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US EPA - REGION IX
HEARING CLERK

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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 IN THE MATTER OF:) Docket No.
11) RCRA-09-2012-0023

12 NATIONAL CONTAINER GROUP WEST, LLC,)
13) CONSENT AGREEMENT
14 Respondent.) AND
FINAL ORDER

15 CONSENT AGREEMENT

16 Complainant, the United States Environmental Protection Agency, Region IX
17 ("Complainant" or "EPA"), and Respondent, National Container Group West, LLC
18 ("Respondent"), the parties herein, having agreed that settlement of this matter is in the public
19 interest and that entry of this Consent Agreement and Final Order, pursuant to 40 CFR Section
20 22.18, ("CA/FO"), without further litigation is the most appropriate means of resolving this
21 matter;

22 NOW, THEREFORE, Complainant and Respondent hereby agree as follows:

23 A. INTRODUCTION

- 24 1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1)
25 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C.
26 § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative
27

1 Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits
2 ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States
3 Environmental Protection Agency, Region IX. Respondent is a corporation organized
4 under the laws of the State of Delaware.

5 2. This action commenced with the issuance of a Determination of Violation, Compliance
6 Order and Notice of Right to Request a Hearing ("Complaint") on September 28, 2012
7 under the above-referenced docket number RCRA-09-2012-0023, wherein EPA alleges
8 that Respondent managed hazardous waste in violation of the RCRA Hazardous Waste
9 Management requirements, 42 U.S.C. §§ 6921 - 6939e, the implementing regulations,
10 and state regulations adopted pursuant to the federally authorized California hazardous
11 waste management program.

12 3. This CA/FO, pursuant to 40 CFR § 22.18(b), concludes this proceeding.

13 **B. ADMISSIONS AND WAIVERS**

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

24 5. Respondent neither admits nor denies any allegations of fact set forth in the Complaint.
25 Respondent hereby waives any rights Respondent may have to contest the allegations set
26 forth in the Complaint, waives any rights Respondent may have to a hearing on any issue
27

1 relating to the factual allegations or legal conclusions set forth in the Complaint,
2 including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C.
3 § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In
4 addition, Respondent hereby waives any rights Respondent may have to appeal the Final
5 Order attached to this Consent Agreement and made part of this CA/FO.

6 **C. CIVIL PENALTY**

7 6. Complainant and Respondent hereby consent to the assessment of a civil penalty in the
8 amount of **TEN THOUSAND DOLLARS (\$10,000)** in settlement of the civil penalty
9 claims set forth in the Complaint. Satisfaction of the terms of this CA/FO constitutes a
10 settlement of all civil penalty claims for the violations alleged in the Complaint.

11 7. Respondent shall submit payment of the civil penalty of **TEN THOUSAND DOLLARS**
12 **(\$10,000)** within thirty (30) calendar days of the Effective Date of this CA/FO. The
13 Effective Date of this CA/FO is the date that the Final Order contained in this CA/FO,
14 having been approved and issued by either the Regional Judicial Officer or Regional
15 Administrator, is filed.

16 8. Respondent shall submit the payment due under this CA/FO in accordance with one of
17 the options set forth below, and shall reference the Respondent's name and the docket
18 number, RCRA-09-2012-0023, of this matter:

19 a. A check sent by regular U.S. Postal Service mail should be made payable to the
20 "Treasurer, United States of America" and addressed to:

21 US Environmental Protection Agency
22 Fines and Penalties
23 Cincinnati Finance Center
24 PO Box 979077
25 St. Louis, MO 63197-9000

26 b. Wire transfers should be directed to the Federal Reserve Bank of New York as
27 follows:

1 Federal Reserve Bank of New York
2 ABA: 021030004
3 Account Number: 68010727
4 SWIFT address: FRNYUS33
5 33 Liberty Street
6 New York NY 10045
7 Field Tag 4200 of the Fedwire message should read:
8 "D 68010727 Environmental Protection Agency".

- 9 c. A check sent by overnight mail should be payable to the "Treasurer, United States
10 of America" and addressed to:

11 U.S. Bank
12 1005 Convention Plaza
13 Mail Station SL-MO-C2GL
14 St. Louis, MO 63101
15 Contact: Natalie Pearson, 314-418-4087

- 16 d. An On Line Payment Option for payments directly from your bank account or by
17 credit/debit card is available through the U.S. Department of Treasury. To use
18 this payment option, access www.pay.gov, enter "sfo 1.1" in the Public Forms
19 search field, open the form, and complete the required fields.

20 See also, http://www.epa.gov/ocfo/finservices/payment_instructions.htm.

- 21 9. At the time payment is so made, a copy of the transmittal form shall be sent to:

22 Regional Hearing Clerk (RC-1)
23 U.S. Environmental Protection Agency - Region IX
24 75 Hawthorne Street
25 San Francisco, CA 94105

26 and

27 Kandice Bellamy (WST-3)
28 Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

10. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM
6-8000), the payment must be received within thirty (30) calendar days of the effective
date of this CA/FO to avoid additional charges. If payment is not received within thirty
(30) calendar days, interest will accrue from the effective date of this CA/FO at the
current rate published by the United States Treasury as described at 40 CFR §13.11(a).
Additionally, administrative costs for collecting the overdue debt will be assessed

1 monthly and a monthly penalty charge will be assessed at a rate of 6% per annum on any
2 principal amount not paid within ninety (90) calendar days of the due date. See 40 CFR
3 §13.11(b) and (c). Furthermore, Respondent will be liable for stipulated penalties as set
4 forth below for any payment not received by its due date.

- 5 11. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and
6 shall not be deducted by Respondent or any other person or entity for federal, state or
7 local taxation purposes.

8 **D. DELAY IN PERFORMANCE AND STIPULATED PENALTIES**

- 9 12. In addition to the interest and per annum penalties described above, in the event that
10 Respondent fails to pay the full amount of the penalty within the time specified in
11 Section C, Respondent agrees to pay Complainant a stipulated penalty in the amount of
12 up to TWO THOUSAND DOLLARS (\$2,000.00) for each day the default continues.

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

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

- 22 15. All penalties under this Section shall be made payable by certified or cashier's check to
23 "Treasurer of the United States" and shall be remitted to:

24 US Environmental Protection Agency
25 Fines and Penalties
26 Cincinnati Finance Center
27 PO Box 979077

1 St. Louis, MO 63197-9000

- 2 16. All payments shall indicate the name of the Facility, any EPA identification number of
3 the Facility, Respondent's name and address, and the EPA docket number of this action.

4 At the time payment is made, Respondent shall send a copy of the payment transmittal to:

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

- 11 17. The payment of stipulated penalties shall not alter in any way Respondent's obligation to
12 complete the performance required hereunder.

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

16 **E. PARTIES BOUND**

- 17 19. This CA/FO shall apply to and be binding upon Respondent and its agents, successors
18 and assigns and upon all persons acting under or for Respondent, until such time as the
19 civil penalty required under Section D has been paid in accordance with Section G, all
20 compliance tasks have been completed, and any delays in performance and/or stipulated
21 penalties have been resolved. At such time as those matters are concluded, this CA/FO
22 shall terminate and constitute full settlement of the civil violations alleged herein.

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

- 25 21. The undersigned representative of Respondent hereby certifies that he is fully authorized
26 by Respondent to enter into this CA/FO, to execute and to legally bind Respondent.

27 **F. CERTIFICATION OF COMPLIANCE**

- 28 22. Upon signing this CA/FO, Respondent certifies under penalty of law to EPA that the

1 Respondent has fully complied with the requirements of the federally authorized
2 California hazardous waste management program, including the regulations that formed
3 the basis for the violations alleged in this CA/FO.

- 4 23. This certification of compliance is based upon true, accurate and complete information,
5 which the signatory can verify personally or regarding which the signatory has inquired of
6 the person or persons directly responsible for gathering the information.

7 **G. RESERVATION OF RIGHTS**

- 8 24. EPA expressly reserves all rights and defenses that it may have.

- 9 25. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and
10 remedies, both legal and equitable, including the right to require that Respondent perform
11 tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory
12 and regulatory powers, authorities, rights and remedies, both legal and equitable, which
13 may pertain to Respondent's failure to comply with any of the requirements of this
14 CA/FO, including without limitation, the assessment of penalties under Section 3008(c)
15 of RCRA, 42 U.S.C. § 6928(c).

- 16 26. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation
17 of any rights, remedies, powers or authorities, civil or criminal, which EPA has under
18 RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of
19 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law
20 enforcement authority of the United States, except as otherwise stated above.

- 21 27. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of
22 its obligations to comply with any applicable local, state, or federal laws and regulations.

- 23 28. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise
24 preclude EPA from taking additional enforcement actions should EPA determine that
25 such actions are warranted except as they relate to Respondent's liability for federal civil
26

1 penalties for the specific alleged violations and facts as set forth in Section C of this
2 CA/FO.

3 29. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does
4 not relieve Respondent of any obligation to obtain and comply with any local, state, or
5 federal permits. Compliance by Respondent with the terms of this CA/FO shall not
6 relieve Respondent of any obligations to comply with RCRA or any other applicable
7 local, state, or federal laws and regulations.

8 30. EPA reserves its right to seek reimbursement from Respondent for any additional costs
9 incurred by the United States which may result or arise from the violations alleged in the
10 Complaint. Notwithstanding compliance with the terms of this CA/FO, Respondent is
11 not released from liability, if any, for the costs of any response actions taken by EPA.

12 **H. OTHER CLAIMS**

13 31. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,
14 cause of action or demand in law or equity by or against any person, firm, partnership,
15 entity or corporation for any liability it may have arising out of or relating in any way to
16 the generation, storage, treatment, handling, transportation, release, or disposal of any
17 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or
18 contaminants found at, taken to, or taken from the Facility.

19 **I. MISCELLANEOUS**

20 32. This CA/FO may be amended or modified only by written agreement executed by both
21 EPA and Respondent.

22 33. The headings in this CA/FO are for convenience of reference only and shall not affect
23 interpretation of this CA/FO.

24 34. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
25 proceeding.

1 **J. EFFECTIVE DATE**

2 35. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on
3 the date that the Final Order contained in this CA/FO, having been approved and issued
4 by either the Regional Judicial Officer or Regional Administrator, is filed.

5
6 **IT IS SO AGREED,**

7
8 For Respondent **NATIONAL CONTAINER GROUP WEST, LLC**

9
10 11/21/12

11 Date



Michael Chorpash
Executive Vice President
National Container Group West, LLC

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15 For Complainant **U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX**

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17 12/6/12

18 Date



Jeff Scott
Director
Waste Management Division
United States Environmental Protection Agency,
Region IX

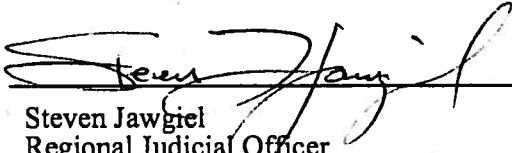
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FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order ((U.S. EPA Docket No. RCRA-09-2012-0023) be entered and that Respondent pay a civil penalty in the amount of **TEN THOUSAND DOLLARS (\$10,000)** within thirty (30) days after the Effective Date of this Consent Agreement and Final Order, in accordance with the terms of this Consent Agreement and Final Order. A copy of the payment transmittal shall be sent to EPA Region IX as specified in Section C of this Consent Agreement and Final Order within such 30-day period.

This Final Order shall be effective upon filing.

12/06/12
Date


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

CERTIFICATE OF SERVICE

I certify that the original of the Consent Agreement and Final Order in the matter of National Container Group West, LLC, was filed with:

Regional Hearing Clerk
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

A true and correct copy of the same was sent to the following parties

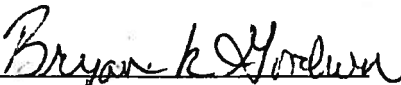
via CERTIFIED MAIL to:

Aaron P. Allan, Esq.
Counsel for National Container Group West, LLC
Glaser, Weil, Frank, Jacobs, Howard, Avchen &
Shapiro, LLP
10250 Constellation Blvd.
Los Angeles, California 90067

CERTIFIED MAIL NUMBER: 7005 2570 0001 6436 5795

and hand delivered to the following U.S. EPA case attorney:

Letitia Moore
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

12/07/12
Date

