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JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CENTER FOR COMMUNITY
ACTION AND ENVIRONMENTAL
JUSTICE,

Plaintiff,

v.

COUNTY OF SAN BERNARDINO,

Defendant.

Case No. 5:15-CV-00880-VAP-SP
CONSENT JUDGMENT

WHEREAS, Plaintiff Center for Community Action and Environmental Justice (“CCA EJ”) is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to working with communities to improve the social and natural environment. Penny Newman is the Executive Director of CCA EJ;

WHEREAS, Defendant County of San Bernardino (“County”) owns a landfill facility located at 850 Tropica Rancho Road in Colton, California (the “Facility”). The Facility was operated pursuant to State Water Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge

CONSENT JUDGMENT

1 Requirements for Discharges of Storm Water Associated with Industrial Activities
2 Excluding Construction Activities (hereinafter, the “General Permit”);

3 WHEREAS, the Facility was permanently closed on December 31, 2014;

4 WHEREAS, on April 23, 2015, the County submitted to the Regional Water
5 Quality Control Board, Santa Ana Region (“Regional Board”) its Notice of
6 Termination for the Facility’s coverage under the General Permit as a result of the
7 permanent closure of the Facility as of December 31, 2014. . The basis for
8 terminating coverage was that the Facility was categorized as a “Closed Facility”;

9 WHEREAS, on or about March 5, 2015, CCAEJ provided the Facility with a
10 Notice of Violation and Intent to File Suit (“60-Day Notice Letter” or “Notice
11 Letter”) under Section 505 of the Federal Water Pollution Control Act (the “Act” or
12 “Clean Water Act”), 33 U.S.C. § 1365;

13 WHEREAS, on May 5, 2015, CCAEJ filed its Complaint in the United States
14 District Court for the Central District of California (*Center for Community Action
15 and Environmental Justice v. County of San Bernardino*, Case No. 5:15-cv-00880-
16 VAP-SP). Attached hereto as Exhibit B is a true and correct copy of the
17 Complaint, including the 60-Day Notice Letter;

18 WHEREAS, on June 11, 2015, the Regional Board formally approved the
19 Facility’s notice to terminate coverage under the General Permit;

20 WHEREAS, the County denies any and all of CCAEJ’s claims in its 60-Day
21 Notice Letter and Complaint;

22 WHEREAS, the County filed a Motion to Dismiss all of CCAEJ’s claims on
23 the basis that the claims allege “wholly past violations” and, therefore, fail to state
24 any justiciable claims against the County;

25 WHEREAS, CCAEJ and the County (hereinafter, collectively referred to as
26 the “Settling Parties”), through their authorized representatives and without either
27 adjudication of CCAEJ’s claims or admission by the County of any alleged
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1 violation or other wrongdoing, have agreed that it is in the Settling Parties’ mutual
2 interest to enter into a Consent Judgment setting forth terms and conditions
3 appropriate to resolving the allegations set forth in the Complaint without further
4 proceedings;

5 WHEREAS, after a Settlement Agreement and Release, attached hereto as
6 Exhibit A, has been submitted to the United States Department of Justice (“DOJ”)
7 and the national and Region IX offices of the United States Environmental
8 Protection Agency (“EPA”) for the statutory review period pursuant to 40 C.F.R. §
9 135.5 at least 45 days prior to the submittal of this Consent Judgment to the Court
10 for entry; and

11 WHEREAS, on February 23, 2016, the DOJ communicated to CCAEJ that it
12 does not have any objection to entry of the Consent Judgment;

13 NOW, THEREFORE, without trial or adjudication of issues of fact or law,
14 without this Consent Judgment constituting evidence against the County excepted
15 as otherwise noted, and upon consent of the County, the Court finds that there is
16 good and sufficient cause to enter this Consent Judgment, and that it is therefore
17 ORDERED, ADJUDGED, AND DECREED:

18 **I. JURISDICTION**

19 1. For purposes of this Consent Judgment, the Settling Parties stipulate
20 that this Court has jurisdiction over the Settling Parties and the subject matter of
21 this Consent Judgment. The Settling Parties stipulate that venue is appropriate in
22 this Court. The Court will maintain jurisdiction through the Termination Date (as
23 defined in the Settlement Agreement and Release, attached hereto as Exhibit A), or
24 through the conclusion of any proceeding to enforce the Settlement Agreement and
25 Release, for purposes of resolving any disputes between the Settling Parties with
26 respect to any provision on the Settlement Agreement and Release.

27 **II. SETTLEMENT AGREEMENT AND RELEASE**

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1 2. The Settling Parties shall comply with the terms and conditions set
2 forth in the Settlement Agreement and Release. The Settlement Agreement and
3 Release, attached hereto as Exhibit A, is incorporated herein as the judgment of this
4 Court and shall be enforced in accordance with the authorities provided in the
5 Settlement Agreement and Release.

6 **III. NO ADMISSION OR FINDING**

7 3. Neither this Consent Judgment nor any payment made pursuant to this
8 Consent Judgment shall constitute evidence or be construed as a finding,
9 adjudication, or acknowledge of any fact, law or liability, nor shall it be construed
10 as an admission of violation of any law, rule or regulation. However, this Consent
11 Judgment and/or any payment made pursuant to this Consent Judgment may
12 constitute evidence in actions seeking enforcement of this Consent Judgment.

13 **IV. ENFORCEMENT**

14 4. Except as specifically noted herein, any disputes with respect to any of
15 the provisions of this Consent Judgment shall be resolved through the following
16 procedure. The Settling Parties agree to first meet and confer to resolve any dispute
17 arising under this Consent Judgment. In the event that such disputes cannot be
18 resolved through this meet and confer process, the Settling Parties agree to request
19 a settlement meeting before the Magistrate Judge assigned to this action. In the
20 event that the Settling Parties cannot resolve the dispute by the conclusion of the
21 settlement meeting with the Magistrate Judgment, the Settling Parties agree to
22 submit the dispute, via motion, to this Court.

23 **V. OTHER TERMS**

24 5. The Effective Date of this Consent Judgment shall be upon the entry of
25 this Consent Judgment by the Court (the “Effective Date”).

26 6. Unless an extension is agreed to in writing by the Settling Parties, this
27 Consent Judgment shall terminate on the date the County satisfies the commitments
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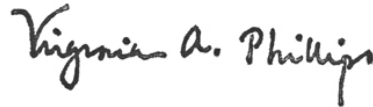
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in Paragraphs 4 and 5 of the Settlement Agreement and Release, attached hereto as Exhibit A (the “Termination Date”).

7. This Consent Judgment, and any provisions herein, may not be changed, waived, discharged or terminated unless by written instrument, signed by the Settling Parties.

8. This Consent Judgment constitutes a full and final settlement of this matter. It is expressly understood and agreed that the Consent Judgment has been freely and voluntarily entered into by the Settling Parties with and upon advice from legal counsel.

SO ORDERED this 25th day of February, 2016



The Honorable Virginia A. Phillips
United States District Judge

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Dated: February 24, 2016

Squire Patton Boggs (US) LLP

By: /s/ Chris M. Amantea
Chris M. Amantea
Christopher W. Smith
Attorneys for Defendant County of San Bernardino

Dated: February 24, 2016

Lozeau Drury LLP

By: /s/ Douglas J. Chermak
Douglas J. Chermak
Attorneys for Plaintiff Center for
Community Action and Environmental
Justice