



BEFORE THE DIRECTOR OF THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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In the Matter of:)
Cave Creek Landfill located at 8.3 miles east of)
I-17 approximately 1/2 mile south of Carefree)
Highway Phoenix, Maricopa, Arizona)
Azurite Place ID 1169)

CONSENT ORDER

Docket No. S-2-10

Maricopa County in its capacity as owner and/or operator of Cave Creek Landfill located at 8.3 miles east of I-17 approximately 1/2 mile south of Carefree Highway, Phoenix, Maricopa, Arizona.

RECITALS

Maricopa County acknowledges that no promise of any kind or nature whatsoever, was made to induce it to enter into this Consent Order, and Maricopa County has done so voluntarily.

Maricopa County acknowledges that by entering into this Consent Order, it does not resolve any liability it may have for civil penalties for violations of any State or Federal environmental law.

By entering into this Consent Order, Maricopa County does not admit to any civil or criminal liability, or waive any right including but not limited to the assertion of any defense available to Maricopa County under applicable law. Further, Maricopa County does not admit, and both the Arizona Department of Environmental Quality (ADEQ) and Maricopa County retain the right to controvert in any subsequent proceeding except proceeding to implement or enforce this Consent Order, the validity of any Findings of Fact or Conclusions of Law contained in this Consent Order.

Initials WJ

1 The undersigned representative of Maricopa County certifies that he is fully authorized to
2 execute this Consent Order on behalf of Maricopa County and to legally bind Maricopa County
3 to this Consent Order.

4 Maricopa County admits to the jurisdiction of the Director of ADEQ.

5 Except as to the right to controvert the validity of any Findings of Fact or Conclusion of
6 Law contained in this Consent Order in a proceeding other than to enforce this Consent Order,
7 Maricopa County consents to the terms and entry of this Consent Order and agrees not to contest
8 the validity or terms of this Consent Order in any subsequent proceeding.

9 **THEREFORE, IT IS HEREBY ORDERED** as follows:

10 **I. JURISDICTION**

11 The Director of ADEQ has jurisdiction over the subject matter of this action and is
12 authorized to issue this Consent Order pursuant to the Arizona Revised Statutes (A.R.S.) §§ 41-
13 1092.07(F)(5), 49-261, and 49-781.

14 **II. FINDINGS**

15 **THE DIRECTOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**
16 **CONCLUSIONS OF LAW:**

17 **A. Findings of Fact**

18 1. The Cave Creek Landfill is owned and operated by Maricopa County and
19 is located approximately one-half mile south of Carefree Highway, about three miles west of
20 Cave Creek Road, and 8 miles east of Interstate 17 in Phoenix, Arizona, Maricopa County.

21 2. During the May 11, 1998, routine inspection of the facility, the Solid
22 Waste Inspections and Compliance Unit (SWICU) observed from the groundwater monitoring
23 results of landfill monitoring well MW1 0.005 milligrams per liter (mg/L) of trichloroethylene
24 (TCE) which exceeds Aquifer Water Quality Standards (AWQS) and at 0.015 mg/L in December
25 1997.

1 3. During the May 11, 1998, inspection, the SWICU also observed that the
2 facility did not place a notice of the exceedence in their operating record; did not notify ADEQ
3 of the exceedence; and did not establish a monitoring program or demonstrate that the
4 exceedence was caused by some condition other than the landfill within ninety (90) days of
5 detecting the exceedence.

6 4. A Notice of Violation (NOV) was issued to Maricopa County on July
7 1998, alleging violations observed during the inspection.

8 5. Additional groundwater monitoring conducted on May 28, 1998, and July
9 28, 1998, illustrated 0.089 mg/L and 0.085 mg/L TCE in monitoring wells MW1 and MW2.

10 6. On September 16, 1998, and October 23, 1998, the SWICU received a
11 letter from Maricopa County indicating that the groundwater levels in MW1 and MW2 were too
12 low to obtain adequate samples.

13 7. On November 17, 1998, and March 26, 1999, Maricopa County obtained
14 groundwater samples from a production well located at the north end of the landfill and MW-2
15 which indicated 0.012 mg/L and 0.017 mg/L of TCE and 0.007 mg/L and 0.063 mg/L of TCE,
16 respectively. Maricopa County was unable to sample groundwater monitoring wells MW1 due to
17 continued low groundwater levels on November 17, 1998.

18 8. On August 15, 1999, Maricopa County entered into an administrative
19 order (Docket #S-189-99) with ADEQ that required Maricopa County to characterize the nature
20 and source of groundwater contamination. This consent order allowed Maricopa County an
21 opportunity to demonstrate that the landfill was not a source of the TCE contamination.

22 9. Maricopa County did not submit a plan to install a new monitoring well or
23 other means of collecting down gradient water samples after determining that there was
24 insufficient water in the monitoring wells to collect adequate samples. Instead, Maricopa County
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1 was actively working to towards demonstrating that the contamination was a result of another
2 landfill north of the Cave Creek Landfill that had been closed since the 1970s.

3 10. On October 14, 1999, the SWICU sent a letter to Maricopa County
4 notifying it that they did not adequately demonstrate that the TCE contamination in groundwater
5 at that landfill was the result of a source other than the Cave Creek Landfill.

6 11. On June 28, 2005, Maricopa County entered into Consent Order (Docket #
7 S-102-05) with ADEQ that required the characterization and remediation of the contamination.

8 12. On August 26, 2005, Maricopa County submitted *Maricopa County*
9 *Waste Management Cave Creek Landfill Groundwater Characterization Plan*, (Work Plan)
10 dated August 26, 2005.

11 13. On December 31, 2005, Maricopa County sent ADEQ a letter requesting
12 approval of the Work Plan and the proposed location of the additional ground water monitoring
13 well. This new well was proposed as part of the Work Plan, as required by Section III of Consent
14 Order, docket number S-102-05.

15 14. On August 31, 2006, ADEQ sent a letter to Maricopa County approving
16 the location of the proposed groundwater monitoring well (MW-3). The letter also requested that
17 Maricopa County submit a modified Work Plan including procedures and timeframes for
18 submitting an alternative well location(s) in the event that sampling of MW-3 did not provide
19 conclusive information regarding the extent of groundwater contamination.

20 15. On November 5, 2008, Maricopa County submitted *Maricopa County Risk*
21 *Management Department, Cave Creek Landfill Groundwater Remedial Action Plan*, (RAP)
22 dated September 25, 2008. ADEQ had not received the modified Work Plan; therefore, ADEQ
23 had not approved the Work Plan, nor had Maricopa County submitted a Groundwater
24 Characterization Report, as required by Consent Order Docket S-102-05, Section III.

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1 16. On January 29, 2009, ADEQ and representatives of Maricopa County met
2 to discuss the RAP and the Work Plan.

3 20. On February 13, 2009, the Solid Waste Plan Review Unit (SWPRU) sent a
4 letter to Maricopa County explaining that the submittal of the RAP was premature. The letter
5 outlined the required information including groundwater flow directions, volatile organic
6 compounds distribution, groundwater monitoring well locations, and hydrogeologic conditions
7 of the vicinity of the landfill prior to beginning remedial alternative evaluation.

8 22. On May 11, 2009, Maricopa County submitted the *Addendum to the Cave*
9 *Creek Landfill Groundwater Characterization Work Plan*. On May 13, 2009, ADEQ notified
10 Maricopa County in writing of their approval of the Work Plan and the proposed schedule.

11 B. Conclusions of Law

12 1. Cave Creek Landfill accepted household solid waste as defined in A.R.S.
13 § 49-701(14) and 40 CFR § 258.2, incorporated by into state law by A.R.S. § 49-761(B), and is a
14 municipal solid waste landfill as defined in A.R.S. § 49-701(20) and 40 CFR § 258.2.

15 2. Cave Creek Landfill ceased accepting waste in 1999 and is a closed solid
16 waste facility as defined in A.R.S. § 49-701.3.

17 3. The AWQS for TCE is 0.005 ppm as established by A.A.C. R18-11-
18 406(C).

19 4. Maricopa County violated 40 CFR § 258.54(c) incorporated by A.R.S. §
20 49-761(B) by failing to begin assessment monitoring within 90 days of detecting a statistically
21 significant exceedence of TCE over background levels, and by failing to successfully
22 demonstrate within 90 days that a source other than the landfill caused the contamination.

23 5. Maricopa County violated 40 CFR § 258.55(g)(1)(i-ii) incorporated by
24 A.R.S. § 49-761(B) by failing to characterize the nature and extent of groundwater
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1 B. ADEQ will review the status reports and relay any disputes in writing to
2 Maricopa County. Maricopa County shall incorporate all required modifications, changes or
3 other alterations, as requested by ADEQ, within a reasonable time specified by ADEQ.

4 **V. VIOLATIONS OF ORDER/STIPULATED PENALTIES**

5 A. Under A.R.S. § 49-783, violation of this Consent Order subjects Maricopa
6 County to civil penalties of up to \$1,000 per day per violation not to exceed fifteen thousand
7 dollars for each violation. ADEQ and Maricopa County agree that the calculation of civil
8 penalties for violation of this Consent Order would be very difficult.

9 B. ADEQ and Maricopa County therefore agree that if Maricopa County fails to
10 comply with any requirement of this Consent Order, Maricopa County shall pay a stipulated
11 penalty pursuant to the schedule below:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day of Violation</u>
13 1 st to 30 th day	\$200 per day per violation
14 31 st to 60 th day	\$300 per day per violation
15 After 60 days	Statutory Maximum (\$15,000)

16 C. Except as otherwise provided herein, stipulated penalties shall begin to accrue on
17 the day that performance is due or that a violation of this Consent Order occurs and shall
18 continue to accrue until correction of the act of noncompliance is completed. Neither issuance
19 by ADEQ nor receipt by Maricopa County of a Notice of Violation of the terms and conditions
20 of this Consent Order are conditions precedent to the accrual of stipulated penalties.

21 D. Stipulated penalty payments shall be made pursuant to a civil settlement (e.g.,
22 Consent Judgment) with ADEQ filed in a court of competent jurisdiction. If ADEQ and
23 Maricopa County are unable to reach agreement for payment of stipulated penalties under a civil
24 settlement, or if Maricopa County fails to make payment of stipulated penalties due under a civil
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1 settlement, ADEQ may file a civil action seeking the maximum civil penalty allowed under
2 Federal or State law for violation of this Consent Order.

3 E. The stipulated penalties required by this Consent Order shall be in addition to
4 other remedies or sanctions available to ADEQ by reason of any failure by Maricopa County to
5 comply with the requirements of Federal or State laws. The payment of stipulated penalties shall
6 not relieve Maricopa County from compliance with the terms and conditions of this Consent
7 Order or Federal or State laws, nor limit the authority of the State to require compliance with the
8 Consent Order or State law.

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1 **VI. COMPLIANCE WITH OTHER LAWS**

2 A. This Consent Order does not encompass issues regarding releases, contamination,
3 sources, operations, facilities or processes not expressly covered by the terms of this Consent
4 Order, and is without prejudice to the rights of the State of Arizona or Maricopa County, arising
5 under any federal or Arizona environmental statutes and rules with regard to such issues.

6 B. Nothing in this Consent Order shall constitute a permit of any kind, or a
7 modification of any permit of any kind, or an agreement to issue a permit of any kind under
8 federal, state or local law, or relieve Maricopa County in any manner of its obligation to apply
9 for, obtain, and comply with all applicable permits. Nothing in this Consent Order shall in any
10 way alter, modify or revoke federal, state, or local law, or relieve Maricopa County in any
11 manner of its obligation to comply with such laws. Compliance with the terms of this Consent
12 Order shall not be a defense to any action to enforce any such permits or laws.

13 **VII. FORCE MAJEURE**

14 A. Maricopa County shall perform all the requirements of this Consent Order
15 according to the time limits set forth herein, unless performance is prevented or delayed by
16 events which constitute a *force majeure*. *Force majeure*, for the purposes of this Consent Order,
17 is defined as any event, arising from causes beyond the control of Maricopa County or its
18 authorized representatives which delays or prevents the performance of any obligation under this
19 Consent Order and which could not have been overcome or prevented by Maricopa County. The
20 financial inability of Maricopa County to comply with the terms of this Consent Order, shall not
21 constitute a *force majeure*.

22 B. In the event of a *force majeure*, the time for performance of the activity affected
23 by the *force majeure* shall be determined by ADEQ and extended for a period no longer than the
24 delay caused by the *force majeure*. The time for performance of any activity dependent on the
25 delayed activity shall be similarly extended. In the event of a *force majeure*, Maricopa County

1 shall notify ADEQ in writing within five (5) calendar days after Maricopa County or its agents
2 become aware of the occurrence. The written notice provided to ADEQ shall describe in detail
3 the event, the anticipated delay, the measures taken and to be taken by Maricopa County to
4 prevent or minimize delay, and a proposed timetable under which those measures will be
5 implemented. Maricopa County shall take all reasonable measures to prevent or minimize any
6 delay caused by the *force majeure*. Failure of Maricopa County to comply with any
7 requirements of this paragraph for a particular shall preclude Maricopa County from asserting
8 any claim of *force majeure* for that event.

9 **VIII. SITE ACCESS**

10 ADEQ may at any time, upon presentation of credentials to authorized personnel on duty,
11 enter upon the premises at the Facility for the purpose of observing and monitoring compliance
12 with the provisions of this Consent Order. This right of entry shall be in addition to, and not in
13 limitation of or substitution for, ADEQ's rights under applicable law.

14 **IX. CORRESPONDENCE**

15 All documents, materials, plans, notices, or other items submitted as a result of this
16 Consent Order shall be transmitted to the addresses specified below:

17 To ADEQ:

18 Arizona Department of Environmental Quality
19 Waste Programs Division
20 Attention: Solid Waste Inspections and Compliance Unit
21 1110 West Washington Street
22 Phoenix, Arizona 85007-2935
23 Telephone: (602) 771-4673

24 To Maricopa County:

25 Maricopa County Department of Solid Waste
Attn: Division Manager
2801 West Durango Street
Phoenix, Arizona 85009
Telephone: (602) 506-7336

Submissions to ADEQ as a result of this Consent Order shall be deemed submitted upon receipt.

1 **X. RESERVATION OF RIGHTS**

2 A. This Consent Order is based solely upon currently available information. If
3 additional information is discovered, which indicates that the actions taken under this Consent
4 Order are or will be inadequate to protect human health, safety, or the environment, or to
5 conform with applicable federal or state laws, ADEQ shall have the right to require further
6 action.

7 B. ADEQ shall have the right: to pursue civil penalties for violations of any and all
8 violations of A.R.S. Title 49, or the rules promulgated thereunder, occurring before entry of this
9 Consent Order; to disapprove of work performed by Maricopa County that fails to comply with
10 this Consent Order; to take enforcement action for any and all violations of this Consent Order;
11 and to take enforcement action for any and all violations of A.R.S. Title 49, or the rules
12 promulgated thereunder, occurring after the entry of this Consent Order.

13 **XI. SEVERABILITY**

14 The provisions of this Consent Order are severable. If any provision of this Consent
15 Order is declared by a court of law to be invalid or unenforceable, all other provisions of this
16 Consent Order shall remain in full force and effect.

17 **XII. MODIFICATIONS**

18 Any modifications of this Consent Order shall be in writing and must be approved by
19 both Maricopa County and ADEQ.

20 **XIII. EFFECTIVE DATE**

21 The effective date of this Consent Order shall be the date this Consent Order is signed by
22 ADEQ and Maricopa County. If such signatures occur on different dates, the later date shall be
23 the effective date of this Consent Order.

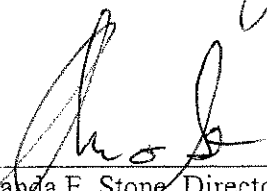
1 **XIV. PARTIES BOUND**

2 No change in ownership, corporate status, or partnership status relating to the subject of
3 this Consent Order will in any way alter the responsibilities of Maricopa County under this
4 Consent Order. Maricopa County will be responsible, and will remain responsible, for carrying
5 out all activities required under this Consent Order.

6 **XV. TERMINATION**

7 The provisions of this Consent Order shall be deemed satisfied and this Consent Order shall be
8 terminated upon receipt of written notification from ADEQ that Maricopa County has
9 demonstrated, to the satisfaction of ADEQ, that all of the terms of this Consent Order have been
10 completed. Any denial of a request for termination from Maricopa County will be in writing and
11 describe which terms of the Consent Order have not been completed to the satisfaction of
12 ADEQ. ADEQ reserves the right to terminate this Consent Order unilaterally at any time for any
13 reason. Any termination will include a written explanation of the reason(s) for termination.

14 ISSUED this 14th day of January, 2010

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18 Amanda E. Stone, Director
Waste Programs Division
Arizona Department of Environmental Quality

CONSENT TO ORDER

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The undersigned, on behalf of Maricopa County, hereby acknowledges that [he/she] has read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Arizona Department of Environmental Quality, agrees that Maricopa County will abide by the same and waive any right to appeal therefrom.

DATED this 15 day of Dec., 2009.


Max Wilson, Chairman, BOS 111809
Maricopa County

ORIGINAL of the foregoing Consent Order was sent certified mail, return receipt requested, this 19 day of January, 2010 to:

Max Wilson, Chairman, BOS
Maricopa County
301 West Jefferson Street
10th Floor
Phoenix, Arizona 85003

1 COPY of the foregoing Consent Order was filed this 19 day of January, 2020, with:

2 Arizona Department of Environmental Quality
3 Office of Administrative Counsel
4 Attention: Judith Fought, Hearing Administrator
5 1110 West Washington Street
6 Phoenix, Arizona 85007-2935

7 COPIES of the foregoing Consent Order were sent by regular/interdepartmental mail, this 19
8 day of January, 2020 to the following:

9 Tamara Huddleston, Chief Counsel
10 Environmental Enforcement Section, Office of the Attorney General
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