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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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

CONSENT AGREEMENT

A INTRODUCTION

1. This administrative proceeding was initiated pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("Complainant" or "EPA"). Respondent is George Auclair, Jr.(hereinafter, "Respondent"), an individual and the heir to the real property identified as Allotment 12A, located within the exterior boundaries of the Torres-Martinez Indian Reservation, near Thermal, California, in Riverside County (the "Facility").

2. This action commenced with the issuance of a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing ("Complaint") on March 14, 2007 under

the above-referenced docket number RCRA-09-2007-0009. The Complaint alleged that Respondent violated Sections 1008, 3004, 3005, 3010 and 4005(a) of RCRA, 42 U.S.C. §§ 6907, 6924, 6925, 6930 and 6945(a), and 40 C.F.R. §§ 257.3-7(a), 257.3-8(d), 265.11, 270.1, and 279.22(c)(1).

B. ADMISSIONS AND WAIVERS

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

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

5. Respondent neither admits nor denies any allegations of fact or law set forth in the Complaint. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in the Complaint, waive any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in the Complaint, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without

adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

C. CIVIL PENALTY

6. Complainant and Respondent hereby consent to the assessment of a civil penalty in the amount of ZERO DOLLARS ($0) in settlement of the civil penalty claims set forth in the Complaint. Satisfaction of the terms of this Consent Agreement and Final Order constitutes a settlement of all civil penalty claims for the violations of Sections 1008, 3004, 3005, 3010 and 4005(a) of RCRA, 42 U.S.C. §§ 6907, 6924, 6925, 6930 and 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 forth in the Complaint.

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

D. COMPLIANCE TASKS AND STIPULATED PENALTIES

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

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

10. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the

noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.

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

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

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

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

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

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

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

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

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

E. NOTIFICATION

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

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

and

Kaoru Morimoto, Environmental Engineer
Waste Management Division, WST-3
U.S. Environmental Protection Agency, Region IX
75 Hawthorne St.
San Francisco, CA 94105
Phone: 415-972-3306
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

F. PARTIES BOUND

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

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

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

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

G. CERTIFICATION OF COMPLIANCE

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

H. RESERVATION OF RIGHTS

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

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

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

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

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

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

I. OTHER CLAIMS

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

J. MISCELLANEOUS

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

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

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

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

IT IS SO AGREED,

For Respondent GEORGE AUCLAIR, JR.

10/29/07
Date

George Auclair, Jr.

For Complainant

1/16/08
Date

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

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