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ORIGINAL FILE

MAR 23 2013

LOS ANGELES
SUPERIOR COURT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. Deborah O. Rafael, Director, the
11 Department of Toxic Substances Control,

Case No. **BC503093**

12 Plaintiff,

13 v.

~~PROPOSED~~ FINAL JUDGMENT ON
14 CONSENT AND PERMANENT
INJUNCTION

15 CHEMICAL WASTE MANAGEMENT,
INC., DOES 1-20,

(Code of Civil Procedure § 664.6)

16 Defendants.

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18 Good cause appearing herein, the Court finds that the settlement between Plaintiff, People
19 of the State of California *ex rel.* Deborah O. Raphael, Director, California Department of Toxic
20 Substances Control, and Defendant Chemical Waste Management, Inc., a Corporation, is fair and
21 in the public interest. Accordingly, the Stipulation for Settlement and Entry of Consent Judgment
22 and Permanent Injunction entered into by Plaintiff, People of the State of California, and
23 Defendant Defendant Chemical Waste Management, Inc., a Corporation, a true and correct copy
24 which is attached as Exhibit A, is approved, and the Final Judgment on Consent and Permanent
25 Injunction is entered as provided therein.

26 IT IS SO ORDERED.

27 Dated: 3/22, 2013

Original Signed by Terry A. Greene

28 The Honorable Judge of the Superior Court

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11

12 PEOPLE OF THE STATE OF CALIFORNIA,
13 ex rel. Deborah O. Rafael, Director, the
California Department of Toxic Substances
14 Control,

15 Plaintiff,

16 v.

17 CHEMICAL WASTE MANAGEMENT,
18 INC., DOES 1-20,

19 Defendants.
20

Case No.

**STIPULATION FOR SETTLEMENT
AND ENTRY OF CONSENT
JUDGMENT AND PERMANENT
INJUNCTION**

(Code of Civil Procedure § 664.6)

21 Plaintiff, People of the State of California, ex rel. Deborah O. Raphael, Director of the
22 California Department of Toxic Substances Control ("Plaintiff" or the "Department") and
23 Defendant Chemical Waste Management, Inc. ("Defendant" or "CWM")¹ enter into this
24 Stipulation for Settlement and Entry of Consent Judgment and Permanent Injunction
25 ("Stipulation"), and stipulate as follows:
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27 ¹ Plaintiff and Defendant also are individually referred to herein as "Party" or
collectively referred to herein as the "Parties."
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1. THE COMPLAINT.

Concurrently with this Stipulation for Settlement and Entry of Consent Judgment and Permanent Injunction, the Department files a Complaint for Civil Penalties and Injunctive Relief (“Complaint”) pursuant to the California Hazardous Waste Control Law, Health and Safety Code section 25100 et seq. (“HWCL”) and its implementing regulations against Defendant Chemical Waste Management as an owner and operator of a commercial hazardous waste treatment, storage and disposal facility (“Facility.”) The Facility is located at 35251 Old Skyline Road, which is in Kings County, CA, and located north of State Highway 41, and approximately two and a half miles from Interstate Highway 5 (“Facility”). This Stipulation settles the matters alleged in the Complaint.

2. AGREEMENT TO SETTLE DISPUTE

The Parties enter into this Stipulation pursuant to a compromise and settlement of the matters alleged in the Complaint on the terms set forth in this Stipulation and by mutually consenting to the entry by the Superior Court of the County of Los Angeles (the “Court”) of the Final Judgment on Consent and Permanent Injunction in the form attached as Exhibit 1 (“Consent Judgment”). The Parties are each represented by counsel. The Office of the Attorney General represents the Department. Akin Gump Stauss Hauer & Feld LLP represents Defendant. This Stipulation and the Consent Judgment were negotiated and executed in good faith and at arms’ length by the Parties to avoid expensive and protracted litigation regarding the alleged violations of the HWCL in the Complaint and to further the public interest. Thus, the Parties voluntarily enter into this Stipulation and agree to entry of the Consent Judgment.

3. JURISDICTION AND VENUE

The Parties agree that this Court has subject matter jurisdiction over the matters alleged in the Complaint and personal jurisdiction over Defendant. The Parties stipulate that venue is appropriate in Los Angeles.

4. WAIVER OF HEARING AND TRIAL AND ENTRY OF CONSENT JUDGMENT

By signing and entering into this Stipulation, Defendant waives its right to a trial on

1 matters alleged in the Complaint. Further, the Parties request entry of the Consent Judgment on
2 the terms set forth in this Stipulation.

3 5. APPLICABILITY

4 Unless otherwise expressly provided herein, the provisions of this Stipulation and the
5 Consent Judgment shall apply to and be binding on Defendant, its subsidiaries and divisions, its
6 parent companies, its officers and directors, its successors and assignees or other entities, acting
7 by, through, under or on behalf of CWM, and the Department and any successor agency of the
8 Department that may have responsibility for and jurisdiction over the subject matter of the
9 Consent Judgment.

10 6. SETTLEMENT

11 The Parties enter into this Consent Judgment and Stipulation as a compromise and
12 settlement of disputed claims to avoid the expense of litigation and in furtherance of the public
13 interest. The Parties agree that there has been no adjudication of any fact or law.

14 7. INJUNCTION

15 Effective immediately upon entry of the Consent Judgment, Defendant shall comply with
16 the following:

17 A. Defendant shall comply with California Code of Regulations, tit. 22, section
18 66268.40(a)(1), and process and treat hazardous waste in accordance with the treatment standards
19 set forth in the "Treatment Standards for Hazardous Waste" table found in section
20 66268.40(a)(1).

21 B. Defendant shall comply with California Code of Regulations, tit. 22, section
22 66264.72(c) and upon discovering a significant discrepancy in quantity or type of hazardous
23 waste, attempt to reconcile the significant discrepancy in quantity or type of hazardous waste
24 designated on the manifests with the generator or transporter. If CWM is unable to resolve the
25 discrepancy within 15 days after receiving the waste, Defendant shall immediately submit to the
26 Department a letter describing the discrepancy, its attempts to reconcile the discrepancy, and a
27 copy of the manifest or shipping paper at issue. Significant Discrepancy Reports shall be mailed
28 to:

1 DTSC REPORT REPOSITORY
2 GENERATOR INFORMATION SERVICES SECTION
3 P.O. Box 806
4 Sacramento, CA 95812-0806.

5 C. Defendant shall report all new releases of a hazardous waste and/or hazardous
6 constituent to the Department orally within twenty-four (24) hours of discovery and in writing to
7 the Department within ten (10) days of discovery which is required by the 2003 Permit (See 2003
8 Permit, Part VI, paragraph 1, p. 38). The 24-hour oral report and the 10-day written report will be
9 provided by Defendant to both the Department's Permitting Section in Sacramento, located at
10 8800 Cal Center Drive, Sacramento, CA 95826, and to the Department's Enforcement Section in
11 Clovis, located at 1515 Tollhouse Road, Clovis, CA 93611. The Parties agree that the reporting
12 requirements for new releases of hazardous waste and/or hazardous constituents described above
13 and set forth in the 2003 Permit, Part VI., paragraph 1, p. 38, do not require Defendant to report
14 the following spills and leaks to the Department:

- 15 i. Spills and leaks of hazardous waste or hazardous constituents that occur and are
16 fully contained within a permitted secondary containment area.
17 ii. Incidental leakage of vehicle fluids such as engine oil, antifreeze, hydraulic oil,
18 gear oil, and fuel associated with vehicles operating within the Facility.

19 D. Nothing in Sections 7(A), 7(B) or 7(C) of this Stipulation or in any provision of the
20 Consent Judgment entered in this matter is intended, or shall be construed, to limit any of the
21 following:

- 22 i. Defendant's reporting or notification obligations required pursuant to the 2003
23 Permit or the HWCL and its implementing regulations;
24 ii. Defendant's obligations under other provision of the 2003 Permit; and
25 iii. Defendant's rights and obligations with respect to the HWCL, or any
26 environmental laws applicable to the Facility's operations.

27 **8. MONETARY SETTLEMENT REQUIREMENTS**

28 A. Defendant shall pay the Department the sum of \$311,194.00, of which \$291,208.84
is a civil penalty and \$19,985.16 is the Department's costs, within 30 days of the "Effective Date"

1 of the Consent Judgment.

2 B. The sum of \$311,194.00 referenced in paragraph 8A above shall be paid by
3 Defendant to the Department by cashier's check or electronic transfer, payable to "California
4 Department of Toxic Substances Control," and shall bear the following notation: "Chemical
5 Waste Management" and shall be sent to:

6 Cashier
7 Accounting Office, MS-21A
8 Department of Toxic Substances Control
9 P.O. Box 806
10 Sacramento, CA 95812-0806

11 C. An electronic (i.e., Adobe PDF) copy or paper photocopy of all checks and payments
12 made pursuant to the Consent Judgment shall be sent, at the same time, to:

13 Paul Kewin, Assistant Deputy Director
14 Enforcement and Emergency Response Program
15 Department of Toxic Substances Control
16 1001 I Street, MS 11-A
17 P.O. Box 806
18 Sacramento, CA 95812-0806
19 Paul.kewin@dtsc.ca.gov

20 Christopher Cho, Staff Counsel
21 Office of Legal Counsel, MS-23A
22 Department of Toxic Substances Control
23 1001 I Street
24 P.O. Box 806
25 Sacramento, CA 95812-0806
26 Christopher.cho@dtsc.ca.gov

27 9. LATE PAYMENTS

28 In addition to the payments due to the Department pursuant to the provisions of Paragraph
8 above, Defendant shall be liable for a stipulated late payment penalty of \$2,500.00 for each of
the first seven calendar days that the payment required pursuant to Paragraph 8 is late. Beginning
on the eighth day that the payment is late, Defendant shall be liable for a stipulated late payment
penalty of \$5,000 per day for each additional day the required payment is late.

10. NOTICE

All submissions and notices required by this Stipulation and the Consent Judgment shall

1 be in writing, and shall be sent to:

2 For the Plaintiff:

3 Paul Kewin, Assistant Deputy Director
4 Enforcement and Emergency Response Program
5 Department of Toxic Substances Control
6 1001 I Street, MS 11-A
7 P.O. Box 806
8 Sacramento, CA 95812-0806

9 and

10 Christopher Cho, Staff Counsel
11 Office of Legal Counsel
12 Department of Toxic Substances Control
13 1001 I Street, MS-23A
14 P.O. Box 806
15 Sacramento, CA 95812-0806

16 For Defendant:

17 Larry W. Metter, Vice President
18 Chemical Waste Management, Inc.
19 9801 Tujunga Avenue
20 Sun Valley, CA 91352

21 and

22 Jim Wetwiska
23 Akin Gump Stauss Hauer & Feld LLP
24 1111 Louisiana Street 44th Floor
25 Houston, TX 77002

26 All approvals and decisions regarding any matter requiring approvals or decisions
27 under the terms of this Stipulation and the Consent Judgment shall be communicated in writing.
28 Each Party may change its respective representative(s) for purposes of notice by providing the
name and address of the new representative, in writing, to all Parties. Any such change will take
effect within seven calendar days of the date of the written notice.

29 11. AUTHORITY TO ENTER STIPULATION

Each signatory to this Stipulation certifies that he or she is fully authorized by the Party he

1 or she represents to enter into this Stipulation, to execute it on behalf of the party represented, and
2 to legally bind that party.

3 **12. NO WAIVER OF RIGHT TO ENFORCE.**

4 The failure of the Department to enforce any provision of the Stipulation or Consent
5 Judgment shall neither be deemed a waiver of such provision, nor in any way affect the validity
6 of the Consent Judgment or the Department's enforcement authority. The failure of the
7 Department to enforce any such provision of this Stipulation or the Consent Judgment shall not
8 preclude it from later enforcing the same or other provisions. No oral advice, guidance,
9 suggestions, or comments by employees or officials of the Department or Defendant, or people or
10 entities acting on behalf of Defendant, regarding matters covered in this Stipulation or the
11 Consent Judgment, shall be construed to relieve Defendant of its obligations under this
12 Stipulation or the Consent Judgment.

13 **13. NO LIABILITY OF THE DEPARTMENT**

14 The Department shall not be liable for any injury or damage to persons or property
15 resulting from acts or omissions by Defendant, its officers, directors, employees, agents,
16 representatives, or contractors, in carrying out activities pursuant to this Stipulation or the
17 Consent Judgment, nor shall the Department be held as a party to or guarantor of any contract
18 entered into by Defendant, its officers, directors, employees, agents, representatives, or
19 contractors, in carrying out the requirements of this Stipulation or the Consent Judgment.

20 **14. FUTURE REGULATORY CHANGES**

21 Nothing in this Stipulation or the Consent Judgment shall excuse Defendant from meeting
22 any new or more stringent requirements that may be imposed by applicable law or by changes in
23 the applicable law. To the extent future statutory and regulatory changes make Defendant's
24 obligations less stringent than those provided for in this Stipulation or the Consent Judgment,
25 Defendant may apply to this Court by noticed motion to modify the obligations contained herein.

26 **15. INTEGRATION**

27 This Stipulation and the Consent Judgment constitute the entire agreement between the
28 Parties regarding the Complaint filed in this court, and may not be amended or supplemented

1 except as provided for in this Stipulation or in the Consent Judgment. No oral representations
2 have been made or relied on other than as expressly set forth herein.

3 **16. RETENTION OF JURISDICTION**

4 The Parties agree that the Court has continuing jurisdiction to interpret and enforce the
5 provisions of this Stipulation and the Consent Judgment.

6 **17. EQUAL AUTHORSHIP**

7 This Stipulation and the Consent Judgment shall be deemed to have been drafted equally
8 by all Parties hereto. The Parties agree that the rule of construction holding that ambiguity is
9 construed against the drafting party shall not apply to the interpretation of this Stipulation or the
10 Consent Judgment.

11 **18. AMENDMENTS TO THIS STIPULATION AND THE CONSENT**
12 **JUDGMENT**

13 This Stipulation and the Consent Judgment may only be amended pursuant to a written
14 agreement signed by all the Parties, followed by written approval by the Court; or by order of the
15 Court following the filing of a duly noticed motion.

16 **19. COUNTERPARTS**

17 This Stipulation may be executed in several counterpart originals, all of which taken
18 together shall constitute an integrated document.

19 **20. ENTRY OF CONSENT JUDGMENT PURSUANT TO STIPULATION**

20 The Parties further stipulate that upon approval of this Stipulation by the Court, the Court
21 shall enter the Consent Judgment in this matter in the form set forth in the attached Exhibit 1.
22 The "Effective Date" of the Consent Judgment is the date the Consent Judgment is entered by the
23 Court. If the Court does not approve this Stipulation and the Consent Judgment in the form and
24 substance proposed in Exhibit 1 hereto, each Party reserves the right to withdraw both the
25 Stipulation and the Consent Judgment upon written notice to all Parties and the Court.
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IT IS SO STIPULATED.

Dated: February _____, 2013

For the Department of Toxic Substances Control

Brian Johnson, Deputy Director
Enforcement and Emergency Response Program
Department of Toxic Substances Control

Dated: ^{March} February 11, 2013

For Defendant Chemical Waste Management, Inc.:

Original Signed by Larry W. Metter

Larry W. Metter, Vice President

APPROVED AS TO FORM:

Dated: February _____, 2013

KAMALA D. HARRIS
Attorney General of California
Margarita Padilla
Supervising Deputy Attorney General

OLIVIA W. KARLIN
Deputy Attorney General
Attorneys for Plaintiff

Dated: ^{March} February 12, 2013

Original Signed by Jim Wetwiska

JIM WETWISKA
AKIN GUMP STAUSS HAUER & FIELD LLP
ATTORNEYS FOR DEFENDANT

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IT IS SO STIPULATED.

Dated: ~~February~~ ^{MARCH} 14, 2013

For the Department of Toxic Substances Control

Original Signed by Brian Johnson

Brian Johnson, Deputy Director
Enforcement and Emergency Response Program
Department of Toxic Substances Control

Dated: February _____, 2013

For Defendant Chemical Waste Management, Inc.:

Larry W. Metter, Vice President

APPROVED AS TO FORM:

Dated: ~~February~~ ^{MARCH} 15, 2013

KAMALA D. HARRIS
Attorney General of California
Margarita Padilla
Supervising Deputy Attorney General

Original Signed by Olivia W. Karlin

OLIVIA W. KARLIN
Deputy Attorney General
Attorneys for Plaintiff

Dated: February _____, 2013

JIM WETWISKA
AKIN GUMP STAUSS HAUER & FIELD LLP
ATTORNEYS FOR DEFENDANT