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8 **OFFICE OF ADMINISTRATIVE HEARINGS**  
9 **FOR THE STATE OF CALIFORNIA**

11  
12 In THE MATTER OF: ) OAH Case No.: 2009120240  
13 )  
14 Acme Fill Corporation ) SETTLEMENT AGREEMENT  
15 Mr. Nicholas Farros, Sr., President ) DATE: January 29, 2010  
16 950 Waterbird Way )  
Martinez, CA 94533 )  
17 )

17 The parties and their counsel, having appeared at a Mandatory Settlement Conference on  
18 the captioned matter and on the date designated; resolve this matter as described in this  
19 document to avoid the risk, uncertainty and cost of litigation.  
20

21 **INTRODUCTION**

22 Acme Fill Corporation (“Acme”) was issued violations on or about September 29, 2009  
23 for the alleged failure to perform quarterly groundwater monitoring, to completely perform  
24 Appendix IX monitoring, to comply with the concentration limit provisions of the statistical  
25 analysis plan, to design a groundwater monitoring system which included identification of the  
26 uppermost aquifer and aquifers hydraulically connected, and to maintain as part of their  
27 operating record information regarding monitoring, testing, analytical data and corrective action.  
28 Acme denied that it had violated or was violating any of the Departments regulation as so

1 alleged. At the January 29, 2010 conference; the parties agreed that the facility was in  
2 compliance.

3 Acme has offered in defense that the Department of Toxic Substances Control (“DTSC”)  
4 in 1999 had approved a post closure groundwater monitoring and corrective action plan that  
5 required Acme to implement post closure plan conditions that did not contain the conditions at  
6 issue, and that further Acme had detrimentally relied upon the 1999 DTSC approval. Acme has  
7 further alleged that delays caused by DTSC in the processing of the post closure permit resulted  
8 in Acme being subject to the requirements at the time of the violations that they may not have  
9 been subject to had a post closure permit been proceeded faster. DTSC disputes Acme’s  
10 defenses.

### 11 **FACILITY DESCRIPTION**

12 Acme Landfill covers about 383 acres and is subdivided into three parcels. This action  
13 involves the North Parcel; a closed Class I landfill of approximately 135 acres. The physical  
14 address is 950 Waterbird Way, Martinez, California 94553.

### 15 **RECITATION OF PROCEDURAL HISTORY**

16  
17 DTSC’s issued an Enforcement Order to Acme on September 17, 2009, asserting the  
18 following violations of DTSC regulations:

19 That Respondent violated California Code of Regulations, title 22, division 4.5, chapter  
20 15, section 66265.97, subsection (b)(1) in that for over three years, from March 10 2003 until  
21 January 27, 2007, Respondent failed to design a groundwater monitoring system which included  
22 the identification of the uppermost aquifer and aquifers hydraulically connected, to wit:

23 a) Respondent failed to characterize the nature of geologic contacts at the western  
24 margin of the facility. By not characterizing the nature of geologic contacts at the  
25 western margin of the facility, the adequacy of the groundwater monitoring  
26 system could not be demonstrated.

27 b) Respondent failed to identify the vertical migration pathways within the  
28 uppermost aquifer. By not characterizing the vertical interconnection of water-

1 bearing zones within the uppermost aquifer, the adequacy of the groundwater  
2 monitoring system could not be demonstrated.

3 That Respondent violated California Code of Regulations, title 22, division 4.5, chapter  
4 15, section 66265.73, subsection (b)(6) in that for over two years, from March 10 2003 until  
5 August 5 2005, Respondent failed to maintain as part of their operating record monitoring,  
6 testing, or analytical data, and corrective action, to wit:

7 a) Respondent failed to include in the operating record the boring log for water  
8 level well WPZ-1E.

9 b) The Respondent failed to maintain in the operating record accurate well-head  
10 and screened-interval elevations. The as-built specifications for ground surface  
11 and top-of-screen elevations for wells PC-20A, PC-21A, PC-21B, PC-22A, and  
12 MW-501 did not match the Sampling and Analysis Plan (SAP) Tables SAP-2 and  
13 SAP-3 ground surface elevations and depths-to-screens.

14 That Respondent violated California Code of Regulations, title 22, division 4.5, chapter  
15 15, section 66265.99, subsection (e)(6) in that for the five years preceding August 31, 2009, the  
16 Respondent failed to analyze groundwater samples at well MW-501 for all constituents  
17 contained in Appendix IX at least annually, to wit: Respondent is required to conduct  
18 groundwater monitoring under the Evaluation Plan Monitoring Program because a release has  
19 been detected in well MW-501 and facility failed to conduct the required analyses.

20 That Respondent violated California Code of Regulations, title 22, division 4.5, chapter  
21 15, section 66265.99, subsection (e)(3) in that for the five years preceding August 31, 2009, the  
22 Respondent failed to collect samples from each monitoring point at least quarterly, to wit:  
23 Respondent only collected samples from each monitoring point semi-annually.

24 That Respondent violated California Code of Regulations, title 22, division 4.5, chapter  
25 15, section 66265.91, subsection (b) in that for the five years preceding August 31, 2009,  
26 Respondent failed to comply with the concentration limit provisions of the statistical evaluation  
27 plan, to wit: Respondent failed to update the concentration limits for all constituents of concern  
28 as stipulated in the statistical evaluation plan.

1 On October 16, 2009, Acme submitted its Notice of Defense to the Department and  
2 requested a hearing before the Office of Administrative Hearings (OAH).

3 A Prehearing Conference was set by OAH for February 11, 2010, and a Mandatory  
4 Settlement Conference was held before Administrative Law Judge Steven Owyang on January  
5 29, 1020.

6 A full and final settlement was reached by the parties at the Mandatory Settlement  
7 Conference, and a written outline of the settlement terms was executed by the party  
8 representatives. This purpose of this document is to further memorialize the terms of that  
9 settlement.

10 **SCHEDULE OF COMPLIANCE**

11 The facility has returned to compliance.  
12

13 **SETTLEMENT TERMS**

14 To avoid the risk, uncertainty and cost of litigation, the parties agreed to the following  
15 terms:

- 16 1. Acme will pay to DTSC the sum of \$60,000 as follows:  
17 a. \$20,000 is due and payable upon execution of this document.  
18 b. \$20,000 is due and payable no later then 90 days from the date of  
19 execution of this document.  
20 c. \$20,000 is due and payable no later then 180 days from the date of  
21 execution of this document.  
22

23 Acme shall deliver the payment to:

24 Department of Toxic Substances Control  
25 Accounting Office  
26 1001 I Street, 21st floor  
27 P. O. Box 806  
28 Sacramento, California 95812-0806

1 A photocopy of the check shall be sent to:

2 Mr. Paul S. Kewin  
3 Unit Chief  
4 Northern California Branch  
5 Enforcement & Emergency Response Program  
6 8800 Cal Center Drive  
7 Sacramento, CA 95826-3200

8 2. Ten per cent (10%) of the total amount to be paid pursuant to this settlement is  
9 allocated to a penalty for the alleged failure to completely perform the Appendix IX monitoring  
10 as asserted by the Department. The remaining amount to be paid pursuant to this settlement is  
11 allocated to costs incurred by DTSC related to the Acme site.

12 3. Acme stipulates that no portion of the settlement money will originate from or be  
13 procured from any post closure maintenance financial policy or mechanism.

14 4. The parties are entering into this settlement to avoid the cost, risk and uncertainty  
15 of litigation.

16 5. Acme has a post closure permit application pending. Once the post closure permit  
17 is issued; Acme will be subject to the permitting regulations in lieu of the interim status  
18 regulations for the area or facility covered by the permit.

19 Liability: Except as provided for herein, nothing in this Settlement shall constitute or be  
20 construed as a satisfaction or release from liability for any conditions or claims arising as a result  
21 of past, current, or future operations of Respondent.

22 Government Liabilities: The State of California shall not be liable for injuries or  
23 damages to persons or property resulting from acts or omissions by Respondent or related parties  
24 in carrying out activities pursuant to this Settlement, nor shall the State of California be held as a  
25 party to any contract entered into by Respondent or its agents in carrying out activities pursuant  
26 to this Settlement.

27 Extension Request: If Respondent is unable to perform any activity or submit any  
28 document within the time required under this Settlement, the Respondent may, prior to

1 expiration of the time, request an extension of time in writing. The extension request shall  
2 include a justification for the delay.

3 Extension Approvals: If the Department determines that good cause exists for an  
4 extension, it will grant the request and specify in writing a new compliance schedule.

5 Time Periods: "Days" for purposes of this Order means calendar days.  
6

7 This Settlement agreement may be executed in counterparts.  
8  
9

10 Dated: February 11, 2010

Original signed by Robert Sullivan  
Attorney on behalf of Plaintiff

11  
12  
13 Dated: February 10, 2010

Original signed by Paul S. Kewin  
Department of Toxic Substances Control

14  
15  
16 Dated: February 10, 2010

Original signed by Thomas M. Bruen  
Attorney on behalf of Respondent

17  
18  
19 Dated: February 10, 2010

Original signed by Nicholas J. Farros, Sr.,  
President  
Acme Fill Corporation