
Diamond Bar, CA 91765

26. Respondent shall provide two sampling ports in each round stack in accordance with District requirements. The ports shall be spaced at 90 degrees from each other in each round stack. An equivalent method of flow measurement may be used upon prior written approval by the Executive Officer. Respondent shall provide adequate and safe access to all source test ports within 48 hours notice by the District.

27. Respondent shall conduct surveys in the areas immediately adjacent to the Facility to document odor intensity pursuant to the SCAQMD's odor classification chart, odor source (if identifiable) and actions taken to identify the odor, and actions taken to mitigate the odor, if necessary. Odor surveys shall be conducted daily by someone other than someone who works in the MRF. Respondent shall also immediately conduct an odor survey when an odor complaint is received. By August 1, 2008, Duane McDonald, Athens Services Director of Environmental Services, shall (1) accompany each individual who has responsibility to conduct odor surveys; (2) evaluate their odor detection during that survey, relative to his own detection; and (3) submit a report to the District regarding his findings. This is required once for each of the responsible individuals.

Respondent shall include a map of the survey route. The route shall be based on a 360 degree route around the Facility including all residential streets within a quarter mile of the Facility. The survey shall include wind direction and speeds, stop locations, odor description and intensities according to the SCAQMD odor classification chart. Records of all odor surveys shall be maintained by Respondent for three (3) years and made available to the District upon request.

28. Respondent shall monitor and record wind speeds and directions at its wind station on a 24-hour basis, and shall make such current and/or historical information available to SCAQMD representatives upon request.

29. All records required in this abatement order shall be maintained for a minimum of two (2) years and shall be made available to the SCAQMD personnel upon request.

30. This Order for Abatement shall be terminated as of January 15, 2009, unless a different termination date is set at a subsequent hearing.

31. The Hearing Board shall retain jurisdiction over this matter until January 29, 2009 unless the order is amended or modified.

32. This Order for Abatement is not and does not act as a variance, and Respondent is subject to all rules and regulations of the District, and with all applicable provisions of California law. Nothing herein shall be deemed or construed to limit the authority of the District to issue Notices of Violation, or to seek civil penalties, criminal penalties, or injunctive relief, or to seek further orders for abatement, or other administrative or legal relief.

33. The Hearing Board may modify the Order for Abatement upon a showing of good cause, therefore, and upon making the findings required by Health and Safety Code §42451(a) and District Rule 806(a). Any modification of the Order shall be made only at a public hearing upon 10 days published notice and appropriate written notice to Respondent.

FOR THE BOARD: Barry Wallerstein

DATED: 24 JULY 2008

This Hearing Board Member disagrees with the throughput limits established in Condition no. 1 of this Order, and the underlying findings and argument used to support the establishment of those limits. Other than as discussed herein, this Hearing Board member concurs in the other Fact Findings, Conclusions, and Conditions of this Order.

The Order asserts that based on the evidence presented in this matter, there is no level of throughput for which it can be said with confidence that the creation of an odor nuisance outside of the Facility will be prevented.

If this is true, then it is inappropriate to impose an arbitrarily-selected set of throughput limits as part of this Order. The Order bases the selection of a throughput limits on the actual throughput in November 2007, the month that hearings in this matter began. If one accepts the argument that there is no level of throughput for which it can be said with confidence that the creation of an odor nuisance outside the Facility will be prevented, then a limit based on the actual throughput in November 2007 is no more supportable than any other limit that might be selected.

The date of the first hearing is, in most matters before this Hearing Board, a function of several administrative variables including, but not limited to, the date of filing by the moving party of the petition for the order of abatement; the length of the required public noticing period; the complexity of prehearing issues that must be resolved (and, consequently, the number and scheduling of prehearing conferences); and availability of hearing dates on the Hearing Board's calendar. Therefore, the initial hearing date is not related to a respondent's throughput level in any way, except that it will arbitrarily coincide with whatever amount of throughput happens to occur on that day. As such, the

choice by this Hearing Board of throughput limits based on the date of the first hearing is spurious and arbitrary at best.

Thus, the alternatives are to roll back the throughput limit to the 1,920 tpd limit imposed on Respondent by the CUP, the Settlement Agreement, and the prior District PTCs for the Facility, or to impose no throughput limit whatsoever without regard to the throughput limits already imposed by these governmental agencies.

The previous throughput limit of 1,920 tpd was imposed by the CUP, Settlement Agreement, and prior District PTCs for this facility as a baseline limit for Respondent's throughput. The throughput limit would then increase upon Respondent's completion of the required facility modifications. Although it can be argued that the throughput limit in the Settlement Agreement governing the Facility was also arbitrarily established, specific remedial actions were tied to relief from that throughput limit and Respondent, per its own testimony in the matter before this Hearing Board, failed to satisfactorily complete those actions.

While the Hearing Board is not responsible for implementing or overseeing in any way the requirements imposed by the CUP or the Settlement Agreement, weight should be given to the throughput limit established by the District in the prior PTCs for the Facility since the District is the moving party in this action.

Since witnesses for both the District and Respondent agreed that there is a positive relationship between the amount of throughput and the amount of odor generated inside the Facility, it is reasonable to assume that unless the odor control system is in full operation and is in compliance with any additional requirements set forth in the Order, there might be an increase in the odors emitted by the Facility. Therefore, it would seem

proper to impose a throughput limitation of some sort so as to minimize odors escaping from the Facility in the interim.

Based on the District's adoption of the 1,920 tpd throughput limit in the prior PTCs for the Facility and Respondent's failure to meet the facility modification requirements necessary for a throughput increase, this Order should limit Respondent to a throughput of 1,920 tpd. The Hearing Board may change this throughput limit, or any other condition of the Order, upon the presentation of new evidence at future hearings.

Marti Klein, Public Member