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13 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
14 **FOR MARICOPA COUNTY**

15 STATE OF ARIZONA, *ex rel*, HENRY
16 R. DARWIN, Director, Arizona
17 Department of Environmental Quality,

18 Plaintiffs,

19 vs.

20 COUNTY OF COCHISE,

21 Defendant.

Civil Action No. _____

CONSENT JUDGMENT

(Non-classified Civil)

22 1. The Plaintiff, **STATE of ARIZONA** *ex rel*. Henry R. Darwin, Director,
23 Arizona Department of Environmental Quality (“the State”), has filed a Complaint
24 (“Complaint”) alleging that Defendant, **COUNTY OF COCHISE** (“County” or
25 “Defendant”) violated 40 Code of Federal Regulations (“C.F.R.”) § 258.21(a), Arizona
26 Revised Statutes (“A.R.S.”) Title 44, Chapter 9, and Title 49, Chapters 2 and 4, and the

1 Cochise County Municipal Solid Waste Facility Plan, No. 02659800, permit 44517
2 (“MSWFP”) and the rules adopted thereunder.

3
4 2. The State’s relator, Henry R. Darwin, is the Director of the Arizona
5 Department of Environmental Quality (“ADEQ”) and has been duly authorized by the
6 State to enter into this Consent Judgment for and on behalf of the State.

7
8 3. Defendant County is a county and political subdivision of the State of
9 Arizona and is a “Person” as defined by A.R.S. §§ 44-1301(3), 49-201(27) and 49-
10 701(23).

11
12 4. The County owned and operated the Cochise County Western Regional
13 Landfill (“WRL” or “Landfill”) located at 2595 North Sagebrush Road, Huachuca City,
14 Arizona 85616-8307.

15
16 5. On or about _____, the State filed civil complaint no.
17 _____ in the Superior Court of Arizona, County of Maricopa,
18 against the Defendant. The Defendant acknowledges through its authorized
19 representative that it has been served with a copy of the Summons and Complaint in
20 this action and has been fully advised of its right to a trial in this matter and waives the
21 same.
22

23
24 6. Defendant admits to the jurisdiction of this Court and that venue is proper
25 in Maricopa County.

26
7. Defendant has consented to the terms and entry of this Consent Judgment
and acknowledges that the State has made no promise of any kind or nature other than

1 what is set forth in this Consent Judgment, and that the Defendant has entered into this
2 Consent Judgment voluntarily and after due consideration.

3
4 8. It is in the best interests of the State and the public to enter into this
5 Consent Judgment. The Defendant has accepted responsibility for the violations
6 alleged in the Complaint (filed concurrently). The parties hereby intend to completely
7 and finally settle and release the civil liability of the Defendant for the violations
8 described in the Complaint, and hereby move the Court to enter this Consent Judgment
9 according to the following terms.
10

11 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND**
12 **DECREED** as follows:

13
14 **I. JURISDICTION AND VENUE**

15 9. ADEQ is authorized to bring this action pursuant to A.R.S. §§ 44-1307,
16 49-262, 49-783, 49-811, and 49-861.
17

18 10. This Court has jurisdiction over the subject matter of this action pursuant
19 to A.R.S. §§ 44-1307, 49-262, 49-783, 49-811, and 49-861.

20 11. This Court has personal jurisdiction in this matter because at all times
21 alleged herein Defendants conducted business in Arizona, the WRL is located in
22 Arizona, and the violations alleged in this Complaint occurred in Arizona.
23

24 12. Defendant admits in the Consent Judgment that this Court has venue over
25 the subject matter. Additionally, this Court is the court of proper venue pursuant to
26

1 A.R.S. §§ 12-401(17), 49-265 and 49-784.

2 **II. BINDING EFFECT**

3
4 13. This Consent Judgment constitutes and embodies the full and complete
5 understanding of the parties and supersedes all prior understandings or agreements,
6 whether oral or in writing, which pertain to the subject matter contained herein.

7
8 14. The State and Defendant hereby consent to the terms and entry of this
9 Consent Judgment, and agree not to contest its validity in any subsequent proceeding.
10 This Consent Decree applies to and is binding upon the State and upon the Defendant,
11 its agents, servants, employees, attorneys, successors and assigns, and all persons, firms
12 and corporations acting in active concert or participation with the Defendant.

13
14 15. The Defendant shall provide a copy of this Consent Judgment to each
15 contractor retained to perform any activity required by this Consent Judgment. In any
16 action to enforce this Consent Judgment, the Defendant shall not raise as a defense the
17 failure by any of its agents, servants, contractors, employees, successors or assigns to
18 take actions necessary to comply with this Consent Judgment.

19
20 16. Any change in ownership of the Defendant including, but not limited to,
21 any transfer of assets or real or personal property shall in no way alter such Defendant's
22 responsibilities under this Consent Judgment. If the Defendant sells or otherwise
23 conveys or assigns any of its right, title or interest in the Landfill, such sale, conveyance
24 or assignment shall not release the Defendant from any
25
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1 obligation imposed by this Consent Judgment, unless:

- 2 a) the party to whom the right, title or interest has been sold,
3 transferred or assigned agrees in writing to fulfill the obligations of
4 this Consent Judgment; and,
5
6 b) ADEQ approves the provision transferring the obligations.

7
8 17. The Defendant shall notify the State in writing of any purchase or
9 succession in interest at least thirty (30) days prior to such transfer. The Defendant
10 shall give written notice of the existence of this action and provide a copy of this
11 Consent Judgment to any successors in interest or transferees.

12
13 18. Defendant certifies that its undersigned representative is fully authorized
14 by the County to enter into the terms and conditions of this Consent Judgment, to
15 execute it on behalf of the County and to legally bind the County to its terms.

16
17 **III. DEFINITIONS**

18 19. The terms used in this Consent Judgment shall have the same meanings as
19 defined in C.F.R. Chapter 40, A.R.S. Title 44, Chapter 9 and Title 49, Chapter 2 and 4
20 and MSWFP No. 02659800, permit 44517.

- 21
22 a. "Complaint" means the civil complaint No.

23 _____ filed by the State in the Superior Court of Arizona,
24 County of Maricopa against the Defendant on or about _____.

25
26 b. "Day" shall mean a calendar day, unless otherwise noted. In
computing any period under this Consent Judgment, where the last day would

1 fall on a Saturday, Sunday, or a State or Federal holiday, the period shall run
2 until the close of business of the next working day.

3 c. "Effective Date" shall be the date that the Consent Judgment is
4 entered by this Court.

5 d. "Force Majeure" is defined as any event arising from causes
6 beyond the reasonable control of the County or its contractors that delays the
7 performance of any obligation under this Consent Judgment. Force Majeure
8 does not include financial inability to complete any requirement of this Consent
9 Judgment.

10 e. "State" means the Plaintiff, State of Arizona *ex rel.* Henry
11 Darwin, Director, Arizona Department of Environmental Quality. For purposes
12 of this Consent Judgment, the State does not include any other Agency, Board,
13 Commission, Department, Officer or employees of the State of Arizona.

14 f. "Covered Matters" shall mean any claims for civil liability for the
15 violations identified in the Notices of Violation, Nos. 104697, 1425309 and
16 142312, or in the Complaint, or for violations of any other laws or rules
17 pertaining to the regulation of solid waste disposal and waste tire disposal at the
18 Cochise County Western Regional Landfill occurring before the effective date of
19 this Consent Judgment.

20 Covered Matters do not include:

21 i. Compliance with the Defendant's obligations under this
22 Consent Judgment.

1 ii. Violations of environmental laws or rules that were
2 unknown to ADEQ prior to the effective date of this Consent Judgment;

3 iii. Claims for liability under any other laws pertaining to the
4 regulation of solid waste and waste tires that are reported or discovered
5 after the effective date of this Consent Judgment;

6 iv. Any past or future claims for liability arising from
7 violations of environmental statutes or regulations other C.F.R. Chapter
8 40, A.R.S. Title 44, Chapter 9 and Title 49, Chapter 2 and 4.

9 v. Criminal liability arising from violations of any local, State
10 or Federal laws.

11 vi. Any liability to any State Agency other than ADEQ.

12
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14 **IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

15 20. In lieu of penalties, Cochise County proposed and enacted a new solid
16 waste program, the 100% Screened Load Program (“County Program”) as a
17 Supplemental Environmental Project (“SEP”). A.R.S. § 49-117 provides the ADEQ the
18 authority to enter into a SEP if the project advances at least one of the objectives of the
19 environmental statutes that are the basis of the enforcement action and shall have an
20 adequate nexus. A nexus exists if any of the following apply: the project is designed to
21 reduce the likelihood that similar violations will occur in the future; the project reduces
22 the adverse impact to public health or the environment to which the violation

1 contributes; or the project reduces the overall risk to the public health or the
2 environment potentially affected by the violation.

3
4 21. The trial program reduces the overall risk to the public health or the
5 environment and mandated that the County would implement a new protocol to screen
6 all incoming vehicles coming into any of the solid waste facilities in Cochise County
7 for all Household Hazardous Wastes (“HHW”). If any HHW was found, the County
8 employees would follow the newly designed protocol to properly handle the waste. The
9 SEP is attached hereto as Exhibit “A” and the County has expended over \$700,000
10 since 2011, for implementation and training.

11
12
13 22. The trial program included formalized training for all WRL employees in
14 the new protocol, identification of HHW and the appropriate steps for disposal. The
15 program also implemented a monitoring system to track every user of each solid waste
16 facility in Cochise County by recording each customer’s license plate number. In
17 addition, to track the success of the program, each transfer station recorded all HHW
18 discovered through the load screening process on a daily basis. All of these paper
19 forms were then forwarded to the administration office at the WRL for monitoring both
20 the system and program. Cochise County then implemented the entire program as a
21 Standard Operating Procedure for the WRL, which continues today.

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23
24 23. The Defendant shall continue with and incorporate the 100% Screened
25 Load Program, Standard Operating Procedures (“SOP”) as defined Supplemental
26 Environmental Project (“SEP”) into a permanent Solid Waste Program for the County
of Cochise.

1 I certify under penalty of law that this document and all attachments, if
2 any, were prepared under my direction or supervision by qualified
3 personnel responsible for properly gathering and evaluating the
4 information submitted. Based on my inquiry of the person or people who
5 are responsible for gathering and evaluating the information, to the best of
6 my knowledge and belief, the information submitted is true, accurate and
7 complete. I am aware that there are significant penalties for knowingly
8 submitting false information, including the possibility of fines and
9 imprisonment for knowing violations.

10 **VI. LIQUIDATED DAMAGES**

11 29. The Parties agree that calculating the harm to the State for violations of
12 the following provisions of this Consent Judgment would be very difficult. The Parties
13 therefore agree that a violation of Section IV renders the Defendant liable for liquidated
14 damages. The liquidated damages shall begin to accrue on the day that performance is
15 due, and shall continue to accrue through the day before performance is completed.

16 30. If the Defendant fails to comply with any of the following requirements
17 of Section IV of this Consent Judgment, Defendant shall pay the following liquidated
18 damages pursuant to the schedule below:

<u>Period of Failure to Comply</u>	<u>Damages Per Day of Violation</u>
1st through 31st day	\$100 per day per violation
32nd through 60th day	\$200 per day per violation
After 60 days	\$300 per day per violation

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23 31. Unless the Defendant invokes, in writing, the dispute resolution procedure
24 specified in Section VIII of this Consent Judgment, the Defendant shall pay the
25 liquidated damages set forth in this Section within thirty (30) days following written
26 demand by the State. Payment shall be made by cashier's check or money order

1 payable to ADEQ and shall be hand-delivered or mailed and postmarked, postage
2 prepaid, to:

3
4 **Chief Financial Officer**
5 **Arizona Department of Environmental Quality**
6 **ATTN: Accounts Receivable**
7 **1110 W.Washington Street**
8 **Phoenix, AZ 85007**

9 together with a letter tendering the payment. In the alternative, upon prior written
10 notification to the Chief Financial Officer at the above address, the payments may be
11 made by wire transfer to “Arizona Department of Environmental Quality”, Bank of
12 America, Routing No. 026009593, Account No. 252844527. All letters regarding
13 payment shall identify this case by the names of the Parties and the Court docket
14 number. Copies of the letters shall be sent to:

15 The Office of the Attorney General at:

16 Rick Zeise
17 Assistant Attorney General
18 Environmental Enforcement Section
19 Office of the Attorney General
20 1275 W. Washington
21 Phoenix, Arizona, 85007

22 and to ADEQ at:

23 G. Randall Matas, Manager
24 Inspections and Compliance Section
25 Waste Programs Division
26 Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

32. Liquidated damages shall begin to accrue on the day after performance is
due and shall continue through the final day of completion, even if no notice is sent to

1 the Defendant. Nothing herein shall prevent the simultaneous accrual of separate
2 liquidated damages for separate violations of the Consent Judgment.

3
4 33. Liquidated damages shall accrue as provided in this Section during the
5 dispute resolution procedure required by Section VIII of this Consent Judgment, but the
6 due date for payment of liquidated damages shall be extended until the dispute
7 resolution process is concluded.

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9 **VII. NOTICES**

10 34. Notices from the Defendants shall be sent to:

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12 The Office of the Attorney General at:

13 Rick Zeise
14 Assistant Attorney General
15 Environmental Enforcement Section
16 Office of the Attorney General
17 1275 W. Washington
18 Phoenix, Arizona, 85007

19 and to ADEQ at:

20 G. Randall Matas, Manager
21 Inspections and Compliance Section
22 Waste Programs Division
23 Arizona Department of Environmental Quality
24 1110 W. Washington Street
25 Phoenix, AZ 85007

26 35. Notices from the State shall be sent to Cochise County at:

Martin D. Haverty, Director
Cochise County Solid Waste Department
2595 N. Sagebrush Road
Huachuca City, AZ 85616

1 **VIII. DISPUTE RESOLUTION**

2 36. All decisions of the State rendered specifically under this Consent
3 Judgment including, but not limited to, the meaning or the application of this Consent
4 Judgment and its provisions, or whether the Defendants are in compliance with its
5 terms, shall be delivered in writing to the Defendant. Such decisions shall be final
6 unless the Defendant invokes the dispute resolution provisions below.
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9 37. After notice is received by the Defendant as provided in Paragraph 34
10 above, the Parties shall engage in informal negotiations regarding the dispute for a
11 period of thirty (30) calendar days, or for a longer period mutually agreed upon by the
12 Parties.
13

14 38. If the dispute is not resolved pursuant to the informal process described in
15 Paragraph 37 above, the State shall issue a written decision regarding the matter in
16 dispute. The decision of the State shall be considered final and binding unless the
17 Defendant requests, in writing and within seven (7) calendar days of receipt of the
18 State’s decision, that the ADEQ Director of the Waste Programs Division (“Division
19 Director”) reconsider the initial decision. The Division Director shall issue a final
20 written decision after receipt of the request. The written decision of the Division
21 Director is final and binding.
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24 39. The Defendant waives any right to any judicial review of an
25 administrative decision pursuant to A.R.S. Title 41, any formal administrative appeal
26 pursuant to A.R.S. Title 12 or any administrative informal appeal process.

1 asserting any claim of Force Majeure. The Defendant shall be deemed to have
2 knowledge of any Force Majeure circumstance of which its contractors or any party
3 acting on its behalf had or should have had knowledge.
4

5 44. If the State agrees that the delay in performance is attributable to a Force
6 Majeure event or is reasonable under the circumstances, the time for
7 performance of the obligations under this Consent Judgment that are affected by the
8 Force Majeure event and the time for performance of any activity dependent on the
9 delayed activity shall be extended for such time as is necessary to complete those
10 obligations. An extension of time for performance of the obligations affected by the
11 Force Majeure event or non-Force Majeure event shall not, of itself, extend the time for
12 performance of any other obligation. If the State does not approve the delay or agree
13 that the delay or anticipated delay has been or will be caused by a Force Majeure event,
14 or is not otherwise reasonable, the State shall notify the Defendant in writing of its
15 decision. If the State agrees that the delay is attributable to a Force Majeure event or is
16 reasonable under the circumstances, the State shall notify the Defendant in writing of
17 the length of the extension which will be equivalent in time to the reasonable delay, if
18 any, for performance of the obligations affected by the Force Majeure event, or as
19 otherwise approved by the State. The decision of the State pursuant to this paragraph is
20 subject to the dispute resolution procedure in Section VIII of this Consent Judgment.
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26 **X. MATERIAL BREACH**

45. Any failure by the Defendant to complete the work required in and pay
for the SEP required by Section IV, or pay the liquidated damages within the times

1 specified by Section VI shall constitute a material breach and violation of this Consent
2 Judgment. The State, in its sole discretion, shall have the option of either:

3
4 46. Enforcing this Consent Judgment through the Court, in which case the
5 Defendant shall be liable for interest and additional penalties pursuant to the provisions
6 of A.R.S. § 49-113(B) and the State's reasonable costs and attorney fees incurred in
7 enforcing this Consent Judgment; or

8
9 47. Declaring the Consent Judgment null and void and the State may pursue
10 the Complaint or refile this action against the Defendant. In this event the Defendant
11 shall be barred from alleging the affirmative defenses of estoppel, laches, or the
12 expiration of any statute of limitations. In any future actions for the violations
13 contained in the Complaint, the Defendant shall receive credit for any civil penalties
14 paid to the State pursuant to this Consent Judgment.

15
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17 **XI. RELEASE**

18 48. Upon fulfillment of its obligations under Sections IV and VI, the
19 Defendant is hereby released from any and all civil liability to the State for any and all
20 violations and allegations contained in the Covered Matters.

21
22 49. This release does not cover criminal liability under any local, state or
23 federal statute or regulation.

24 50. The Defendant releases the State of Arizona, its agencies, departments,
25 officials, employees or agents from any and all claims or causes of action against
26 arising under or related to the violations and the allegations contained in the Covered
Matters.

1 **XII. SEVERABILITY**

2 51. This Consent Judgment is not severable. If any Section of this Consent
3 Judgment is declared by this Court to be invalid or unenforceable, the entire Consent
4 Judgment is rendered invalid and the parties shall return to the positions they occupied
5 prior to the execution of this Consent Judgment.
6

7 **XIII. APPLICABLE LAW**

8 52. The validity, meaning, interpretation, enforcement and effect of this
9 Consent Judgment shall be governed by the law of the State of Arizona.
10

11 **XIV. COSTS OF SUIT**

12 53. Each party shall bear its own costs and attorney's fees in this action,
13 except that pursuant to Section X.A, the Defendant shall be liable for the State's
14 reasonable costs and attorney fees incurred in enforcing this Consent Judgment.
15

16 **XV. RESERVATION OF RIGHTS**

17 54. Entry of this Consent Judgment is solely for the purpose of settling the
18 Complaint and except as expressly set forth herein, does not preclude the Plaintiff or
19 any other agency or officer of the State of Arizona, or subdivision thereof, from
20 instituting other administrative, civil or criminal proceedings as may be appropriate
21 now or in the future, initiating a civil or criminal action against Defendants for
22 violations of A.R.S. Title 44 and Title 49 or the rules promulgated thereunder, or any
23 other violation of Arizona state law, occurring after the Effective Date.
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1 55. This Consent Judgment does not encompass issues regarding violations,
2 sources, operations, facilities or processes of Defendant not expressly covered by the
3 terms of this Consent Judgment and are without prejudice to the rights of the State of
4 Arizona arising under any of the environmental statutes and rules of Arizona with
5 regard to such matters. The State reserves the right to take any appropriate legal action
6 against the Defendant for violations which are not alleged in the Complaint or
7 contained in the Covered Matters. The State reserves the right to take any and all
8 appropriate action necessary to protect the public health, welfare, or the environment.
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11 56. Nothing in this Consent Judgment shall constitute a permit of any kind, or
12 a modification of any permit of any kind, under federal, state or local law. Nothing in
13 this Consent Judgment shall in any way alter, modify or revoke federal, state or local
14 statutes, regulations, rules or requirements. Nor shall this Consent Judgment affect or
15 relieve Defendant in any manner of its obligations to apply for, obtain and comply with
16 applicable federal, state and local permits. Compliance with the terms of this Consent
17 Judgment shall be no defense to an action to enforce any such permits or requirements.
18 The State does not by its consent to the entry of this Consent Judgment, warrant or aver
19 that compliance with this Consent Judgment will constitute or result in compliance with
20 Arizona law. Notwithstanding the State's review and approval of any materials
21 submitted pursuant to this Consent Judgment, the Defendant shall remain solely
22 responsible for compliance with any other applicable federal, state or local law or
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1 regulation. Any submissions made to the State pursuant to this Consent Judgment shall
2 not be interpreted as a waiver or limitation of the State's authority to enforce any
3 federal, state, or local statute or regulation including permit conditions.
4

5 57. The State shall have the right to take enforcement action for any and all
6 violations of this Consent Judgment and reserves the right to pursue all legal and
7 equitable remedies.
8

9 58. This Consent Judgment does not affect any Consent Orders in effect
10 between the State and the County or any of the County agencies.
11

12 59. The entry of this Consent Judgment shall not serve as a basis for any
13 defenses of claim splitting, estoppels, laches, res judicata, or waiver challenging the
14 State's legal right to bring an action regarding matters not expressly covered by this
15 Consent Judgment.
16

17 **XVI. RIGHT OF ENTRY**

18 60. The State or its representatives, contractors, consultants and agents, shall
19 have the right to enter the Facility at any location, at all reasonable times, for the
20 purpose of:
21

- 22 a. Observing and monitoring the progress and compliance with the
23 provisions of this Consent Judgment.
- 24 b. Verifying any data or information submitted to the State in
25 accordance with the terms of the Consent Judgment;
26

1 c. Obtaining samples, and, upon request, splits of any samples taken
2 by the Defendant or its consultants.

3
4 61. This right of entry shall be in addition to, and not in limitation of or
5 substitution for, the State's rights under applicable law. The State's Right of Entry in
6 no way affects or reduces any rights of entry or inspection that the State has under any
7 law or regulation.

8
9 **XVII. MODIFICATIONS**

10 62. Any modification of this Consent Judgment must be in writing and
11 approved by the parties and the Court, except that any extensions for the performance
12 of any requirement of this Consent Judgment may be requested in writing by Defendant
13 and consented to in writing by the State.

14
15 **XIII. RETENTION OF JURISDICTION**

16 63. The Court shall retain jurisdiction over both the subject matter of this
17 Consent Judgment and the Parties to effectuate and enforce this Consent Judgment or to
18 provide further orders, direction, or relief as may be necessary or appropriate for the
19 construction, modification, or execution of this Consent Judgment.

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22 **XIX. PROOF OF VIOLATIONS IN FUTURE PROCEEDINGS**

23 64. The alleged violations that are the subject of this Consent Judgment may
24 be used by the State in any future enforcement proceedings brought against the
25 Defendant for the purpose of determining appropriate penalties in that future
26 proceeding.

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XX. TERMINATION

65. The provisions of this Consent Judgment shall be deemed satisfied and shall terminate after the following has occurred: Defendant has completed all of the requirements under Sections IV, V, VI and VII.

66. After satisfaction of this Consent Judgment, upon request by the Defendant, the State shall execute and file a satisfaction of judgment with this Court and in any County in which this Judgment was recorded.

SO ORDERED this ____ day of _____, _____.

Judge of the Superior Court

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CONSENT TO JUDGMENT

_____, on behalf of Defendant County of Cochise, hereby acknowledges that (s)he is authorized to sign this Consent Judgment and bind Defendant to its entry, has read the foregoing Consent Judgment in its entirety, agrees with the statements made therein, consents to its entry by the Court and agrees that Defendant will abide by the same.

DATED this _____ day of _____, _____.

COCHISE COUNTY

By: _____
(Please print name and Title)

1 **CONSENT TO JUDGMENT**

2 Laura L. Malone, on behalf of Plaintiff State of Arizona, hereby acknowledges
3 that she is authorized by the Director of ADEQ to sign this Consent Judgment, has read
4 the foregoing in its entirety agrees with the statements made therein, consents to its
5 entry by the Court and agrees that the State and ADEQ will abide by the same.
6

7 DATED this _____ day of December, 2014.

8 Arizona Dept. of Environmental Quality

9 _____
10 Laura L. Malone, Director

11 Waste Programs Division
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