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6 UNITED STATES
7 ENVIRONMENTAL PROTECTION AGENCY
8 REGION IX

9 IN THE MATTER OF:)
10 HARVEY DURO and)
DESERT MOBILEHOME PARK INC.,)
11)
12)
13 Respondents.)

Docket No.
RCRA-9-2007- 00 14
09
14 CONSENT AGREEMENT
15 AND
16 FINAL ORDER
17 PURSUANT TO 40 C.F.R.
18 SECTIONS 22.13 and 22.18

14 CONSENT AGREEMENT

15 Complainant, the United States Environmental Protection Agency, Region IX
16 ("Complainant" or "EPA"), and Respondents, Harvey Duro and Desert Mobilehome Park Inc.
17 ("Respondents"), the parties herein, having agreed that settlement of this matter is in the public
18 interest and that entry of this Consent Agreement and Final Order, pursuant to 40 C.F.R. Sections
19 22.13 and 22.18, ("CA/FO"), without further litigation is the most appropriate means of
20 resolving this matter;

21 NOW, THEREFORE, Complainant and Respondents hereby agree as follows:

22 A. PRELIMINARY STATEMENT

23 1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1)
24 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C.
25 § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative
26

1 Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits
2 ("Consolidated Rules"), 40 C.F.R. Part 22. Complainant is the United States
3 Environmental Protection Agency, Region IX. Respondents are Harvey Duro and Desert
4 Mobilehome Park Inc., a California corporation.

5 2. Respondents operate a mobile home park with residential and commercial uses that
6 include solid waste disposal, generation and storage of hazardous wastes, and collection
7 and storage of used oil (the "Facility"). The Facility is located at 68-800 Hwy 195,
8 Thermal, California 92274, in Riverside County, on land held in trust by the United
9 States of America, within the Torres Martinez Desert Cahuilla Indian Reservation.

10 3. Household garbage, household hazardous waste, furniture, tires, plastic, insulation, metal,
11 containers of unknown wastes, and hazardous waste, including lead-acid batteries, used
12 oil, cleaning fluids, and electronic equipment, are disposed of at the Facility.

13 4. This CA/FO, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), simultaneously commences
14 and concludes this proceeding, wherein EPA alleges that Respondents operated an open
15 dump, failed to minimize releases of hazardous wastes, failed to properly mark containers
16 of used oil, and failed to store used oil in containers in good condition, in violation of
17 Sections 1008, 3004, 3005, 3014 and 4005(a) of RCRA, 42 U.S.C. §§ 6907, 6924, 6925,
18 6935 and 6945(a), and 40 C.F.R. §§ 258.21(a), 258.25, 258.26(a), 265.31 and 279.22(b),
19 (c)(1) and (d).

20 B. GENERAL ALLEGATIONS

21 5. Each Respondent is, and at all times referred to herein was, a "person" as defined in
22 Section 1004(15) of RCRA, 42 U.S.C. §6903(15), and 40 C.F.R. §§ 260.10 and 270.2.

23 6. Each Respondent was the "owner" and/or "operator" of a "facility" as defined in 40
24 C.F.R. §§ 258.2, 260.10 and 270.2 .

25 7. Each Respondent was engaged in the "disposal" of solid or hazardous waste as defined in
26 Section 1004(3) of RCRA, 42 U.S.C. §6903(3) and 40 C.F.R. §§ 260.10 and 270.2 at the
27

1 time of the violations alleged.

2 8. Each Respondent is engaged in the disposal of "household waste" as defined in 40 C.F.R.
3 § 258.2 at the time of the violations alleged.

4 9. Each Respondent is the "owner" or "operator" of a "facility" as defined in 40 C.F.R.
5 §§ 258.2 and 260.10 at the time of the violations alleged.

6 10. Each Respondent operated a "municipal solid waste landfill (MSWLF) unit" as defined in
7 40 C.F.R. § 258.2 at the time of the violations alleged.

8 11. Each Respondent stored "hazardous waste" as defined in Section 1004(5) of RCRA, 42
9 U.S.C. § 6903(5) and 40 C.F.R. §§ 260.10 and 261.3.

10 12. On June 29, 2006, EPA conducted a RCRA inspection at the Facility. Based upon the
11 findings EPA made during the inspection and additional information obtained subsequent
12 to the inspection, EPA determined that Respondents violated Sections 1008, 3004, 3005,
13 3014 and 4005(a) of RCRA, 42 U.S.C. §§ 6907, 6924, 6925, 6935 and 6945(a), and 40
14 C.F.R. §§ 258.21(a), 258.25, 258.26(a), 265.31 and 279.22(b), (c)(1) and (d).

15 13. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to enforce
16 the hazardous waste management program at the Torres Martinez Indian Reservation in
17 California. Pursuant to section 4005(c)(2) of RCRA, 42 U.S.C. § 6945(c)(2), the
18 Administrator may use the authorities of Sections 3007 and 3008 of RCRA, 42 U.S.C. §§
19 6927 and 6928, to enforce the prohibition on open dumping of solid waste or hazardous
20 waste contained in Section 4005(a) of RCRA, 42 U.S.C. § 6945(a) at the Torres Martinez
21 Indian Reservation in California.

22 14. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue or-
23 ders assessing a civil penalty, requiring compliance immediately or within a specified
24 time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et*
25 *seq.*, 42 U.S.C. § 6921 *et seq.*, and as provided pursuant to Section 4005(c)(2) of RCRA,
26 42 U.S.C. § 6945(c)(2), for violations of minimum criteria that define the solid waste
27

1 management practices which constitute open dumping of solid waste or hazardous waste.

2 15. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA
3 Regional Administrator for Region IX, who has redelegated this authority to the Director
4 of the Waste Management Division.

5 C. ALLEGED VIOLATIONS

6 COUNT I

7 (Open Dumping of Solid Waste)

8 16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were
9 set forth here in their entirety.

10 17. Section 4005(a) of RCRA, 42 U.S.C. 6945(a), prohibits the open dumping of solid waste
11 or hazardous waste, effective upon the promulgation of standards for the management of
12 solid waste.

13 18. Federal regulations establishing standards for municipal solid waste landfills, 40 C.F.R.
14 Part 258, were promulgated on October 9, 1991. 40 C.F.R. § 258.1(h) provides that
15 municipal solid waste landfill units failing to satisfy the criteria of 40 C.F.R. Part 258
16 constitute open dumps, which are prohibited under Section 4005(a) of RCRA, 42 U.S.C.
17 § 6945(a).

18 19. 40 C.F.R. § 258.21(a) provides that the owners or operators of all MSWLF units must
19 cover disposed solid waste with six inches of earthen material at the end of each
20 operating day, or at more frequent intervals, if necessary.

21 20. 40 C.F.R. § 258.25 provides that owners or operators of all MSWLF units must control
22 public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by
23 using artificial barriers, natural barriers, or both, as appropriate to protect human health
24 and the environment.

25 21. 40 C.F.R. § 258.26(a) provides that owners or operators of all MSWLF units must design,
26 construct, and maintain: (1) a run-on control system to prevent flow onto the active
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1 portion of the landfill during the peak discharge from a 25-year storm; and (2) a run-off
2 control system from the active portion of the landfill to collect and control at least the
3 water volume resulting from a 24-hour, 25-year storm.

4 22. On June 29, 2006, the EPA Inspector observed piles of solid waste on the ground at the
5 facility. The solid waste included household garbage, household hazardous waste,
6 furniture, tires, plastic, insulation, metal, containers of unknown wastes, and hazardous
7 waste, including lead-acid batteries, used oil, cleaning fluids, and electronic equipment.

8 23. On June 29, 2006, the EPA inspector observed that the facility did not control public
9 access as required by 40 C.F.R. § 258.25; the facility did not provide for daily cover as
10 required by 40 C.F.R. § 258.21(a); and the facility did not have a run-on and run-off
11 control system as required by 40 C.F.R. § 258.26(a). Failure to comply with these
12 requirements constitutes open dumping and is prohibited under Section 4005(a) of
13 RCRA, 42 U.S.C. § 6945(a), as provided in 40 C.F.R. § 258.1(h).

14 24. Therefore, EPA alleges that Respondents violated Section 4005(a) of RCRA, 42 U.S.C.
15 § 6945(a).

16 COUNT II

17 (Failure To Minimize Releases of Hazardous Wastes)

18 25. Paragraphs 1 through 24 above are incorporated herein by this reference as if they were
19 set forth here in their entirety.

20 26. Respondents stored or disposed of spent lead-acid batteries, which are "hazardous waste"
21 as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 C.F.R. §§ 260.10
22 and 261.3.

23 27. Respondents stored or disposed of cathode ray tube ("CRT") wastes from commercial
24 operations. Due to the lead content in the CRTs, the CRTs are "hazardous waste" as
25 defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 C.F.R. §§ 260.10 and
26 261.3.

1 28. 40 C.F.R. §265.31 requires that hazardous waste facilities must be maintained and
2 operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-
3 sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface
4 water which could threaten human health or the environment.

5 29. On June 29, 2006, EPA's inspector observed that Respondents had been storing and
6 disposing of lead-acid batteries and CRTs at the Facility. Most of the lead-acid batteries
7 and CRTs were located on the ground. One of the lead-acid batteries was leaking and the
8 casing of another was severely deteriorated. Many of the CRTs were broken.

9 30. Therefore, EPA alleges that Respondents violated 40 C.F.R. § 265.31.

10 COUNT III

11 (Failure To Label Used Oil Containers)

12 31. Paragraphs 1 through 30 above are incorporated herein by this reference as if they were
13 set forth here in their entirety.

14 32. 40 C.F.R. § 279.30(b) requires that owners or operators of do-it-yourselfer ("DIY") used
15 oil collection centers must comply with the standards for used oil generators.

16 33. 40 C.F.R. § 279.31(b) requires that owners or operators of used oil collection centers
17 must comply with the standards for used oil generators.

18 34. Respondents operated a used oil collection center at the Facility.

19 35. 40 C.F.R. § 279.22(c)(1) requires that containers used to store used oil must be labeled or
20 marked clearly with the words "Used Oil."

21 36. On June 29, 2006, the EPA inspector observed seventy-six (76) various sized containers
22 of used oil at the Facility. None of the containers of used oil were marked with the words
23 "Used Oil."

24 37. Therefore, EPA alleges that Respondents violated 40 C.F.R. § 279.22(c)(1).

25 COUNT IV

26 (Failure to Store Used Oil in Containers in Good Condition)

with No Leaks and Manage Used Oil Releases)

38. Paragraphs 1 through 37 above are incorporated herein by this reference as if they were set forth here in their entirety.

39. 40 C.F.R. § 279.22(b) requires that generators store used oil in containers in good condition (no severe rusting, apparent structural defects or deterioration) and containers with no visible leaks.

40. 40 C.F.R. § 279.22(d) requires that upon detection, generators stop, contain, and properly manage releases of used oil to the environment. Additionally, leaking containers must be repaired or replaced prior to returning them to service.

41. On June 29, 2006, the EPA inspector observed structural defects (i.e., bulging) in one container of used oil. Another container had deteriorated to such a condition that it leaked. The EPA inspector also observed areas where used oil was released to the soil.

42. Therefore, EPA alleges that Respondents violated 40 C.F.R. §§ 279.22(b) and (d).

D. CIVIL PENALTY

43. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Debt Collection Improvement Act of 1996, 40 C.F.R. Part 19, authorizes a civil penalty of up to THIRTY-TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$32,500) per day for each violation of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq.

44. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Respondents to comply with applicable requirements, and any economic benefit accruing to Respondents, as well as such other matters as justice may require, EPA proposes that Respondents be assessed ONE THOUSAND FIVE HUNDRED AND TWENTY FIVE DOLLARS (\$1,525.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the "RCRA Civil Penalty Policy,"

1 dated June 2003, as adjusted by the Debt Collection Improvement Act. Under the penalty
2 policy, EPA uses a penalty assessment matrix, which is then adjusted to take into account
3 multi-day violations, for case-specific circumstances, and for the economic benefit gained
4 from non-compliance, where appropriate.

5 E. SUPPLEMENTAL ENVIRONMENTAL PROJECT

6 45. Respondents shall expend a total of FIVE THOUSAND FOUR HUNDRED AND FIFTY
7 DOLLARS (\$5,450.00) to complete the supplemental environmental project ("SEP")
8 described in Attachment A to this CA/FO. Work on the SEP shall commence within
9 forty-five (45) days of the effective date of this CA/FO and shall be completed within
10 ninety (90) days of the effective date of this CA/FO.

11 46. In signing this CA/FO, Respondents hereby certify that Respondents are not required by
12 any federal, state, tribal or local law or regulation to perform or develop the SEP required
13 by this CA/FO; nor are Respondents required by agreement, grant or as injunctive relief
14 in this or any other case to perform or develop the SEP. Respondents further certify that
15 neither Respondent has received, and is not presently negotiating to receive, credit in any
16 other enforcement action for the SEP required by this CA/FO; nor will Respondents
17 realize any profit attributable to or associated with the SEP. Respondents will not list any
18 extramural expenditures associated with this SEP as a business deduction for purposes of
19 income taxes. However, there is no such limitation on any salaries paid employees who
20 are paid to assist in performance of the SEP.

21 47. Within ten (10) days after the work on the SEP is completed, Respondents shall notify
22 EPA and certify that the work has been completed in accordance with the requirements of
23 this CA/FO, including all attachments. The notice to EPA shall describe the activities
24 involved in completing the SEP, including the location, dates and hours of operation, the
25 types and volume of wastes collected, the waste disposal arrangements and disposal sites,
26 and an estimate of the number of people who participated in the waste roundup. The
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1 signatory for each Respondent shall certify under penalty of law that this certification of
2 compliance is based upon true, accurate and complete information, which the signatory
3 can verify personally or regarding which the signatory has inquired of the person or
4 persons directly responsible for gathering the information.

5 48. Within twenty (20) days after the work on the SEP is completed, Respondents shall
6 submit to EPA substantiating documentation showing that Respondents expended at least
7 FIVE THOUSAND FOUR HUNDRED AND FIFTY DOLLARS (\$5,450.00) to
8 complete the SEP and that the SEP was completed in accordance with the requirements of
9 this CA/FO, including all attachments. Substantiating documentation may include, but is
10 not limited to, invoices, vouchers, checks, and photographs.

11 49. In the event that Respondents publicize this SEP or the results of this SEP, Respondents
12 shall state in a prominent manner that the project was undertaken as part of a settlement
13 of an enforcement action by EPA.

14 F. ADMISSIONS AND WAIVERS

15 50. For the purposes of this proceeding, each Respondent admits to the jurisdictional
16 allegations set forth in Section B of this CA/FO. Respondents consent to and agree not to
17 contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce
18 its terms. Further, Respondents will not contest EPA's jurisdiction and authority to
19 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 51. Respondents neither admit nor deny any allegations of fact or law set forth in Section C
22 of this CA/FO. Respondents hereby waive any rights Respondents may have to contest
23 the allegations set forth in this CA/FO, waive any rights Respondents may have to a
24 hearing on any issue relating to the factual allegations or legal conclusions set forth in this
25 CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42
26 U.S.C. § 6928(b), and hereby consent to the issuance of this CA/FO without adjudication.

1 In addition, Respondents hereby waive any rights Respondents may have to appeal the
2 Final Order attached to this Consent Agreement and made part of this CA/FO.

3
4 G. PARTIES BOUND

5 52. This CA/FO shall apply to and be binding upon Respondents and their agents, successors
6 and assigns and upon all persons acting under or for Respondents, until such time as the
7 civil penalty required under Sections D and I has been paid in accordance with Section I,
8 compliance tasks under Section H have been completed, and any delays in performance
9 and/or stipulated penalties have been resolved. At such time as those matters are
10 concluded, this CA/FO shall terminate and constitute full settlement of the violations
11 alleged herein.

12 53. No change in ownership or corporate, partnership or legal status relating to the Facility
13 will in any way alter Respondents' obligations and responsibilities under this CA/FO.

14 54. The undersigned representatives of Respondents hereby certify that they are fully
15 authorized by Respondents to enter into this CA/FO, to execute and to legally bind
16 Respondents.

17 H. COMPLIANCE TASKS

18 55. Respondents shall complete the following tasks in the prescribed time frames:

19 a. Removal and Proper Disposal of Existing Waste. Within thirty (30) days of the
20 effective date of this CA/FO, Respondents shall remove and properly dispose of offsite
21 all solid and hazardous waste currently located in the area adjacent to the dump trailers at
22 the Facility. Respondents shall certify in writing to EPA that they have completed the
23 removal and offsite disposal and that no new open dumps have developed at the Facility.
24 Such certification shall include a description of the types of wastes and quantity removed
25 and disposed of, and a list of the names and addresses of the facilities where the waste
26 was disposed.

1 b. Program To Prevent Open Dumping. To avoid open dumping at the Facility in the
2 future, within thirty (30) days of the effective date of this CA/FO, Respondents shall
3 arrange for weekly garbage pickup from the Facility for all residents of the mobile home
4 park. This requirement shall be enforceable under this CA/FO for one (1) year following
5 the effective date of the CA/FO.

6 c. Waste Management Plan. Within forty-five (45) days after the effective date of this
7 CA/FO, Respondents shall submit to EPA for approval a plan for the management of
8 used oil, lead-acid batteries, electronics (televisions, computer monitors, etc), and tires
9 which may be discovered at the Facility. Respondents shall implement the EPA approved
10 plan within thirty days (30) days after notice of EPA's approval of the plan. The
11 requirement to implement the EPA approved management plan shall be enforceable under
12 this CA/FO for one (1) year following the effective date of the CA/FO.

13 d. Waste Management Factsheet. Within thirty (30) days after the effective date of this
14 CA/FO, Respondents shall submit to EPA for approval a proposed factsheet to be
15 provided to all households at the Facility informing residents of how and where to
16 properly dispose of used oil, lead acid batteries, electronics, and tires. Respondents shall
17 post the factsheet at a prominent location at the Facility and provide a copy to all
18 households at the Facility within thirty days (30) days after notice of EPA's approval of
19 the factsheet.

20 56. Compliance Certification. Upon completion of all tasks required by this CA/FO,
21 Respondents shall certify to EPA in writing that Respondents have corrected the
22 violations alleged and completed all compliance tasks, and that Respondents are now in
23 compliance with the applicable requirements of Sections 1008, 3004, 3005 and 4005(a) of
24 RCRA, 42 U.S.C. §§ 6907, 6924, 6925 and 6945(a), and their implementing regulations.
25 The signatories for Respondents shall certify under penalty of law that this certification of
26 compliance is based upon true, accurate and complete information, which the signatories
27

1 can verify personally or regarding which the signatories have inquired of the person or
2 persons directly responsible for gathering the information.

3 I. PAYMENT OF CIVIL PENALTY

4 57. Respondents hereby consent to the assessment of a civil penalty in the amount of ONE
5 THOUSAND, FIVE HUNDRED TWENTY FIVE DOLLARS (\$ 1525.00) in settlement
6 of the civil penalty claims of the United States for the violations of Sections 1008, 3004,
7 3005, 3014 and 4005(a) of RCRA, 42 U.S.C. §§ 6907, 6924, 6925, 6935 and 6945(a),
8 and 40 C.F.R. §§ 258.21(a), 258.25, 258.26(a), 265.31 and 279.22(b), (c)(1) and (d),
9 alleged in Section C above.

10 58. Respondents shall submit payment of the civil penalty of ONE THOUSAND, FIVE
11 HUNDRED TWENTY FIVE DOLLARS (\$ 1,525.00) within thirty (30) calendar days of
12 the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date EPA
13 signs the Final Order. Payment shall be made by Funds Transfer Deposit (EPA Form
14 2570-6) through the Federal Reserve Communication System (FRCS) to the account of
15 the U.S. Treasury at the Federal Reserve Bank of New York. At the time payment is so
16 made, a copy of EPA Form 2570-6 shall be sent to:

17
18 Regional Hearing Clerk (RC-1)
19 U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

20 and

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

24 59. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM
25 6-8000), the payment must be received within thirty (30) calendar days of the Effective
26 Date of this CA/FO to avoid additional charges. If payment is not received within thirty
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1 (30) calendar days, interest will accrue from the Effective Date of this CA/FO at the
2 current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. A
3 late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an
4 additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty
5 will further apply on any principal amount not paid within ninety (90) calendar days of
6 the due date. Respondents further will be liable for stipulated penalties as set forth below
7 for any payment not received by its due date.

8 J. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

9 60. In addition to the interest and per annum penalties described above, in the event that
10 Respondents fail to pay the full amount of the penalty within the time specified in
11 Section I, Respondents agree to pay Complainant a stipulated penalty in the amount of up
12 to ONE HUNDRED DOLLARS (\$100.00) for each day the default continues.

13 61. In the event Respondents fail to comply with any of the compliance tasks identified in
14 Paragraph 55, Respondents shall be liable for a stipulated penalty in the amount of up to
15 ONE HUNDRED DOLLARS (\$100.00) for each day of violation.

16 62. Except as provided in paragraph 63 immediately below, in the event that Respondents fail
17 to complete the SEP as required by this CA/FO, including all attachments, Respondents
18 shall pay a stipulated penalty of SIX THOUSAND DOLLARS (\$ 6,000.00).

19 63. If Respondents fail to complete the SEP as required by the CA/FO, including all
20 attachments, but Respondents (a) have made good faith and timely efforts to complete the
21 SEP; and (b) certify, with supporting documentation, that at least 90% of the amount of
22 money which was required by this CA/FO to be spent was expended on the SEP, no
23 stipulated penalty will apply.

24 64. If Respondents complete the SEP in accordance with the requirements of this CA/FO,
25 including all attachments, but Respondents spent less than 90 percent of the amount of
26 money required by this CA/FO to be spent for the SEP, Respondents shall pay a
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1 stipulated penalty of ONE THOUSAND FIVE HUNDRED DOLLARS (\$ 1,500.00).

2 65. If Respondents satisfactorily complete the SEP in accordance with the requirements of
3 this CA/FO, including all attachments, and spend at least 90% of the amount of money
4 required by this CA/FO to be spent for the SEP, no stipulated penalty will apply.

5 66. The determination of whether Respondents have satisfactorily completed the SEP set
6 forth in Section E of this CA/FO and the determination of whether Respondents have
7 made a good faith, timely effort to implement the SEP for purposes of this Section, are
8 within the sole discretion of the Director, Waste Management Division, EPA Region IX,
9 subject to the terms of this CA/FO. The decision of the Division Director, Waste
10 Management Division, EPA Region IX is not reviewable in any forum.

11 67. All penalties shall begin to accrue on the date that performance is due or a violation
12 occurs, and shall continue to accrue through the final day of correction of the
13 noncompliance. Nothing herein shall prevent the simultaneous accrual of separate
14 penalties for separate violations.

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

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

22 U.S. Department of the Treasury
23 Attn: EPA Region IX Hearing Clerk
24 P.O. Box 360863M
Pittsburgh, PA 15251

25 70. All payments shall indicate the name of the Facility, any EPA identification number of
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1 the Facility, each Respondent's name and address, and the EPA docket number of this
2 action. At the time payment is made, Respondents shall send a copy of the payment
3 transmittal to:

4
5 Kaoru Morimoto (WST-3)
6 Waste Management Division
7 U.S. Environmental Protection Agency - Region IX
8 75 Hawthorne Street
9 San Francisco, CA 94105

8 71. The payment of stipulated penalties shall not alter in any way each Respondent's
9 obligation to complete the performance required hereunder.

10 72. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any
11 other remedies or sanctions which may be available to EPA by reason of Respondents'
12 failure to comply with any of the requirements of this CA/FO.

13 K. RESERVATION OF RIGHTS

14 73. EPA expressly reserves all rights and defenses that it may have.

15 74. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and
16 remedies, both legal and equitable, including the right to require that Respondents
17 perform tasks in addition to those required by this CA/FO. EPA further reserves all of its
18 statutory and regulatory powers, authorities, rights and remedies, both legal and equitable,
19 which may pertain to Respondents' failure to comply with any of the requirements of this
20 CA/FO, including without limitation, the assessment of penalties under Section 3008(c)
21 of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to
22 sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or
23 criminal, which EPA has under RCRA, the Comprehensive Environmental Response,
24 Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other
25 statutory, regulatory or common law enforcement authority of the United States.

26 75. Compliance by Respondents with the terms of this CA/FO shall not relieve Respondents
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1 of their obligations to comply with any applicable local, state, tribal or federal laws and
2 regulations.

3 76. The entry of this CA/FO and Respondents' consent to comply shall not limit or otherwise
4 preclude EPA from taking additional enforcement actions should EPA determine that
5 such actions are warranted except as they relate to Respondents' liability for federal civil
6 penalties for the specific alleged violation and facts as set forth in Section C of this
7 CA/FO.

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

13 78. The entry of this CA/FO and Respondents' consent to comply shall not limit or otherwise
14 preclude EPA from taking additional enforcement actions should EPA determine that
15 such actions are warranted except as they relate to Respondents' liability for federal civil
16 penalties for the specific alleged violation and facts as set forth in Section C of this
17 CA/FO.

18 79. EPA reserves its right to seek reimbursement from Respondents for any additional costs
19 incurred by the United States which may result or arise from the alleged counts set forth
20 in Section C. Notwithstanding compliance with the terms of this CA/FO, Respondents
21 are not released from liability, if any, for the costs of any response actions taken by EPA.

22 L. OTHER CLAIMS

23 80. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,
24 cause of action or demand in law or equity by or against any person, firm, partnership,
25 entity or corporation for any liability it may have arising out of or relating in any way to
26 the generation, storage, treatment, handling, transportation, release, or disposal of any
27

1 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or
2 contaminants found at, taken to, or taken from the Facility.

3 M. MISCELLANEOUS

4 81. This CA/FO may be amended or modified only by written agreement executed by both
5 EPA and Respondents.

6 82. The headings in this CA/FO are for convenience of reference only and shall not affect
7 interpretation of this CA/FO.

8 83. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
9 proceeding.

10 84. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective
11 on the date that the Final Order contained in this CA/FO, having been approved and
12 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

13
14 **IT IS SO AGREED,**

15
16 For Respondent DESERT MOBILEHOME PARK, INC.

17
18 6/26/07
19 Date

20 Harvey Duro
Harvey Duro, President
Desert Mobilehome Park Inc.

21
22 For Respondent HARVEY DURO

23
24 6/26/07
25 Date

26 Harvey Duro
Harvey Duro, President.

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9/4/07

Date

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

1
2 **FINAL ORDER**
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6 **IT IS HEREBY ORDERED** that this Consent Agreement and Final Order ((U.S. EPA Docket
7 No. RCRA-09-2007-⁰⁰¹⁴) be entered and that Respondent pay a civil penalty in the amount of
8 ONE THOUSAND FIVE HUNDRED AND TWENTY FIVE DOLLARS (\$1,525.00) by Funds
9 Transfer Deposit through the Federal Reserve Communication System to the account of the U.S.
10 Treasury at the Federal Reserve Bank of New York, within thirty (30) days after the Effective
11 Date of this Consent Agreement and Final Order. A copy of the Funds Transfer Deposit Form
12 shall be sent to the EPA Region IX addresses specified in Section I of this Consent Agreement
13 and Final Order within such 30-day period.
14

15 This Final Order shall be effective upon filing.
16
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19 09/07/07

20 Date

21 Steven Jawgiel

22 Steven Jawgiel
23 Regional Judicial Officer
24 United States Environmental Protection Agency,
25 Region IX
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2 **FINAL ORDER**
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6 **IT IS HEREBY ORDERED** that this Consent Agreement and Final Order ((U.S. EPA Docket
7 No. RCRA -09-2007-0014) be entered and that Respondent pay a civil penalty in the amount of
8 ONE THOUSAND FIVE HUNDRED AND TWENTY FIVE DOLLARS (\$1,525.00) by Funds
9 Transfer Deposit through the Federal Reserve Communication System to the account of the U.S.
10 Treasury at the Federal Reserve Bank of New York, within thirty (30) days after the Effective
11 Date of this Consent Agreement and Final Order. A copy of the Funds Transfer Deposit Form
12 shall be sent to the EPA Region IX addresses specified in Section I of this Consent Agreement
13 and Final Order within such 30-day period.
14

15 This Final Order shall be effective upon filing.
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18
19 09/11/07

20 Date

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21 Steven Jawgiel
22 Regional Judicial Officer
23 United States Environmental Protection Agency,
24 Region IX
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Attachment A

Description of Supplemental Environmental Project

Respondent shall conduct a one day waste roundup at Desert Mobile Home Park. The waste round up will include collection of the following types of items which will be stored in separate bins:

- Batteries;
- Washers and dryers, refrigerators, condensers and scrap metal;
- Computer hard drives;
- Keyboards, legal trash and mattresses;
- Microwaves;
- TVs and computer monitors; and
- Used oil.

Respondent states that it is making arrangements with USA Desert Commodities, Ltd., to assist in the event and that it will be making arrangements with Advanced Oil Pickup for pickup of the used oil, but nothing in this CA/FO requires the use of any specific contractor.

Respondent will notify the Tribe prior to the event and will post flyers at appropriate locations in advance of the event.

Respondent will arrange for transportation and lawful disposal of all of the collected items no later than ten (10) days after the waste roundup.

CERTIFICATE OF SERVICE

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

by Certified Mail, Return Receipt Requested, to:

**Harvey Duro
Desert Mobilehome Park, Inc.
68800 Hwy 195
Thermal, California 92274**

by First Class Mail to:

**Jack Gradias
Desert Mobilehome Park, Inc.
68800 Hwy 195
Thermal, California 92274**

by Hand Delivery to:

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

9-11-07

Date



**Danielle Carr
Regional Hearing Clerk**