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REPUBLIC SERVICES, INC. and REPUBLIC WASTE SERVICES OF SOUTHERN CALIFORNIA, LLC

*Additional Plaintiffs' Counsel Listed On Next Page*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ORANGE COUNTY COASTKEEPER, a  
California non-profit corporation,

Plaintiff,

vs.

REPUBLIC SERVICES, INC., a Delaware  
Corporation, et al.;

Defendants.

INLAND EMPIRE WATERKEEPER, a  
program of ORANGE COUNTY  
COASTKEEPER; ORANGE COUNTY  
COASTKEEPER, a California non-profit  
corporation,

Civil Case No. SACV13-00113-BRO  
(MLGx);

Civil Case No. SACV-13-00115-BRO  
(JPRx)

**CONSENT DECREE**

**Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 *et seq.***

Consent Decree

1 Civil Case No. SACV-13-00113-BRO (MLGx);  
Civil Case No. SACV-13-00115-BRO (JPRx)

vs.  
REPUBLIC SERVICES, INC., a Delaware  
Corporation, et al.;  
Defendants.

REPUBLIC SERVICES, INC., a Delaware  
Corporation, et al.;  
Defendants.

2 Civil Case No. SACV-13-00113-BRO (MLG<sub>x</sub>);  
Civil Case No. SACV-13-00115-BRO (JPR<sub>x</sub>)

1 INLAND EMPIRE WATERKEEPER

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**WHEREAS**, together, Orange County Coastkeeper and Inland Empire Waterkeeper have over 2,000 members who live and/or recreate in and around the Santa Ana River watershed, and are dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Santa Ana River and Inland Empire area receiving waters;

**WHEREAS**, Defendant Republic Waste Services of Southern California, LLC operates the CVT Facility as the “Consolidated Volume Transport Facility,” the ADT Facility as the “Anaheim Truck Depot Facility,” and the Colton Facility as the “Inland Empire Materials Recovery and Transfer Facility;”

**WHEREAS**, the Settling Parties refer to the CVT Facility, the CVT Recycling Facility, the ATD Facility, and the Colton Facility collectively as the “Republic Facilities;”

1           **WHEREAS**, Coastkeeper alleges that Taormina Industries, Inc. is an owner  
2 and/or operator of the CVT Facility and the ATD Facility, and that Taormina Industries,  
3 Inc. is a subsidiary of Republic Services, Inc. and/or Republic Waste Services of  
4 Southern California, LLC, which allegations Republic denies. Republic alleges and  
5 represents that Taormina Industries, Inc. has been merged into Republic Waste Services  
6 of Southern California, LLC;

7           **WHEREAS**, discharges from the Republic Facilities are regulated by the National  
8 Pollutant Discharge Elimination System (“NPDES”) General Permit NO. CAS000001  
9 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as  
10 amended by Order No. 97-03-DWQ (“Storm Water Permit”) and the Federal Water  
11 Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”),  
12 Sections 301(a) and 402, 33 U.S. C. §§ 1311(a), 1342;

13           **WHEREAS**, on May 18, 2012, Coastkeeper served Defendants, the United States  
14 Environmental Protection Agency (“EPA”), EPA Region IX, the State Water Resources  
15 Control Board (“State Board”) and the Regional Water Quality Control Board (“Regional  
16 Board”), with a notice of intent to file suit (“Notice Letter”) under Sections 505(a) and  
17 (b) of the CWA, 33 U.S.C. §§ 1365(a) and (b). The Notice Letter alleged violations of  
18 Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342, and  
19 violations of the Storm Water Permit at the CVT Facility and the ATD Facility;

20           **WHEREAS**, on November 19, 2012, Coastkeeper served Defendants, EPA, the  
21 State Board, and the Regional Board a supplemental Notice Letter alleging additional,  
22 updated violations of Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C.  
23 §§ 1311(a) and 1342, and violations of the Storm Water Permit (“Supplemental Notice  
24 Letter”) at the CVT Facility, the CVT Recycling Facility, and the ATD Facility;

25           **WHEREAS**, on November 19, 2012, Waterkeeper served Defendants, EPA, EPA  
26 Region IX, the State Board, and the Regional Board, with a notice of intent to file suit  
27 (“Notice Letter”) under Sections 505(a) and (b) of the CWA, 33 U.S.C. §§ 1365(a) and  
28 (b). The Notice Letter alleged violations of Sections 301(a) and 402 of the Clean Water

Act, 33 U.S.C. §§ 1311(a) and 1342, and violations of the Storm Water Permit at the Colton Facility;

**WHEREAS**, on January 24, 2013, Coastkeeper filed a complaint against Defendants in the United States District Court, Central District of California (Case No. SACV13-00113-JST (MLGx));

**WHEREAS**, on January 24, 2013, Waterkeeper filed a complaint against Defendants in the United States District Court, Central District of California (Case No. SACV13-00115-CJC (JPRx)) (hereinafter “Complaint”), and defendants Republic Services, Inc. and Republic Services of Southern California, LLC answered and denied all material allegations of the Complaint;

**WHEREAS**, on January 31, 2013, Coastkeeper filed a first amended complaint against Defendants in the United States District Court, Central District of California (Case No. SACV13-00113-JST (MLGx)) (hereinafter “First Amended Complaint”), and defendants Republic Services, Inc. and Republic Services of Southern California, LLC answered and denied all material allegations of the First Amended Complaint;

**WHEREAS**, Coastkeeper alleges Defendants to be in violation of the substantive and procedural requirements of the Storm Water Permit and the Clean Water Act;

**WHEREAS**, Defendants deny all allegations in the Notice Letter, Supplemental Notice Letter, and First Amended Complaint relating to the CVT Facility, CVT Recycling Facility, and the ATD Facility;

**WHEREAS**, Defendants deny all allegations in the Notice Letter and Complaint relating to the Colton Facility;

**WHEREAS**, by Order of the Chief Judge (Dkt. No. 22), Case No. SACV13-00113-JST (MLGx) was transferred from Judge Josephine Staton Tucker to Judge Beverly Reid O’Connell (Case No. SACV13-00113-BRO (MLGx));

**WHEREAS**, by Order of the Chief Judge (Dkt. No. 13), Case No. SACV13-00115-CJC (JPRx) was transferred from Judge Cormac J. Carney to Judge Beverly Reid O’Connell (Case No. SACV13-00115-BRO (JPRx))

1       **WHEREAS**, by Order of the Court (Dkt. No. 22), Case No. SACV13-00113-BRO  
2 (MLGx) was consolidated with *Orange County Coastkeeper v. Republic Services, Inc. et*  
3 *al.*, SACV-00115-BRO (JPRx);

4       **WHEREAS**, by Order of the Court (Dkt. No. 24), Case No. SACV13-00115-BRO  
5 (JPRx) was consolidated with *Orange County Coastkeeper v. Republic Services, Inc. et*  
6 *al.*, SACV-00113-BRO (MLGx);

7       **WHEREAS**, the Settling Parties submit concurrently herewith this Consent  
8 Decree setting forth terms and conditions appropriate to resolving the allegations set  
9 forth in the related case *Orange County Coastkeeper v. Republic Services, Inc. et al.*,  
10 SACV-00115-BRO (JPRx);

11       **WHEREAS**, Coastkeeper and Republic have agreed that it is in the Settling  
12 Parties' mutual interest to enter into a Consent Decree setting forth terms and conditions  
13 appropriate to resolving the allegations set forth in the Complaint and First Amended  
14 Complaint without further proceedings;

15       **WHEREAS**, all actions taken by Republic pursuant to this Consent Decree shall  
16 be made in compliance with all applicable Federal and State laws and local rules and  
17 regulations;

18       **WHEREAS**, with respect to all roofing structure Best Management Practices  
19 ("BMPs") described in the SWPPPs attached to this Consent Decree as Exhibits A  
20 through D, inclusive, Republic shall diligently file and pursue all required local agency  
21 applications for permits for these roofing structures, and shall diligently pursue the  
22 procurement of contractors, labor and materials to complete all such roofing structures as  
23 soon as possible, but Republic's expectation is that the roofing structures will not be  
24 completed until approximately February 1, 2014, and this schedule is acceptable to  
25 Plaintiffs;

26       **WHEREAS**, as to the "Storm Chamber ®" structures at the CVT Facility  
27 described in Exhibit A, Figure 3A, area 3 (outlined in light blue), a portion of the area  
28 where this BMP is to be installed is currently owned by the City of Anaheim. The City

1 has offered to sell this property to Republic Waste Services of Southern California, LLC  
2 so that Republic may install the Storm Chamber® as shown on Figure 3A, and Republic  
3 Waste Services will purchase said property in order to obtain City consent for installation  
4 of the Storm Chambers® in this area, but it is unknown whether the transfer of this  
5 property will occur in time for Republic to meet the December 31, 2013, deadline for this  
6 BMP, and this potential delay is acknowledged by Plaintiffs, provided, however, that  
7 Republic shall take the interim measures to eliminate storm water discharges from this  
8 area as described in the SWPPP for the CVT Facility should Republic be unable to install  
9 the StormChambers® by December 31, 2013.

10  
11 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**  
12 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT AS**  
13 **FOLLOWS:**

- 14 1. The Court has jurisdiction over the subject matter of this action pursuant to  
15 Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A);  
16 2. Venue is appropriate in the Central District pursuant to Section 505(c)(1) of  
17 the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the Republic Facilities are located  
18 within this District;  
19 3. The Complaint and First Amended Complaint state claims upon which relief  
20 may be granted pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365;  
21 4. Plaintiffs have standing to bring this action;  
22 5. The Court shall retain jurisdiction over this matter for purposes of enforcing  
23 the terms of this Consent Decree for the life of the Consent Decree, or as long thereafter  
24 as is necessary for the Court to resolve any motion to enforce this Consent Decree.

25 **I. AGENCY REVIEW AND TERM OF CONSENT DECREE**

- 26 6. Plaintiffs shall submit this Consent Decree to the United States Department  
27 of Justice and the EPA (collectively “Federal Agencies”) immediately upon the final  
28 signature of the Settling Parties for agency review consistent with 40 C.F.R. § 135.5. In



the event that the Federal Agencies object to entry of this Consent Decree, the Settling Parties agree to meet and confer to attempt to resolve the issue(s) raised by the Federal Agencies within a reasonable amount of time. Upon approval of the Consent Decree by the Court, Plaintiffs will dismiss Defendant Taormina Industries, Inc. and all other Defendants, other than Republic Services, Inc. and Republic Waste Services of Southern California, LLC, with prejudice.

7. This Consent Decree shall terminate as to the CVT Facility, CVT Recycling Facility, and ATD Facility on August 1, 2015, unless there is an ongoing, unresolved dispute regarding Defendants' compliance with this Consent Decree. This Consent Decree shall terminate as to the Colton Facility on August 1, 2016.

## **II. COMMITMENTS OF THE SETTLING PARTIES**

### **A. Storm Water Permit Coverage**

8. Immediately upon entry of this Consent Decree by the Court, pursuant to and in compliance with the requirements of Provision E and Attachment 3 of the Storm Water Permit, Defendants shall submit a Notice of Intent to Comply with the Storm Water Permit ("NOI") at the CVT Recycling Facility to the State Board. The NOI shall be submitted on the form provided with Attachment 3 of the Storm Water Permit, and shall include all required elements identified on the form.

### **B. Storm Water Pollution Reduction Measures**

9. In addition to maintaining the current BMPs at the Facilities not otherwise impacted by this Consent Decree, Defendants shall implement the BMPs necessary to comply with the provisions of this Consent Decree as follows:

a. At the CVT Facility Defendants shall implement the BMPs (except for roofing structures which shall be implemented by February 1, 2014) set forth in **Exhibit A** attached hereto by December 31, 2013;

b. At the CVT Recycling Facility Defendants shall implement the BMPs (except for any roofing structures, which shall be implemented by February 1, 2014) set forth in **Exhibit B** attached hereto by December 31, 2013;

1 c. At the ATD Facility Defendants shall implement the BMPs (except for  
2 roofing structures which shall be implemented by February 1, 2014) set forth in **Exhibit**  
3 **C** attached hereto by December 31, 2013;

4 d. At the Colton Facility Defendants shall implement the BMPs (except for  
5 roofing structures which shall be implemented by February 1, 2014) set forth in **Exhibit**  
6 **D** attached hereto by December 31, 2013;

7 e. And further provided, moreover, that with respect to the deadlines in  
8 items (a) through (d), inclusive, Defendants shall diligently file and pursue all required  
9 local agency applications for permits for the BMPs, and shall diligently pursue the  
10 procurement of contractors, labor and materials to complete all such BMPs by the  
11 December 31, 2013, deadlines, and shall use their best efforts to meet these deadlines, but  
12 shall be excused from meeting these deadlines for a specific BMP if circumstances  
13 beyond the reasonable control of Defendants (such as a delay in obtaining any required  
14 governmental permits or approvals) prevent the attainment of the deadline for a specific  
15 BMP, but such deadline will only be excused so long as Defendants continue to exercise  
16 due diligence and best efforts in pursuing the permitting and implementation of the BMP  
17 in question, and furthermore any excused delay shall not excuse Defendants from  
18 implementing their other, unexcused obligations under this Consent Decree.

19 **C. Storm Water and Rain Sampling**

20 10. Sampling Frequency and Methodology. During the life of this Consent  
21 Decree, Defendants shall collect storm water samples of any discharge from the Republic  
22 Facilities, including specifically any storm water discharge from the infiltration basins to  
23 be implemented at the Republic Facilities, but excluding the parking lot in front of the  
24 CVT Facility offices on Blue Gum Street as this parking lot is not associated with any  
25 industrial activities, consistent with the SWPPPs attached hereto as Exhibits A-D.

26 11. Defendants shall request that sample-analysis results be reported to them  
27 within ten (10) days of laboratory receipt of the sample.

28 12. Defendants shall provide the complete lab results of all samples collected at

the Facilities to Coastkeeper within ten (10) days of receiving the results.

13. Republic shall install a recording rain gauge capable of continuously recording rainfall at the site to 0.01 inches at the Colton Facility on or before December 31, 2013, Republic shall maintain the recording rain gauge in accordance with manufacturers' recommendations, maintain records of all maintenance; maintain records of rain data, and provide such records upon request by Coastkeeper.

14. Where Republic observes and/or samples a discharge from Stormchambers and/or infiltration areas at the Colton Facility, Republic shall provide rain data to Coastkeeper within 21 days of the rain event producing the discharge.

#### **D. Action Plan**

15. If Republic or Coastkeeper's sampling, visual observations, and/or photographs evidence a discharge from the Colton Facility inconsistent with the design standard set forth in Exhibits A-D, Republic shall, within 60 days of that discharge, submit to Coastkeeper a plan to modify BMPs to comply with that design standard, including consideration of:

- a. increased size infiltration basins; and/or
- b. increased detention;
- c. improved pretreatment.

16. The Action Plan shall include data, drawing, and other design rationale demonstrating that the proposal will achieve compliance with SWPPP requirements.

17. Coastkeeper shall have sixty (60) days to comment on the Action Plan.

18. If the Settling Parties are unable to agree as to the adequacy of the Action Plan, either Settling Party may invoke dispute resolution pursuant to Section III below.

#### **E. Visual Observations**

19. During the life of this Consent Decree, during normal scheduled facility operating hours Defendants shall conduct visual observations at all industrial discharge areas during every rain event that produces a discharge.

20. Defendants shall pay particular attention to potential discharge locations

identified as the infiltration basins described in the SWPPPs attached hereto as Exhibits A-D.

**F. Employee Training**

21. Within thirty (30) days of entry of this Consent Decree by the Court, Defendants shall develop and implement a training program, including any training materials needed for effective implementation of the training program, to ensure (1) that there are a sufficient number of employees delegated to achieve compliance with the Storm Water Permit and this Consent Decree, and (2) that these employees are properly trained to perform the required activities to achieve compliance with the Storm Water Permit and this Consent Decree (“Training Program”). At a minimum the Training Program shall require at least the following:

a. Language. Defendants shall conduct the Training Program in the primary language of the employees participating in the Training Program, if an employee is unable to reasonably understand English;

b. Non-Stormwater Discharges. Defendants shall train all employees on the Storm Water Permit’s prohibition of non-storm water discharges, so that employees know what non-storm water discharges are, that non-storm water discharges can result from improper surface washing or dust control methods, and how to detect and prevent non-storm water discharges;

c. BMPs. Defendants shall train all employees on BMP implementation and maintenance to ensure that BMPs are implemented effectively to prevent the exposure of pollutants to storm water, to prevent the discharge of contaminated storm water, and to ensure the proper treatment of storm water at the Facilities;

d. Storm Water Sampling. Defendants shall designate an adequate number of employees necessary to collect storm water samples from each discharge location as required by this Consent Decree. The training shall include the proper sampling protocols, including chain of custody requirements, to ensure storm water samples are properly collected, stored, and submitted to a certified laboratory.

1        22.     Training shall be provided by a private consultant or a representative of  
2 Defendants who is familiar with the requirements of this Consent Decree and the Storm  
3 Water Permit. The training shall be repeated annually, or as necessary to ensure that all  
4 such employees are familiar with the requirements of this Consent Decree, the Storm  
5 Water Permit, and the Facilities' SWPPPs. All new staff will receive this training before  
6 assuming responsibilities for implementing the SWPPPs.

7        23.     Defendants shall maintain training records to document compliance with this  
8 section, and shall provide Coastkeeper with a copy of these records within fourteen (14)  
9 days of receipt of a written request.

10        **G.     Storm Water Pollution Prevention Plans**

11        24.     Additional Revisions to SWPPPs. Defendants shall revise the SWPPPs  
12 attached hereto as Exhibits A-D if there are any changes in the Facilities' operations,  
13 including but not limited to changes to storm water discharge point(s) or changes or  
14 additions to the BMPs at the Facilities. Defendants shall submit any revised SWPPP to  
15 Coastkeeper for review and comment within ten (10) days of completion. Coastkeeper  
16 shall provide comments, if any, to the Defendants within thirty (30) days of receipt of any  
17 revised SWPPP. Defendants shall incorporate Plaintiffs' comments into any revised  
18 SWPPP, or shall justify in writing why any comment is not incorporated within thirty  
19 (30) days of receiving comments. Any disputes as to the adequacy of the SWPPP shall be  
20 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in  
21 Section III below.

22        **H.     Compliance Monitoring and Reporting**

23        25.     Site Inspections. Coastkeeper and its representatives may conduct one (1)  
24 Wet Season site inspection and one (1) dry season site inspection per year at each of the  
25 Republic Facilities during the life of this Consent Decree. The site inspections shall occur  
26 during normal business hours and Coastkeeper shall provide Defendants with twenty-four  
27 (24) hours notice (weekends and holidays excluded) prior to each Wet Season site  
28 inspection and forty-eight (48) hours notice (weekends and holidays excluded) prior to

1 each dry season site inspection.

2 26. During the site inspections, Coastkeeper and/or its representatives shall be  
3 allowed access to the Republic Facilities' SWPPPs, and other monitoring records,  
4 reports, and sampling data for the Republic Facilities. During the site inspections,  
5 Coastkeeper and/or its representatives may collect samples of discharges from the  
6 Republic Facilities. At Coastkeeper's expense, a certified California laboratory shall  
7 analyze samples collected by Coastkeeper and copies of the lab reports shall be provided  
8 to Defendants within five (5) business days of receipt. At the request of Defendants, the  
9 samples shall be split and one half provided to Defendants so as to allow Defendants to  
10 have their own certified California laboratory analyze the samples, in which case  
11 Defendants shall provide the laboratory results to Coastkeeper within five (5) business  
12 days of receipt.

13 27. Compliance Monitoring and Oversight. Defendants shall pay a total of  
14 Fifteen Thousand Dollars (\$15,000.00) to Coastkeeper for fees and costs incurred by  
15 Coastkeeper in monitoring Defendants' compliance with this Consent Decree. Payment  
16 shall be made within thirty (30) days of entry of this Consent Decree by the Court  
17 payable to: "Orange County Coastkeeper" and delivered by certified mail or overnight  
18 delivery to: Orange County Coastkeeper, 3151 Airway Avenue, Suite F-110, Costa Mesa,  
19 CA 92626. Upon request, Plaintiffs shall provide Defendants with documentation of the  
20 fees and costs incurred in connection with compliance monitoring and oversight  
21 activities. Any unexpended compliance monitoring funds remaining at the final  
22 termination of this Consent Decree shall be refunded to Defendants within ten (10)  
23 business days after the date of final termination.

24 28. Reporting and Document Provision. During the life of this Consent Decree,  
25 Defendants shall copy Coastkeeper on all documents related to water quality at each of  
26 the Republic Facilities that are submitted to the Regional Board, the State Board, and/or  
27 any State or local agency, county, or municipality. Such reports and documents shall be  
28 provided to Coastkeeper on the date they are sent to the agencies, counties, and/or

municipalities. Any correspondence related to Defendants' compliance with the Storm Water Permit or storm water quality received by Defendants from any regulatory agency, State or local agency, county or municipality shall be provided to Coastkeeper within ten (10) days of receipt by Defendants.

**I. Environmental Project, Reimbursement of Litigation Fees, Payments**

29. Environmental Mitigation Project. To remediate the alleged environmental harms resulting from the non-compliance with the Storm Water Permit as alleged in the Complaint and First Amended Complaint, Defendants agree make a payment of One Hundred Sixty Seven Thousand Dollars (\$167,000.00) to the O.C./I.E. Public Interest Green Fund to fund environmental project activities that will benefit the Santa Ana River and its watershed. Payment shall be made within thirty (30) days of entry of this Consent Decree by the Court payable to the "O.C./I.E. Public Interest Green Fund" and delivered by certified mail or overnight delivery to: Orange County Community Foundation, 4041 MacArthur Boulevard, Suite 510, Newport Beach, California 92660.

30. Coastkeeper's Fees. Defendants shall pay a total of One Hundred Ninety Three Thousand Dollars (\$193,000.00) to Coastkeeper to partially reimburse Coastkeeper for its investigation fees, expert/consultant fees and costs, and reasonable attorneys' fees incurred as a result of investigating and preparing the lawsuit, and negotiating this Consent Decree. Coastkeeper shall be responsible for any remaining fees and costs in excess of this amount; provided, however, that Coastkeeper may apply to the Court for an award for additional fees and costs incurred by Coastkeeper in any proceedings to enforce this Consent Decree. Payment shall be made within thirty (30) days of entry of this Consent Decree by the Court payable to: "Orange County Coastkeeper" and delivered by certified mail or overnight delivery to: Orange County Coastkeeper, 3151 Airway Avenue, Suite F-110, Costa Mesa, CA 92626.

**III. DISPUTE RESOLUTION**

31. This Court shall retain jurisdiction over this matter until the final termination

1 date defined in paragraph seven (7) above for the purposes of implementing and  
2 enforcing the terms and conditions of this Consent Decree, and adjudicating all disputes  
3 among the Settling Parties that may arise under the provisions of this Consent Decree.  
4 The Court shall have the power to enforce this Consent Decree with all available legal  
5 and equitable remedies, including contempt.

6 32. Meet and Confer. A party to this Consent Decree shall invoke the dispute  
7 resolution procedures of this Section by notifying all other Settling Parties in writing of  
8 the matter(s) in dispute. The Settling Parties shall then meet and confer in good faith  
9 (either telephonically or in person) in an attempt to resolve the dispute informally over a  
10 period of ten (10) days from the date of the notice. The Settling Parties may elect to  
11 extend this time in an effort to resolve the dispute without court intervention.

12 33. If the Settling Parties cannot resolve a dispute by the end of meet and confer  
13 informal negotiations, the party initiating the dispute resolution provision may invoke  
14 formal dispute resolution by filing a motion before the United States District Court for  
15 the Central District of California. The Settling Parties agree to request an expedited  
16 hearing schedule on the motion.

17 34. Enforcement Fees and Costs. Litigation costs and fees incurred in  
18 conducting meet and confer or otherwise addressing and/or resolving any dispute,  
19 including an alleged breach of this Consent Decree, shall be awarded in accord with the  
20 standard established by Section 505 of the Clean Water Act, 33 U.S.C. §§ 1365 and 1319,  
21 and case law interpreting that standard.

22 **IV. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

23 35. Coastkeeper's Release. Upon entry of this Consent Decree by the Court,  
24 Coastkeeper, on its own behalf and on behalf of its current and former officers, directors,  
25 employees, and each of their successors and assigns, and its agents, attorneys, and other  
26 representatives releases all persons including, without limitation, Defendants (and each of  
27 their direct and indirect parent and subsidiary companies and affiliates, and their  
28 respective current and former officers, directors, members, employees, shareholders and



1 each of their predecessors, successors and assigns, and each of their agents, attorneys,  
2 consultants, and other representatives) from, and waives all claims which arise from or  
3 pertain to this action, including all claims for injunctive relief, penalties, fees (including  
4 fees of attorneys, experts, and others), costs, expenses or any other sum incurred or  
5 claimed, and/or claims asserted in Coastkeeper's Notice Letters, Supplemental Notice  
6 Letter, Complaint, and First Amended Complaint up to entry of this Consent Decree by  
7 the Court.

8       36.     Defendants' Release. Upon entry of this Consent Decree by the Court,  
9 Defendants, on its own behalf and on behalf of its current and former officers, directors,  
10 employees, members, and each of their successors and assigns, and their agents,  
11 attorneys, and other representatives releases Coastkeeper (and its current and former  
12 officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of  
13 their successors and assigns, and its agents, attorneys, and other representatives) from,  
14 and waives all claims which arise from or pertain to this action, including all claims for  
15 fees (including fees of attorneys, experts, and others), costs, expenses or any other sum  
16 incurred or claimed for matters related to Coastkeeper's Notice Letters, Supplemental  
17 Notice Letter, Complaint, and First Amended Complaint up to entry of this Consent  
18 Decree by the Court.

19       37.     Nothing in this Consent Decree limits or otherwise affects Coastkeeper's  
20 right to address or take any position that it deems necessary or appropriate in any formal  
21 or informal proceeding before the State Board, Regional Board, EPA, or any other  
22 judicial or administrative body on any other matter relating to Defendants' compliance  
23 with the Storm Water Permit or the Clean Water Act occurring or arising after entry of  
24 this Consent Decree by the Court but specifically excluding the discharges and all other  
25 matters addressed by this Consent Decree.

26     **V. MISCELLANEOUS PROVISIONS**

27       38.     No Admission of Liability. Neither this Consent Decree, the implementation  
28 of additional BMPs nor any payment pursuant to the Consent Decree shall constitute or

1 be construed as a finding, adjudication, admission or acknowledgment of any fact, law, or  
2 liability, nor shall it be construed as an admission of violation of any law, rule, or  
3 regulation. Defendants maintain and reserve all defenses they may have to any alleged  
4 violations that may be raised in the future.

5 39. Force Majeure. Force Majeure includes any act of God, war, fire,  
6 earthquake, windstorm, flood or natural catastrophe; civil disturbance, vandalism,  
7 sabotage or terrorism; restraint by court order or public authority or agency; or action or  
8 non-action by, or inability to obtain the necessary authorizations or approvals from any  
9 governmental agency. Force Majeure shall not include normal inclement weather,  
10 economic hardship, or inability to pay. Any party seeking to rely upon this paragraph to  
11 excuse or postpone performance, shall have the burden of establishing that it could not  
12 reasonably have been expected to avoid the Force Majeure event and which by exercise  
13 of due diligence has been unable to overcome the failure of performance. The Settling  
14 Parties shall exercise due diligence to resolve and remove any Force Majeure event.  
15 Delay in compliance with a specific obligation under this Consent Decree due to Force  
16 Majeure as defined in this paragraph shall not excuse or delay compliance with any or all  
17 other obligations required under this Consent Decree.

18 40. Construction. The language in all parts of this Consent Decree shall be  
19 construed according to its plain and ordinary meaning, except as to those terms defined in  
20 the Storm Water Permit, the Clean Water Act, or specifically herein.

21 41. Choice of Law. The laws of the United States shall govern this Consent  
22 Decree.

23 42. Severability. In the event that any provision, paragraph, section, or sentence  
24 of this Consent Decree is held by a court to be unenforceable, the validity of the  
25 enforceable provisions shall not be adversely affected.

26 43. Correspondence. All notices required herein or any other correspondence  
27 pertaining to this Consent Decree shall be sent by overnight mail or courier as follows:

28 If to Plaintiff:

Consent Decree

18 Civil Case No. SACV-13-00113-BRO (MLGx);  
Civil Case No. SACV-13-00115-BRO (JPRx)

1 Daniel Cooper  
daniel@lawyersforcleanwater.com  
2 Caroline Koch  
caroline@lawyersforcleanwater.com  
3 Lawyers for Clean Water, Inc.  
4 1004-A O'Reilly Avenue  
5 San Francisco, California 94129

6 With copies to:

7 Orange County Coastkeeper  
8 Garry Brown, Executive Director  
garry@coastkeeper.org  
9 3151 Airway Avenue, Suite F-110  
10 Costa Mesa, California 92626

11 If to Defendants:

12 Thomas M. Bruen (Bar No. 63324)  
tbruen@tbsglaw.com  
13 1990 N. California Boulevard, Suite 620  
14 Walnut Creek, California 94596

15 With copies to:

16 Robin Murbach  
rmurbach@republicservices.com  
17 General Manager  
18 CVT Recycling Facility  
19 1071 Blue Gum Street  
20 Anaheim, California 92806  
Robin Murbach  
rmurbach@republicservices.com  
21 General manager  
22 Consolidated Volume Transport  
23 1131 Blue Gum Street  
24 Anaheim, California 92806

25 Dan Capener  
dcapener@republicservices.com  
26 General manager  
27 Anaheim Truck Depot  
28 1231 Blue Gum Street

1 Anaheim, California 92806

2 Andre Griggs

3 agriggs@republicservices.com

4 General Manager

5 Inland Regional Material Recovery Facility and Transfer Station

6 2059 East Steel Road

7 Colton, California 92324

8 Tim Benter

9 tbenter@republicservices.com

10 Deputy General Counsel

11 Republic Services, Inc.

12 18500 North Allied Way

13 Phoenix, Arizona 85054

14 Notifications of communications shall be deemed submitted the next business day  
15 after having been deposited with an overnight mail/delivery service or the day of sending  
16 notification or communication by email. Any change of address or addresses shall be  
17 communicated in the manner described above for giving notices. In addition, the Settling  
18 Parties may agree to transmit documents electronically or by facsimile.

19 44. Effect of Consent Decree. Except as provided herein, Plaintiffs do not, by  
20 their consent to this Consent Decree, warrant or aver in any manner that Defendants'  
21 compliance with this Consent Decree will constitute or result in compliance with any  
22 Federal or State law or regulation. Nothing in this Consent Decree shall be construed to  
23 affect or limit in any way the obligation of Defendants to comply with all Federal, State,  
24 and local laws and regulations governing any activity required by this Consent Decree.

25 45. Counterparts. This Consent Decree may be executed in any number of  
26 counterparts, all of which together shall constitute one original document. Telecopy,  
27 email of a .pdf signature, and/or facsimile copies of original signature shall be deemed to  
28 be originally executed counterparts of this Consent Decree.

46. Modification of the Consent Decree. This Consent Decree, and any  
provisions herein, may not be changed, waived, discharged, or terminated unless by a

1 written instrument, signed by the Settling Parties.

2 47. Full Settlement. This Consent Decree constitutes a full and final settlement  
3 of this matter.

4 48. Integration Clause. This is an integrated Consent Decree. This Consent  
5 Decree is intended to be a full and complete statement of the terms of the agreement  
6 between the Settling Parties and expressly supersedes any and all prior oral or written  
7 agreements, covenants, representations, and warranties (express or implied) concerning  
8 the subject matter of this Consent Decree.

9 49. Authority. The undersigned representatives for Plaintiffs and Defendants  
10 each certify that he/she is fully authorized by the party whom he/she represents to enter  
11 into the terms and conditions of this Consent Decree.

12 50. The provisions of this Consent Decree apply to and bind the Settling Parties,  
13 including any successors or assigns. The Settling Parties certify that their undersigned  
14 representatives are fully authorized to enter into this Consent Decree, to execute it on  
15 behalf of the Settling Parties, and to legally bind the Settling Parties to its terms.

16 51. The Settling Parties agree to be bound by this Consent Decree and not to  
17 contest its validity in any subsequent proceeding to implement or enforce its terms. By  
18 entering into this Consent Decree, Defendants do not admit liability for any purpose as to  
19 any allegation or matter arising out of the Notice Letters, the Supplemental Notice Letter,  
20 the Complaint, or the First Amended Complaint.

21 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree as  
22 of the date first set forth below.

23 APPROVED AS TO CONTENT

24  
25 Dated: October 2, 2013

By: Garry Brown  
Garry Brown  
Orange County Coastkeeper

1 Dated: \_\_\_\_\_, 2013

By: \_\_\_\_\_  
[Defendant Republic Services, Inc.]


5 Dated: \_\_\_\_\_, 2013

By: \_\_\_\_\_  
[Defendant Republic Waste Services of  
Southern California, LLC]

8 APPROVED AS TO FORM

LAWYERS FOR CLEAN WATER, INC.

12 Dated: October 2, 2013

By:   
Daniel Cooper  
Attorney for Plaintiff


LAW OFFICE OF THOMAS M. BRUEN  
A Professional Corporation

17 Dated: \_\_\_\_\_, 2013

By: \_\_\_\_\_  
Thomas M. Bruen  
Attorney for Defendants

20 **IT IS SO ORDERED.**

22 Dated: November 20, 2013

By:   
HON. BEVERLY REID O'CONNELL  
United States District Court Judge