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

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

Attorneys for Complainant

FILED
2009 APR 14 PM 3:56
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In re the Matter of: **California Waste Solutions, Inc.,** 1819 and 1820 Tenth Street, Oakland, California, Respondent.	Docket No.: CWA-09-2007-0005 **CONSENT AGREEMENT AND PROPOSED FINAL ORDER** Proceedings Under Section 309(g) of the Clean Water Act, as amended, 33 U.S.C. § 1319(g)

CONSENT AGREEMENT

Preliminary Statements

The United States Environmental Protection Agency, Region 9 ("EPA" or "Complainant") initiated these proceedings pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(g). On September 28, 2007, EPA issued a Complaint, Findings of Violation, 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

Complaint, EPA alleged that Respondent violated the CWA's storm water regulations and Section 301(a), 308(a), and 402 of the Act, 33 U.S.C. § 1311(a), 1318(a), and 1342, at its facilities located at 1819 and 1820 Tenth Street in Oakland, California.

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

General Provisions

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

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

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

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

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

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

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

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

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

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

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

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

Penalty

13. Respondent consents to the assessment of and agrees to pay a civil penalty of One Hundred Seventeen Thousand and One Hundred Dollars ($117,100). The penalty was calculated based on the nature, circumstances, extent and gravity of the violations, Respondent's ability to pay, its prior history of violations, its degree of culpability, and any economic benefit or savings accruing to Respondent as a result of the violations.

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

Quarter:	Payment Due Date:	Amount:
1st	April 30, 2009	$14,637.50
2nd	July 31, 2009	$15,079.91
3rd	October 30, 2009	$15,079.91
2010		
4th	January 29, 2010	$15,079.91
5th	April 30, 2010	$15,079.91
6th	July 30, 2010	$15,079.91
7th	October 29, 2010	$15,079.91
2011		
8th	January 31, 2011	$15,079.91

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

Danielle Carr
Regional Hearing Clerk
EPA Region 9 (ORC-1)
75 Hawthorne Street
San Francisco, California 94105

Ann Murphy
CWA Compliance Office
EPA Region 9 (WTR-7)
75 Hawthorne Street
San Francisco, California 94105

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

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

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

Effective and Termination Dates

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

CONSENTING PARTIES:

For Respondent California Waste Solutions, Inc.:

BY: David Duong, President, California Waste Solutions, Inc. DATE: 3/30/09

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

BY: Alexis Strauss, Director Water Division DATE: 8 April 2009

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

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

Attorneys for Complainant

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In re the Matter of: **California Waste Solutions, Inc.,** 1819 and 1820 Tenth Street, Oakland, California, Respondent.	Docket No.: CWA-09-2007-0005 **[PROPOSED]** **FINAL ORDER** Proceedings Under Section 309(g) of the Clean Water Act, as amended, 33 U.S.C. § 1319(g).

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent California Waste Solutions, Inc., is hereby ordered to comply with the Consent Agreement.

Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 9

04/11/09
DATE:

EXHIBIT A

In the Matter of California Waste Solutions, Inc.,

EPA Docket No. CWA-09-2007-0005

EPA REGION 9 COLLECTION INFORMATION:

ELECTRONIC FUNDS TRANSFERS

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

CHECK PAYMENTS

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

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

OVERNIGHT MAIL:

U.S. Bank
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

CERTIFICATE OF SERVICE

In the Matter of California Waste Solutions, Inc.,

EPA Docket No. CWA-09-2007-0005

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

Richard Norris
ARCHER NORRIS
2033 North Main Street, Suite 800
P.O. Box 8035
Walnut Creek, CA 94596-3728

Date

Steve Armsey
Regional Hearing Clerk
U.S. EPA, Region 9