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7 **UNITED STATES**
ENVIRONMENTAL PROTECTION AGENCY
8 **REGION IX**

9 In the matter of) **Docket No. RCRA 09-2007-0009**
10 **George Auclair, Jr.**) **CONSENT AGREEMENT AND**
11 Respondent) **FINAL ORDER**
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14 **CONSENT AGREEMENT**

15 **A INTRODUCTION**

- 16 1. This administrative proceeding was initiated pursuant to Section 3008(a)(1) of the
17 Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C.
18 §6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative
19 Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,
20 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency,
21 Region IX ("Complainant" or "EPA"). Respondent is George Auclair, Jr.(hereinafter,
22 "Respondent"), an individual and the heir to the real property identified as Allotment
23 12A, located within the exterior boundaries of the Torres-Martinez Indian Reservation,
24 near Thermal, California, in Riverside County (the "Facility").
- 25 2. This action commenced with the issuance of a Determination of Violation, Compliance
26 Order and Notice of Right to Request a Hearing ("Complaint") on March 14, 2007 under
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1 the above-referenced docket number RCRA-09-2007-0009. The Complaint alleged that
2 Respondent violated Sections 1008, 3004, 3005, 3010 and 4005(a) of RCRA, 42 U.S.C.
3 §§ 6907, 6924, 6925, 6930 and 6945(a), and 40 C.F.R. §§ 257.3-7(a), 257.3-8(d), 265.11,
4 270.1, and 279.22(c)(1).

5 **B. ADMISSIONS AND WAIVERS**

6 3. Complainant, the United States Environmental Protection Agency, Region IX, and
7 Respondent George Auclair, Jr., the parties herein, having agreed that settlement of this
8 matter is in the public interest and that entry of this Consent Agreement and Final Order,
9 (“CA/FO”), pursuant to 40 C.F.R. Sections 22.13 and 22.18, without further litigation, is
10 the most appropriate means of resolving this matter.

11 4. For purposes of this proceeding, Respondent admits and agrees that the EPA
12 Administrator and Region IX Administrator have jurisdiction and authority over the
13 subject matter of the action commenced in this CA/FO and over Respondent pursuant to
14 Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. §§ 22.4 and 22.37.
15 Further, for the purposes of this proceeding, Respondent admits to the jurisdictional
16 allegations of facts and law set forth in the Complaint. Respondent consents to and
17 agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO
18 and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and
19 authority to compel compliance with this CA/FO in any enforcement proceedings, either
20 administrative or judicial, or to impose sanctions for violations of this CA/FO.

21 5. Respondent neither admits nor denies any allegations of fact or law set forth in the
22 Complaint. Respondent hereby waives any rights Respondent may have to contest the
23 allegations set forth in the Complaint, waive any rights Respondent may have to a hearing
24 on any issue relating to the factual allegations or legal conclusions set forth in the
25 Complaint, including without limitation a hearing pursuant to Section 3008(b) of RCRA,
26 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without
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1 adjudication. In addition, Respondent hereby waives any rights Respondent may have to
2 appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

3 **C. CIVIL PENALTY**

4 6. Complainant and Respondent hereby consent to the assessment of a civil penalty in the
5 amount of ZERO DOLLARS (\$0) in settlement of the civil penalty claims set forth in the
6 Complaint. Satisfaction of the terms of this Consent Agreement and Final Order
7 constitutes a settlement of all civil penalty claims for the violations of Sections 1008,
8 3004, 3005, 3010 and 4005(a) of RCRA, 42 U.S.C. §§ 6907, 6924, 6925, 6930 and
9 6945(a), and 40 C.F.R. §§ 257.3-7(a), 257.3-8(d), 265.11, 270.1, and 279.22(c)(1) set
10 forth in the Complaint.

11 7. The effect of the settlement described above is conditional upon the accuracy of
12 Respondent's representations to EPA concerning his financial resources as memorialized
13 in Respondent's correspondence dated September 24, 2007 and Respondent's agreement
14 that he will not allow any open dumping on Allotment 12A.

15 **D. COMPLIANCE TASKS AND STIPULATED PENALTIES**

16 8. Respondent shall manage Allotment 12A to ensure that there will be no open dumping of
17 solid waste at Allotment 12A in the future. Respondent shall ensure that any generation,
18 receipt, storage, disposal, treatment, accumulation or transport of solid and hazardous
19 wastes at Allotment 12A is conducted in compliance with Sections 3002, 3004, 3005,
20 3007, 3010 and 4005 of RCRA, 42 U.S.C. §§ 6922, 6924, 6925, 6927, 6930, and 6945;
21 and 40 C.F.R. Parts 257, 258, 262, 264, 265, 270 and 279.

22 9. In the event Respondent fails to comply with the compliance tasks identified in
23 Paragraph 8 of this CA/FO, Respondent shall be liable for a stipulated penalty of up to
24 \$ 3,500 for each day of violation.

25 10. All penalties shall begin to accrue on the date that performance is due or a violation
26 occurs, and shall continue to accrue through the final day of correction of the
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1 noncompliance. Nothing herein shall prevent the simultaneous accrual of separate
2 penalties for separate violations.

3 11. All penalties owed to EPA under this Section shall be due within thirty (30) days of
4 receipt of a notification of noncompliance. Such notification shall describe the
5 noncompliance and shall indicate the amount of penalties due. Interest at the current rate
6 published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to
7 accrue on the unpaid balance at the end of the thirty-day period.

8 12. All penalties shall be made payable by certified or cashier's check to "Treasurer of the
9 United States" and shall be remitted to:

10 US Environmental Protection Agency
11 Fines and Penalties
12 Cincinnati Finance Center
13 PO Box 979077
St. Louis, MO 63197-9000

14 13. All payments shall indicate the name of the Facility, any EPA identification number of
15 the Facility, Respondent's name and address, and the EPA docket number of this action
16 (No. RCRA 09-2007-0009). At the time payment is made, Respondent shall send a copy
17 of the payment transmittal to:

18 Kaoru Morimoto (WST-3)
19 Waste Management Division
20 U.S. Environmental Protection Agency - Region IX
21 75 Hawthorne Street
San Francisco, CA 94105

22 14. The payment of stipulated penalties shall not alter in any way Respondent's obligation to
23 complete any performance required hereunder.

24 15. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any
25 other remedies or sanctions which may be available to EPA by reason of Respondent's
26 failure to comply with any of the requirements of this CA/FO.

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1 16. Notwithstanding any other provision of this Section, EPA may, in its unreviewable
2 discretion, waive any portion of stipulated penalties that have accrued pursuant to this
3 CA/FO.

4 17. The payment of stipulated penalties specified in this Section shall not be deducted by
5 Respondent or any other person or entity for federal, state or local taxation purposes.

6 **E. NOTIFICATION**

7 18. All notices and submissions to EPA shall include a certification under penalty of law that
8 the information submitted is true, accurate and complete, which the signatory can verify
9 personally or regarding which the signatory has inquired of the person or persons directly
10 responsible for gathering the information. All notices and submissions shall be sent by
11 email and fax, and shall be effective upon receipt, unless otherwise provided herein. All
12 notices and submissions sent to EPA shall be directed to:

13 Rich Vaille, Associate Waste Director
14 Waste Management Division, WST-1
15 U.S. Environmental Protection Agency, Region IX
16 75 Hawthorne St.
17 San Francisco, CA 94105
18 Phone: 415-972-3378
19 Fax: 415-947-3530
20 Email: vaille.rich@epa.gov

21 and

22 Kaoru Morimoto, Environmental Engineer
23 Waste Management Division, WST-3
24 U.S. Environmental Protection Agency, Region IX
25 75 Hawthorne St.
26 San Francisco, CA 94105
27 Phone: 415-972-3306
28 Fax: 415-947-3530
Email: reed.matthew@epa.gov

19. All notices and submissions to Respondent shall be directed to:

Dorothy Alther, Esq.
California Indian Legal Services
609 South Escondido Blvd.
Escondido, CA 92025
Phone: 760-746-8941
Fax: 760-746-1815
Email: dalther@calindian.org

1 **F. PARTIES BOUND**

2 20. This CA/FO shall apply to and be binding upon Respondent and Respondent's agents,
3 successors and assigns and upon all persons acting under or for Respondent.

4 21. No change in ownership or corporate, partnership or legal status relating to the Facility
5 will in any way alter Respondent's obligations and responsibilities under this CA/FO.

6 22. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any
7 successor in interest prior to transfer of ownership or operation of the Facility and shall
8 notify EPA within seven (7) days prior to such transfer.

9 23. The undersigned representative of Respondent hereby certifies that he or she is fully
10 authorized by Respondent to enter into this CA/FO, to execute and to legally bind
11 Respondent to it.

12 **G. CERTIFICATION OF COMPLIANCE**

13 24. Upon signing this CA/FO, Respondent certifies under penalty of law to EPA that the
14 Respondent has fully complied with the requirements of Sections 1008, 3004, 3005, 3010
15 and 4005(a) of RCRA, 42 U.S.C. §§ 6907, 6924, 6925, 6930 and 6945(a), that formed the
16 basis for the violations alleged in the Complaint. This certification of compliance is
17 based upon true, accurate and complete information, which the signatory can verify
18 personally or regarding which the signatory has inquired of the person or persons directly
19 responsible for gathering the information.

20 **H. RESERVATION OF RIGHTS**

21 25. EPA expressly reserves all rights and defenses that it may have.

22 26. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and
23 remedies, both legal and equitable, including without limitation, the right to require that
24 Respondent perform tasks in addition to those required by this CA/FO and the right to
25 assess penalties under Section 3008 of RCRA, 42 U.S.C. § 6928, or take other
26 appropriate action, in the event that Respondent fails to comply with any of the
27 requirements of this CA/FO.

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1 27. This CA/FO shall not be construed as a covenant not to sue, a release, waiver or
2 limitation of any rights, remedies, powers or authorities, civil or criminal, that EPA has
3 under RCRA, or any other statutory, regulatory or common law enforcement authority of
4 the United States, except as otherwise set forth herein.

5 28. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise
6 preclude EPA from taking additional enforcement actions should EPA determine that
7 such actions are warranted, except as they relate to Respondent's liability for federal civil
8 penalties for the specific alleged violations set forth in the Complaint.

9 29. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does
10 not relieve Respondent of any obligation to obtain and comply with any local, state, tribal
11 or federal permits. Compliance by Respondent with the terms of this CA/FO shall not
12 relieve Respondent of obligations to comply with any applicable local, state, tribal or
13 federal laws and regulations.

14 30. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released
15 from liability, if any, for the costs of any response actions taken by EPA. EPA reserves
16 its right to seek reimbursement from Respondent for any response costs incurred by the
17 United States that may result or arise from the alleged counts set forth in the Complaint.

18 **I. OTHER CLAIMS**

19 31. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,
20 cause of action or demand in law or equity by or against any person, firm, partnership,
21 entity or corporation for any liability it may have arising out of or relating in any way to
22 the generation, storage, treatment, handling, transportation, release, or disposal of any
23 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or
24 contaminants found at, taken to, or taken from Respondent's facility..

25 **J. MISCELLANEOUS**

26 32. This CA/FO may be amended or modified only by written agreement executed by both
27 EPA and Respondent.
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- 1 33. The headings in this CA/FO are for convenience of reference only and shall not affect
2 interpretation of this CA/FO.
- 3 34. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
4 proceeding.
- 5 35. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective
6 on the date that the Final Order contained in this CA/FO, having been approved and
7 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

8 **IT IS SO AGREED,**

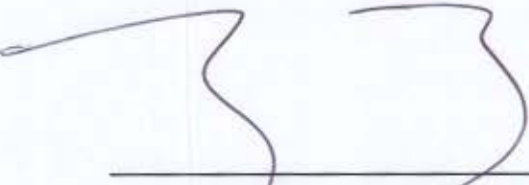
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10 For Respondent GEORGE AUCLAIR, JR.

11 10/29/07
12 Date


George Auclair, Jr.

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15 For Complainant

16 1/16/08
17 Date


Nancy Lindsay, Acting Director
Waste Management Division
United States Environmental Protection Agency,
Region IX

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FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. RCRA-9-2007-0009) be entered and that Respondent George Auclair, Jr., comply with the terms of this Consent Agreement and Final Order.

THIS FINAL ORDER SHALL BE EFFECTIVE IMMEDIATELY.

01/16/08
Date


Steven L. Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original copy of the foregoing Consent Agreement and Final Order has been filed with the Regional Hearing Clerk, Region IX, and that copies have been sent

by Certified Mail, Return Receipt Requested, to:

**Dorothy Alther, Esq.
California Indian Legal Services
609 South Escondido Blvd.
Escondido, California 92025**

CERTIFIED MAIL NO. 7000 1670 0009 3122 6332

by Hand Delivery to:

**Letitia D. Moore
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105**

Jan. 17, 2008
Date

Danielle E. Carr
**Danielle Carr
Regional Hearing Clerk**