



Cochise County Board of Supervisors

Public Programs...Personal Service
www.cochise.az.gov

PATRICK G. CALL
Chairman
District 1

ANN ENGLISH
Vice-Chairman
District 2

RICHARD R. SEARLE
Supervisor
District 3

MICHAEL J. ORTEGA
County Administrator

JAMES E. VLAHOVICH
Deputy County Administrator

ARLETHE G. RIOS
Clerk of the Board

AGENDA FOR SPECIAL BOARD MEETING AND POSSIBLE EXECUTIVE SESSION

Tuesday, January 27, 2015 at 11:00 a.m.

BOARD OF SUPERVISORS EXECUTIVE CONFERENCE ROOM
1415 MELODY LANE, BUILDING G, BISBEE, AZ 85603

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Cochise County Board of Supervisors and to the general public that the Board of Supervisors will hold a meeting open to the public for the purpose of deciding whether to go into executive session. If authorized by a majority vote of the Board, the executive session will be held immediately after the vote and will not be open to the public.

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

ROLL CALL

Members of the Cochise County Board of Supervisors will attend either in person or by telephone, video or internet conferencing.

ACTION

Board of Supervisors

Pursuant to A.R.S. § 38-431(A)(3) and (A)(4), the Board may go into executive session for legal advice with the attorney of the public body and to consider its position and instruct its attorney regarding the public body's position regarding pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.

1. Approve Consent Judgment proposed by the Arizona Attorney General and the Arizona Department of Environmental Quality relating to alleged County violations of solid waste environmental laws.

Pursuant to the Americans with Disabilities Act (ADA), Cochise County does not, by reason of a disability, exclude from participation in or deny benefits or services, programs or activities or discriminate against any qualified person with a disability.

Inquiries regarding compliance with ADA provisions, accessibility or accommodations can be directed to Chris Mullinax, Safety/Loss Control Analyst at (520) 432-9720, FAX (520) 432-9716, TDD (520) 432-8360, 1415 Melody Lane, Building F, Bisbee, Arizona 85603.

Cochise County Board of Supervisors

1415 Melody Lane, Building G Bisbee, Arizona 85603
520-432-9200 520-432-5016 fax board@cochise.az.gov

AI-2209

1.

Special / Executive Session Board of Supervisors Meeting

Meeting Date: 01/27/2015

Consider a Consent Judgment with the Attorney General and ADEQ regarding alleged DEQ violations

Submitted By: Britt Hanson, County Attorney

Department: County Attorney

Presentation: No A/V Presentation

Document Signatures:

Recommendation:

of ORIGINALS

Submitted for Signature:

NAME of PRESENTER: Britt Hanson, Jim Vlahovich, David Horne

TITLE of PRESENTER: Chief Civil Deputy, Deputy County Administrator, Director Solid Waste

Mandated Function?:

Source of Mandate or Basis for Support?:

Information

Agenda Item Text:

Approve Consent Judgment proposed by the Arizona Attorney General and the Arizona Department of Environmental Quality relating to alleged County violations of solid waste environmental laws.

Background:

Based on an October 28, 2008 inspection of the Western Regional Landfill (WRL), on April 8, 2009 ADEQ served the County with a Notice of Violation alleging nine violations of environmental laws. Based on a July 10, 2013 inspection of the WRL, on August 8, 2013 ADEQ served the County with a Notice of Violation alleging four violations of environmental laws.

The Arizona Attorney General, on behalf of ADEQ, has requested that the County sign a Consent Judgment in Superior Court admitting the violations, with potential consequences if there are additional violations, but no fines unless there are further violations. If the County does not sign the Consent Judgment, the AG will sue the County in Maricopa County Superior Court to gain a finding of violations and seek further sanctions, including fines.

The purpose of this Agenda item is to advise the Board about the proposed Consent Judgment and the potential lawsuit, and obtain a Board decision whether to i) sign the Consent Judgment as is, ii) negotiate the terms of the Consent Judgment, or iii) defend the lawsuit. The proposed Consent Judgment is attached, as is the AG's draft Complaint.

This matter involves a great deal of history, with ongoing discussions among the Solid Waste Director, ADEQ, several different Assistant AGs, the County Attorney, and Mr. Vlahovich. Attached is a November 22, 2013 email from Assistant AG John Hestand to Britt Hanson detailing some of that history. Also attached is December, 2013 letter from Adam Ambrose to Hestand addressing the alleged violations, which also details the history of these violations.

The first thing to understand about this matter is that ADEQ does *not* allege that the violations are

ongoing. To the contrary, the Solid Waste Department addressed and resolved them almost immediately. In addition, in 2010, the Solid Waste Department finished drafting a Supplemental Environmental Plan to address the causes of the 2008 violations, which was reviewed by ADEQ and I believe was approved as well. The County Solid Waste Department also implemented a 100% screened load program to prevent hazardous waste from inadvertently being dumped in the landfill. Former Solid Waste Director Haverty, Deputy County Administrator Vlahovich and Chief Civil Deputy County Attorney Hanson traveled to Phoenix to negotiate what it then believed would be a settlement of the matter through the implementation of these programs.

The second thing to understand about this matter is that numerous times during the six years, after the County proposed a resolution of the violations to the AG and ADEQ, the County would not hear back for months and months, to the point where the County believed the matter was resolved—only to get an email or letter from the AG stating that they still intend to pursue the matter. That is why the matter has dragged out so long. We have asked the AG directly why ADEQ still wants to pursue this and gotten no response except that ADEQ does want to pursue the Consent Judgment

We believe that our legal advice to the Board, and discussion of it, should occur in executive session.

Department's Next Steps (if approved):

Either sign the Consent Agreement and forward it to the County Attorney, or the County Attorney will inform the Attorney General that it does not intend to sign the Consent Agreement and will prepare for a lawsuit.

Impact of NOT Approving/Alternatives:

The County may be subject to a lawsuit by the Attorney General's Office on behalf of the Arizona Department of Environmental Quality.

To BOS Staff: Document Disposition/Follow-Up:

If approved, sign the Consent Agreement and forward it to the County Attorney.

Attachments

[email from AG Hestand to Hanson 11 22 13](#)

[L - Hestand - Landfill ADEQ NOV Response](#)

[PHX-#4174235-v4-Cochise_Co_RZ_Complaint](#)

[PHX-#4189926-v4-Cochise_Co_CJ_w_RZ_corr](#)

Hanson, Britt

From: German, Gloria
Sent: Friday, November 22, 2013 2:07 PM
To: Hanson, Britt; Blanchard, Sue
Subject: FW: email to Britt Hanson regarding the Cochise County Western Regional Landfill

Gloria G. German

Administrative Manager
 Cochise County Attorney's Office
 (520) 432-8700

From: Hestand, John [mailto:John.Hestand@azag.gov]
Posted At: Friday, November 22, 2013 12:39 PM
Posted To: Attorney
Conversation: email to Britt Hanson regarding the Cochise County Western Regional Landfill
Subject: email to Britt Hanson regarding the Cochise County Western Regional Landfill

Dear Britt: Here is the brief history of the issues surrounding ADEQ's concerns regarding the Cochise County Western Regional Landfill.

1. On October 28, 2008 ADEQ's Solid Waste Inspections and Compliance Unit conducted a complaint response inspection of the Cochise County Western Regional Landfill. According to the anonymous complaint liquid paint was being disposed of directly to the Landfill.
2. On April 8, 2009 ADEQ issued a Notice of Violation to the Landfill for nine violations of environmental laws regarding
 - a. Failure to control wind dispersion and other surface dispersions of land fill materials,
 - b. Failure to cover disposed solid waste with six inches of earthen material at the end of each operating day or at more frequent intervals if necessary.
 - c. Disposal of waste tires in a landfill or by incineration,
 - d. Failure to prevent stormwater from running on to the site and failure to correct soil erosion to ensure proper cover of waste,
 - e. Operating a surface water impoundment without an aquifer protection permit,
 - f. Failure to manage mixtures of used oil and hazardous waste,
 - g. Failure of a used oil generator to perform the required clean-up stems upon detection of a release of used oil to the environment,
 - h. Failure to transport used oil and liquid paint to an off-site recycling facility, and
 - i. Failure to properly label containers or above ground tanks or fill pipes used to store used oil at a generator facility.
3. On January 20, 2010 Curtis Cox, wrote to Mr. Haverty, Director of the Cochise County

Department of Solid Waste indicating that ADEQ had referred the NOV to the Attorney General's Office to file an enforcement action in Superior Court for violations of the Solid Waste Programs. That letter stated that ADEQ wanted to meet with Cochise County to discuss resolving the violations through settlement.

4. During 2010 negotiations took place regarding the characteristics of an appropriate Supplemental Environmental Plan to be adopted in the Consent Judgment in lieu of civil penalties. I understand that one of the points of contention regarding resolution of the situation was Cochise County's preference to have the matter resolved through a Consent Order (administrative) rather than a Consent Judgment (Judicial). Curis explained that because the matter involved money, in this case an SEP that the County would have to pay for, rather than civil penalties, it could only be done through a Consent Judgment.
5. In early 2011 several crisis took attention away from resolving the environmental violations and the matter went on a back burner.
6. On June 27, 2012 ADEQ's Solid Waste Inspection and Compliance Unit conducted a routine inspection of the Western Regional Landfill and found the Landfill in compliance with ADEQ's solid waste regulations at the time of the inspection.
7. This matter was assigned to me and I contacted ADEQ to ask whether, based on the passage of time, it would be possible to resolve the matter through a Consent Order as opposed to a Consent Judgment.
8. ADEQ indicated that it would conduct an inspection of the Landfill. If the inspection found no violations of solid waste or tire laws a Consent Order would be sufficient. If the inspection found violations of the solid waste or tire laws then a Consent Judgment would be required.
9. On July 10, 2013 ADEQ's Solid Waste Inspections and Compliance Unit conducted an inspection of the Landfill.
10. On August 8, 2013 ADEQ issued a Notice of Violation to the Cochise County Department of Solid Waste Management setting out the following violations.
 - a. Failure to cover disposed solid waste with six inches of cover at the end of each operating day, or more frequent interval as necessary,
 - b. Failure to operate the facility in a manner that controls wind dispersion and other surface dispersions of solid waste from the facility,
 - c. Failing to maintain the integrity and effectiveness of final cover, and
 - d. Storage of used motor vehicle tires outdoors in a grid system that exceeds fifty feet by one hundred and fifty feet.
11. Two of the listed violations in the April 8, 2009 NOV and three of the listed violations in the August 8, 2013 NOV dealt with wind dispersion and other surface dispersion of solid waste and failure to maintain adequate cover.
12. Two of the listed violations in the April 8, 2009 NOV and one of the listed violations in the August 8, 2013 NOV dealt with tires.

I am including the documents arising from the July 10, 2013 Inspection Report and the August 8, 2013 Notice of Violation.

Would you please have the attorney that you assign to this matter get in touch with me after he/she has had an opportunity to discuss the matter with the Cochise County employees?

Please let me know if you want me to send you copies of the documents relating to the earlier Inspection and NOV.

Thanks
John

John T. Hestand

Assistant Attorney General
Environmental Enforcement Section
1275 West Washington Street
Phoenix, Arizona 85007
(602) 542-8086
John.hestand@azag.gov

OFFICE OF THE
COCHISE COUNTY ATTORNEY
CIVIL DIVISION
P.O. Drawer CA
Bisbee, Arizona 85603



EDWARD G. RHEINHEIMER
COCHISE COUNTY ATTORNEY
Telephone No.: (520) 432-8700
Fax No.: (520) 432-8778

December 30, 2013

Mr. John T. Hestand
Assistant Attorney General
Environmental Enforcement Section
1275 West Washington Street
Phoenix, AZ 85007

Re: Cochise County Western Regional Landfill, Notice of Violation, August 8, 2013

Dear John:

Let me say at the outset that although this letter is going to present reasons why, because of the extraordinary factual circumstances of this case, we don't believe judicial intervention and civil monetary penalties would be appropriate, we are very uncomfortable as a County administration taking an adversarial stance on this point because we do not have, or wish to ever take, an adversarial view of the role of the Arizona Department of Environmental Quality (ADEQ). To the contrary, we are grateful for the oversight it provides, which is essential to us in maintaining the integrity and public safety of facilities that we operate.

We further understand that sometimes the most efficacious way for ADEQ to assure compliance with public health and environmental quality standards is to require that we stipulate to terms of an administrative consent order, violation of which may result in sanctions, and that sometimes it is appropriate for ADEQ to take the more drastic action of going directly to court to seek a consent judgment, which may result in imposition of civil monetary penalties, pursuant to A.R.S. § 49-783(B). And of course we are aware that just because a violation is immediately cured does not mean that ADEQ may not still proceed to seek to impose civil penalties. In other words, we fully recognize and welcome the authority and discretion that ADEQ has to monitor and enforce regulations to assure the proper management of solid waste landfills. I do not wish my comments below to be construed to cast any doubt on our respect for the importance of the mission or breadth of discretion of that agency.

That said, in this case, with respect to the Notice of Violation ("NOV") issued August 8, 2013, due to the nature of the violations, the history of the landfill, the extraordinary

circumstances surrounding the timing of this particular inspection and the confusion caused by the departure from past practices by the ADEQ inspectors in this instance, I would urge that this is not a case that merits court action and imposition of civil penalties. I believe an administrative order issued by ADEQ concerning these infractions, putting our solid waste department staff on notice that no infractions will be tolerated, will have the most positive effect and, under the circumstances, would be the fairest way to dispose of this matter. As for the NOV issued April 8, 2009, involving much more serious charges, which our Solid Waste Department responded to with a substantial commitment to preventing them from ever recurring, in light of the remedial actions taken by our Solid Waste staff, the absence of any recurrence of the more serious of those infractions and the staleness of the NOV, which is now more than four and a half years old, I would argue that it makes no sense to continue to pursue any further enforcement action with respect to those violations and that, in any event, it appears to me that the statute of limitations on those counts may have already expired.

Let me first address specific issues we would like to bring to your attention concerning the Notice of Violation (NOV) issued by ADEQ on August 8, 2013. Following that I address issues related to the violations identified by ADEQ in its NOV of April 8, 2009, and remedial actions taken by the County in response thereto.

A. Notice of Violation issued August 8, 2013, based on inspection conducted on July 10, 2013

1. **Recent past (improved) inspection record.** First, to put this matter into proper historical context, after being cited for some very serious violations based on an inspection back in 2008, involving mishandling of toxic materials, substantial remedial actions were taken by the County, which drastically and permanently changed the way the County managed its operations, as discussed and demonstrated in Subsection B, below, and evidence of the success of those efforts was reflected in fact that a spot inspection undertaken by ADEQ June 27, 2012, uncovered no problems and landfill was found to be in full compliance with all ADEQ solid waste regulations. So I would urge that the present violations should not be seen as a perpetuation of sloppy practices by a recalcitrant government agency, but rather as a momentary lapse in compliance with some regulations due to extraordinary circumstances outlined below.

2. **Failure to properly stack tires not (an appealable) violation.** On July 10, 2013, inspection, none of the violations involving mishandling of toxic waste that were uncovered in 2008 was found to presently exist. Although there was one violation with respect to tires, it was not of the serious nature of the previous tire-related violation (disposal of tires in a landfill), but was only a matter of failure to segregate them in a sufficiently small area for recycling (failure to store tires in a grid system that does not

exceed 50' by 100'). This was remedied immediately and we were instructed in an advisory letter from the agency that "No further action is required at this time." In fact, that same that letter expressly stated that, although ADEQ could issue an appealable administrative order compelling compliance, "this letter has no such force or effect." And the letter was not denominated as a "Notice of Violation," but rather as an "Opportunity to Correct Deficiencies." Hence, we conclude that this issue, since addressed, should not be a basis for further action by you or ADEQ. *See* Opportunity to Correct Deficiencies, Case ID # 142309 (August 8, 2013), attached as Exhibit 1.

3. **"No further action" required of County on remaining 3 violations, which were cured before NOV.** The remaining three violations all concerned failure to adequately cover solid waste and prevent wind dispersion; specifically (i) the west slope was partially uncovered, part of which was necessary to allow for dumping of incoming waste on the day of inspection; (ii) failure to adequately control wind dispersion, in part because of the reason stated in (i), above, and in part due to extraordinary weather (wind and rain) conditions extant on the day of inspection and the days immediately preceding, as noted more fully in paragraph 4 below; and (iii) failure to maintain the integrity and effectiveness of final cover, due again in large part to the extraordinary weather conditions discussed below. All three of those violations were found to have been cured within less than two weeks of day of inspection and, in fact, before the Notice of Violation was issued or we were even advised that it might be. Further, the ADEQ NOV noted that "No further action is required at this time." *See* NOV, Case ID # 142312 (Aug. 8, 2013), attached as Exhibit 2. As we acknowledged at the outset, we are aware that the agency has authority to seek civil penalties even when violations are cured immediately, but where, as here, as elaborated in paragraph 6, below, we had reason to believe that no violation would be found, and all alleged deficiencies had been cured by the time a finding of violation was even disclosed to us and, possibly, even before it was determined that the deficiencies that were found rose to the level of a violation, it is not entirely clear to us whether imposition of a civil penalty would be appropriate.

4. **Extraordinary weather.** This, to be candid, is the most compelling factor I wish to highlight: As noted in the attached report on weather conditions in Sierra Vista, Arizona, the location closest to the landfill where Weather Service data is collected, ADEQ inspectors chose literally the morning after the windiest day of the year to make their inspection of this facility, with wind gusts of up to 48 miles per hour recorded on that day. *See* Historical Weather for the Last Twelve Months in Sierra Vista, Arizona, USA, attached as Exhibit 3. Inspectors arrived on the morning of July 10, 2013. The windiest day of the year was July 9, 2013. Also, as the above-referenced weather report will confirm, this inspection occurred during a period of extraordinarily heavy rainfall during an already wet monsoon season for the area. The days before inspection were also some of the wettest of the year, rendering it difficult to remediate lesions in the final

cover due to storm run-off before inspectors arrived because the weather was too inclement and the grounds so muddy that it impeded workers' ability to even go on the site to perform remedial work. The inspection date was preceded by several weeks of heavy rains that, at one point, on June 15, had become so severe that the entire landfill had to be closed because it was impossible to gain access due to deep accumulations of mud. *See* Cochise County Western Regional Landfill Daily Operations Log and summary e-mail statement attached as Exhibit 4. And on June 20 a temporary alternative dump site had to be established on the premises because the designated dumping area had become too flooded. *See* Exhibit 4, *supra*. Landfill staff did, nonetheless, manage to maintain the integrity of the facility through this period. It is worthy of note, however, that these were extraordinary conditions that occurred not just on that single day before inspectors arrived, but that had been accumulating over a period of weeks prior to that date. The combined effects of the degeneration of the grounds due to heavy rains and flooding over a period of weeks, combined with the record wind gusts for the year immediately preceding inspection rendered it virtually impossible for existing staff to guarantee complete absence of any deficiency on that one particular day. Despite these adverse conditions, landfill staff managed to keep the facility largely in compliance with ADEQ regulations and to rectify all violations within two weeks thereafter. *See* copies of photos sent to ADEQ inspectors by Mohd Hasan, Environmental Compliance & Safety Engineer, Cochise County Western Regional Landfill, dated July 17, 23 and 25, 2013, attached as Exhibit 5.

5. Emergency caused by extraordinary weather. In addition, because of the extraordinary weather conditions, emergency problems arose at a pit that was being dug adjacent to the landfill that required diversion of employees to remove flood waters so that contractors who had arrived from Oregon and California to perform substructure installation work (plastic welding) in connection with the laying of a foundation for that pit according to schedule in order to avoid huge cost overruns for the County. And this transpired at a moment when the Solid Waste Department happened found itself temporarily short-staffed, due to unanticipated staff resignations and prison inmate reassignments. *See* E-mail Statement of Mohd Hasan, Environmental Compliance & Safety Engineer, Cochise County Western Regional Landfill, Dec. 3, 2013, attached as Exhibit 6; and *See, also*, Affidavit of Solid Waste Department Director Martin Haverty, attached as Exhibit 7. Because adverse weather conditions rendered it almost impossible, if not impossible, for those employees who were on staff to get onto the existing landfill site to check for and remediate any possible deficiencies during this period of harsh weather, it was determined that at least some of them would be reassigned to removal of flood waters from the new pit so that at least cost overruns resulting from out-of-state contractors running up hours of billable inactivity could be avoided, as confirmed by the Director of our Cochise County Solid Waste Department in the attached affidavit. *See* Exhibit 7. In short, inspectors arrived at a moment of a figurative "perfect storm" of

circumstances, combined with a literal perfect storm of bad weather. It is doubtful that existing staff could have prevented some wind-blown material from escaping and some leakage from storm run-off and exposure of trash even without these added problems, as the weather conditions made it nearly impossible for staff to perform this work on the site at the moment this inspection occurred. But the emergency need to divert staff to the job of removing ponding water from the site of the adjacent construction site only served to aggravate the crisis conditions on that day.

6. **Departure from past agency practices.** As noted by the landfill manager on duty at the time of inspection, the ADEQ inspectors who conducted this inspection advised him that due to all of these extraordinary circumstances it was not anticipated that any notice of violation would be issued by ADEQ if deficiencies could be cured within two weeks. *See Exhibit 6, supra.* Despite the continued adverse weather conditions, landfill staff met that deadline. *See Exhibit 5, supra.* I have been advised by our Solid Waste staff that this is contrary to past custom and practice of the ADEQ which, I have been told, routinely states at time of inspection whether a notice of violation will issue and then honors such statements in deciding whether to proceed with such notices.

7. **Missed opportunity to appeal on grounds of impossibility, due to confusion of landfill staff concerning oral, written statements of agency.** Lastly, no appeal of the notice of violation was ever lodged because, as noted above, based both on the oral statements by inspectors that no notice of violation would issue, *see Exhibit 6, supra,* and the written statement in the one Notice of Violation that did, nonetheless, issue concerning three deficiencies, that “No further action is required at this time,” staff at the landfill had concluded that no further enforcement action would result. *See Exhibits 1 and 2, supra.* The written notice and information provided orally by inspectors was confusing and ambiguous for them, and as a result, the Solid Waste staff did not timely notify County legal counsel of the notice of violation. Had counsel been advised of the NOV, the County would have appealed on grounds of impossibility. We do not, by mentioning this, mean in any way to impugn the good faith of the agency. We only request that it consider this when deciding whether to proceed with litigation.

In conclusion, while we are grateful for the oversight that ADEQ provides for us and, I believe, have developed a record that demonstrates a commitment to eliminating any violations of health and safety standards that ADEQ has identified and of implementing policies to assure that violations that are found do not recur, there are nonetheless some rare occasions when minor infractions may occasionally crop up for brief periods due to circumstances briefly beyond our control, such as the weather events and confluence of other factors herein referenced. And so, accordingly, while we wish to do everything in our power to comply with every request and demand of ADEQ and to avoid an adversarial relationship with that agency, which has always served us well, in this case,

Mr. John T. Hestand
Assistant Attorney General
Environmental Enforcement Section
December 30, 2013
Page | 6

for all of the reasons above-stated, we would have to contest any civil legal action filed in superior court seeking civil penalties. We believe this would be an apt case for a court to decline to grant an agency request for such penalties. We simply don't believe they are appropriate or would have a beneficial effect in this case. I hope it doesn't come to that.

We do, however, want to maintain the highest possible standards at our landfill site and would welcome continued close monitoring by ADEQ to assure that we meet those standards. For this reason we would have no objection to agency issuance of an administrative order, in lieu of a judicial consent judgment, holding our Solid Waste Department to a commitment to take extraordinary ongoing care to prevent any further infractions. We hope that the agency will concur with this approach, and will appreciate the good faith with which we have responded to all past oversight of our operations.

B. Notice of Violation issued April 8, 2009, based upon inspection conducted on October 28, 2008

The violations of April 8, 2009, were numerous and serious and have been studiously and responsibly addressed so as to prevent their recurrence. Specifically, they included twelve (12) waste tires that were visible on the working face of the landfill, failure to properly manage mixtures of used oil and hazardous waste, failure of a used oil generator to perform clean-up upon detection of a release of used oil into the environment, failure to transport used oil and liquid paint to an off-site recycling facility, failure to properly label containers or above ground tanks or fill-pipes used to store oil at a generator facility, and containment operation of surface water and oil in an unlined impoundment area without an aquifer protection permit, as well as the more common failure to control wind dispersion of land fill materials, failure to adequately cover solid waste with six inches of earthen material at the end of each operating day, and failure to prevent storm water run-off.

Most of the violations (five out of nine) were related to sloppy management practices with regard to used oil and paint, which are highly toxic to the environment and so of great public concern, and a sixth involved identifiable waste tires visible on the working face. The remaining infractions, involving failure to adequately cover solid waste and prevent storm water run off, all of which contribute to wind dispersion of waste, are also serious because they defeat the purpose of the landfill and pose a hazard to neighbors that is more than *de minimis* (including risk of fatalities to live stock that ingest such materials), so we don't mean to indicate that we do not also take them seriously.

Frankly, we were mortified, ourselves, by the seriousness of these violations and we acted quickly and decisively to remediate. As should be reflected in ADEQ records, within 15 days of receipt of the NOV, we instituted a campaign to diligently picking up

Mr. John T. Hestand
Assistant Attorney General
Environmental Enforcement Section
December 30, 2013
Page | 7

all wind blown debris on a daily basis and to assure adequate earthen coverage and prevent improper surface water drainage by use of a scraper. These, of course were obvious and necessary first steps to take, but more than that, we drastically changed almost everything about how we do business at the landfill.

A rigid hazardous waste drop-off program policy was instituted and all landfill and transfer station employees received training in its implementation from an outside consultant hired to perform the training, and each of them were required to sign a commitment to compliance. That program provided for and mandated proper disposal and recycling of tires, batteries, used oil and liquid paint. We have previously provided ADEQ with written documentation of these measures, but would be happy to also supply you with them upon request.

Two pits (impoundment areas) that had contained residual used oil and paint were excavated and their contents were placed in lined containers and sent to an ADHS certified laboratory for testing and ultimate disposal, with test results forwarded to ADEQ. Soil samples were collected from the excavated pits and an extensive scheme of soil testing in other areas was undertaken by an outside engineering firm retained to check for background concentrations of toxic materials, with test results forwarded to ADEQ.

Two 55-gallon drums of material that appeared to contain a mixture of old oil and paint and the contents of a 150 gallon tote were removed from the site and properly disposed of by our used oil contractor and all paint and hazardous material formerly located in the area was removed and properly disposed of by Southwest Hazard Control in Tucson.

Steps were taken to mitigate sheet flows of storm water to prevent ponding. Three monitoring ground water wells at the Western Regional Landfill were tested and continue to be tested on a bi-annual basis to check for aquifer water quality standards, and test results have shown that none of these three wells have exceeded water quality limits established by ADEQ in the Arizona Administrative Code, at R18-11-406.

All of the above-referenced documentation has previously been supplied to ADEQ, but, again, we would be glad to supply you with all of this data upon your request.

After taking these steps to respond to the NOV issued in April of 2009 we were pleased that ADEQ did not act to commence any civil litigation against Cochise County. We presumed the agency had elected not to do so in response to evidence of the County's good faith efforts, although there had been some discussion at that time of the possibility that civil penalties might be sought.

Mr. John T. Hestand
Assistant Attorney General
Environmental Enforcement Section
December 30, 2013
Page | 9

- (5) Copies of photos sent to ADEQ inspectors by Mohd Hasan, Environmental Compliance & Safety Engineer, Cochise County Western Regional Landfill, dated July 17, 23 and 25, 2013.
- (6) Email Statement of Mohd Hasan, Environmental Compliance & Safety Engineer, Cochise County Western Regional Landfill, Dec. 3, 2013.
- (7) Affidavit of Martin Haverty, Director of the Cochise County Solid Waste Department.

1 **THOMAS C. HORNE**
2 **ATTORNEY GENERAL**
Firm Bar No. 14000

3 **RICK ZEISE**
4 Assistant Attorney General
5 State Bar No. 025855
6 1275 West Washington Street
7 Phoenix, Arizona 85007-2926
Telephone: (602) 542-8553
8 Fax: (602) 542-7798
Rick.Zeise@azag.gov
9 Attorneys for Plaintiffs

10 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **FOR MARICOPA COUNTY**

12 STATE OF ARIZONA, *ex rel*, HENRY
13 R. DARWIN, Director, Arizona
14 Department of Environmental Quality,

15 Plaintiffs,

16 vs.

17 COUNTY OF COCHISE,

18 Defendant.

Civil Action No. _____

VERIFIED COMPLAINT

(Non-classified Civil)

19 The Plaintiff, **STATE OF ARIZONA** *ex rel*. Henry R. Darwin, Director,
20 Arizona Department of Environmental Quality (“the State” or “Plaintiff”), alleges the
21 following:

22 **NATURE OF ACTION**

23 1. The State brings this civil action against Defendant **COUNTY OF**
24 **COCHISE** (“County” or “Defendant”) for violations of 40 Code of Federal
25 Regulations (“C.F.R.”) § 258.21(a), the Arizona Revised Statutes (“A.R.S.”) Title 44,
26

1 Chapter 9 (tires), Title 49, Chapters 2 (water quality) and 4 (solid waste and
2 management of used oil), the Cochise County Municipal Solid Waste Landfill Master
3 Facility Plan 02659800.02, permit 44517 (“MSWLP”) and the rules adopted
4 thereunder.

5 **PARTIES**

6 2. The State’s relator, Henry R. Darwin, is the Director of the Arizona
7 Department of Environmental Quality (“ADEQ”). ADEQ maintains its central office at
8 1110 West Washington Street, City of Phoenix, County of Maricopa.

9 3. Defendant County is a county and political subdivision of the State of
10 Arizona and is a “Person” as defined by A.R.S. §§ 44-1301(3), 49-201(27) and 49-
11 701(23).

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

15 **JURISDICTION AND VENUE**

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

18 6. 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 7. Defendant admits to the jurisdiction of this Court within the signed the
21
22
--

1 Consent Judgment.

2 8. This Court has personal jurisdiction in this matter as, at all times alleged
3 herein, Defendants conducted business in Arizona, the Landfill is located in Arizona,
4 and the violations alleged in this Complaint occurred in Arizona.

5 9. Defendant admits in the Consent Judgment that this Court has venue over
6 the subject matter. Additionally, this Court is the court of proper venue pursuant to
7 A.R.S. §§ 12-401(17), 49-265 and 49-784.

8 **GENERAL ALLEGATIONS**

9
10 10. On April 10, 2008, ADEQ approved the County of Cochise Municipal
11 Solid Waste Facility Plan (“MSWFP”), approval number 02659800.02, under permit
12 No. 44517, for operation of the WRL (Attached hereto as Exhibit “A” is a true and
13 correct copy of the Plan).

14 11. On October 28, 2008, the Solid Waste Inspections and Compliance Unit
15 (“SWICU”) of ADEQ conducted an inspection of the WRL and discovered the
16 violations as alleged.

17 12. During the October 28, 2008, inspection which led to the Notice of
18 Violation issued in 2009, SWICU observed the following violations:

19 a. A moderate amount of windblown litter at the northern end of the
20 Landfill and a large amount of solid waste, including at least five waste tires on the
21 slope leading to the ponding area;
22

1 b. Inadequate daily cover had been applied to the Landfill. Solid
2 waste was visible through the cover on the side slopes and the lift in front and next to
3 the working face of the Landfill;

4 c. At lease twelve waste tires were visible on the side slopes of the
5 Landfill and on the lift in front next to the working face;

6 d. A large amount of soil erosion of Landfill cover and exposed solid
7 waste through the side slopes of the closed cells and ponding was observed next to the
8 working face of the active cell;

9 e. The Landfill created two approximately 8' x 10' unlined surface
10 impoundments, which contained a mixture of used oil and liquid paint. At the time of
11 inspection, there was at least eight (8) inches of liquid in the impoundments. The Solid
12 Waste Director was unaware of when or why the impoundments were created. The
13 Landfill did not possess an Aquifer Protection Permit ("APP") for disposal of used oil
14 and paint to the ground;

15 f. There was oil mixed with paint in four (4) unlabeled 55-gallon
16 drums that were placed in an impoundment of bare soil. Mixtures of used oil and
17 characteristic hazardous waste are regulated as hazardous waste and the Landfill failed
18 to conduct a waste determination on the used oil and paint mixture prior to disposing of
19 the mixture as required by statute. Land disposal means placement of solid waste in or
20 on the land. At the time of the inspection, the Landfill had not obtained an APP to
21
22

1 operate a solid waste land disposal facility on this property;

2 g. Used oil had stained the soil near the valve of the secondary
3 containment units for used oil and paint; and,

4 h. There were four (4) 55-gallon drums of used oil and a 150-gallon
5 tote of used oil that were not properly labeled with the words “used oil.”

6 13. ADEQ issued a Notice of Violation (“NOV 2009”) for the violations on
7 or about April 8, 2009 (Attached hereto as Exhibit “B” is a true and correct copy of the
8 NOV 2009).

9 14. On June 27, 2012 SWICU conducted a second inspection of the Landfill
10 and did not issue a Notice of Violation.

11 15. On July 10, 2013, SWICU conducted a third inspection of the Landfill.

12 16. During the July 2013 inspection, SWICU observed the following
13 violations:
14

15 a. Heavy on-site windblown litter and a large area of exposed solid
16 waste on the west slope leading up to the working face. Ravens were scavenging at the
17 base and above the working face of the landfill;

18 b. Heavy on-site windblown litter throughout the facility;

19 c. An additional area of heavy, on-site windblown litter and a large
20 area of exposed solid waste on the west slope leading up to the working face; and

21 d. SWICU representatives measured the used/waste tire pile on the
22
--

1 west side of the Waste Tire Collection Site (“WTCS”) and determined the pile was
2 110’x100’x9’.

3 17. On or about August 8, 2013, ADEQ issued two Notices of Violation
4 (“NOV Aug. 2013(a)” and “NOV Aug. 2013(b)”) regarding the findings of Inspection
5 July 2013 (Attached hereto as Exhibit “C” is a true and correct copy of the NOV Aug.
6 2013(a) and as Exhibit “D”, is a true and correct copy of NOV Aug. 2013(b)).

7
8 **COUNT ONE**

9 **Failure To Control Wind Dispersion of Landfill Materials**
10 **(40 C.F.R. § 258.21(a), A.R.S. § 49-761(B) and (C) and**
11 **Municipal Solid Waste Facility Plan Section 3.3(b) and (c))**
12 **(October 2008 inspection)**

13 18. The State incorporates by reference and realleges the foregoing
14 paragraphs 1 through 17 as though fully set forth herein.

15 19. 40 C.F.R. § 258.21(a) provides, “Except as provided in paragraph (b) of
16 this section, the owners or operators of all MSWLF [Municipal Solid Waste Landfill]
17 units must cover disposed solid waste with six inches of earthen material at the end of
18 each operating day, or at more frequent intervals if necessary, to control disease
19 vectors, fires, odors, blowing litter, and scavenging.”

20 20. A.R.S. § 49-761(B) adopts 40 C.F.R. § 258.21(a) by reference.

21 21. Section 3.3(b) of the MSWFP mandates the County to “[c]ontrol wind
22 dispersion and other surface dispersions of the landfill materials so that they do not
-- create a public nuisance or pose an imminent and substantial endangerment to public

1 health or the environment. Visible materials that have dispersed beyond the boundaries
2 of the current work face shall be collected on a regular basis.”

3 22. Section 3.3(c) of the MSWFP mandates the County to “[c]over disposed
4 solid waste with six (6) inches of earthen material or approved alternative cover at the
5 end of each operating day or as necessary to control vectors, fires, odors, blowing litter,
6 and scavenging.”

7 23. At the time of the October 28, 2008 inspection, the County violated 40
8 C.F.R. § 258.21(a), A.R.S. § 49-761(B), and the MSWLP, Section 3.3(b) and (c) by:

9 a. failing to control wind dispersion and other dispersions of Landfill
10 materials and solid waste so that they do not create a public nuisance or pose imminent
11 and substantial endangerment to public health or the environment; and
12

13 b. failing to cover disposed solid waste with six inches of earthen
14 material or approved alternative daily cover at the end of each operating day, or more
15 often as necessary.

16 **COUNT TWO**

17 **Improper Control of Surface Water Drainage to**
18 **Prevent Stormwater From Running on the Land**
19 **(40 C.F.R. § 258.26, A.R.S. § 49-761 (B),**
20 **Municipal Solid Waste Facility Plan, Section 3.5(a))**
21 **(October 2008 inspection)**

22 24. The State incorporates by reference and realleges the foregoing
-- paragraphs 1 through 23 as though fully set forth herein.

1 25. 40 C.F.R. § 258.26 mandates that;

2 (a) Owners or operators of all MSWLF units must design, construct, and
3 maintain:

4 (1) A run-on control system to prevent flow onto the active portion of the
5 landfill during the peak discharge from a 25-year storm; and

6 (2) A run-off control system from the active portion of the landfill to
7 collect and control at least the water volume resulting from a 24-hour, 25-year
8 storm.

9 (b) Run-off from the active portion of the landfill unit must be handled in
10 accordance with § 258.27(a) of this part.

11 26. A.R.S. §49-761(B) adopts 40 C.F.R. § 258.26 by reference.

12 27. MSWFP, section 3.5(a) provides;

13 (a) The proper control of surface water drainage shall be implemented to prevent
14 stormwater from running onto the site. Any soil erosion on landfill cover or ponding of
15 stormwater in the landfill will be corrected to ensure proper cover of waste and
16 stormwater management in the landfill are pursuant to 40 C.F.R. § 258.26.
17

18 28. At the time of the October 28, 2008, inspection, the County violated 40
19 C.F.R. § 258.26, A.R.S. § 49-761(B) and MSWFP, section 3.5(a). During the
20 inspection, the SWICU observed a large amount of soil erosion of the landfill cover and
21 exposed solid waste through the side slopes of the closed cells and water was ponding
22

--

1 next to the working face of the active cell.

2 **COUNT THREE**

3 **Operation of a Surface Impoundment Without an Aquifer Protection Permit**
4 **((A.R.S. §§ 49-241(B)(1) and 762)**
5 **(October 2008 inspection)**

6 29. The State incorporates by reference and realleges the foregoing
7 paragraphs 1 through 28 as though fully set forth herein.

8 30. A.R.S. § 49-241 discussed Aquifer Protection Permits (“APPs”) and
9 requires:

10 (A) Unless otherwise provided by this article, any person who
11 discharges or who owns or operates a facility that discharges shall obtain an aquifer
12 protection permit from the director.

13 (B) Unless exempted under section [A.R.S. §] 49-250, or unless the
14 director determines that the facility will be designed, constructed and operated so that
15 there will be no migration of pollutants directly to the aquifer or to the vadose zone, the
16 following are considered to be discharging facilities and shall be operated pursuant to
17 either an individual permit or a general permit, including agricultural general permits,
18 under this article:

19 (1) Surface impoundments, including holding, storage settling,
20 treatment or disposal pits, ponds and lagoons.

21 (2) Solid waste disposal facilities except for mining overburden
22

1 and wall rock that has not been and will not be subject to mine leaching
2 operations.

3 31. The County is not entitled to the exemption as discussed in A.R.S. § 49-
4 250 (19) as the MSWFP permit did not provide for or give authorization for two
5 unlined surface impoundments, each approximately 8' x 10', that each contained
6 approximately eight (8) inches of a mixture of used oil and liquid paint.

7 32. At time of the October 28, 2008 inspection, the County violated A.R.S. §
8 49-241(B)(1) by operating two 8' x 10' feet unlined surface impoundments with a
9 mixture of used oil and liquid paint, without applying for or obtaining an APP.
10

11 **COUNT FOUR**

12 **Failure To Manage Mixtures of Used Oil and Hazardous Waste**
13 **(40 C.F.R. §§ 279.10(b), 279.21 & 262.11 and A.R.S. § 49-802(A))**
(October 2008 inspection)

14 33. The State incorporates by reference and realleges the foregoing
15 paragraphs 1 through 32 as though fully set forth herein.

16 34. Pursuant to A.R.S. § 49-802(A), the State of Arizona has adopted by
17 reference the Federal Used Oil Program, 40 C.F.R. Part 279, as amended on January 1,
18 1997.

19 35. Pursuant to 40 C.F.R. § 279.10(b), "(i) Mixtures of used oil and
20 hazardous waste ...is subject to regulation as hazardous waste under parts 260 through
21 266, 268, 270, and 124 of this chapter, rather than as used oil under this part."
22

1 paragraphs 1 through 38 as though fully set forth herein.

2 40. Pursuant to 40 C.F.R. § 279.22(d), “[u]pon detection of a release of used
3 oil to the environment...and which has occurred after the effective date of the recycled
4 used oil management program in effect in the State in which the release is located, a
5 generator must perform the following cleanup steps:

6 (1) Stop the release;

7 (2) Contain the released used oil;

8 (3) Clean up and manage properly the released used oil and other materials; and

9 (4) If necessary, repair or replace any leaking used oil storage containers or tanks
10 prior to returning them to service.
11

12 41. At the time of the October 28, 2008 inspection, ADEQ observed used oil
13 and oil stained soil near the valve of the secondary containment units for used oil and
14 paint.

15 42. The County violated 40 C.F.R. § 279.22(d) by failing to appropriately
16 respond to the released used oil at the facility.

17 **COUNT SIX**

18 **Illegal Disposal of Waste Tires In a Landfill**

19 **(A.R.S. § 44-1304(A))**

20 **(October 2008 inspection)**

21 43. The State incorporates by reference and realleges the foregoing
22 paragraphs 1 through 42 as though fully set forth herein.
--

1 44. A.R.S. § 44-1304 states:

2 (A) The disposal of waste tires in landfills and the incineration of those
3 tires are prohibited, except as provided in subsection C or D of this section or in
4 accordance with rules adopted by the director of the department of
5 environmental quality. An owner or operator of a solid waste disposal site shall
6 not knowingly accept waste tires for disposal.

7 (B) A person shall not dispose of motor vehicle waste tires unless the
8 waste tires are disposed of at a waste tire collection site or as provided in
9 subsection C or D of this section or in accordance with rules adopted by the
10 director of the department of environmental quality.

11
12 45. At the time of the October 28, 2008 inspection, the County violated
13 A.R.S. § 44-1304 as it had deposited at least twelve waste tires on the side slopes of the
14 landfill and on the lift in the front and next to the working face in violation of A.R.S. §
15 44-1304(A).

16 **COUNT SEVEN**

17 **Failure To Transport Recyclable Materials To An Off-Site Recycling Facility**
18 **(Municipal Solid Waste Facility Plan, Section 3.1(b))**
19 **(October 2008 inspection)**

20 46. The State incorporates by reference and realleges the foregoing
21 paragraphs 1 through 45 as though fully set forth herein.

22 47. Municipal Solid Waste Facility Plan No. 45517, Section 3.1(b) requires:
--

1 “The following collected recyclable materials must be transported to an off-site
2 recycling facility and cannot be put into the landfill: 1. tires; 2. batteries; 3. used oil;
3 and 4. liquid paint.

4 48. At the time of the October 28, 2008 inspection, the County violated
5 MSWLP, Section 3.1(b) by placing used tires, used oil, and liquid paint into the
6 Landfill.

7
8 **COUNT EIGHT**

9 **(Failure To Properly Label Containers Of Used Oil)**
10 **(40 C.F.R. § 279.22(c), A.R.S. § 49-802(A))**
11 **(October 2008 inspection)**

12 49. The State incorporates by reference and realleges the foregoing
13 paragraphs 1 through 48 as though fully set forth herein.

14 50. 40 C.F.R. § 279.22(c) requires that containers and above ground tanks
15 used to store used oil at generator facilities must be labeled or marked clearly with the
16 words “Used Oil.”

17 51. At the time of the October 28, 2008 inspection, ADEQ inspectors
18 observed that four (4) 55-gallon drums of used oil and a 150-gallon tote of used oil at
19 the Landfill were not properly labeled with the words “Used Oil.”

20 ///

21 ///

22 ///

--

1 **COUNT NINE**

2 **Failure To Control Wind Dispersion of Landfill Materials**
3 **(40 C.F.R. § 258.21(a), A.R.S. §49-761(b) and (c) and**
4 **Municipal Solid Waste Facility Plan Section 3.3(b) and (c))**
5 **(July 2013 inspection)**

6 52. The State incorporates by reference and realleges the foregoing
7 paragraphs 1 through 51 as though fully set forth herein.

8 53. At the time of the July 10, 2013 inspection, the County violated 49 C.F.R.
9 § 258.21(a), A.R.S. § 49-761(B) and (C), and MSWLP, Section 3.3(b) and (c) by

10 a. failing to control heavy on-site litter and a large area of exposed
11 solid waste on the west slope leading up to the working face;

12 b. failing to control wind dispersion and other dispersions of landfill
13 materials and solid waste so that they do not create a public nuisance or pose imminent
14 and substantial endangerment to public health or the environment; and

15 c. by allowing heavy on-site windblown litter and a large area of
16 exposed solid waste on the west slope leading up to the working face.

17 **COUNT TEN**

18 **Illegal Storage of Waste Tires In a Landfill**
19 **(A.R.S. § 44-1304.01 (A)(2))**
20 **(July 2013 inspection)**

21 54. The State incorporates by reference and realleges the foregoing
22 paragraphs 1 through 53 as though fully set forth herein.

55. A.R.S. § 44-1304.01(A)(2) states:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
--

A. It is unlawful to store one hundred or more used motor vehicle tires outdoors as follows:

1. In any fashion that exceeds twenty feet in height.

2. In a pile that is more than one hundred fifty feet from a twenty foot wide access route that allows fire control apparatus to approach the pile. Access routes between and around tire piles shall be at least twenty feet wide and maintained free of accumulations of rubbish, equipment or other materials. Access routes shall be spaced so that a maximum grid system unit of fifty (50) feet by one hundred fifty (150) feet is maintained.

56. At the time of the July 2013 inspection, the County had deposited used waste tires in a pile on the west side of the Waste Tire Collection Site and the pile was approximately 110' x 100' x 9'.

PRAYER FOR RELIEF

WHEREFORE, the State prays for the Court to sign and enter the Consent Judgment.

RESPECTFULLY SUBMITTED this ___ day of November, 2014.

THOMAS C. HORNE
Attorney General

Rick Zeise
Assistant Attorney General
Environmental Enforcement Section

1 **THOMAS C. HORNE**
2 **ATTORNEY GENERAL**
3 Firm Bar No. 14000

4 **RICK ZEISE**
5 Assistant Attorney General
6 State Bar No. 025855
7 1275 West Washington Street
8 Phoenix, Arizona 85007-2926
9 Telephone: (602)-542-8553
0 Fax: (602) 542-7798
1 Environmental@azag.gov
2 Attorneys for Plaintiffs

10 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **FOR MARICOPA COUNTY**

12 STATE OF ARIZONA, *ex rel*, HENRY
13 R. DARWIN, Director, Arizona
14 Department of Environmental Quality,

15 Plaintiffs,

16 vs.

17 COUNTY OF COCHISE,

18 Defendant.
19
20

Civil Action No. _____

CONSENT JUDGMENT

(Non-classified Civil)

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

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 5. On or about _____, the State filed civil complaint no.
16 _____ in the Superior Court of Arizona, County of Maricopa,
17
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 6. Defendant admits to the jurisdiction of this Court and that venue is proper
24 in Maricopa County.

25
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
26

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
13
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.

22
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

19
20
21
22
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.

8
9 **VII. NOTICES**

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

11
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.
7

8
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.
22
23

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.
21
22
23
24
25

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
16
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 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.
9
10

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
23
24
25
26

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.

20
21
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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26