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9 UNITED STATES
10 ENVIRONMENTAL PROTECTION AGENCY
11 REGION 9

12 **In the Matter of:**

Docket No. CAA-09-2023-0071

13 **Agromin OC, LLC; Allied Waste Services
14 of North America, LLC; et al.**

**CONSENT AGREEMENT FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18**

15 **Respondents.**

16
17 **CONSENT AGREEMENT**

18 The United States Environmental Protection Agency (“EPA”), Region 9, and thirty (30)
19 legal entities referenced in the Attachment to and paragraph 26 of this Consent Agreement and
20 Final Order (“CAFO”) agree to settle this matter and consent to the entry of this CAFO, which
21 simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and
22 22.18.

23 **I. AUTHORITY, JURISDICTION AND PARTIES**

24 1. This is a civil administrative penalty assessment proceeding brought under
25 Section 113(d) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(d).

26 2. Complainant is the Director of the Enforcement and Compliance Assurance
27 Division, EPA, Region 9, who has been duly delegated the authority to initiate and settle civil
28 administrative penalty proceedings under Section 113(d) of the Act.

In the Matter of: Agromin OC, LLC; Allied Waste Services of North America, LLC; et al. 1
Consent Agreement and Final Order

1 9. A person’s failure to comply with any approved regulatory provision of a SIP
2 renders the person in violation of an applicable implementation plan and subject to enforcement
3 under section 113(a)(1) of the Act. 42 U.S.C. § 7413(a)(1).

4 **Title 13, Section 2025 of California Code of Regulations: Truck and Bus Regulation**

5 10. In accordance with Resolution 10-44 (December 2010), the California Air
6 Resources Board (“CARB”) adopted amendments to the “Regulation to Reduce Emissions
7 of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants From In-Use
8 Heavy-Duty Diesel-Fueled Vehicles,” codified at title 13, Section 2025 of the California
9 Code of Regulations (the “Truck and Bus Regulation” or “TBR”).

10 11. The EPA incorporated the TBR as submitted by the CARB into the California
11 SIP, effective May 4, 2012. *See* 77 Fed. Reg. 20308 (April 4, 2012). Since that time, the
12 EPA has coordinated with CARB regarding the EPA’s enforcement of the Truck and Bus
13 Regulation pursuant to section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), and 40 C.F.R.
14 § 52.23.

15 12. As stated in Section 2025(a) of the TBR, the purpose of the regulation is “to
16 reduce emissions of diesel particulate matter (PM), oxides of nitrogen (NOx) and other criteria
17 pollutants from in-use diesel-fueled vehicles.”

18 13. Pursuant to Section 2025(b) of the TBR, the TBR “applies to any person,
19 business, ... that owns or operates, leases, or rents, affected vehicles that operate in California.
20 Affected vehicles are those that operate on diesel-fuel, dual-fuel, or alternative diesel-fuel that
21 are registered to be driven on public highways, were originally designed to be driven on public
22 highways whether or not they are registered, ... and have a gross vehicle weight rating (GVWR)
23 greater than 14,000 pounds.” The Truck and Bus Regulation requires, in part, Fleet Owners to
24 upgrade their vehicles to meet specific performance standards for NOx and PM.

25 14. Section 2025(d)(17) of the TBR defines “Diesel Particulate Filter” (“DPF”) as “an
26 emission control technology that reduces diesel particulate matter emissions by directing the
27 exhaust through a filter that physically captures particles but permits gases to flow through...”
28

1 15. Section 2025(d)(18) of the TBR defines “Diesel Particulate Matter (PM)” as “the
2 particles found in the exhaust of diesel-fueled compression ignition engines....”

3 16. Section 2025(d)(28) of the TBR defines “Fleet” as “one or more vehicles, owned
4 by a person, business, or government agency, traveling in California and subject to this
5 regulation....”

6 17. Section 2025(d)(29) of the TBR defines “Fleet Owner” as either the person
7 registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles
8 (DMV), or its equivalent in another state, province, or country; as evidenced on the vehicle
9 registration document carried in the vehicle.”

10 18. Section 2025(d)(42) of the TBR defines “Motor Carrier” as “the same as defined
11 in California Vehicle Code Section 408 for fleets other than those that are comprised entirely of
12 school buses”

13 19. Section 408 of the California Vehicle Codes defines “Motor Carrier” as “the
14 registered owner, lessee, licensee, or bailee of any vehicle set forth in Section 34500 , who
15 operates or directs the operation of any such vehicle on either a for-hire or not-for-hire basis.”

16 20. Section 2025(d)(47) of the TBR defines “Person” as “an individual, corporation,
17 business trust, estate, trust, partnership, Limited Liability Company, association, joint venture,
18 government, governmental subdivision, agency, or instrumentality, public corporation, or any
19 other legal or commercial entity.”

20 21. Section 2025(g) of the TBR requires Fleet Owners to comply with the following
21 compliance schedule for all vehicles in the Fleet with a GVWR greater than 26,000 pounds:

22 a. Vehicles with 1993 and older engine model years must be upgraded to
23 2010 model year engines by January 1, 2015;

24 b. Vehicles with an engine model year of 1994 or 1995 must be equipped
25 with a 2010 model year engine by January 1, 2016.

26 c. Vehicles with an engine model year of 1996 through 1999 must be
27 equipped with a DPF by January 1, 2012.

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1 d. Vehicles with an engine model year of 2000 through 2004 must be
2 equipped with a DPF by January 1, 2013.

3 e. Vehicles with an engine model year of 2005 through 2006 must be
4 equipped with a DPF by January 1, 2014.

5 22. A fleet may meet the 2010 model year emissions equivalent engine (as defined in
6 Section 2025(d)(3) of the TBR) requirement by replacing the engine or vehicle with one with a
7 2010 model year engine or later, retrofitting the engine with a verified diesel emission control
8 system (as defined in 2025(d)(60) of the TBR) that achieves 2010 model year equivalent
9 emissions, or by replacing a vehicle with one that has a future compliance deadline.

10 23. Section 2025(s)(4) of the TBR provides that motor carriers or brokers must
11 maintain “[b]ills of lading and other documentation identifying the motor carrier or broker who
12 hired or dispatched the vehicle and the vehicle dispatched.”

13 24. Section 2025(x)(2) of the TBR provides that “[a]ny in-state or out-of-state motor
14 carrier, California broker, or any California resident who operates or directs the operation of any
15 vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in
16 compliance with the regulation and comply with the record keeping requirements of section
17 2025(s)(4).”

18 25. Section 2025(x)(3) of the TBR provides that “[c]ompliance may be accomplished
19 by keeping at the business location, a copy of the Certificate of Reported Compliance with the
20 In-Use On-Road Diesel Vehicle Regulation for each fleet, or in the vehicle.”

21 **III. ALLEGATIONS**

22 26. At all times relevant to this CAFO, each Respondent was a corporation or limited
23 liability company created in California or Delaware. Each Respondent is identified along with its
24 respective state of creation in the Attachment to this CAFO.

25 27. At all times relevant to this CAFO, each Respondent was a “Person” as that term
26 is defined under Section 2025(d)(47) of the TBR.

1 28. At all times relevant to this CAFO, each Respondent was a person or business that
2 owned and/or operated diesel-fueled vehicles that have a GVWR greater than 14,000 pounds and
3 are registered to be driven on public highways in California, among other states.

4 29. At all times relevant to this CAFO, the TBR applied to each Respondent.

5 30. At all times relevant to this CAFO, the TBR applied to Browning-Ferris, Inc., and
6 BFI Waste Systems of Southern California, Inc.

7 31. At all times relevant to this CAFO, Browning-Ferris, Inc.; Browning-Ferris
8 Industries of California, Inc.; Republic Services Vasco Road, LLC; BFI Waste Systems of
9 Southern California, Inc.; and Republic Waste Services of Southern California, LLC, were each
10 a "Fleet Owner" of a "Fleet" of vehicles as those terms are defined under Section 2025(d)(28)
11 and (29), respectively, of the TBR.

12 32. At all times relevant to this CAFO, one or more Respondents were "Motor
13 Carrier[s]" as that term is defined under Section 2025(d)(42) of the TBR.

14 33. Browning-Ferris, Inc., (now BFI Waste Systems of North America, LLC) violated
15 section 2025(g) of the TBR as a Fleet Owner by operating in California during 2018, 2019 and
16 2020 one (1) vehicle above 26,000 pounds GVWR with an engine model year of 1988 that was
17 not equipped with a 2010 engine model year engine after the compliance deadline of January 1,
18 2015.

19 34. Browning-Ferris Industries of California, Inc., violated section 2025(g) of the
20 TBR as a Fleet Owner by operating in California during 2018 and 2019 one (1) vehicle above
21 26,000 pounds GVWR with an engine model year of 1995 that was not equipped with a 2010
22 engine model year engine after the compliance deadline of January 1, 2016.

23 35. Republic Services Vasco Road, LLC, violated section 2025(g) of the TBR as a
24 Fleet Owner by operating in California during 2018, 2019 and 2020 one (1) vehicle above
25 26,000 pounds GVWR with an engine model year of 1998 that was not equipped with a DPF
26 after the compliance deadline of January 1, 2012.

27 36. BFI Waste Systems of Southern California, Inc., (now Browning-Ferris Industries
28 of California, Inc.) violated section 2025(g) of the TBR as a Fleet Owner by operating in

1 California during 2018, 2019 and 2020 one (1) vehicle above 26,000 pounds GVWR with an
2 engine model year of 1999 that was not equipped with a DPF after the compliance deadline of
3 January 1, 2012.

4 37. Republic Waste Services of Southern California, LLC, violated section 2025(g) of
5 the TBR as a Fleet Owner by operating in California during 2018 and 2019 one (1) vehicle above
6 26,000 pounds GVWR with an engine model year of 2004 that was not equipped with a DPF
7 after the compliance deadline of January 1, 2013.

8 38. Republic Waste Services of Southern California, LLC, violated section 2025(g) of
9 the TBR as a Fleet Owner by operating in California during 2018 and 2019 one (1) vehicle above
10 26,000 pounds GVWR with an engine model year of 2006 that was not equipped with a DPF
11 after the compliance deadline of January 1, 2014.

12 39. Within the period of January 1, 2018, through October 14, 2020, one or more
13 Respondent(s) violated section 2025(x)(2) of the TBR by failing to verify prior to hiring or
14 dispatching that each of the 59 (fifty-nine) vehicles subject to the TBR that Respondent(s) hired
15 or dispatched was in compliance with the TBR.

16 **IV. RESPONDENTS' ADMISSIONS**

17 40. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this
18 proceeding, Respondents: (i) admit that EPA has jurisdiction over the subject matter of this
19 CAFO and over Respondents; (ii) neither admit nor deny the specific factual allegations
20 contained in Section III of this CAFO; (iii) consent to the terms of this CAFO, including the
21 assessment of the civil administrative penalty under Section V of this CAFO; (iv) waive any
22 right to contest the allegations contained in Section III of this CAFO; and (v) waive the right to
23 appeal the proposed Final Order contained in this CAFO.

24 **V. CIVIL ADMINISTRATIVE PENALTY**

25 41. Respondents agree to the assessment of a penalty in the amount of ONE
26 HUNDRED THOUSAND DOLLARS (\$100,000) as final settlement of the civil claims against
27 Respondents arising under the Act as alleged in Section III of this CAFO.

28 42. Respondents agree to:

1 a. pay the civil penalty of ONE HUNDRED THOUSAND DOLLARS
2 (\$100,000) (“EPA Penalty”) within 30 days of the Effective Date of this CAFO; and

3 b. pay the EPA Penalty using any method, or combination of methods,
4 provided on the website <https://www.epa.gov/financial/makepayment>, and identifying the
5 payment with “Docket No. CAA-09-2023-0071.”

6 c. within 24 hours of payment of the EPA Penalty, send proof of payment to
7 Daniel Haskell at haskell.daniel@epa.gov (“proof of payment” means, as applicable, a copy of
8 the check, confirmation of credit card or debit card payment, confirmation of wire or automated
9 clearinghouse transfer, and any other information required to demonstrate the payment has been
10 made according to the EPA requirements, in the amount due, and identified with “Docket No.
11 CAA-09-2023-0071”).

12 43. If Respondents do not timely pay the civil penalty as specified in Paragraph 42(a),
13 then Respondents shall pay to the EPA a stipulated penalty in the amount of ONE THOUSAND
14 DOLLARS (\$1,000.00) for each day the default continues plus the remaining balance of the
15 penalty sum specified in Paragraph 42(a) upon written demand by the EPA.

16 a. All penalties owed to EPA under this Paragraph shall be due within thirty
17 (30) calendar days of Respondents’ receipt of a notification of noncompliance and request for
18 payment from EPA. Such notification shall describe the amount of penalties due.

19 b. Payment of stipulated penalties shall be made in accordance with the
20 procedure set forth for payment of the penalty in Paragraph 42(b).

21 c. Notwithstanding any other provision of this CAFO, EPA may, in its
22 unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to
23 this CAFO.

24 44. If Respondents fail to timely pay any portion of the penalty assessed under this
25 CAFO, the EPA may:

26 a. request the Attorney General to bring a civil action in an appropriate
27 district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C.
28

1 § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment
2 penalty, 42 U.S.C. § 7413(d)(5);

3 b. refer the debt to a credit reporting agency or a collection agency, 42
4 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

5 c. collect the debt by administrative offset (i.e., the withholding of money
6 payable by the United States to, or held by the United States for, a person to satisfy the debt the
7 person owes the Government), which includes, but is not limited to, referral to the Internal
8 Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

9 d. suspend or revoke any licenses of Respondent(s) or other privileges
10 granted by EPA, or suspend or disqualify Respondent(s) from doing business with EPA or
11 engaging in programs EPA sponsors or funds, 40 C.F.R. Part 13.

12 e. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13,
13 interest, penalties charges, and administrative costs will be assessed against the outstanding
14 amount that Respondents owe to EPA for Respondents' failure to pay the civil administrative
15 penalty by the deadline specified in Paragraph 42.a. Interest will be assessed at an annual rate
16 that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury
17 tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the
18 Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R.

19 § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R.

20 § 13.11(c). Administrative costs for handling and collecting Respondents' overdue debt will be
21 based on either actual or average cost incurred, and will include both direct and indirect costs.

22 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g.,
23 the Department of Justice, the Internal Revenue Service), that department or agency may assess
24 its own administrative costs, in addition to EPA's administrative costs, for handling and
25 collecting Respondents' overdue debt.

26 45. Payment of civil administrative penalties pursuant to this CAFO shall not be used
27 by any Respondent or any other person as a tax deduction from any Respondent's federal, state,
28 or local taxes.

1 **VI. RESPONDENTS' REPRESENTATION**

2 46. Respondents represent that they have taken actions with respect to their
3 vehicle fleet and hiring of vehicles processes sufficient to address the violations EPA alleged
4 in the NOV.

5 **VII. RETENTION OF RIGHTS**

6 47. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondents'
7 liability for federal civil penalties for the violations and facts specifically alleged in Section III of
8 this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil
9 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
10 ordinance, or permit not specifically alleged in Section III of this CAFO; or (ii) any criminal
11 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
12 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
13 any violation of this CAFO or any violation not specifically alleged in Section III of this CAFO.
14 This CAFO does not exempt, relieve, modify, or affect in any way Respondents' duty to comply
15 with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

16 **VIII. ADDITIONAL TERMS OF SETTLEMENT**

17 48. The undersigned representative of Complainant and the undersigned
18 representative of Respondents each certifies that he or she is fully authorized to enter into the
19 terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

20 49. The provisions of this CAFO shall apply to and be binding upon Respondents and
21 their officers, directors, employees, agents, trustees, servants, authorized representatives,
22 successors, and assigns.

23 50. By signing this CAFO, Respondents acknowledge that this CAFO will be
24 available to the public and agree that this CAFO does not contain any confidential business
25 information or personally identifiable information.

26 51. By signing this CAFO, Respondents certify, to the best of Respondents'
27 knowledge and belief, that the information they have supplied concerning this matter was at the
28 time of submission true, accurate, and complete for each such submission, response, and

1 statement. Respondents acknowledge that there are significant penalties for submitting false or
2 misleading information, including the possibility of fines and imprisonment for knowing
3 submission of such information, under 18 U.S.C. § 1001.

4 52. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
5 this proceeding.

6 **IX. EFFECTIVE DATE**

7 53. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
8 effective on the date that the final order contained in this CAFO, having been approved and
9 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

10
11 The foregoing Consent Agreement In the Matter of: Agromin OC, LLC; Allied Waste
12 Services of North America, LLC; *et al.*, Docket No. CAA-09-2023-0071 is hereby stipulated,
13 agreed, and approved for entry:

14 FOR RESPONDENTS, Agromin OC, LLC; Allied Waste Services of North America, LLC; *et*
15 *al.*

16
17 9/21/2023
18 _____
19 DATE

20
21 
22 _____
23 Name Title
24 Vice President

20 The foregoing Consent Agreement In the Matter of: Agromin OC, LLC; Allied Waste
21 Services of North America, LLC; *et al.*, Docket No. CAA-09-2023-0071 is hereby stipulated,
22 agreed, and approved for entry:

23 FOR COMPLAINANT:

24
25 _____
DATE

26
27 AMY MILLER-
28 BOWEN
29 _____
30 Digitally signed by AMY
31 MILLER-BOWEN
32 Date: 2023.09.28
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34 Amy C. Miller-Bowen, Director

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FINAL ORDER

Complainant and Respondents, having entered into the foregoing Consent Agreement,
IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2023-0071) be
entered, and that Respondents shall pay a civil administrative penalty in the amount of ONE
HUNDRED THOUSAND DOLLARS (\$100,000.00) and comply with the terms and conditions
set forth in the Consent Agreement. This Consent Agreement and Final Order shall become
effective upon filing.

**BEATRICE
WONG**  Digitally signed by
BEATRICE WONG
Date: 2023.09.29
14:07:42 -07'00'

DATE

Beatrice Wong
Regional Judicial Officer
U.S. EPA, Region IX

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**Attachment
Respondents**

Legal Entity	State of Creation
Agromin OC, LLC	California
Allied Waste Services of North America, LLC	Delaware
Allied Waste Systems, Inc.	Delaware
Allied Waste Transfer Services of California, LLC	California
AWIN Leasing Company, Inc.	Delaware
BFI Waste Systems of North America, LLC	Delaware
Browning-Ferris Industries of California, Inc.	California
Consolidated Disposal Service, L.L.C.	Delaware
Elder Creek Transfer & Recovery, Inc.	California
Forward, Inc.	California
Golden Bear Transfer Services, Inc.	California
Imperial Landfill, Inc.	California
International Disposal Corp. of California	California
Keller Canyon Landfill Company	California
N Leasing Company, LLC	Delaware

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing Consent Agreement and Final Order in the matter of Agromin
3 OC, LLC; Allied Waste Services of North America, LLC et al., (CAA-09-2023-0071) was filed
4 with the Regional Hearing Clerk, and that a true and correct copy of the same was sent to the
5 following parties via electronic mail, as indicated below:

6 **RESPONDENT:** Malcolm Weiss, Esq.
7 Hunton Andrews Kurth LLP
8 550 South Hope Street , Suite 2000
9 Los Angeles, CA 90071
10 Mweiss@hunton.com

11 **COMPLAINANTS:** Brian Riedel
12 Assistant Regional Counsel
13 U.S. EPA – Region IX
14 75 Hawthorne Street, ORC-2-2
15 San Francisco, CA 94105
16 Riedel.Brian@EPA.Gov

17 **PONLY TU** Digitally signed by
18 PONLY TU
19 Date: 2023.09.29
20 14:25:54 -07'00'

21 _____
22 Ponly Tu Date
23 Regional Hearing Clerk
24 U.S. EPA - Region IX
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