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SACRAMENTO COURTS
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JAN SCULLY, District Attorney
County of Sacramento
DOUGLAS SCOTT WHALEY (SBN 144557)
Deputy District Attorney
901 G Street
Sacramento, California 95814
Telephone: (916) 874-8840
Facsimile: ((16) 874-7660
E-Mail: whaley@sacda.org

*Attorneys for Plaintiff,
The People of the State of California
[Additional Plaintiff's Counsel Continued in Signatures Below]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

COVANTA DELANO, INC.; COVANTA
MENDOTA, L.P.; and PACIFIC OROVILLE
POWER, INC.,

Defendants.

Case No.: 34-2014-00171352

**STIPULATED FINAL JUDGMENT
AND PERMANENT INJUNCTION**

This Stipulation for Entry of Final Judgment and Permanent Injunction ("Final Judgment") is entered into by the People of the State of California, having filed its Complaint herein and appearing through its attorneys, Jan Scully, District Attorney of Sacramento County; Michael L. Ramsey, District Attorney of Butte County; Elizabeth A. Egan, District Attorney of Fresno County; Robert J. Maloney, District Attorney of Glenn County; Lisa S. Green, District Attorney of Kern County; Birgit Fladager, District Attorney of Stanislaus County; Timothy Ward, District Attorney of Tulare County; and Michael L. Knowles, District Attorney of Tuolumne County ("Plaintiffs"); and Defendants Covanta Delano, Inc., a Delaware corporation; Covanta Mendota, L.P., a California limited partnership; and Pacific Oroville Power, Inc., a California corporation,

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1 (collectively "Defendants") appearing through their counsel Bartko, Zankel, Bunzel & Miller by
2 Robert H. Bunzel, Esq. and Paul Hastings LLP., by Peter H. Weiner, Esq. and Robert P. Hoffman,
3 Esq. For the purposes of this Final Judgment, Plaintiffs and Defendants shall be referred to
4 collectively as "Parties" and individually as "Party".

5 Plaintiffs and Defendants, having stipulated and consented to the entry of this Final
6 Judgment prior to the taking of any proof, and without trial or adjudication of any issue of fact or
7 law; and

8 Defendants having already voluntarily paid the sum of \$288,788.23 in costs and expenses
9 to the Department of Toxic Substances Control (DTSC); and,

10 The Court having considered the pleadings and good cause appearing therefor:

11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

12 **I. JURISDICTION AND VENUE**

13 1. The Parties stipulate and agree that the civil departments of the Superior Court of
14 California, County of Sacramento has subject matter jurisdiction over the matters alleged in this
15 action and personal jurisdiction over the Parties to this Final Judgment.

16 **II. DEFINITIONS**

17 2. Terms used in this Final Judgment shall have the meanings assigned to them in
18 Chapter 6.5 of Division 20 of the California Health & Safety Code and the regulations
19 promulgated under this chapter, unless otherwise provided in this Final Judgment. Whenever the
20 terms set forth below are used in this Final Judgment, the following definitions shall apply:

21 a. "Ash" shall mean combustion solids generated by the biomass boilers
22 owned and/or operated by Defendants, consisting of Fly Ash (a mixture of combustion
23 residue and solid air pollution control products collected in the baghouse or electrostatic
24 precipitator) and Bottom Ash (generally combustion residues from grate technologies; a
25 mixture of bed sand, lime solids and combustion residues removed from the boiler and
26 cyclone hoppers from fluid bed technologies);

27 b. "Ash Management Verification Plan" shall mean that certain Ash
28 Management Verification Plan attached to this Final Judgment as Exhibit A;

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- c. "Complaint" shall mean the complaint filed by the Plaintiffs in this action;
- d. "Costs" shall mean the costs described in ¶ 5 below;
- e. "Facilities" shall mean, individually and/or collectively, the biomass fueled electrical generating facilities owned by Defendants and located at the following addresses: (i) 31500 Pond Road, Delano, California, 93215 ("Delano Facility"); (ii) 400 Guillen Parkway, Mendota, California 93640 ("Mendota Facility"); and (iii) 3050 South 5th Avenue, Oroville, California, 95965 ("POPI Facility").

III. APPLICABILITY

3. The provisions of this Final Judgment, subject to Paragraph 11 and Exhibit A which are applicable to the Delano Facility, Mendota Facility; and to the POPI Facility only in the event the POPI Facility reopens and produces Ash generated in any week of a designated month in which sampling under Paragraph 11 and Exhibit A are applicable. The remaining provisions of this Final Judgment are applicable to Defendants Covanta Delano, Inc., a Delaware corporation; Covanta Mendota, L.P., a California limited partnership; Pacific Oroville Power, Inc., a California corporation; and to their employees, officers, directors, representatives, successors, assigns and to any and all persons acting under, by, through or on behalf of, or in concert with Defendants, with actual or constructive notice of the Final Judgment in connection to the testing, recycling, and/or disposal of Ash.

IV. SETTLEMENT OF DISPUTED CLAIMS

4. This Final Judgment is not an admission by Defendants regarding any issue of law or fact in the above-captioned matter or any violation of any law. The Parties enter into this Final Judgment pursuant to a compromise and settlement of disputed claims, as set forth in the Complaint, for the purpose of furthering the public interest. All Parties have stipulated and consented to the entry of this Final Judgment prior to the taking of any proof, and without trial or adjudication of any fact or law herein.

V. COSTS, CIVIL PENALTIES AND SPECIAL ENVIRONMENTAL PROJECTS

5. Pursuant to Health and Safety Code Section 25181 and Business and Professions

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1 Code Section 17203, Defendants shall pay Costs in the total amount of \$237,905.77, which shall
2 be paid as follows:

3 a. \$74,382.27 to the Kern County District Attorney's office as reimbursement
4 to be paid to the Craig Thompson Environmental Trust Fund;

5 b. \$136,694.98 to the Butte County District Attorney's office;

6 c. \$26,828.52 to the California District Attorneys Association as
7 reimbursement for other costs incurred by the District Attorneys which shall be distributed
8 by agreement of the District Attorneys bringing this action pursuant to Government Code
9 Section 26506.

10 6. Pursuant to Business and Professions Code Section 17206, Defendants shall pay
11 civil penalties in the amount of \$258,306.00, which shall be distributed by agreement of the
12 District Attorneys bringing this action pursuant to Government Code Section 26506.

13 7. Pursuant to Business and Professions Code Section 17206, Defendants shall pay
14 \$40,000.00 as and for Special Environmental Projects (SEPs) as follows:

15 a. \$20,000.00 to the Craig Thompson Environmental Fund for such purposes
16 consistent with the established purposes of the fund.

17 b. \$20,000.00 to the California District Attorneys Association Circuit
18 Prosecutor Project.

19 VI. COMPLIANCE REQUIREMENTS

20 A. INJUNCTIVE PROVISIONS

21 8. Pursuant to Health and Safety Code Section 25181 and Business and Professions
22 Code Section 17203, Defendants and all persons, partnerships, corporations, or other entities
23 acting under, by or on behalf of Defendants with actual or constructive knowledge of this Final
24 Judgment are permanently enjoined and restrained from directly or indirectly engaging in any of
25 the following acts or practices in the State of California:

26 a. Failing to properly characterize Ash in violation of Health and Safety Code
27 Section 25189 et seq.;

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2 b. Transporting Ash in violation of Health and Safety Code Section 25189 et
3 seq., and all California and federal hazardous waste manifesting and transportation
4 requirements;

5 c. Disposing of Ash in violation of Health and Safety Code Section 25189 et
6 seq., and Fish and Game Code Section 5650;

7 d. Contracting for beneficial use of Ash as a soil amendment, except as
8 allowed under the law, including but not limited to Food and Agricultural Code
9 Sections 14501 *et. seq.*, and 14682 and 22 CCR 66266.115; or

10 e. Contracting for beneficial use of Ash unless contractors have been provided
11 a Safety Data Sheet (SDS, formally known as MSDS), and provided that such contractors
12 have agreed in writing with Defendants to supply such SDS and relevant safety
13 documentation to end-users.

14 9. Nothing contained herein constitutes a modification, alteration, exemption, or
15 reinterpretation of any existing federal, state or local, law, regulation, rule, requirement, contract,
16 permit, authorization or operating agreement.

17 10. Nothing herein constitutes a waiver, or exception to enforcement of state law.

18 **B. ASH MANAGEMENT VERIFICATION PLAN**

19 11. Pursuant to Health and Safety Code Section 25181 and Business and Professions
20 Code Section 17203 and commencing within 120 days of date of entry of this Final Judgment and
21 continuing until the earlier of three (3) years, cessation of facility operations or modification of this
22 Stipulation, Defendants shall implement the Ash Management Verification Plan at the Delano
23 Facility and the Mendota Facility. The Ash Management Verification Plan is attached to this Final
24 Judgment as Exhibit A. Plaintiffs have consulted with DTSC regarding the Ash Management
25 Verification attached to this Final Judgment as Exhibit A, and the Parties have provided DTSC
26 with written notice of application for entry of this Final Judgment.

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VII. CONTINUING JURISDICTION

12. The Court shall retain continuing jurisdiction to enforce the terms of this Final Judgment and to address any other matters arising out of or regarding the Final Judgment. The Parties shall meet and confer at least ten days prior to the filing of any application or motion relating to the Final Judgment, and shall negotiate in good faith in an effort to resolve any dispute without judicial intervention. If the Parties are unable to resolve their dispute after meet and confer discussions, any Party may move this Court seeking a resolution of that dispute by the Court.

VIII. FORCE MAJEURE

13. Subject to the conditions and limitations set out below, it shall not be a breach of Defendants' obligations under this Final Judgment if Defendants are delayed in meeting a scheduled deadline to the extent that such delay is due to a force majeure event. A force majeure event includes, and is limited to, acts of God, wars, insurrections, or acts of terror. A force majeure event does not include any failure of Defendants or their contractors, consultants, subcontractors, or other parties employed by or contracted to perform work for or on behalf of the Defendants, unless such failure is itself caused by an underlying force majeure event. Dates by which performance obligations are scheduled to be met shall be extended for a period of time equal to the time unavoidably lost due to any delay so caused. As a condition to any claim of non-liability under this paragraph, Defendants must (a) provide prompt written notice of the asserted force majeure event to Plaintiffs, (b) provide details as soon as possible following the occurrence of the cause relied upon, (c) provide justification for any delay for which force majeure relief is claimed and the earliest possible date of compliance.

IX. FUTURE REGULATORY CHANGES

14. Nothing in this Final Judgment shall excuse Defendants from meeting any more stringent requirements that may be imposed by applicable law or by any changes in the applicable law. Conversely, nothing in this Final Judgment shall prevent Defendants from acting upon any less stringent requirements that may be imposed by applicable law or by any changes in the applicable law.

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X. MATTERS COVERED BY THIS FINAL JUDGMENT

15. This Final Judgment is a full, final, and binding resolution between the People of the State of California for the Counties of Sacramento, Butte, Fresno, Glenn, Kern, Stanislaus, Tulare, and Tuolumne, and Defendants, their parents, shareholders, divisions, subdivisions, subsidiaries, sister companies, affiliates, cooperative members, licensees, agents and representatives, officers, directors, employees, attorneys, agents, representatives, predecessors, successors, and assigns of any and all civil or criminal penalties, charges, liabilities, obligations or damages for violations alleged in the Complaint filed in this action or based upon the facts or conduct alleged in the Complaint or relating to Defendants' practices of characterizing, recycling, and beneficial use of Ash, transmission of required information or warnings (including but not limited to a SDS or MSDS) regarding Ash, and disposal of Ash, known to the People of the State at the time of this judgment (the "Covered Matters"). Defendants also waive any claims against the People of the State of California for the Counties of Sacramento, Butte, Fresno, Glenn, Kern, Stanislaus, Tulare, and Tuolumne based on the investigation, filing or prosecution of this action.

16. Subject to performance of this Final Judgment, Plaintiffs and Defendants covenant not to sue each other arising out of or related to Covered Matters in any judicial, administrative or regulatory forum.

17. Except as expressly provided in this Final Judgment, nothing in this Final Judgment is intended nor shall it be construed to preclude the People, or any state, county or local agency from exercising its authority under any law, statute, or regulation. Except as expressly provided in this Final Judgment, Defendants retain all of their defenses to the exercise of the aforementioned authority.

XI. INTEGRATION

18. This Final Judgment constitutes the entire agreement between the Parties and may not be amended or supplemented, except as provided in the Final Judgment. No oral representations have been made or relied upon other than as expressly set forth herein.

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XII. MODIFICATION

19. This Final Judgment may be modified by stipulation of the Parties with approval of the Court.

XIII. MATTERS NOT COVERED BY THIS FINAL JUDGMENT

20. The Parties reserve the right to pursue any claim, violations or causes of action that are not Covered Matters ("Reserved Claim") and to defend against any Reserved Claim. Any violation of law, statute, regulation or ordinance, if any, by Defendants which occurred at any facility other than the Facilities, are not resolved, settled or covered by this Final Judgment.

21. In any subsequent action that may be brought concerning any Reserved Claim, Defendants agree they will not assert that failing to pursue the Reserved Claims as part of this action constitutes claim-splitting, laches or is otherwise inequitable because such claims should have been brought as part of this action. This Paragraph does not prohibit Defendants from asserting any statute of limitations or other equitable defenses that may be applicable to any Reserved Claims.

XIV. NOTICES

22. All notices required by this Final Judgment concerning the Delano Facility or the Mendota Facility shall be sent to:

For The People of the State of California:
Douglas Whaley
Deputy District Attorney
Sacramento County District Attorney's Office
901 G Street
Sacramento, California 95814
Telephone (916) 874-8840

23. All notices required by this Final Judgment concerning the POPI Facility shall be sent to:

Harold Thomas
Deputy District Attorney
25 County Center Drive — Administration Building
Oroville, CA 95965
Phone: (530) 538-7411

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Copies of all notices shall be sent to:

For Defendants Covanta:
Nancy Tammi
Covanta Energy LLC
445 South Street
Morristown, NJ 07960
(862) 345-5133

With a copy to

Robert H. Bunzel
Bartko, Zankel, Bunzel & Miller
One Embarcadero Center, Suite 800
San Francisco, California 94111
(415) 956-1900

And

Robert Hoffman
Paul Hastings LLP
55 Second Street
Twenty-Fourth Floor
San Francisco, CA 94105
(916) 552-2881

23. Any Party may change its notice name and address by informing the other Parties in writing, but no change is effective until it is received. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Final Judgment or by mutual agreement of the Parties in writing.

XV. INTERPRETATION

24. The Court finds that this Final Judgment is the result of negotiations between the parties and the presumption set forth in Civil Code Section 1654 that documents should be interpreted against any party is not applicable to this Final Judgment.

XVI. TERMINATION

25. As to each of the Facilities, this Final Judgment shall terminate, and the obligations herein end on the earlier of (i) cessation of operations of a Facility, or (ii) sixty (60) months (5 years) after the Effective Date, absent noticed motion made by a Party hereto showing good cause why its term should be extended, and an Order to such effect.

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XVII. EFFECTIVE DATE

26. The "Effective Date" of this Final Judgment shall be that date of the signature of the Court entering this order.

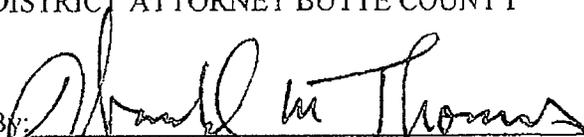
IT IS SO STIPULATED.

FOR THE PLAINTIFF:

Dated: 10/29/14, 2014 IAN SCULLY
DISTRICT ATTORNEY SACRAMENTO COUNTY

By: 
Douglas Scott Whaley
Deputy District Attorney

Dated: Oct 28, 2014 MICHAEL L. RAMSEY
DISTRICT ATTORNEY BUTTE COUNTY

By: 
Harold M. Thomas
Deputy District Attorney

Dated: _____, 2014 ELIZABETH A. EGAN
DISTRICT ATTORNEY FRESNO COUNTY

By: _____
Michael C. Brummel
Deputy District Attorney

Dated: _____, 2014 ROBERT J. MALONEY
DISTRICT ATTORNEY GLENN COUNTY

By: _____
Robert E. Nichols
Deputy District Attorney

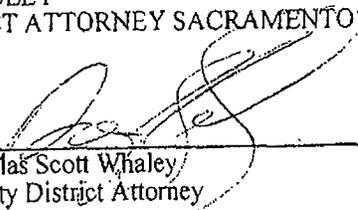
XVII. EFFECTIVE DATE

26. The "Effective Date" of this Final Judgment shall be that date of the signature of the Court entering this order.

IT IS SO STIPULATED.

FOR THE PLAINTIFF:

Dated: 11/5/14, 2014 JAN SCULLY
DISTRICT ATTORNEY SACRAMENTO COUNTY

By: 
Douglas Scott Whaley
Deputy District Attorney

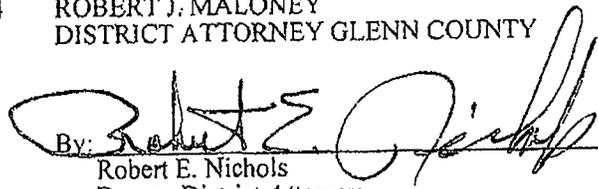
Dated: _____, 2014 MICHAEL L. RAMSEY
DISTRICT ATTORNEY BUTTE COUNTY

By: _____
Harold M. Thomas
Deputy District Attorney

Dated: _____, 2014 ELIZABETH A. EGAN
DISTRICT ATTORNEY FRESNO COUNTY

By: _____
Michael C. Brummel
Deputy District Attorney

Dated: 10/30/14, 2014 ROBERT J. MALONEY
DISTRICT ATTORNEY GLENN COUNTY

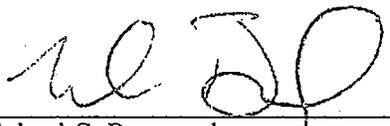
By: 
Robert E. Nichols
Deputy District Attorney

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Dated: 10/20, 2014

ELIZABETH A. EGAN
DISTRICT ATTORNEY FRESNO COUNTY

By: 
Michael C. Brummel
Deputy District Attorney

Dated: _____, 2014

ROBERT J. MALONEY
DISTRICT ATTORNEY GLENN COUNTY

By: _____
Robert E. Nichols
Deputy District Attorney

Dated: _____, 2014

LISA S. GREEN
DISTRICT ATTORNEY KERN COUNTY

By: _____
John T. Mitchell
Deputy District Attorney

Dated: _____, 2014

BIRGIT FLADAGER
DISTRICT ATTORNEY STANISLAUS COUNTY

By: _____
Richard B. Mury
Deputy District Attorney

Dated: _____, 2014

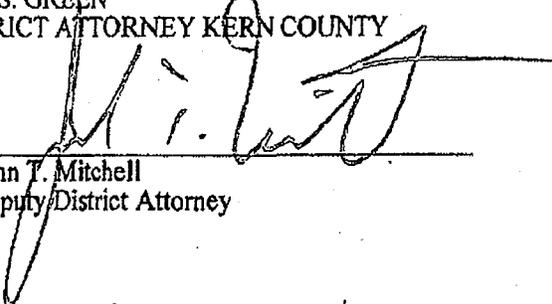
PHILLIP CLINE
DISTRICT ATTORNEY TULARE COUNTY

By: _____
Rodney M. Blaco
Deputy District Attorney

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Dated: October 23 2014

LISA S. GREEN
DISTRICT ATTORNEY KERN COUNTY

By: 

John T. Mitchell
Deputy District Attorney

Dated: _____, 2014

BIRGIT FLADAGER
DISTRICT ATTORNEY STANISLAUS COUNTY

By: _____
Richard B. Mury
Deputy District Attorney

Dated: _____, 2014

PHILLIP CLINE
DISTRICT ATTORNEY TULARE COUNTY

By: _____
Rodney M. Blaco
Deputy District Attorney

Dated: _____, 2014

MICHAEL L. KNOWLES
DISTRICT ATTORNEY TUOLUMNE COUNTY

By: _____
Robert E. Nichols
Deputy District Attorney

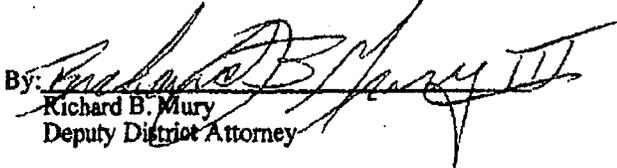
FOR DEFENDANTS:

AKB

1 Dated: _____, 2014 LISA S. GREEN
2 DISTRICT ATTORNEY KERN COUNTY

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4 By: _____
5 John T. Mitchell
6 Deputy District Attorney

7 Dated: 10-23-14, 2014 BIRGIT FLADAGER
8 DISTRICT ATTORNEY STANISLAUS COUNTY

9
10 By: 
11 Richard B. Mury
12 Deputy District Attorney

13 Dated: _____, 2014 PHILLIP CLINE
14 DISTRICT ATTORNEY TULARE COUNTY

15 By: _____
16 Rodney M. Blaco
17 Deputy District Attorney

18 Dated: _____, 2014 MICHAEL L. KNOWLES
19 DISTRICT ATTORNEY TUOLUMNE COUNTY

20 By: _____
21 Robert E. Nichols
22 Deputy District Attorney

23 FOR DEFENDANTS:
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Dated: _____, 2014 ELIZABETH A. EGAN
DISTRICT ATTORNEY FRESNO COUNTY

By: _____
Michael C. Brummel
Deputy District Attorney

Dated: _____, 2014 ROBERT J. MALONEY
DISTRICT ATTORNEY GLENN COUNTY

By: _____
Robert E. Nichols
Deputy District Attorney

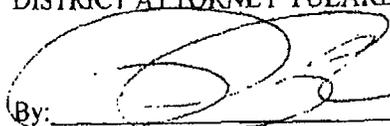
Dated: _____, 2014 LISA S. GREEN
DISTRICT ATTORNEY KERN COUNTY

By: _____
John T. Mitchell
Deputy District Attorney

Dated: _____, 2014 BIRGIT FLADAGER
DISTRICT ATTORNEY STANISLAUS COUNTY

By: _____
Richard B. Mury
Deputy District Attorney

Dated: October 23, 2014 TIMOTHY WARD
DISTRICT ATTORNEY TULARE COUNTY

By:  _____
Rodney M. Blaco
Deputy District Attorney

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Dated: _____, 2014 LISA S. GREEN
DISTRICT ATTORNEY KERN COUNTY

By: _____
John T. Mitchell
Deputy District Attorney

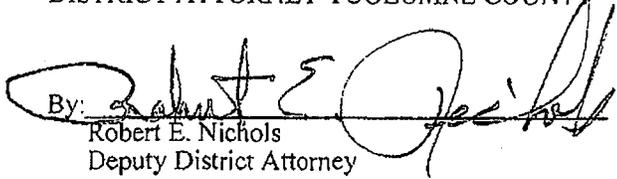
Dated: _____, 2014 BIRGIT FLADAGER
DISTRICT ATTORNEY STANISLAUS COUNTY

By: _____
Richard B. Mury
Deputy District Attorney

Dated: _____, 2014 PHILLIP CLINE
DISTRICT ATTORNEY TULARE COUNTY

By: _____
Rodney M. Blaco
Deputy District Attorney

Dated: 10/30/14, 2014 MICHAEL L. KNOWLES
DISTRICT ATTORNEY TUOLUMNE COUNTY

By: 
Robert E. Nichols
Deputy District Attorney

FOR DEFENDANTS:

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Dated: Oct. 23, 2014 COVANTA DELANO, INC.

By: 

Dated: Oct. 23, 2014 COVANTA MENDOTA, L.P.

By: 

Dated: Oct 23, 2014 PACIFIC OROVILLE POWER, INC.

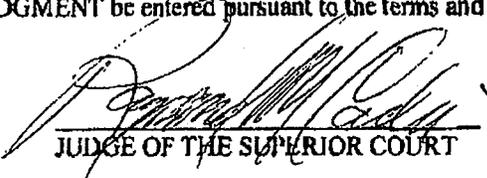
By: 

JUDGMENT

The Court having read and considered the foregoing Stipulation, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT JUDGMENT be entered pursuant to the terms and conditions of the foregoing stipulation.

DATE: DEC - 4 2014


JUDGE OF THE SUPERIOR COURT

RAYMOND M. CADEI

RMB

EXHIBIT A

**Covanta Mendota, L.P.
Covanta Delano, Inc.
Ash Management Verification Plan**

Objective:

To ensure that Ash management at Covanta Mendota, L.P. and Covanta Delano, Inc., complies with relevant environmental laws and regulations.

Background:

For purposes of this Ash Management Verification Plan, "Ash" shall mean combustion solids generated by the biomass boilers consisting of "Fly Ash" (a mixture of combustion residue and solid air pollution control products collected in the baghouse or electrostatic precipitator) and "Bottom Ash" (generally combustion residues from grate technologies; a mixture of bed sand, lime solids and combustion residues removed from the boiler and cyclone hoppers from fluid bed technologies). The Covanta facilities in Mendota and Delano utilize fluidized bed combustors. As a result, the facilities produce Fly Ash and Bottom Ash. Bottom Ash is generated less frequently and in smaller amounts than Fly Ash.

Ash generated as the result of biomass combustion that has no hazardous waste characteristics other than $\text{pH} \leq 2$ or $\text{pH} \geq 12.5$ may be utilized for beneficial use.¹ Alternatively, Ash may be disposed of at a properly authorized landfill. Landfills, and some beneficial use sites, may have restrictive Waste Discharge Requirements ("WDRs"), and Ash management at these sites must also be consistent with those conditions and applicable law.

Each facility must determine if the Ash it produces is hazardous waste either by testing samples and/or relying on generator knowledge.² Sampling must be performed in accordance with USEPA SW-846, Chapter 9,³ which includes procedures for sampling and statistical analyses for evaluating test results for the purpose of comparing Ash characteristics with applicable regulatory thresholds.

Relevant Regulatory Criteria:

Table 1 lists California's hazardous waste regulatory thresholds for lead, arsenic, copper, chromium, and pH.

¹ See HSC § 25143.5.

² See 22 § CCR 66262.11.

³ See 22 § CCR 66261.20(c).

EXHIBIT A

Table 1 – Relevant Hazardous Waste Criteria for all Samples

	TTLC (total), mg/kg	STLC, mg/L	Other
Lead	1,000	5.0	
Arsenic	500	5.0	
Copper	2,500	25	
Chromium	2,500	560	
pH			pH ≤ 2 or pH ≥ 12.5 ^(*)

(*) The pH limits do not apply if the Ash is being beneficially used such that the pH is lowered below 12.5 and above 2, so long as the Ash does not exhibit any other hazardous characteristic, and is made available for commercial use.

Management of Ash:

Ash generated as the result of biomass combustion that has no hazardous characteristic other than pH ≤ 2 or pH ≥ 12.5 may be utilized for beneficial use.⁴ Alternatively, Ash may be disposed of at a properly-authorized landfill. Landfills, and some beneficial use sites, may have restrictive Waste Discharge Requirements (“WDRs”), and Ash management at these sites must also be consistent with those conditions and applicable law.

Ash will be managed pursuant to the Year One Compliance Program, as described below, beginning within 120 days of the date of entry of this Final Judgment for one (1) year. After one (1) year of implementing the Year One Compliance Program, the facility shall implement the Ongoing Compliance Program as described below for two (2) years. Fly Ash and Bottom Ash will be tested separately.

Dairy and Other Agricultural Use:

- Fly Ash

During the months of March, June, September, and December, Fly Ash destined for use at dairies or related agricultural applications⁵ shall be placed in a segregated pile each week. Each

⁴ See HSC § 25143.5.

⁵ Covanta Mendota, L.P. and Covanta Delano, Inc. do not warrant that any specific percentage of Ash will be used for any specific application. For purposes of meeting the segregated sampling requirement, a minimum of 100 tons of the Ash generated each week of a designated month shall be segregated and sampled at each facility (except if there is a week without a 100 tons of Ash generated, in which case the sampling required pursuant to this plan will be suspended and sampling will commence again in the next week in which more than 100 tons of Ash are generated, and continue until the number of weeks required by this plan have been completed). The POPI facility is not currently in operation. In the event the POPI facility generates any Ash in any week in a designated month, the Ash generated shall be segregated and sampled pursuant to this plan regardless of quantity.

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weekly pile of Fly Ash destined for use at dairies or other related agricultural applications during the months of March, June, September, and December will be sampled and analyzed, prior to shipment, as described in the Sampling and Analysis Protocol set forth below. In the first week of each designated month, the samples shall be analyzed for each of the metals in Table 1. In the remaining weeks of each designated month, the samples shall be analyzed for lead and arsenic unless the protocol must be repeated for the reasons described herein. No segregated pile of Fly Ash destined for use at dairies or other related agricultural applications shall be comingled with any other material prior to testing.

Fly Ash subject to sampling under this plan will not be shipped for dairy or other related agricultural applications until the sample analytical results are reviewed and have been found to demonstrate that the Fly Ash does not exceed the regulatory thresholds for the tested metals.

Fly Ash that is not subject to management as hazardous waste under this plan also may be disposed of in an authorized landfill or be beneficially used in "Controlled Circumstances," as described below.

- Bottom Ash

All Bottom Ash that is destined for use at dairies or other related agricultural applications shall be placed in a segregated pile (or piles, as necessary) prior to shipment.⁶ Each pile will be sampled and analyzed prior to shipment as described above for Fly Ash, except that Bottom Ash will be tested for each of the metals in Table 1 each time a pile is sampled and analyzed. Bottom Ash will then be sent to an authorized destination using the same criteria as for Fly Ash.

No pile of Bottom Ash destined for use at dairies or other related agricultural applications will be comingled with any other material prior to testing.

Bottom Ash that is not subject to management as hazardous waste under this plan may also be disposed of in an authorized landfill or be beneficially used in "Controlled Circumstances," as described below.

Disposal at an Authorized Landfill or Beneficial Use in Certain "Controlled Circumstances:"

Ash that is not beneficially used for dairy or related agricultural applications may be used beneficially in certain "Controlled Circumstances," including:

- Beneficial uses within a landfill
- Sub grade applications beneath road or parking lot pavement
- Sub grade fill in industrial zoned areas
- Similar uses that encapsulate Ash and minimize potential exposure

⁶ Covanta expects to generate Bottom Ash on a less-than-weekly basis.

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Ash that is destined for landfill disposal or beneficial use in "Controlled Circumstances" may be disposed or used without being subject to this plan. Each facility may utilize generator knowledge to characterize Ash that is destined for landfill disposal or beneficial use in "Controlled Circumstances." If Covanta Mendota, L.P. or Covanta Delano, Inc. utilizes generator knowledge and incorrectly determines that Ash is nonhazardous and fails to manage the Ash pursuant to applicable law, then Covanta Mendota, L.P. or Covanta Delano, Inc. may be subject to enforcement action.⁷

Year One Compliance Program:

The following summary describes a mutually agreed upon plan that will test representative samples of Ash sent for dairy or other related agricultural use for one (1) year, beginning within 120 days of the date of entry of this Final Judgment. Fly Ash shall be accumulated in weekly piles and tested during the months of March, June, September, and December for one year. Bottom Ash shall be accumulated in a pile (or piles, as necessary) and each tested prior to shipment for one year. Ash sampling and analysis shall proceed as follows:

- a. Ash sent for dairy or related agricultural use:
 - i. During test months, Fly Ash will be staged in weekly piles. Bottom Ash shall be staged in piles whenever it will be sent for dairy or other related agricultural use.
 - ii. Collect and prepare or manage samples as directed in the attached Sampling and Analysis Protocol (SAP).
 - iii. Follow the procedures set forth in the SAP.
 - iv. If the calculated Upper Confidence Limit (UCL) on the mean does not equal or exceed the respective STLC or TTLC for any of the metals tested, the Ash is not subject to management as hazardous waste pursuant to this plan.
 - v. If the UCL on the mean equals or exceeds the STLC or TTLC for any of the metals tested, additional samples of each pile may be tested, and a new UCL calculated pursuant to the steps in the SAP using all current and any additional sample results to determine if the Ash is subject to management as hazardous waste pursuant to Step iv above.
 - vi. If, after analyzing additional samples, the UCL on the mean still equals or exceeds the regulatory threshold, the facility may subdivide each pile into nine (9) equally sized portions. Each of the nine (9) portions shall be treated as a new pile to be sampled and analyzed in accordance with the SAP and managed as provided in step iv or step vii as appropriate.
 - vii. If, after analyzing the additional samples (Step v) and analyzing the samples from the nine (9) equally subdivided piles (Step vi), the UCL on the mean for any

⁷ See 22 § CCR 66260.200(c).

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portion or portions of the Ash exceeds a regulatory threshold for any of the metals in Table 1, such portion or portions shall be managed as hazardous waste under this plan.

viii. If a weekly Fly Ash sample exceeds a regulatory threshold for any of the metals in Table 1, the facility shall:

1. Repeat this protocol every week until two (2) consecutive weekly calculated UCL results demonstrate that those particular piles of Fly Ash are not subject to management as hazardous waste under this plan.; and
2. Repeat this protocol, in the following year, a single time in the month or months in which Fly Ash was required to be managed as hazardous waste in the prior year.

ix. Reporting

1. Test results obtained as a result of following this protocol will be sent on a quarterly basis with a summary report to Douglas Whaley or his designee.

Ongoing Compliance Program:

After one (1) year of implementing the Year One Compliance Program described above, the facility shall only be required to randomly sample one (1) weekly pile of Fly Ash each quarter utilizing the SAP. In the event that any of the sampling results characterize the Fly Ash as hazardous, the facility shall repeat sampling per the SAP every week until two (2) consecutive weekly calculated UCL results demonstrate that the Fly Ash is not subject to management as hazardous waste under this plan.

After one (1) year of implementing the Year One Compliance Program described above, the facility shall only be required to randomly sample one (1) pile of Bottom Ash, per facility, each quarter utilizing the SAP. In the event that any of the sampling results characterize the Bottom Ash as hazardous, the facility shall repeat sampling per the SAP until two (2) consecutively tested piles' calculated UCL results demonstrate that the Bottom Ash is not subject to management as hazardous waste under this plan.

Test results obtained as a result of following this Ongoing Compliance Program will be sent on a quarterly basis with a summary report to Douglas Whaley or his designee.

The Ongoing Compliance Program shall terminate three (3) years after the date of entry of this Final Judgment.

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Sampling and Analysis Protocol (SAP)

Sampling Strategies, Techniques and Approved Test Methods:

1. The Data Quality Objective will be to establish the 80% "two-tailed" upper confidence limit ("UCL")⁸ of the mean, in accordance with SW-846, Chapter 9, for each of the hazardous constituents listed in the table of the settlement agreement, so that those values can be compared to their respective regulatory thresholds.
2. Samples shall be obtained and prepared in accordance with SW-846, Chapter 9. For pH testing, solid samples shall be prepared and analyzed in accordance with section 66261.22, subsection (a)(3) of Title 22 of the California Code of Regulations using EPA Test Method 9040C.
3. Sample Collection and Protocol for Submission to Laboratory for Testing:
 - a. Collect eight (8) uniform (equal size) random samples from each pile as follows:
 - i. Divide the pile by an imaginary grid, and assign a series of consecutive numbers to the units of the grid.
 - ii. Select eight (8) of the numbers of the grid (units) to be sampled through the use of a random-numbers table (such a table can be found in any text on basic statistics). Each of the eight (8) samples will be collected from the center of the grid segment selected, provided that the center of the grid segment can be accessed safely. If the center of the grid segment cannot be accessed safely, the sample shall be collected from as close to the center of that grid as possible, considering the safety of the individual collecting the sample. Piles may be spread out in a uniform fashion to provide reasonable and safe access to the Ash for sampling.
 - iii. Each sample shall be collected by a single person using a new disposable powder lance, with an end tip, or using a powder lance that will be decontaminated as described in Section 3.a.iv, below, following the collection of each sample. The lance is approximately one meter in length and thus collects a sample that contains Ash from the surface down to a depth of one meter. The lance will be pushed into the center of the designated grid segment within the pile, from the surface to the lowest possible depth the lance can be pushed without submerging the handle in the Ash. Once in the Ash, the lance will be rotated 360⁰ and then pulled out of the Ash. The powder lance can be used repeatedly within the same grid as needed to collect a sample of approximately 30 oz. Each time the lance will be pushed into the Ash at the center of the selected grid segment. If Ash has not filled in the hole where the previous Ash was collected, then the lance will be pushed into the Ash immediately adjacent to the previous location. The lance will never be pushed into the Ash at a location outside of the selected grid segment for that sample.
 - iv. The decontamination of sampling equipment shall be as follows:

⁸ An 80% "two-tailed" upper confidence limit is equivalent to a 90% "one-tailed" UCL for purposes of determining whether a sample exceeds a regulatory limit.

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1. Wash with non-phosphate detergent (e.g., Alconox), using a bristle brush if necessary to remove residual Ash or soil;
 2. Rinse with tap water;
 3. Rinse with de-ionized/distilled water; and
 4. Pour all decontamination fluids used for decontamination on the top of the pile following the end of sampling.
 5. Covanta acknowledges the possibility that cross contamination may result in inaccurately high sample results and accepts this risk.
- v. Ash removed by the lance from the pile shall be placed in a new, 32-ounce, clear glass jar. Covanta, at its own discretion, may utilize a larger container with a liner bag (e.g., a 5-gallon bucket) to collect any single Ash sample from each grid segment prior to transferring the Ash into a 32-ounce, clear glass jar. Any Ash remaining in each liner will, at Covanta's discretion, either be poured back into the pile at the conclusion of the sampling event or will be poured into additional new, 32-ounce, clear glass jar(s) to be kept onsite as a "split sample" that can be utilized for testing in the event sample loss in transit or issues at the laboratory arise.
 - vi. Once Ash has been placed into a jar as described above, the jar will be labeled and sealed with a tamper evident chain of custody seal. The samples will be labeled with a sample ID that corresponds to the facility where the sample was collected, the date of collection, and the order in which it was collected. For example, if the Ash was collected from Covanta Delano from segment 3 on December 15, 2013, the sample ID would be COVD121513-03.
 - vii. After collection, the samples will either be placed in coolers or similar devices with bubble wrap or other packaging materials for shipment to an ELAP certified lab within ten days or be retained onsite for at least 30 days in the event that Covanta determines additional samples need to be analyzed. Evidence seal tape shall be placed on the outside of the coolers or similar devices that contain the samples. For pH testing, solid samples shall be packaged and sent to the laboratory as soon as possible.
 - viii. Log the sampling event information (i.e., for each sample taken record the Facility, Grid Segments from which it was taken, and the date of sampling) in the Ash database.
- b. Prepare the Chain of Custody ("COC") for all samples collected. Submit at least four (4) of the samples collected to an ELAP certified lab for analysis with a copy of the COC. Appropriately store the remaining samples not sent to the ELAP certified lab.
4. COC information: each COC shall clearly indicate the following information:
 - a. The week of the sample, and the date the sample was collected.
 - b. The sample ID including using the standardized sample naming protocol as provided in 3.a.vi.
 - c. Each sample's content (i.e. Fly Ash or Bottom Ash) will be designated as appropriate.
 5. Testing of the Fly Ash samples by an ELAP certified lab shall include:
 - a. Total and WET-extractable metals (citric acid buffer) for each of the metals in Table 1 for the first week of the month only;
 - b. Total and WET-extractable lead and arsenic for each week of the month;

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6. Testing of the Bottom Ash samples by an ELAP certified lab shall include:
 - a. Total metals test for each of the metals in Table 1.
 - b. WET-extractable metals for any metal(s) with a total result that exceeds 10 times the STLC limit in Table 1.
7. Log the sample results into an Ash database.
8. After obtaining the sample results from the laboratory, the following calculations shall be performed:
 - a. Determine the mean of the four (4) samples utilizing Equation 2(a) of Table 9-1 of SW-846;
 - b. Determine the variance of the four (4) samples utilizing Equation 3(a) of Table 9-1 of SW-846;
 - c. Determine the appropriate number of samples of Ash to be collected using Equation 8 of Table 9-1 of SW-846. If additional samples are required, additional samples of the pile shall be analyzed and Steps 8a and 8b shall be repeated with the original four (4) samples, plus the additional samples;
 - d. Determine the standard deviation and standard error of the analyzed samples using Equations 4 and 5 of Table 9-1 of SW-846. If the mean of the metal is equal to or greater than the applicable regulatory threshold, then that metal is present in the Ash at a hazardous concentration. If the mean of the metal is less than the applicable regulatory threshold, then proceed to the next step;
 - e. Determine the 80% two-tailed UCL of the mean of the analyzed samples using Equation 6 of Table 9-1 of SW-846;
 - f. Compare the 80% UCL of the mean to the regulatory threshold for each metal analyzed; and
 - g. If the UCL of the mean is less than the respective STLC and TTLC for the metals tested, the Ash may be managed as non-hazardous (e.g., for Fly Ash for dairy or related agricultural application).

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