

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (“AGREEMENT”) is entered into between the California Sportfishing Protection Alliance (“CSPA”) and Solano Garbage Company (“SGC”) (collectively, the “SETTLING PARTIES”) with respect to the following facts and objectives:

RECITALS

WHEREAS, CSPA is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the Suisun Slough, Suisun Bay, the San Francisco Bay, and other California waters. Bill Jennings is the Chairperson of CSPA and a member of CSPA;

WHEREAS, SGC is a corporation organized under the laws of the State of California that owns and operates a solid waste and recycling collection operation and a recycling center located at 2901 Industrial Court in Fairfield, California (the “Facility”) 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 Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (hereinafter, the “General Permit”). A map of the Facility is attached hereto as Exhibit A and incorporated by reference;

WHEREAS, on or about November 7, 2008, CSPA provided SGC with a Notice of Violation and Intent to File Suit (“60-Day Notice Letter”) under Section 505 of the Federal Water Pollution Control Act (the “Act” or “Clean Water Act”), 33 U.S.C. § 1365;

WHEREAS, on January 20, 2009, CSPA filed its Complaint in the United States District Court for the Northern District of California against SGC (*California Sportfishing Protection Alliance v. Solano Garbage Company*, Case No. 3:09-cv-00243-SI). A true and correct copy of the Complaint, including the 60-Day Notice Letter, is attached hereto as Exhibit B and incorporated by reference;

WHEREAS, SGC denies any and all of CSPA's claims in its 60-Day Notice Letter and Complaint;

WHEREAS, CSPA and SGC, through their authorized representatives and without either adjudication of CSPA's claims or admission by SGC of any alleged violation or other wrongdoing, have chosen to resolve in full CSPA's allegations in the 60-Day Notice Letter and Complaint through settlement and avoid the cost and uncertainties of further litigation; and

WHEREAS, CSPA and SGC have agreed that it is in their mutual interest to enter into this AGREEMENT setting forth the terms and conditions appropriate to resolving CSPA's allegations set forth in the 60-Day Notice Letter and Complaint.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CSPA and SGC hereby agree as follows:

EFFECTIVE DATE

1. The term "Effective Date," as used in this AGREEMENT, shall mean the last date on which the signature of a party to this AGREEMENT is executed.

COMMITMENTS OF CSPA

2. **Stipulation to Dismiss and [Proposed] Order.** Within ten (10) calendar days of the expiration of the Agencies' review period specified in Paragraph 19 below, CSPA shall file a Stipulation to Dismiss and [Proposed] Order thereon pursuant to Federal Rule of Civil Procedure 41(a)(2) with the United States District Court for the Northern District of California ("District Court"), with this AGREEMENT attached and incorporated by reference, specifying that CSPA is dismissing all claims in CSPA's Complaint. Consistent with Paragraphs 25 and 26 herein, the Stipulation to Dismiss and [Proposed] Order shall state that the District Court will maintain jurisdiction through December 14, 2011 for purposes of resolving any disputes between the SETTLING PARTIES with respect to any provision of this AGREEMENT. If the District Court chooses not to enter the Order, this AGREEMENT shall be null and void.

COMMITMENTS OF SGC

3. **Compliance with General Permit.** SGC agrees to operate the Facility in compliance with the applicable requirements of the General Permit and Clean Water Act.

4. **Implemented Storm Water Controls.** SGC shall maintain in good working order all storm water collection and treatment systems currently installed or to be installed pursuant to this AGREEMENT, including but not limited to, existing housekeeping measures.

5. **Additional Best Management Practices.** Within THIRTY (30) calendar days after the Effective Date, SGC shall implement the following structural best management practices (“BMPs”) to improve the storm water pollution prevention measures at the drop inlets, outfalls, and other industrial areas at the Facility:

- a. SGC shall enhance each Triton filter installed at each drop inlet at the Facility with a new filter that uses mixed media for hydrocarbon and metal removal in a non-pocketed media bag, along with a sediment pre-screen to keep the media bag clear from sediment and other materials for better water filtering.
- b. SGC shall design removable metal or rubber covers for all drop inlets at the Facility to prevent the accumulation of dirt, leaves and other sediment. The covers shall be placed over all drop inlets on or before July 1st at the end of each rainy season, subsequent to appropriate maintenance of the filters described above. The covers shall be removed prior to the first rain event of the subsequent rainy season. The covers shall be fitted to prevent such materials from entering the drop inlets and designed such that the covers will remain firmly in place while there is normal activity at the Facility.
- c. SGC shall install two 3” pipes in the channel that runs from the office parking lot along the side of the truck wash pad. SGC shall then fill this

channel to prevent any contamination of the run-off from truck washing activities.

- d. SGC shall monitor its operations in the Vehicle Wash area, clearly marked on Exhibit A. SGC shall re-train employees with respect to storm water pollution prevention. SGC shall monitor the area to ensure that steam cleaning activities stay within the wash rack area.

6. **Increased Housekeeping Measures.** Within THIRTY (30) days of the EFFECTIVE DATE, SGC shall institute the following accelerated sweeping schedule at the Facility:

- a. During the rainy season, SGC shall use a regenerative sweeper to conduct weekly sweeping of the entire Facility, including the parking lot area, and the parking stalls. SGC shall conduct additional sweeping as needed prior to any anticipated storm events.
- b. SGC shall include a narrative description of its sweeping program in the Storm Water Pollution Prevention Plan (“SWPPP”). Sweeper operators will be provided with a log sheet attached to a clip board which will be maintained at the Facility to document the dates and times that the sweepers are operated. A sample blank log sheet will be included in the Facility’s Annual Report and the SWPPP.

7. **Monitoring.** SGC agrees to perform the monitoring described herein during the 2009-2010 and 2010-2011 rainy seasons.

- a. SGC shall incorporate the discharges from the parking lot area into its storm water monitoring program. The monitoring location for this area shall be called “SD-8”.
- b. SGC shall sample and analyze storm water discharges at the following storm water discharge locations, marked on Exhibit A: SD-2, SD-3, SD-4, SD-6, and SD-8 [adjacent parking lot]. Monitoring samples shall be

collected at a point downstream from any storm water management measures and treatment systems.

- c. During the 2009-2010 rainy season, SGC shall sample and analyze storm water discharges from three (3) qualifying storm events that result in discharge consistent with the requirements and protocols set forth in the General Permit. During the 2010-2011 rainy season, SGC shall sample and analyze storm water discharges from three (3) qualifying storm events that result in discharge consistent with the requirements and protocols set forth in the General Permit.
- d. SGC shall analyze each storm water sample taken in accordance with the General Permit and this Agreement for, at a minimum, total suspended solids, pH, oil and grease or total organic carbon, specific conductance, chemical oxygen demand, iron, zinc, copper, aluminum, and lead.
- e. SGC shall conduct monthly visual observations of its discharge location for at least one qualifying rain event per month that results in any discharge from the Facility. SGC shall maintain a written log describing these observations.
- f. All maintenance, repair, and replacement activities relating to the Facility's storm water management program shall be recorded and described on appropriate log books or sheets. Such logs shall include, but not be limited to, filter repairs and replacements. Sample log sheets shall be included in the Facility's SWPPP. Completed logs for each rainy season shall be included as part of the Facility's Annual Report submitted to the San Francisco Bay Regional Water Quality Control Board ("Regional Board").

8. **Monitoring Results.** Results from SGC's sampling and analysis during the term of this AGREEMENT shall be provided to CSPA within 30 days of receipt of the sampling results by SGC or its counsel.

9. **Meet and Confer Regarding Exceedence of Levels of Potential Concern.** If analytical results of storm water samples taken by SGC during the 2009-2010 and 2010-2011 rainy season indicate that storm water discharges from the Facility exceed the following levels of potential concern – Total Suspended Solids: 100 mg/L; Specific Conductance: 200 µmhos/cm; Oil & Grease: 15 mg/L or Total Organic Carbon: 120 mg/L; pH: 6.0-9.0 s.u.; Aluminum: 0.75 mg/L; Zinc: 0.117 mg/L; Iron: 1.0 mg/L; Copper: 0.0636 mg/L; Lead: 0.0816 mg/L; and Chemical Oxygen Demand: 120 mg/L – SGC agrees to take responsive actions to improve its storm water management practices, including re-evaluating its structural and non-structural BMPs and considering additional BMPs aimed at reducing levels observed in storm water samples.

In furtherance of that objective, SGC shall prepare a written statement (“Memorandum”) discussing:

- (1) Any exceedance or exceedances;
- (2) An explanation of the possible cause(s) and/or source(s) of any exceedance; and
- (3) Responsive actions to improve its storm water management practices, including modified or additional feasible best management practices (“BMPs”) to be considered to further reduce the possibility of future exceedance(s).

Such Memorandum shall be e-mailed and sent via first class mail to CSPA not later than July 15th (or at such date as may be mutually agreed upon) following the conclusion of each rainy season.

10. Any additional measures set forth in the Memorandum shall be implemented as soon as practicable, but not later than twenty-one (21) days from the due date of the Memorandum, except where 1) structural changes require longer than twenty-one (21) days to complete; 2) weather-related conditions render immediate implementation infeasible; or 3) the SETTLING PARTIES agree in writing to defer implementation of specific measures in order to effectively meet and confer in accordance with Paragraph 11. Within thirty (30) days of

implementation, SGC's SWPPP shall be amended to include all additional BMP measures designated in the Memorandum.

11. Upon receipt of the Memorandum, CSPA may review and comment on any additional measures. If requested by CSPA within twenty-one (21) days of receipt of such Memorandum, CSPA and SGC shall meet and confer and conduct a site inspection within sixty (60) days after the due date of the Memorandum to discuss the contents of the Memorandum and the adequacy of proposed measures to improve the quality of the Facility's storm water to levels at or below the Levels of Potential Concern. If within twenty-one (21) days of the parties meeting and conferring, the parties do not agree on the adequacy of the additional measures set forth in the Memorandum, the SETTLING PARTIES may agree to seek a settlement conference with the Magistrate Judge assigned to this action pursuant to Paragraphs 25 and 26 below. If the SETTLING PARTIES fail to reach agreement on additional measures, CSPA may bring a motion before the Magistrate Judge consistent with Paragraphs 25 and 26 below. If CSPA does not request a meet and confer regarding the Memorandum within the twenty-one (21) day comment period provided for in this paragraph, CSPA shall waive any right to object to such Memorandum pursuant to this AGREEMENT.

12. Any concurrence or failure to object by CSPA with regard to the reasonableness of any additional measures required by this AGREEMENT or implemented by SGC shall not be deemed to be an admission of the adequacy of such measures should they fail to bring the Facility's storm water into compliance with applicable water quality criteria.

13. In addition to any site inspections conducted as part of meeting and conferring on additional measures set forth above, SGC shall permit representatives of CSPA to perform one (1) additional site visit to the Facility per year during normal daylight business hours during the term of this AGREEMENT; provided that CSPA provides SGC via e-mail with at least one week prior written notice.

14. **Provision of Documents and Reports.** During the life of this AGREEMENT, SGC shall provide CSPA with a copy of all documents submitted to the Regional Board or the State Water Resources Control Board ("State Board") concerning the Facility's storm water

discharges, including but not limited to all documents and reports submitted to the Regional Board and/or State Board as required by the General Permit. Such documents and reports shall be mailed to CSPA contemporaneously with submission to such agency. SGC also shall provide CSPA a copy of all documents referenced in this agreement, including but not limited to logs, photographs, or analyses, within seven (7) days of a written request (via e-mail or regular mail) by CSPA.

15. **Amendment of SWPPP and SWMP.** Within sixty (60) days of the Effective Date of this AGREEMENT, SGC shall amend the Facility's SWPPP and the Facility's Storm Water Monitoring Plan ("SWMP") to incorporate all changes, improvements, sample log forms, and best management practices set forth in or resulting from this AGREEMENT. SGC shall ensure that all maps, tables, and text comply with the requirements of the General Permit. SGC shall ensure that the SWPPP describes all structural and non-structural BMPs, details the measures to be installed, and discusses why such BMPs will be effective in addressing the pollutant sources at the Facility. A copy of the amended SWPPP and SWMP shall be provided to CSPA within thirty (30) days of completion. Specific improvements to the Facility's map include the following: identification of the storm water discharge locations, a key describing the symbols on the map, indication of the direction of storm water flows/drainage areas, indication of where materials are directly exposed to precipitation, and location of any structural control measures.

16. **MITIGATION PAYMENT.** In recognition of the good faith efforts by SGC to comply with all aspects of the General Permit and the Clean Water Act, and in lieu of payment by SGC of any penalties which have been disputed but could have been assessed in this action if it had adjudicated adverse to SGC, the SETTLING PARTIES agree that SGC will pay the sum of forty thousand dollars (\$40,000) to the Rose Foundation for Communities and the Environment ("Rose Foundation") for the sole purpose of providing grants to environmentally beneficial projects in southern Solano County and the downstream watershed relating to water quality improvements in those areas, provided that the Rose Foundation agrees that it will not use or grant any funds provided by SGC to fund litigation against solid waste projects in Solano County. The SETTLING PARTIES agree to recommend to the Rose Foundation that some or all of the mitigation funds be directed to the one or more proposals for funding improvements to the

Solano Land Trust/Rush Ranch facility on Grizzly Island Road in the Suisun Primary Marsh if a suitable grant application is submitted to the Rose Foundation for that project. SGC shall prepare a letter to be jointly signed by the SETTLING PARTIES recommending said project. Payment shall be provided to the Rose Foundation as follows: Rose Foundation, 6008 College Avenue, Oakland, CA 94618, Attn: Tim Little. The Rose Foundation shall provide notice to the SETTLING PARTIES within thirty (30) days of when the funds are dispersed by the Rose Foundation, setting forth the recipient and purpose of the funds.

17. **Fees, Costs, and Expenses.** As reimbursement for CSPA's investigative, expert and attorneys' fees and costs, SGC shall pay CSPA the sum of forty-two thousand five hundred dollars (\$42,500). Payment shall be made by SGC within fifteen (15) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. Payment by SGC to CSPA shall be made in the form of a single check payable to "Lozeau Drury LLP Attorney-Client Trust Account," and shall constitute full payment for all costs of litigation, including investigative, expert and attorneys' fees and costs incurred by CSPA that have or could have been claimed in connection with CSPA's claims, up to and including the Effective Date of this AGREEMENT.

18. **Compliance Oversight Costs:** As reimbursement for CSPA's future costs that will be incurred in order for CSPA to monitor SGC's compliance with this AGREEMENT and to effectively meet and confer and evaluate monitoring results for the Facility, SGC agrees to pay CSPA the amount of FIVE THOUSAND DOLLARS (\$5,000) for costs to be incurred in overseeing the implementation of this Consent Decree. SGC shall make payment to CSPA within thirty (30) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. Payment by SGC to CSPA shall be made in the form of a check payable to "Lozeau Drury LLP Attorney-Client Trust Account."

19. **Review by Federal Agencies.** CSPA shall submit this AGREEMENT to the U.S. EPA and the U.S. Department of Justice (hereinafter, the "Agencies") via certified mail, return receipt requested, within five (5) days after the Effective Date of this AGREEMENT for review consistent with 40 C.F.R. § 135.5. The Agencies' review period expires forty-five (45) days after receipt of the AGREEMENT by both Agencies, as evidenced by the return receipts, copies

NO ADMISSION OR FINDING

20. Neither this AGREEMENT nor any payment pursuant to the AGREEMENT shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this AGREEMENT and/or any payment pursuant to the AGREEMENT may constitute evidence in actions seeking compliance with this AGREEMENT.

MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

21. In consideration of the above, and except as otherwise provided by this AGREEMENT, the SETTLING PARTIES hereby forever and fully release each other and their respective successors, assigns, officers, agents, employees, and all persons, firms and corporations having an interest in them, from any and all claims and demands of any kind, nature, or description whatsoever, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which the SETTLING PARTIES have against each other arising from CSPA's allegations and claims as set forth in the 60-Day Notice Letter and Complaint up to and including the Termination Date of this AGREEMENT.

22. The SETTLING PARTIES acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The SETTLING PARTIES hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the 60-Day Notice Letter and Complaint up to and including the Termination Date of this AGREEMENT.

23. For the period beginning on the Effective Date and ending on December 14, 2011, CSPA agrees that neither CSPA, its officers, executive staff, members of its governing board nor any organization under the control of CSPA, its officers, executive staff, or members of its governing board, will file any lawsuit against SGC seeking relief for alleged violations of the Clean Water Act or violations of the General Permit. CSPA further agrees that, beginning on the Effective Date and ending on December 14, 2011, CSPA will not support other lawsuits, by providing financial assistance, personnel time or other affirmative actions, against SGC that may be proposed by other groups or individuals who would rely upon the citizen suit provision of the Clean Water Act to challenge SGC's compliance with the Clean Water Act or the General Permit.

TERMINATION DATE OF AGREEMENT

24. This AGREEMENT shall terminate on December 14, 2011.

DISPUTE RESOLUTION PROCEDURES

25. Except as specifically noted herein, any disputes with respect to any of the provisions of this AGREEMENT shall be resolved through the following procedure. The SETTLING PARTIES agree to first meet and confer to resolve any dispute arising under this AGREEMENT. In the event that such disputes cannot be resolved through this meet and confer process, the SETTLING PARTIES agree to request a settlement meeting before the Magistrate Judge assigned to this action. In the event that the SETTLING PARTIES cannot resolve the dispute by the conclusion of the settlement meeting with the Magistrate Judge, the SETTLING PARTIES agree to submit the dispute via motion to the Magistrate Judge.

26. In resolving any dispute arising from this AGREEMENT, the Judge shall have discretion to award attorneys' fees and costs to either party. The relevant provisions of the then-

applicable Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure shall govern the allocation of fees and costs in connection with the resolution of any disputes before the Magistrate Judge. The Magistrate Judge shall award relief limited to compliance orders and awards of attorneys' fees and costs, subject to proof. The SETTLING PARTIES agree to file any waivers necessary for the Magistrate Judge to preside over any settlement conference and motion practice.

BREACH OF SETTLEMENT AGREEMENT

27. **Impossibility of Performance.** Where implementation of the actions set forth in this AGREEMENT, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good faith efforts of the SETTLING PARTIES, the party who is unable to comply shall notify the other in writing within seven (7) days of the date that the failure becomes apparent, and shall describe the reason for the non-performance. The SETTLING PARTIES agree to meet and confer in good faith concerning the non-performance and, where the SETTLING PARTIES concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the SETTLING PARTIES, new performance deadlines shall be established. In the event that the SETTLING PARTIES cannot timely agree upon the terms of such a stipulation, either of the SETTLING PARTIES shall have the right to invoke the dispute resolution procedure described herein.

GENERAL PROVISIONS

28. **Construction.** The language in all parts of this AGREEMENT shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the General Permit, Clean Water Act or specifically herein.

29. **Choice of Law.** This AGREEMENT shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

30. **Severability.** In the event that any provision, section, or sentence of this AGREEMENT is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

31. **Correspondence.** All notices required herein or any other correspondence pertaining to this AGREEMENT shall be sent by regular, certified, or overnight mail as follows:

If to CSPA:

Bill Jennings, Chairman
California Sportfishing Protection Alliance
3536 Rainier Road
Stockton, CA 95204
Tel: (209) 464-5067
deltakeep@aol.com

And to:

Michael R. Lozeau
Douglas J. Chermak
Lozeau Drury LLP
1516 Oak Street, Suite 216
Alameda, CA 94501
Tel: (510) 749-9102
michael@lozeaudrury.com
doug@lozeaudrury.com

If to SGC:

General Manager
Solano Garbage Company
2901 Industrial Court
Fairfield, California 94533

And to:

Scott W. Gordon
Law Offices of Scott W. Gordon
1990 N. California Blvd., Suite 940
Walnut Creek, CA 94596
swgordon@sbcglobal.net

Notifications of communications shall be deemed submitted on the date that they are e-mailed, postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

32. **Counterparts.** This AGREEMENT may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed counterparts of this AGREEMENT.

33. **Assignment.** Subject only to the express restrictions contained in this AGREEMENT, all of the rights, duties and obligations contained in this AGREEMENT shall inure to the benefit of and be binding upon the SETTLING PARTIES, and their successors and assigns.

34. **Modification of the Agreement:** This AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the SETTLING PARTIES.

35. **Full Settlement.** This AGREEMENT constitutes a full and final settlement of this matter. It is expressly understood and agreed that the AGREEMENT has been freely and voluntarily entered into by the SETTLING PARTIES with and upon advice of counsel.

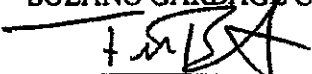
36. **Integration Clause.** This is an integrated AGREEMENT. This AGREEMENT is intended to be a full and complete statement of the terms of the agreement between the SETTLING PARTIES and expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this AGREEMENT.

37. **Authority.** The undersigned representatives for CSPA and SGC each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this AGREEMENT.

The SETTLING PARTIES hereby enter into this AGREEMENT.

Date: August 27, 2009

SOLANO GARBAGE COMPANY


By: Tim M. Benter
Title: Vice President

Date: 17 August, 2009

CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE

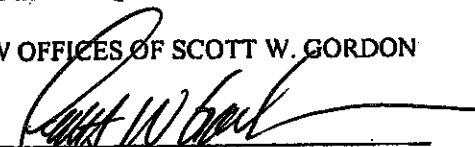

By: Bill Jennings
Title: Executive Director

APPROVED AS TO FORM:

Date: August 19, 2009

For DEFENDANT

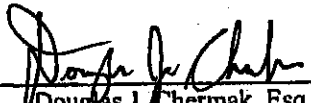
LAW OFFICES OF SCOTT W. GORDON


By: Scott W. Gordon, Esq.

Date: 17 August, 2009

For PLAINTIFF

LOZEAU DRURY LLP


By: Douglas J. Chermak, Esq.