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REGIONAL HEARING CLERK

1 NANCY MARVEL
Regional Counsel
2 United States Environmental Protection Agency, Region 9

3 RICH CAMPBELL
4 Assistant Regional Counsel
United States Environmental Protection Agency, Region 9
5 75 Hawthorne Street
San Francisco, California 94105
6 (415) 972-3870

7 Attorneys for Complainant

8
9 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 9

10
11 In re the Matter of:) Docket No.: CWA-09-2007-0004
12)
13 **California Waste Solutions, Inc.,**)
1005 Timothy Drive,) **CONSENT AGREEMENT**
San Jose, California,) **AND PROPOSED FINAL ORDER**
14)
Respondent.)
15) Proceedings Under Section 309(g) of the
16) Clean Water Act, as amended, 33 U.S.C. §
17) 1319(g)
18)

19 **CONSENT AGREEMENT**

20 **Preliminary Statements**

21 The United States Environmental Protection Agency, Region 9 ("EPA" or
22 "Complainant") initiated these proceedings pursuant to Section 309(g) of the Federal Water
23 Pollution Control Act, commonly referred to as the Clean Water Act ("CWA" or the "Act"), 33
24 U.S.C. § 1319(g). On September 28, 2007, EPA issued a Complaint, Findings of Violation,
25 Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a
Hearing Thereon ("Complaint") to California Waste Solutions, Inc. ("Respondent"). In the

CONSENT AGREEMENT AND FINAL ORDER
IN RE: CALIFORNIA WASTE SOLUTIONS, INC.
DOCKET NO. CWA-09-2007-0004

1 Complaint, EPA alleged that Respondent violated the CWA's storm water regulations and
2 Section 301(a), 308(a), and 402 of the Act, 33 U.S.C. § 1311(a), 1318(a), and 1342, at its facility
3 located at 1005 Timothy Drive in San Jose, California.

4 EPA and Respondent entered into negotiations in an attempt to settle the allegations in
5 the Complaint. This Consent Agreement and Proposed Final Order ("CA/FO") is the result of
6 those negotiations, and resolves all allegations in the Complaint in a manner that is consistent
7 with the public interest and with the provisions and objectives of the CWA.

8 **General Provisions**

9 1. For purposes of this proceeding, Respondent admits the jurisdictional allegations in
10 the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent
11 proceeding to enforce the terms of this CA/FO.

12 2. Respondent neither admits nor denies the factual allegations set forth in the
13 Complaint.

14 3. Respondent agrees not to contest the terms and conditions set forth in this CA/FO in
15 this or subsequent proceedings, and agrees not to appeal the Final Order set forth below.

16 4. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth
17 in the Complaint.

18 5. This CA/FO, inclusive of all exhibits and attachments, is the entire agreement
19 between the parties to resolve EPA's civil penalty claim against Respondent for the specific
20 CWA violations alleged in the Complaint. Full compliance with this CA/FO shall constitute full
21 settlement only of Respondent's federal civil penalty liability for the CWA violations
22 specifically alleged in the Complaint.

23 6. This CA/FO is not a permit and it does not constitute a waiver, suspension, or
24 modification of the requirements of any federal, state, or local permit, statute, ordinance,
25 regulation, or order, including but not limited to any CWA requirements, permits, or orders.

1 7. Respondent certifies by signing this CA/FO that, to the best of its knowledge, it is in
2 compliance with the requirements of Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§
3 1311, 1318, and 1342.

4 8. Except as set forth in Paragraphs 15 and 16, Respondent and EPA each agree to bear
5 their own costs and attorneys' fees.

6 9. This CA/FO shall in no way affect the right of EPA or the United States against any
7 third party (person/entity not a party to this CA/FO) or the right of any third party against
8 Respondent. This CA/FO does not create any right in or grant any cause of action to any third
9 party.

10 10. This CA/FO shall apply to and be binding upon Respondent, its heirs, successors,
11 and assigns. Changes in ownership, including but not limited to any transfer of assets or real or
12 personal property, shall not alter Respondent's obligations under this CA/FO.

13 11. This Consent Agreement may be executed and transmitted by facsimile, email or
14 other electronic means, and in multiple counterparts, each of which shall be deemed an original,
15 but all of which shall constitute on instrument. If any portion of this Consent Agreement is
16 determined to be unenforceable by a competent court or tribunal, it is the parties' intent that the
17 remaining portions shall remain in full force and effect.

18 12. Each signatory to this CA/FO certifies he or she is fully authorized to enter into and
19 bind Respondent to the terms of the CA/FO.

20 **Penalty**

21 13. Respondent consents to the assessment of and agrees to pay a civil penalty of Eighty-
22 Nine Thousand and Two Hundred Dollars (\$89,200). The penalty was calculated based on the
23 nature, circumstances, extent and gravity of the violations, Respondent's ability to pay, its prior
24 history of violations, its degree of culpability, and any economic benefit or savings accruing to
25 Respondent as a result of the violations.

1 14. Payment of the civil penalty, plus interest, shall commence within thirty (30) days of
2 the effective date of the CA/FO in accordance with the following quarterly payment schedule:

Quarter:	Payment Due Date:	Amount:
1st	April 30, 2009	\$11,150.00
2nd	July 31, 2009	\$11,487.00
3rd	October 30, 2009	\$11,487.00
2010		
4th	January 29, 2010	\$11,487.00
5th	April 30, 2010	\$11,487.00
6th	July 30, 2010	\$11,487.00
7th	October 29, 2010	\$11,487.00
2011		
8th	January 31, 2011	\$11,487.00

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10 The date by which each payment must be received by the United States shall be the "due date"
11 for the payment. Respondent shall make each payment in accordance with any of the acceptable
12 methods of payment listed in **Exhibit A**, "EPA Region 9 Collection Information," which is
13 incorporated by reference as part of this CAFO. Concurrent with each quarterly payment of the
14 penalty, Respondent shall provide written notice of payment, referencing the title and docket
15 number of this case and attach a photocopy of the penalty payment, via certified mail to each of
16 the following:

17 Danielle Carr	Ann Murphy
18 Regional Hearing Clerk	CWA Compliance Office
EPA Region 9 (ORC-1)	EPA Region 9 (WTR-7)
75 Hawthorne Street	75 Hawthorne Street
19 San Francisco, California 94105	San Francisco, California 94105

20 15. If the penalty is not paid when due, interest shall accrue on any overdue amount from
21 the first date after the due date through the date of payment, at the interest rate established by the
22 Secretary of the Treasury under 31 U.S.C. § 3717. In addition, a late payment handling charge
23 of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof)
24 following the due date during which time the balance remains unpaid. Payment of any interest
25 and late handling charges shall be made in accordance with paragraph 14 above.

1 16. Failure by Respondent to pay the full penalty when due entitles EPA and the United
2 States to bring a civil action to recover the amount assessed. In such an action, Respondent shall
3 pay (in addition to any assessed penalty, interest, and monthly handling charges) attorney fees,
4 cost for collection proceedings, and a quarterly nonpayment penalty for each quarter during
5 which such failure to pay persists. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. §
6 1319(g)(9), the quarterly nonpayment penalty shall equal twenty percent (20%) of the aggregate
7 amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning
8 of that quarter.

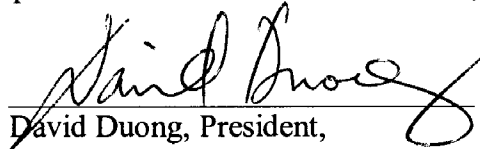
9 17. The civil penalty and any interest, late handling fees, or late penalty payments
10 provided for in the CA/FO shall not be deducted from Respondent's or any affiliated entity's
11 taxes.

12 **Effective and Termination Dates**

13 18. This CA/FO shall take effect on the date the Final Order is filed with the Regional
14 Hearing Clerk, and shall terminate when Respondent has fully complied with its terms.

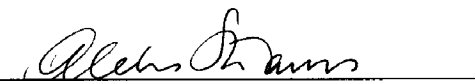
15
16 **CONSENTING PARTIES:**

17 For Respondent California Waste Solutions, Inc.:

18 BY: 
19 David Duong, President,
20 California Waste Solutions, Inc.

DATE: 3/30/09

21 For Complainant U.S. Environmental Protection Agency, Region 9:

22 BY: 
23 Alexis Strauss, Director
24 Water Division

DATE: 8 April 2009

1 NANCY MARVEL
Regional Counsel
2 United States Environmental Protection Agency, Region 9

3 RICH CAMPBELL
Assistant Regional Counsel
4 United States Environmental Protection Agency, Region 9
5 75 Hawthorne Street
San Francisco, California 94105
6 (415) 972-3870

7 Attorneys for Complainant

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9 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 9

10 In re the Matter of:

) Docket No.: CWA-09-2007-0004
)
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11
12 **California Waste Solutions, Inc.,**
13 1005 Timothy Drive,
San Jose, California,

[PROPOSED]
FINAL ORDER

14 Respondent.
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16
17

) Proceedings Under Section 309(g) of the
) Clean Water Act, as amended, 33 U.S.C. §
) 1319(g).
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18 The foregoing Consent Agreement is hereby approved and incorporated by reference into
19 this Order. Respondent California Waste Solutions, Inc., is hereby ordered to comply with the
20 Consent Agreement.
21

22 
23 Steven Jawgiel
Regional Judicial Officer
24 U.S. Environmental Protection Agency
Region 9
25

04/11/09
DATE:

1 **EXHIBIT A**

2 In the Matter of California Waste Solutions, Inc.,

3 EPA Docket No. CWA-09-2007-0004

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5 **EPA REGION 9 COLLECTION INFORMATION:**

6 **ELECTRONIC FUNDS TRANSFERS**

7 Federal Reserve Bank of New York
8 ABA = 021030004
9 Account = 68010727
10 SWIFT address = FRNYUS33
11 33 Liberty Street
12 New York, NY 10045
13 Field Tag 4200 of the Fedwire message should read:
14 "D 68010727 Environmental Protection Agency "

15 **CHECK PAYMENTS**

16 If payment is made by check, the check should be made payable to the
17 "Treasurer, United States of America"

18 U.S. Environmental Protection Agency
19 Fines and Penalties
20 Cincinnati Finance Center
21 P.O. Box 979077
22 St. Louis, MO 63197-9000

23 **OVERNIGHT MAIL:**

24 U.S. Bank
25 Government Lock Box 979077
U.S. Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: 314-418-1028

1 **CERTIFICATE OF SERVICE**

2 In the Matter of California Waste Solutions, Inc.,

3 EPA Docket No. CWA-09-2007-0004

4 I hereby certify that the original of the foregoing Consent Agreement and Proposed Final
5 Order was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent, certified
6 mail, return receipt requested, to:

7
8 Richard Norris
9 ARCHER NORRIS
10 2033 North Main Street, Suite 800
11 P.O. Box 8035
12 Walnut Creek, CA 94596-3728

13 _____
Date

13 _____
Steve Armsey
14 Regional Hearing Clerk
15 U.S. EPA, Region 9
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