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11 CALIFORNIA SPORTFISHING
12 PROTECTION ALLIANCE

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 CALIFORNIA SPORTFISHING
16 PROTECTION ALLIANCE, a non-profit
17 corporation,

17 Plaintiff,

18 vs.

19 ANDERSON LANDFILL, INC., a
20 Delaware corporation, USA WASTE OF
21 CALIFORNIA, INC., a Delaware
22 corporation, and MIKE RIVERA, an
23 individual,

22 Defendants.

Case No. 2:10-CV-00831-WBS-DAD

[PROPOSED] CONSENT AGREEMENT

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387; and, California
Health & Safety Code § 25249.5 *et seq.*)

23 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter
24 “Plaintiff” or “CSPA”) is a non-profit public benefit corporation dedicated to the preservation,
25 protection, and defense of the environment, wildlife, and natural resources of California’s
26 waters;

1 **WHEREAS**, Defendant ANDERSON LANDFILL, INC., a Delaware corporation,
2 (“ALI”) owns and/or operates an approximately 1200-acre sanitary landfill in Anderson,
3 California (the “Facility”);

4 **WHEREAS**, ALI is a wholly-owned subsidiary of Defendant USA Waste of
5 California, Inc. (“USAW”), a Delaware corporation;

6 **WHEREAS**, Defendant MIKE RIVERA is the District Manager for ALI at the
7 Facility;

8 **WHEREAS**, ALI, USAW and Mr. Rivera collectively shall be referred to as the
9 “Defendants;”

10 **WHEREAS**, CSPA and Defendants collectively shall be referred to as the “Parties;”

11 **WHEREAS**, along the southern border of the Facility, the Facility collects and
12 discharges storm water to several unnamed streams that drain to Cottonwood Creek;

13 **WHEREAS**, along the northern border of the Facility, an unnamed creek receives
14 runoff from the Facility and discharges into Anderson Creek;

15 **WHEREAS**, both Cottonwood Creek and Anderson Creek ultimately flow into the
16 Sacramento River, and the Sacramento-San Joaquin Delta (a map of the Facility is attached
17 hereto as **Exhibit A** and incorporated herein by reference);

18 **WHEREAS**, storm water discharges associated with industrial activity are regulated
19 pursuant to the National Pollutant Discharge Elimination System (“NPDES”), General Permit
20 No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 91-13-
21 DWQ (as amended by Water Quality Order 92-12 DWQ and 97-03-DWQ), issued pursuant to
22 Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter “General Permit”);

23 **WHEREAS**, on or about February 5, 2010, Plaintiff provided notice of Defendants’
24 alleged violations of the Clean Water Act, and of its intention to file suit against Defendants,
25 to the Administrator of the United States Environmental Protection Agency (“EPA”); the
26 Administrator of EPA Region IX; the Executive Director of the State Water Resources Control
27 Board (“State Board”); the Executive Officer of the Regional Water Quality Control Board,
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1 Central Valley Region (“Regional Board”); and to Defendants, as required by the Act, 33
2 U.S.C. § 1365(b)(1)(A) (true and correct copies of CSPA’s “Clean Water Act Notice Of
3 Violations Letter” is attached as **Exhibit B** and incorporated herein by reference);

4 **WHEREAS**, on or about September 16, 2010, Plaintiff provided notice of Defendants
5 ANDERSON LANDFILL, INC. and USA WASTE OF CALIFORNIA, INC.’s alleged
6 violations of California Health & Safety Code § 25249.5 *et seq.* (referred to as “Proposition
7 65”) (“Proposition 65 Notice Letter”), and of its intention to file suit to the Proposition 65
8 Enforcement Reporting section of the office of the California Attorney General (“California
9 Attorney General”); the District Attorney of each California county containing sources of
10 drinking water potentially impacted by such violations of Proposition 65 as described in the
11 Proposition 65 Notice Letter; and, to ANDERSON LANDFILL, INC. and USA WASTE OF
12 CALIFORNIA, INC., as required by California Health & Safety Code Section 25249.5, *et seq.*
13 (a true and correct copy of CSPA’s “Proposition 65 Notice Of Violations Letter” is attached as
14 **Exhibit C** and incorporated herein by reference);

15 **WHEREAS**, unless otherwise noted, the Clean Water Act Notice Of Violations Letter
16 and the Proposition 65 Notice Of Violations Letter shall hereinafter collectively be referred to
17 as “the Notices”;

18 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notices
19 and maintain that they have complied at all times with the provisions of the Clean Water Act
20 and the General Permit, and California Health & Safety Code sections 25249.5 *et seq.*;

21 **WHEREAS**, CSPA filed a complaint (“Complaint”) against Defendants in the United
22 States District Court, Eastern District of California, on April 7, 2010 and filed a First
23 Amended Complaint pursuant to the Parties’ stipulated agreement on November 22, 2010;

24 **WHEREAS**, for purposes of this Consent Agreement only, the Parties stipulate that
25 venue is proper in this Court, and that Defendants do not contest the exercise of jurisdiction by
26 this Court to enter this Consent Agreement, but otherwise preserve all affirmative defenses in
27 the event this Consent Agreement is not entered by this Court;

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1 **WHEREAS**, this Consent Agreement shall be submitted to the United States
2 Department of Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c)
3 and to the Proposition 65 Enforcement Reporting section of the office of the California
4 Attorney General; and shall thereafter be submitted for approval by the Court, the date of
5 which approval shall be referred to herein as the “Court Approval Date;”

6 **WHEREAS**, at the time the Consent Agreement is submitted for approval to the United
7 States District Court, CSPA shall request a dismissal of the First Amended Complaint with
8 prejudice and the Parties shall stipulate and request that the Court retain jurisdiction for the
9 enforcement of this Agreement as provided herein;

10 **AND WHEREAS**, the Parties agree that it is in their mutual interest to resolve this
11 matter without further litigation.

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

14 **I. COMMITMENT OF DEFENDANTS**

15 **1. Compliance With General Permit & Clean Water Act.** Beginning immediately, and
16 throughout the term of this Consent Agreement, ALI, as a corporate entity acting by and through its
17 designated agents, representatives and/or employees, shall commence all measures needed to operate
18 the Facility in full compliance with the requirements of the General Permit and the Clean Water Act,
19 subject to any defenses available under the law.

20 **2. ALI’s Implementation of Specific Storm Water Best Management Practices.**
21 Except as otherwise noted herein, within 30 days after the Court Approval Date, ALI shall complete or
22 cause to be completed the implementations of the following storm water control measures/best
23 management practices (“BMPs”):

24 (a) ALI shall continue collecting samples of storm water from established Facility
25 sampling points R-5A and R-5B as appropriate;

26 (b) ALI shall amend the Facility’s SWPPP and SWPPP site map to accurately reflect
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1 the precise geographic location of Facility sampling point R-6 by amending these documents to
2 include the latitude and longitude of sampling point R-6;

3 (c) ALI shall ensure that the edges of the Facility areas of active landfill operations
4 do not themselves become sources of erosion and pollution, and that they are graded in a way that will
5 prevent storm water from creating rills, channels and gullies, especially on the Facility's unpaved
6 access roads;

7 (d) ALI shall implement all erosion control BMPs currently articulated in the
8 Facility's SWPPP and Appendix B to its Storm Water Master Management Plan ("SWMMP")
9 throughout the Facility's network of unpaved access roads, especially those in the more remote
10 southern portions of the Facility;

11 (e) Where new unpaved access roads are built, ALI shall minimize road slopes and
12 shall grade such roads to employ rolling dips and/or water bars (as described in the SWPPP) as needed
13 to adequately reduce the erosion potential of such roads;

14 (f) Throughout the Wet Season (i.e., October 1 through May 31) in each of the two
15 Wet Seasons occurring during the term of this Consent Agreement (i.e., 2011-2012 and 2012-2013),
16 ALI shall assign personnel to monitor local weather reporting in order to identify when the next
17 anticipated qualifying storm event is likely to occur at the Facility; and,

18 (g) ALI shall include a visual monitoring inspection form in the SWPPP and train
19 Facility personnel responsible for conducting visual monitoring of storm water in the proper use of the
20 form.

21 **3. SWPPP Amendments/Additional BMPs.** Within 30 days after the Court Approval
22 Date, ALI shall formally amend the SWPPP for the Facility to incorporate all of the requirements of
23 this Consent Agreement.

24 **4. Sampling Frequency.** ALI shall collect and analyze or cause to be collected and
25 analyzed samples from each discharge point formally designated in the Facility SWPPP from four (4)
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1 Qualifying Storm Events¹ (to the extent that such Qualifying Storm Events occur and to the extent that
2 the discharge point has actual discharge during the qualifying event), in each of the two Wet Seasons
3 occurring during the term of this Consent Agreement (2011-2012 and 2012-2013). The storm water
4 sample results shall be compared with the values set forth in **Exhibit D**, attached hereto, and
5 incorporated herein by reference. If the results of any such samples exceed the parameter values set
6 forth in **Exhibit D**, ALI shall comply with the “Action Memorandum” requirements set forth below.

7 **5. Sampling Parameters.** All samples shall be analyzed for each of the constituents
8 listed in **Exhibit D** by a laboratory accredited by the State of California.² All samples collected from
9 the Facility shall be delivered to the laboratory as soon as possible to ensure that sample “hold time” is
10 not exceeded. Analytical methods used by the laboratory shall be adequate to detect the individual
11 constituents at or below the values specified on **Exhibit D**. Sampling results shall be provided to
12 CSPA within TEN (10) business days of Defendants’ receipt of the laboratory report from each
13 sampling event pursuant to the Notice provisions below. In the event that two consecutive samples
14 from a given discharge point measure any sample parameter (other than pH, Oil & Grease, Specific
15 Conductivity and Total Suspended Solids) as not present in significant quantities³, Defendants shall
16 not be obligated to continue to sample for that parameter at that discharge point for the duration of the
17 agreement.

18 **6. “Action Memorandum” Trigger; CSPA Review Of “Action Memorandum”;**
19 **Meet-and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Paragraph 4

20 _____
21 ¹ “Qualifying Storm Events” under the General Permit are those events in which (i) the samples taken are
22 preceded by at least three (3) working days during which no storm water discharges from the Facility have
23 occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being
24 sampled; and (iii) the samples are collected during daylight operating hours.

25 ² CSPA’s agreement to the terms of this Consent Agreement shall not constitute a waiver of CSPA’s right to
26 assert and argue in any future proceeding that the General Permit requires the sampling of additional pollutant
27 parameters at the Facility, including but not limited to arsenic, cadmium, chemical oxygen demand, lead,
28 magnesium, mercury, nitrate + nitrite, selenium, and silver.

³ The phrase “significant quantities” is used herein as defined in the General Permit: “the volume,
concentrations, or mass of a pollutant that can cause or threaten to cause pollution, contamination, or nuisance;
adversely impact human health or the environment; and/or cause or contribute to a violation of any applicable
water quality standards for the receiving water.”

1 above exceeds the evaluation levels set forth in **Exhibit D**, or if ALI fails to collect and analyze
2 samples from four (4) storm events, as qualified in the General Permit, ALI shall prepare a written
3 statement discussing the exceedance(s) and /or failure to collect and analyze samples from four (4)
4 storm events, the possible cause and/or source of the exceedance(s), and additional measures (if any)
5 that will be taken to address and eliminate the problem and future exceedances (“Action
6 Memorandum”). The Action Memorandum shall be provided to CSPA not later than July 15th
7 following the conclusion of each Wet Season. Recognizing that a SWPPP is an ongoing iterative
8 process meant to encourage innovative BMPs, such additional measures may include, but are not
9 limited to, taking confirmation samples and/or taking samples in other locations, further material
10 improvements to the storm water collection and discharge system, changing the frequency of Facility
11 sweeping, changing the type and extent of storm water filtration media or modifying other industrial
12 activities or management practices at the Facility. Such additional measures, to the extent feasible,
13 shall be implemented immediately and in no event later than 60 days after the due date of the Action
14 Memorandum. Within THIRTY (30) days of implementation, the Facility SWPPP shall be amended
15 to include all additional BMP measures designated in the Action Memorandum. CSPA may review
16 and comment on an Action Memorandum and suggest any additional pollution prevention measures it
17 believes are appropriate, including, but not necessarily sampling locations other than currently
18 implemented; however, CSPA’s failure to do so shall not be deemed to constitute agreement with the
19 proposals set forth in the Action Memorandum. Upon request by CSPA, ALI agrees to meet and
20 confer in good faith (at the Facility, if requested by Plaintiff) regarding the contents and sufficiency of
21 the Action Memorandum.

22 **7. Inspections During The Term Of This Consent Agreement.** In addition to any site
23 inspections conducted as part of the meet-and-confer process concerning an Action Memorandum as
24 set forth above, ALI shall permit representatives of CSPA to perform up to three (3) physical
25 inspections of the Facility during the term of this Consent Agreement. These inspections shall be
26 performed by CSPA’s counsel and consultants and may include sampling, photographing, and/or
27 videotaping. CSPA shall provide ALI with a copy of all sampling reports, photographs and/or video
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1 arising from such site inspections. CSPA shall provide at least forty-eight (48) hours advance notice
2 of such physical site inspection, except that Defendants shall have the right to deny access if
3 circumstances would make the inspection unduly burdensome and pose significant interference with
4 business operations or any party/attorney, or the safety of individuals. In such case, ALI shall specify
5 at least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by CSPA
6 may proceed. ALI shall not make any alterations to Facility conditions during the period between
7 receiving CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's inspection that
8 Defendants would not otherwise have made but for receiving notice of CSPA's request to conduct a
9 physical inspection of the Facility, excepting any actions taken in compliance with any applicable laws
10 or regulations. Nothing herein shall be construed to prevent ALI from continuing to implement any
11 BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

12 **8. Defendants' Communications with Regional and State Boards.** During the term of
13 this Consent Agreement, ALI shall provide CSPA with copies of all documents submitted to or
14 received from the Regional Board or the State Board concerning storm water discharges from the
15 Facility, including, but not limited to, all documents and reports submitted to the Regional Board
16 and/or State Board as required by the General Permit. Such documents and reports shall be provided
17 to CSPA pursuant to the Notice provisions herein (at ¶ 25) and contemporaneously with ALI's
18 submission to such agencies.

19 **9. SWPPP Amendments.** ALI shall provide CSPA with a copy of any amendments to
20 the Facility SWPPP made during the term of the Consent Agreement within fourteen (14) days of such
21 amendment.

22 **II. MITIGATION, PAYMENT IN LIEU OF CIVIL PENALTIES, COMPLIANCE**
23 **MONITORING AND FEES AND COSTS**

24 **10.** As mitigation of the Clean Water Act violations alleged in CSPA's First Amended
25 Complaint, ALI agrees to pay the sum of \$20,000 within SEVEN (7) business days after the Court
26 Approval Date to the Rose Foundation for Communities and the Environment (6008 College Avenue,
27 Oakland, CA 94618, Attn: Tim Little) for projects to improve water quality in Anderson Creek,
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1 Cottonwood Creek, the Sacramento River and/or the Sacramento-San Joaquin-San Francisco Bay-
2 River Delta”. In lieu of any civil penalty assessment against corporate defendants Anderson Landfill,
3 Inc. or USA Waste under Proposition 65, ALI agrees to pay the additional sum of \$10,000 to the Rose
4 Foundation for Communities and the Environment within SEVEN (7) business days after the Court
5 Approval Date. These additional funds shall be used to reduce exposures to toxic chemicals, and to
6 increase consumer, worker and community awareness of the health hazards posed by toxic chemicals
7 consistent with the statutory goals of Proposition 65.

8 **11.** ALI agrees to reimburse CSPA in the amount of \$47,500 to defray CSPA’s reasonable
9 investigative, expert, consultant and attorneys’ fees and costs, and all other costs incurred as a result of
10 investigating the activities at the Facility, bringing the Action and negotiating a resolution in the public
11 interest. Such payment shall be made payable to “Law Offices of Andrew L. Packard Attorney-Client
12 Trust Account ” within SEVEN (7) business days after the Court Approval Date.

13 **12. Compliance Monitoring Funding.** To defray CSPA’s reasonable investigative,
14 expert, consultant and attorneys’ fees and costs associated with monitoring Defendants’ compliance
15 with this Consent Agreement, ALI agrees to contribute \$7,500 total to a compliance monitoring fund
16 maintained by counsel for CSPA as described below. Compliance monitoring activities may include,
17 but shall not be limited to, site inspections, review of water quality sampling reports, review of annual
18 reports, discussions with representatives of Defendants concerning the Action Memoranda referenced
19 above, and potential changes to compliance requirements herein, preparation for and participation in
20 meet-and-confer sessions, water quality sampling and analysis, and compliance-related activities.
21 Payment shall be made payable to “Law Offices of Andrew L. Packard Attorney-Client Trust
22 Account” within SEVEN (7) business days of the Court Approval Date.

23 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

24 **13.** With the exception of the timelines set forth above for addressing exceedances of
25 values specified on **Exhibit D** and Action Memoranda, if a dispute under this Consent Agreement
26 arises, or either Party believes that a breach of this Consent Agreement has occurred, CSPA and ALI
27 shall meet and confer within seven (7) days of receiving written notification from the other Party of a
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1 request for a meeting to determine whether a violation has occurred and to develop a mutually agreed
2 upon plan, including implementation dates, to resolve the dispute. If CSPA and ALI fail to meet and
3 confer, or the meet-and-confer does not resolve the issue, after at least seven days have passed after
4 the meet-and-confer occurred or should have occurred, either Party shall be entitled to all rights and
5 remedies under the law, including filing a motion with the District Court of California, Eastern
6 District, which shall retain jurisdiction over the Action for the limited purposes of enforcement of the
7 terms of this Consent Agreement. CSPA and ALI shall be entitled to seek fees and costs incurred in
8 any such motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in
9 Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such
10 provision.

11 **14. CSPA’s Waiver and Release.** Upon Court approval and entry of this Consent
12 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,
13 directors, officers, agents, attorneys, representatives, and employees, releases Defendants and their
14 officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their
15 predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other
16 representatives (each a “Released Defendant Party”) from, and waives all claims which arise or could
17 have arisen from or pertain to the Action, including, without limitation, all claims for injunctive relief,
18 damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others),
19 costs, expenses or any other sum incurred or claimed or which could have been claimed in this Action,
20 for the alleged failure of Defendants to comply with the Clean Water Act and the alleged failure of
21 corporate defendants Anderson Landfill, Inc.. and USA Waste to comply with Proposition 65 at the
22 Facility, up to the Effective Date of this Consent Agreement.

23 **15.** During the term of the Consent Agreement, CSPA agrees that neither CSPA, its
24 officers, executive staff, or members of its governing board nor any organization under the
25 control of CSPA, its officers, executive staff, or members of its governing board, will file any
26 lawsuit against Defendants seeking relief for alleged violations of the Clean Water Act,
27 General Permit or Proposition 65 that have occurred or that may be occurring at the Facility.
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1 CSPA further agrees that, during the term of the Consent Agreement, CSPA will not support
2 other lawsuits, by providing financial assistance, personnel time or other affirmative actions,
3 against Defendants that may be proposed by other groups that or individuals who would rely
4 upon the citizen suit provision of the Clean Water Act to challenge Defendants' compliance
5 with the Clean Water Act or General Permit at the Facility, or rely on the private enforcement
6 provisions of Proposition 65 to challenge Anderson Landfill, Inc. and USA Waste's
7 compliance with Proposition 65 at the Facility.

8 **16. Defendants' Waiver and Release.** Defendants, on their own behalf and on behalf of
9 those Released Defendant Parties under its control, releases CSPA (and its officers, directors,
10 employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and
11 its agents, attorneys, and other representative) from, and waives all claims which arise or could have
12 arisen from or pertain to the Action, including all claims for fees (including fees of attorneys, experts,
13 and others), costs, expenses or any other sum incurred or claimed or which could have been claimed
14 for matters associated with or related to the Action.

15 **17.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation and
16 Order that shall provide that:

- 17 a. the First Amended Complaint and all claims therein shall be dismissed with
18 prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2); and
19 b. the Court shall retain and have jurisdiction over CSPA and Defendants with
20 respect to disputes arising under this Agreement.

21 Nothing in this Consent Agreement shall be construed as a waiver of any party's right to appeal from
22 an order that arises from an action to enforce the terms of this Consent Agreement. The Parties agree
23 that Defendant Mike Rivera shall be dismissed from this matter and that all obligations under this
24 Consent Decree shall be those of ALI and CSPA, and not of Defendant Mike Rivera.

25 **IV. MISCELLANEOUS PROVISIONS**

26 **18.** The Parties enter into this Consent Agreement for the purpose of avoiding prolonged
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1 and costly litigation. Nothing in this Consent Agreement shall be construed as, and Defendants
2 expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law,
3 nor shall compliance with this Consent Agreement constitute or be construed as an admission by
4 Defendants of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph
5 shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under
6 this Consent Agreement.

7 **19.** The Consent Agreement shall terminate on September 30, 2013.

8 **20.** The Consent Agreement may be executed in one or more counterparts which, taken
9 together, shall be deemed to constitute one and the same document. An executed copy of this Consent
10 Agreement shall be valid as an original.

11 **21.** In the event that any one of the provisions of this Consent Agreement is held by a court
12 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

13 **22.** The language in all parts of this Consent Agreement, unless otherwise stated, shall be
14 construed according to its plain and ordinary meaning. This Consent Agreement shall be construed
15 pursuant to California law, without regard to conflict of law principles.

16 **23.** The undersigned are authorized to execute this Consent Agreement on behalf of their
17 respective parties and have read, understood and agreed to be bound by all of the terms and conditions
18 of this Consent Agreement.

19 **24.** All agreements, covenants, representations and warranties, express or implied, oral or
20 written, of the Parties concerning the subject matter of this Consent Agreement are contained herein.
21 This Consent Agreement and its attachments are made for the sole benefit of the Parties, and no other
22 person or entity shall have any rights or remedies under or by reason of this Stipulated Judgment,
23 unless otherwise expressly provided for therein.

24 **25. Notices.** Any notices or documents required or provided for by this Consent
25 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent Agreement
26 shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the
27 alternative, shall be sent by electronic mail transmission to the email addresses listed below:
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Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
E-mail: DeltaKeep@aol.com

With copies sent to:

Andrew L. Packard
Erik M. Roper
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel: (707) 763-7227
E-mail: Andrew@packardlawoffices.com
Erik@packardlawoffices.com

And to:

Robert J. Tuerck, Esq.
Jackson & Tuerck
P.O. Box 148
429 W. Main Street, Suite C
Quincy, CA 95971
Tel: 530-283-0406
Fax: 530-283-0416
E-mail: Bob@JacksonTuerck.com

Any notices or documents required or provided for by this Consent Agreement or related thereto that are to be provided to ALI pursuant to this Consent Agreement shall be sent by U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail transmission to the email addresses listed below:

Anderson Landfill, Inc.
18703 Cambridge Road
Anderson, CA 96007
Tel: 530.347.5236
Fax: (530) 347-7056

With copies sent to:

John Lynn Smith, Esq.
Reed Smith, LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
Tel: 415.659.4863
Fax: 415.391.8269
E-mail: jlsmith@reedsmith.com

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Andrew M. Kenefick, Esq.
Waste Management Legal Department
801 Second Avenue, Suite 614
Seattle, WA 98104
Tel: (206) 264-3062
Fax: (866) 863-7961
E-mail: akenefick@wm.com

Each Party shall promptly notify the other of any change in the above-listed contact information.

26. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

27. Neither CSPA, Anderson Landfill, Inc. nor USA Waste shall be considered to be in default in the performance of any of its obligations when a failure to perform is due to a “Force Majeure.” A Force Majeure event is any circumstances beyond the Party’s control, including, without limitation, any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm event, or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to overcome, the Force Majeure.

28. If for any reason the Court should decline to approve this Consent Agreement in the form presented, the Parties shall use their best efforts to work together to modify the Consent Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to modify this Consent Agreement in a mutually acceptable manner, this Consent Agreement shall become null and void.

29. This Consent Agreement shall be deemed to have been drafted equally by the Parties, and shall not be interpreted for or against any Party on the ground that any such party drafted it.

30. This Consent Agreement and the attachments contain all of the terms and conditions agreed upon by the Parties relating to the matters covered by the Consent Agreement, and supersede any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications of the Parties, whether oral or written, respecting the matters covered by this Consent Agreement. This Consent Agreement may be amended or modified only by a writing signed by CSPA, Anderson Landfill, Inc. and USA Waste or their authorized representatives, and then by order

1 of the Court.

2 **31.** Except in case of an emergency but subject to the regulatory authority of any applicable
3 governmental authority, any breach of or default under this Consent Agreement capable of being cured
4 shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default,
5 or within such other period approved in writing by the Party making such allegation, which approval
6 shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure
7 or, if the breach or default can be cured but is not capable of being cured within such five (5) day
8 period, has commenced and is diligently pursuing to completion such cure.

9 The Parties hereto enter into this Consent Agreement and respectfully submit it to the Court for
10 its approval and entry as an Order and Final Judgment, provided, however that, pursuant to 33 U.S.C.
11 § 1365(c)(3), the Court shall not enter this Consent Agreement until 45 days after receipt of a copy of
12 the proposed Consent Agreement by the Attorney General and the Administrator of the U.S.
13 Environmental Protection Agency. If the Attorney General and the Administrator of the U.S.
14 Environmental Protection Agency do not submit comments on the Consent Agreement, the
15 Parties shall notify the Court when the 45-day statutory review period has ended.

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17 Dated: _____ California Sportfishing Protection Alliance

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19 By: _____
20 Bill Jennings, Executive Director

21 Dated: _____ Anderson Landfill, Inc.

22
23 By: _____
24 Robert E. Longo
25 Vice President and Assistant Secretary

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Dated: _____ USA Waste of California, Inc.

By: _____
Robert E. Longo
Vice President and Assistant Secretary

Dated: _____ Mike Rivera

By: _____
Mike Rivera

EXHIBIT A – Facility Site Map

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EXHIBIT B – Clean Water Act Notice of Violation

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EXHIBIT C – Proposition 65 Notice of Violation

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EXHIBIT D

Parameter	Action Memorandum Trigger
Iron	10.0 mg/L ⁴
Aluminum	0.75 mg/L
Copper	0.063 mg/L
Zinc	0.117 mg/L
Oil & Grease	15.0 mg/L
pH	6.5 – 8.5
Specific Conductivity	200 µmho/cm
Total Suspended Solids	100.0 mg/L
Turbidity	None

⁴ For iron, the Action Memorandum is triggered only if the Action Memorandum Trigger is exceeded during two different sampling events during a Wet Season.