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PAUL E. ZELLERBACH
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MICHAEL J. QUESNEL
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LAUREN R. MARTINEAU
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Exempt from fees pursuant to
Government Code section 6103

Attorneys for People of the State of California

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
(Riverside)

THE PEOPLE OF THE STATE OF
CALIFORNIA,

v.

AFS, INC.,
a California Corporation,

Defendants.

CASE NO. RIC
**STIPULATION FOR ENTRY OF
FINAL JUDGMENT**

IT IS HEREBY STIPULATED between the Plaintiff, The People of the State of California,
by and through Paul E. Zellerbach, District Attorney for the County of Riverside, State of
California, Michael Quesnel, Supervising Deputy District Attorney and Lauren R. Martineau,
Deputy District Attorney, and the Defendant, AFS, Inc., a California corporation, appearing with
and through their attorney Craig Knutsen, that the proposed Final Judgment Pursuant to
Stipulation (hereinafter referred to as the "Final Judgment"), a copy of which is attached hereto as
Exhibit "1" and by this reference made a part of hereof, may be entered in the above-entitled
matter.

1 The parties further stipulate the Final Judgment is premised on the following:

2 1. The parties acknowledge that the Final Judgment may be used as evidence in future
3 actions against the parties based upon any violations of the terms of the Final Judgment.

4 2. The District Attorney's Office hereby agrees that it shall not file any further lawsuits
5 or causes of action against the Defendant, its subsidiaries, affiliates, successors in interest, officers,
6 directors, agents, assigns or employees arising out of the acts or omissions which occurred on or
7 about February 11, 2010 and July 19, 2010 as alleged in the complaint on file herein.

8 3. Except as expressly provided in this Final Judgment, nothing in this Final Judgment
9 is intended nor shall it be construed to preclude the People, or any state, county, or local agency,
10 department, board or entity, or any CUPA, from exercising its authority under any law, statute or
11 regulation.

12 4. Plaintiff shall not be liable for any injury or damage to persons or property resulting
13 from acts or omissions by the Defendant or its officers, directors, employees, agents,
14 representatives, contractors, successors, or assigns, in carrying out activities pursuant to this Final
15 Judgment, and shall not be held as a party to or guarantor of any contract entered into by the
16 Defendant or its officers, directors, employees, agents, representatives, contractors, successors, or
17 assigns, in carrying out the requirements of this Final Judgment.

18 5. The Defendant agrees not to challenge the jurisdiction of the court over the subject
19 matter of this action.

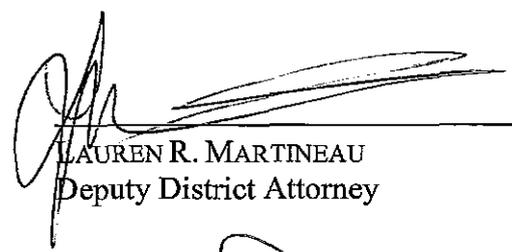
20 6. Jurisdiction is retained for the purpose of enabling any party to this Final Judgment
21 to apply to the Court at any time for such further orders and directions as may be deemed
22 necessary or appropriate for the construction of or the carrying out of this Final Judgment, the
23 enforcement of the compliance with the injunctive provisions hereof, and for the punishment of
24 any violations of the injunctive provisions hereof.

25 7. The Defendant has actual notice of the Final Judgment.

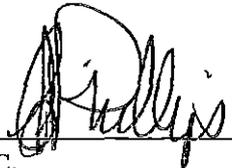
26 8. Each signatory to this stipulation certifies that he or she is fully authorized by the party he
27 or she represents to enter into the Final Judgment, to execute it on behalf of the party represented
28 and to legally bind that party.

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Dated:

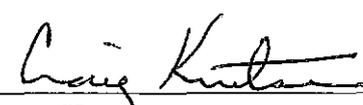

LAUREN R. MARTINEAU
Deputy District Attorney

Dated: 7/3/13


AFS, INC.
Craig Phillips, President

Dated: 7/8/2013

Reviewed as to form:


CRAIG KNUTSEN
Attorney for Defendant

1 PAUL E. ZELLERBACH
District Attorney of the County of Riverside
2 MICHAEL J. QUESNEL
Supervising Deputy District Attorney
3 LAUREN R. MARTINEAU
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Exempt from fees pursuant to
Government Code section 6103

8 *Attorneys for People of the State of California*

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF RIVERSIDE
11 (Riverside)

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,

Plaintiff,

14 v.

15 AFS, INC.,
16 A California Corporation,

17 Defendant.

CASE NO.

**COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES, AND OTHER
EQUITABLE RELIEF**

18
19 The People of the State of California, by and through Paul Zellerbach, District Attorney for
20 the County of Riverside, State of California, Michael Quesnel, Supervising Deputy District
21 Attorney and Lauren R. Martineau, Deputy District Attorney, hereby allege upon information and
22 belief the following:

23 **PLAINTIFF**

24 1. Pursuant to Health and Safety Code section 25182, the Riverside County District
25 Attorney, at the request of a unified program agency, may bring a civil action in the name of the
26 People of the State of California to enjoin any violation of Chapter 6.5 of Division 20 of the
27 California Health and Safety Code ("Chapter 6.5") and to seek civil penalties for any violation of
28 Chapter 6.5.

1 **DEFENDANTS**

2 2. Defendant AFS, Inc., (“AFS”) is a California corporation. Plaintiff is informed and
3 believes and there upon alleges that during the period of time at issue in this lawsuit, AFS operated
4 a facility located at 2535 Anselmo Drive in Corona, California, located in the County of Riverside.
5 At this location, along with other things, this business operated an emissions compliance business
6 that would retrofit diesel engines with emissions particulate capturing filters as well as clean air
7 intake filters and diesel particulate filters. These business practices occur both at the facility as
8 well as away from the facility with the use of AFS retrofitted mobile cleaning vehicles.

9 3. AFS, at all times relevant to the claims in this Complaint, was legally responsible
10 for compliance with the provisions of the California Health and Safety Code including Chapter 6.5
11 of Division 20 at the facility.

12 4. When, in this Complaint, reference is made to any act of a corporate Defendant,
13 such allegations shall be deemed to mean that the officers, directors, agents, employees, or
14 representatives of said defendants did, or authorized such acts, or failed to adequately or properly
15 supervise, control or direct their employees and agents while engaged in the management,
16 direction, operation, or control of the affairs of said business organization, and did so while acting
17 in the scope of their employment or agency.

18 5. Each Defendant is and at all times relevant herein was a “person” as that term is
19 defined in Health and Safety Code section 25118 and Business and Professions Code section
20 17201, and a “business” as that term is defined in Health and Safety Code section 25501(e).

21 **JURISDICTION AND VENUE**

22 6. Venue is proper in this Court pursuant to Health and Safety Code section 25183 as
23 all of the violations alleged in this Complaint and the actions of the Defendants and their agents
24 occurred in whole or in part in Riverside County, California.

25 **STATUTORY AND REGULATORY BACKGROUND**

26 7. The State of California has enacted a comprehensive statutory and regulatory
27 framework for the generation, handling, treatment, storage, transportation, and disposal of hazardous
28 wastes. This framework, contained in Hazardous Waste Control law, Chapter 6.5 of Division 20 of

1 the Health and Safety Code, section 25100 *et. seq.* (“HWCL” or “Chapter 6.5”) and its implementing
2 regulations, which are found at California Code of Regulations, Title 22, Section 66260.1 *et. seq.*,
3 mandates a “cradle to grave” system. The HWCL system is maintained to record the registration,
4 tracking, storage, treatment, and disposal of hazardous wastes and to provide for the protection of the
5 public from the potential risks posed by hazardous wastes.

6 8. The HWCL is the California analog of the federal Resource Conservation and
7 Recovery Act, 42 U.S.C. section 6901 *et. seq.* (“RCRA”). Pursuant to state and federal law, the
8 California Department of Toxic Substances Control (“DTSC”) administers the HWCL in lieu of
9 federal administration of RCRA in California. (See Health and Safety Code § 25101, subdivision
10 (d).) Federal law prohibits California from imposing “any requirements less stringent than those
11 authorized under [RCRA].”

12 9. The HWCL has in certain instances a more inclusive definition of hazardous wastes
13 than does federal law. Hazardous wastes that are regulated under California law but not federal law
14 are known as “non-RCRA hazardous wastes.” (Health and Safety Code § 25117.9.)

15 10. Companies that accumulate or generate hazardous waste in the course of their
16 operations and send that waste offsite for management are subject to certain regulatory
17 requirements. (See Cal. Code Regs., Title 22, § 66262.10 *et. seq.*)

18 **TOLLING AGREEMENT**

19 11. The People of the State of California and AFS have entered into a series of tolling
20 agreements allowing any statute of limitations applicable to any cause of action pursuant to
21 Chapters 6.5 of Division 20 of the Health and Safety Code and the regulations promulgated under
22 these chapters; Business and Professions Code section 17200 *et seq.*; and other statutory and
23 common law authorities for the declaratory and injunctive relief, civil penalties, administrative
24 costs and attorneys’ fees; to be tolled from August 7, 2012, to and including August 6, 2013.

25 **GENERAL ALLEGATIONS**

26 12. On February 11, 2010, Department of Toxic Substances Control (DTSC)
27 coordinated with Waste Management to pick up and secure Defendant’s two – three yard trash
28 dumpsters. The dumpsters were picked up from the Defendant’s Corona, California location and

1 were secured and locked. Members of DTSC then examined and inventoried the contents of the
2 two dumpsters. These dumpsters were found to contain dirty filters and bags of dust. Multiple
3 samples were taken and tested. The lab results showed that zinc, chromium, copper, and nickel
4 were present in level exceeding the regulatory threshold.

5 13. On July 19, 2010, DTSC coordinated with Waste Management to pick up and secure
6 Defendant's two – three yard trash dumpsters. The dumpsters were picked up from the Defendant's
7 Corona, California location and were secured and locked. Members of DTSC then examined and
8 inventoried the contents of the two dumpsters. These dumpsters were found to contain dirty filters
9 and dust at the bottom of the dumpsters. Multiple samples were taken and tested. The lab results
10 showed that zinc, chromium, antimony, and nickel were present in level exceeding the regulatory
11 threshold.

12 14. As a result of the above-referenced investigation, Plaintiff is informed and believes
13 and thereupon alleges that Defendants have violated the California Health and Safety Code,
14 including Chapter 6.5 of Division 20 section 25100 *et. seq.* and Business and Professions Code
15 section 17200.

16 **FIRST CAUSE OF ACTION**

17 **(Intentional Violations of Hazardous Waste Control Laws)**

18 15. Plaintiff realleges and incorporates by reference Paragraphs 1 through 14, inclusive,
19 as if fully set forth here.

20 16. Defendants are liable for civil penalties as set forth in California Health and Safety
21 Code section 25189, subdivision (c) for each violation of any provision of Chapter 6.5 of the
22 California Health and Safety Code and any permit, rule, regulation, standard, or requirement issued
23 or promulgated pursuant thereto which occurred within five years after the discovery of the facts
24 constituting grounds for commencing the action on these claims, exclusive of any applicable
25 tolling periods.

26 17. Defendants must be immediately and permanently enjoined from further violations
27 of Chapter 6.5.

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SECOND CAUSE OF ACTION

(Negligent Violations of Hazardous Waste Control Laws)

18. Plaintiff realleges and incorporates by reference Paragraphs 1 through 17, inclusive, as if fully set forth here.

19. Defendants are liable for civil penalties as set forth in California Health and Safety Code section 25189, subdivision (d) for each violation of any provision of Chapter 6.5 of the California Health and Safety Code and any permit, rule, regulation, standard, or requirement issued or promulgated pursuant thereto which occurred within five years after the discovery of the facts constituting grounds for commencing the action on these claims, exclusive of any applicable tolling periods.

20. Defendants must be immediately and permanently enjoined from further violations of Chapter 6.5.

THIRD CAUSE OF ACTION

(Strict Liability for Violations of Hazardous Waste Control Laws)

21. Plaintiff realleges and incorporates by reference Paragraphs 1 through 20, inclusive, as if fully set forth here.

22. Defendants are strictly liable for civil penalties as set forth in California Health and Safety Code section 25189.2(c) for each violation of any provision of Chapter 6.5 of the California Health and Safety Code and any permit, rule, regulation, standard, or requirement issued or promulgated pursuant thereto which occurred within five years after the discovery of the facts constituting grounds for commencing the action on these claims, exclusive of any applicable tolling periods.

23. Defendants must be immediately and permanently enjoined from further violations of Chapter 6.5.

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1 PRAYER

2 WHEREFORE, Plaintiff prays for judgment as follows:

3 1. Civil penalties according to proof against Defendant pursuant to California Health
4 and Safety Code section 25189 (c), at the statutory maximum of twenty-five thousand dollars
5 (\$25,000) for each day of each violation;

6 2. Civil penalties according to proof against Defendant pursuant to California Health
7 and Safety Code section 25189 (d), at the statutory maximum of twenty-five thousand dollars
8 (\$25,000) for each day of each violation;

9 3. Civil penalties according to proof against Defendant pursuant to California Health
10 and Safety Code section 25189.2 (c), at the statutory maximum of twenty-five thousand dollars
11 (\$25,000) for each day of each violation;

12 4. A permanent injunction requiring Defendant to comply with the provisions of
13 California Health and Safety Code, Division 20, Chapter 6.5 as alleged in the Complaint;

14 6. A permanent injunction requiring the Defendant to comply with the provisions of
15 Title 22 of the California Code of Regulations, Division 4.5, Chapter 21;

16 7. Pursuant to Health and Safety Code Section 25189.1, Defendant be ordered to pay
17 the costs incurred by state and local agencies for clean up of hazardous waste and the restoration of
18 natural resources caused by the disposal of hazardous waste, according to proof at trial.

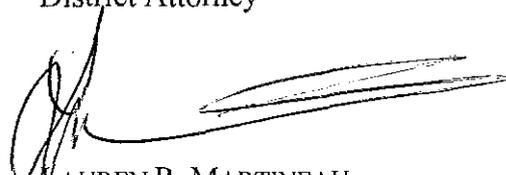
19 9. Grant the Plaintiff its cost of inspection, investigation, attorney's fees, enforcement,
20 prosecution, and suit, herein; and

21 10. Grant such other and further relief as the Court deems just and proper.

22
23 Dated: June __, 2013

Respectfully submitted,

24 PAUL E. ZELLERBACH
25 District Attorney

26
27 
28 LAUREN R. MARTINEAU
Deputy District Attorney

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2 MICHAEL J. QUESNEL
Supervising Deputy District Attorney
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8 *Attorneys for People of the State of California*

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF RIVERSIDE
11 (Riverside)

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,

Plaintiff,

14 v.

15 AFS, INC.,
16 a California corporation,

17 Defendant.

CASE NO.

**[PROPOSED] FINAL JUDGMENT
AND INJUNCTION PURSUANT TO
STIPULATION**

(Code Civ. Proc., § 664.6.)

18
19 Pursuant to a stipulation between the parties herein, the Plaintiff, The People of the State of
20 California, having filed the Complaint herein, and appearing through its attorneys Paul E.
21 Zellerbach, District Attorney of the County of Riverside, Michael Quesnel, Supervising Deputy
22 District Attorney, and Lauren R. Martineau, Deputy District Attorney, and the defendant, AFS,
23 Inc., a California corporation, have agreed that they desire to resolve this action and all issues
24 raised by the Complaint without litigation. Accordingly, Plaintiff and the defendants have further
25 stipulated that this Final Judgment Pursuant to Stipulation (hereinafter referred to as "Final
26 Judgment") may be entered without taking any evidence, and without the trial or adjudication of
27 any issue of law or fact. The parties have waived their right of appeal and have approved this
28 Final Judgment as to form and content.

1 **INTRODUCTION**

2 This matter related to the People’s investigation into AFS, Inc.’s (“AFS”) compliance with
3 state laws and regulations regarding the storage, handling, treatment, transportation, and disposal of
4 hazardous waste pursuant to Health and Safety Code Division 20, Chapter 6.5, at AFS’s location in
5 Corona, California. As set forth in the Complaint filed concurrently herewith (“the Complaint”),
6 the People allege that AFS violated Chapter 6.5 of Division 20 of the Health and Safety Code and
7 the regulations promulgated under these chapters by its improper disposal of hazardous waste on
8 February 11, 2010 and July 19, 2010.

9 The Parties engaged in settlement negotiations prior to the filing of this Consent Judgment.
10 In these negotiations, the People were represented by the Riverside County District Attorney’s
11 Office. AFS was represented by Craig Knutsen of McCauley Knutsen, a Law Business.

12 The People believe that the resolution embodied in this Consent Judgment is fair and
13 reasonable and fulfills the People’s enforcement objections, that the terms of this Consent Judgment
14 are appropriate, and that entry of this Consent Judgment is in the best interest of the public.

15 **FINAL JUDGMENT PURSUANT TO STIPULATION**

16 1. **JURISDICTION**

17 This Court finds that it has jurisdiction of the subject matter and the parties.

18 2. **SETTLEMENT OF DISPUTED CLAIMS**

19 This Final Judgment is not an admission by AFS regarding any issue of law or fact in the
20 above-captioned matter or any violation of any law. The Parties enter into this Final Judgment
21 pursuant to a compromise and settlement of disputed claims, as set forth in the Complaint, for the
22 purpose of furthering the public interest. Both Parties have stipulated and consented to the entry of
23 this Final Judgment prior to the taking of any proof, and without trial or adjudication of any fact or
24 law herein and the Parties waive their right of appeal.

25 3. **APPLICABILITY**

26 The provisions of this Final Judgment are applicable to defendants, AFS, and its employees,
27 representatives, and all other persons, corporations or entities who are acting in concert or in
28 participation with defendant with actual or constructive notice of this Final Judgment.

1 4. **CIVIL PENALTIES AND COSTS**

2 AFS shall pay a total amount of Forty-five thousand dollars (\$45,000.00) in civil penalties
3 and reimbursements costs of investigation and enforcement, as set forth in Paragraphs 4.1 through
4 4.2

5 4.1 **Civil Penalties**

6 Defendant, AFS, shall be liable for Thirty Thousand Dollars (\$30,000.00) in civil
7 penalties, pursuant to Health and Safety Code section 25189.2. An initial installment of Ten Thousand
8 dollars (\$10,000.00) shall be due and payable upon entry of the judgment in this matter; a second
9 subsequent installment of Ten Thousand Dollars (\$10,000.00) is due and payable on or before August
10 23, 2013; a third subsequent installment of Ten Thousand Dollars (\$10,000.00) is due and payable on
11 or before November 25, 2013. All installments shall be paid in the form of a cashier's check made
12 payable to the Riverside County District Attorney's Office and sent to the Riverside County District
13 Attorney's Office, attn: Lauren R. Martineau, 3960 Orange Street, Riverside, CA 92501. Pursuant to
14 Health and Safety Code section 25192, fifty percent (50%) of the installments will be deposited into
15 the Toxic Substances Control Account in the General Fund, twenty-five percent (25%) shall be paid to
16 the Riverside County District Attorney's Office, and twenty-five percent (25%) shall be used to fund
17 the activity of Riverside County CUPA.

18 4.2 **Costs of Investigation**

19 Defendant, AFS, shall pay Fifteen Thousand Dollars (\$15,000.00) for reimbursement of
20 investigative costs and other costs of enforcement incurred in the prosecution of this matter. The costs
21 shall be distributed to California Department of Toxic Substances Control. An initial installment of Five
22 Thousand dollars (\$5,000.00) shall be due and payable upon entry of the judgment in this matter; a
23 second subsequent installment of Five Thousand Dollars (\$5,000.00) is due and payable on or before
24 August 23, 2013; a third subsequent installment of Five Thousand Dollars (\$5,000.00) is due and payable
25 on or before November 25, 2013. All installments shall be paid in the form of a cashier's check or
26 business check made payable to the Riverside County District Attorney's Office and sent to the Riverside
27 County District Attorney's Office, attn: Lauren R. Martineau, 3960 Orange Street, Riverside, CA 92501.

1 4.3 Late Payments

2 There will be an additional penalty of five hundred dollars (\$500.00) for each day any
3 installment listed in this paragraph is late.

4 5. INJUNCTIVE RELIEF

5 Pursuant to the provisions of Health and Safety Code section 25181, Defendant is enjoined,
6 for a period of five years from entry of the judgment, to comply with Chapter 6.5 of Division 20 of
7 the Health and Safety Code and the regulations promulgated under that chapter as well as Chapter
8 21, Division 4.5 of the California Code of Regulations. Failure to comply with this injunction and
9 the specific additional injunctive provisions that follow may subject Defendant to sanctions,
10 including, but not limited to, contempt and additional penalties.

11 5.1. Specific Injunctive Provisions

12 5.1a Defendant is prohibited from intentionally disposing or causing the
13 disposal of a hazardous waste at an unauthorized location, in violation of California Health and
14 Safety Code section 25189, subdivision (c).

15 5.1b Defendant is prohibited from negligently disposing or causing the
16 disposal of a hazardous waste at an unauthorized location, in violation of California Health and
17 Safety Code section 25189, subdivision (d).

18 5.1c Defendant is prohibited from disposing or causing the disposal of a
19 hazardous waste at an unauthorized location, in violation of Health and Safety Code section
20 25189.2, subdivision (c).

21 5.1d. Defendant is prohibited from failing to maintain a valid registration
22 issued by the Department of Toxic Substances Control, in violation of Health and Safety Code
23 section 25163, for as long as legally required for AFS's operations.

24 5.1e. Defendant is prohibited from failing to maintain valid permits in
25 accordance with Title 22, Division 4.5, Chapter 21 of the California Code of Regulations for as
26 long as legally required for AFS's operations.

27 5.1f Defendant is prohibited from failing to maintain proper manifests of
28 hazardous waste, in violation of Health and Safety Code section 25160, for as long as legally

1 required for AFS's operations.

2 6. **AUTHORITY TO INSPECT**

3 Defendant, AFS, shall allow employees of the Department of Environmental Health,
4 Hazardous Materials Division, or their authorized representatives, to inspect all sites and records
5 relevant to determining compliance with this judgment. Such access shall exclude any attorney
6 information and/or documentation which is subject to the attorney-client privilege or otherwise
7 privileged from disclosure under the applicable rules of evidence. The provisions of this paragraph
8 shall in no way effect the authority of the Department of Environmental Health Hazardous
9 Materials Division to enter, inspect, sample or monitor compliance under any law, permit, court
10 order or agreement.

11 7. **RETAINING JURISDICTION**

12 Jurisdiction is retained for the purpose of enabling any party to this Final Judgment to apply
13 to the Court at any time for such further orders and directions as may be deemed necessary or
14 appropriate for the construction of or the carrying out of this Final Judgment, the enforcement of the
15 compliance with the injunctive provisions hereof, and for the punishment of violations of the
16 injunctive provisions hereof.

17
18 **IT IS SO ORDERED.**

19
20 Dated: _____

_____ **JUDGE OF THE SUPERIOR COURT**