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

20 *Additional Plaintiffs' Counsel Listed On Next Page*

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

23 ORANGE COUNTY COASTKEEPER, a
24 California non-profit corporation,

25 Plaintiff,

26 vs.

27 REPUBLIC SERVICES, INC., a Delaware
28 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.**

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

1 INLAND EMPIRE WATERKEEPER

2 Colin Kelly (Bar No. 266956)

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4 6876 Indiana Avenue, Suite D

5 Riverside, California 92506

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7 Facsimile: (951) 530-8824

8 ORANGE COUNTY COASTKEEPER

9 Colin Kelly (Bar No. 266956)

10 Email: colin@Waterkeeper.org

11 3151 Airway Avenue, Suite F-110

12 Costa Mesa, California 92626

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1 **CONSENT DECREE**

2 The following Consent Decree is entered into by and between Plaintiffs Orange
3 County Coastkeeper and Inland Empire Waterkeeper (“Plaintiffs” or “Coastkeeper”), and
4 Defendants Republic Services, Inc., and Republic Waste Services of Southern California,
5 LLC, collectively referred to herein as “Republic.” The entities entering into this Consent
6 Decree are each an individual “Settling Party” and collectively “Settling Parties.”

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

12 **WHEREAS**, Defendant Republic Waste Services of Southern California, LLC
13 operates three waste transfer, processing, and recycling facilities located at 1071 Blue
14 Gum Street (“CVT Recycling Facility”), 1131 Blue Gum Street (“CVT Facility”), and
15 1231 Blue Gum Street (“ATD Facility”) in Anaheim, California and Defendant Republic
16 Services, Inc. is the parent company of Defendant Republic Waste Services of Southern
17 California, LLC;

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

22 **WHEREAS**, Defendant Republic Waste Services of Southern California, LLC
23 operates a waste transfer, storage, and recycling facility located at 2059 East Steel Road
24 in Colton, California (“Colton Facility”) and Defendant Republic Services, Inc. is the
25 parent company of Defendant Republic Waste Services of Southern California, LLC;

26 **WHEREAS**, the Settling Parties refer to the CVT Facility, the CVT Recycling
27 Facility, the ATD Facility, and the Colton Facility collectively as the “Republic
28 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

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

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

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

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

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

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

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

23 **WHEREAS**, by Order of the Chief Judge (Dkt. No. 22), Case No. SACV13-
24 00113-JST (MLGx) was transferred from Judge Josephine Staton Tucker to Judge
25 Beverly Reid O’Connell (Case No. SACV13-00113-BRO (MLGx));

26 **WHEREAS**, by Order of the Chief Judge (Dkt. No. 13), Case No. SACV13-
27 00115-CJC (JPRx) was transferred from Judge Cormac J. Carney to Judge Beverly Reid
28 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

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

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

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

12 **A. Storm Water Permit Coverage**

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

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

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

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

26 b. At the CVT Recycling Facility Defendants shall implement the BMPs
27 (except for any roofing structures, which shall be implemented by February 1, 2014) set
28 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

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

2 13. Republic shall install a recording rain gauge capable of continuously
3 recording rainfall at the site to 0.01 inches at the Colton Facility on or before December
4 31, 2013, Republic shall maintain the recording rain gauge in accordance with
5 manufacturers' recommendations, maintain records of all maintenance; maintain records
6 of rain data, and provide such records upon request by Coastkeeper.

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

10 **D. Action Plan**

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

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

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

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

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

24 **E. Visual Observations**

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

28 20. Defendants shall pay particular attention to potential discharge locations

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

3 **F. Employee Training**

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

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

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

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

24 d. Storm Water Sampling. Defendants shall designate an adequate number of
25 employees necessary to collect storm water samples from each discharge location as
26 required by this Consent Decree. The training shall include the proper sampling
27 protocols, including chain of custody requirements, to ensure storm water samples are
28 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

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

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

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

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

27 **III. DISPUTE RESOLUTION**

28 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:

1 Daniel Cooper
daniel@lawyersforcleanwater.com
2 Caroline Koch
3 caroline@lawyersforcleanwater.com
4 Lawyers for Clean Water, Inc.
5 1004-A O'Reilly Avenue
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
21 Robin Murbach
rmurbach@republicservices.com
22 General manager
23 Consolidated Volume Transport
24 1131 Blue Gum Street
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

9 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