



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

OCT 04 2011

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RECEIVED - 5 PM 9:35

Re: Santa Isabel Municipal Landfill
Docket Nos. RCRA-02-2007- 7302 and RCRA-02-2011-7303

Dear Sirs:

Attached please find an executed copy of a Modification of Administrative Order on Consent to Narrow Future Obligations Under It, Docket No.: 02-2007-7302, signed by LM Waste Service Corp. (LM Waste), VA Waste Management, the Municipality of Santa Isabel (Municipality) and Region 2 of the U.S. Environmental Protection Agency (EPA), as well as the Administrative Order on Consent, Docket No.: RCRA-02-2011-7303, signed by the Municipality and Region 2.

If you have any questions regarding these documents, please do not hesitate to contact me.

Sincerely,

Amy R. Chester
Assistant Regional Counsel
212 637-3213

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

Santa Isabel Municipal Landfill
Santa Isabel, Puerto Rico.

Municipality of Santa Isabel,
Puerto Rico,

LM Waste Service Corp., and

V.A. Waste Management, Corp.

Respondents.

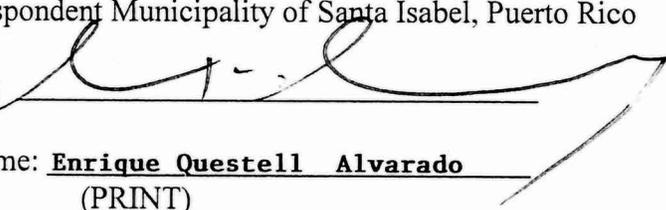
Proceeding Under Section 7003 of the
Solid Waste Disposal Act, as amended.

**MODIFICATION OF ADMINISTRATIVE ORDER ON CONSENT
TO NARROW FUTURE OBLIGATIONS UNDER IT
DOCKET NO.: 02-2007-7302**

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1. On August 30, 2007, the Municipality of Santa Isabel, Puerto Rico ("Municipality"), LM Waste Service, Corp. ("LM Waste Service") and V.A. Waste Management, Corp. ("V.A. Waste Management") (collectively hereafter referred to as the "Respondents" or "Respondent") jointly entered into an Administrative Order on Consent with EPA, Docket No.: RCRA-02-2007-7302, ("2007 AOC") in which the Respondents agreed to close the Santa Isabel Landfill pursuant to the requirements specified therein.
 2. Respondent Municipality has represented to EPA that financial constraints have prevented it from closing the Landfill pursuant to the timeframes set forth in the 2007 AOC.
 3. Respondent Municipality has asked EPA to enter into a new Administrative Order on Consent providing for a revised schedule for a delayed phased closure of the Landfill with the Municipality as the sole Respondent signing the Order. EPA and Municipality have agreed that any new Administrative Order on Consent should contain a recycling program

Modification to Administrative Order On Consent
Santa Isabel Municipal Landfill
Santa Isabel, Puerto Rico
Docket No. RCRA-02-2007-7302

Respondent Municipality of Santa Isabel, Puerto Rico

By: 

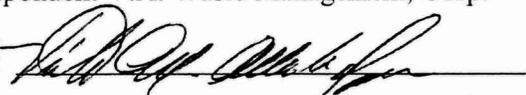
Name: Enrique Questell Alvarado
(PRINT)

Title: Mayor, Municipality of Santa Isabel

Date: **August 25, 2011**

Modification to Administrative Order On Consent
Santa Isabel Municipal Landfill
Santa Isabel, Puerto Rico
Docket No. RCRA-02-2007-7302

Respondent V.A. Waste Management, Corp.

By: 

Name: Victor M. Allende Reyes
(PRINT)

Title: Presidente

Date: 8/30/2011

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

Santa Isabel Municipal
Solid Waste Landfill

ADMINISTRATIVE ORDER
ON CONSENT

Docket No.: **RCRA-02-2011-7303**

Santa Isabel, Puerto Rico.

Municipality of Santa Isabel,
Puerto Rico.

Respondent.

Proceeding Under Section 7003 of the
Solid Waste Disposal Act, as amended.

I. JURISDICTION

1. This Administrative Order (the "Order") is issued on consent to the Municipality of Santa Isabel, Puerto Rico ("Municipality" or "Respondent").
2. The Santa Isabel Municipal Solid Waste Landfill ("Landfill" or "Facility") is located in the Municipality of Santa Isabel in the Commonwealth of Puerto Rico. The Landfill consists of one (1) non-hazardous waste cell hereafter referred to as the "Existing Landfill."
3. The Municipality is the owner of the Landfill, and is or has been the operator of the Landfill.
4. This Order is issued by the United States Environmental Protection Agency ("EPA") pursuant to the authorities vested in the Administrator of EPA by Section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.* ("RCRA" or "the Act"), which authority has been duly delegated to the Regional Administrator of EPA, Region 2.

Owner and Operator

13. Respondent has been the "owner" of the Landfill since at least 1979, as that term is defined in 40 C.F.R. § 258.2, and has contributed and continues to contribute to the handling and disposal of solid waste at the Landfill in its capacity as owner.

14. Respondent Municipality has been the "operator" of the Landfill, as that term is defined in 40 C.F.R. § 258.2, at various times during its ownership of the Landfill including from September 2, 2005 to May 1, 2006 and from October 1, 2006 to the present. During these times, it contributed and/or continues to contribute to the handling and disposal of solid waste at the Landfill in its capacity as an operator.

Respondent is a Person

15. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15).

Factual Background

16. The Landfill is located in the Municipality of Santa Isabel, Puerto Rico. The Municipality has an area of approximately 90 square kilometers and has a population of about 20,000 people.

17. The Landfill began receiving municipal solid waste collected from within the Municipality as early as 1979.

18. In 1993, EQB ordered the Landfill to stop receiving waste. In 1999, the EQB alleged in an Administrative Order that the Landfill received solid waste in 1999 without proper authorization or approval. In 2003, based on an EQB Resolution, the Landfill reopened and began accepting municipal solid waste.

19. According to a study prepared by Malcolm Pirnie for the Solid Waste Management Authority, the Landfill was receiving approximately 350 cubic yards per day of municipal solid waste in March 2006. This waste consists primarily of household waste which includes, among other things, plastics, garbage, and household hazardous waste.

20. The Landfill is located north of an intermittent tributary of the Jueyes River and next to a pasture where cattle graze.

21. The Landfill is located over an alluvial unconfined (water-table) aquifer within the South Coast Aquifer System. Regional groundwater movement is southward toward the coast with some possible lateral movement toward major streams. Unconfined aquifers do not have an impermeable layer to prevent the entry of point (seepage) or diffuse (run-off) source contaminants.

there are still, as of at least April 1, 2011, no controls on the west side of the Landfill. Run-on controls are required by 40 C.F.R. § 258.26.

32. Between at least November 17, 2005, and April 1, 2011, the Landfill did not have an impermeable liner, as required by 40 C.F.R. § 258.40 for “new MSLWF [municipal solid waste landfill] units” and “lateral expansions” as those terms are defined in 40 C.F.R. § 258.2.

33. Between at least November 17, 2005 and April 1, 2011, the Landfill did not have a leachate collection system, as required by 40 C.F.R. § 258.40 for “new MSLWF units” and “lateral expansions” as those terms are defined in 40 C.F.R. § 258.2.

34. Leachate is a “liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.” 40 C.F.R. § 258.2. Landfill leachate may contain hazardous constituents.

35. Increased volumes of leachate are generated by and released from landfill units that do not have requisite engineering controls in place such as surface water run-on controls, impermeable liners and leachate collection systems.

36. Leachate released from the Landfill has the potential to reach and impact the South Coast Aquifer System.

37. Between at least November 17, 2005, and April 1, 2011, the Landfill did not have a groundwater monitoring system, as required by 40 C.F.R. §§ 258.50- 258.51. An adequate groundwater monitoring system is necessary to determine if contaminants are being released beyond the Facility boundaries and into the South Coast Aquifer System. Because PRASA uses the South Coast Aquifer for public water supply, irrigation and other purposes, failure to have groundwater monitoring poses a potential threat to human health and the environment. Groundwater used for irrigation purposes may affect the quality of crops. Additionally, there are at least two private drinking water wells within two kilometers of the Landfill.

38. On at least November 17, 2005, August 6, 2009, March 24, 2010, March 31, 2011, and April 1, 2011, adequate daily cover was not placed on top of solid waste disposed of in the Landfill, as required by 40 C.F.R. § 258.21.

39. The lack of adequate daily cover at the Landfill left exposed, among other things, bagged and loose trash, vegetation, scrap metal, concrete cylinders, lead-acid batteries, scrap tires, refrigerant coils, computer monitors, and medical waste (i.e., hypodermic needles). These items may invite disease vectors such as rodents, mosquitoes, and flies, are odorous, easily windblown, and potential fire risks, invite scavenging, and generate leachate.

40. Between at least November 17, 2005, and April 1, 2011, the Landfill did not have an operational explosive gas control system. A methane monitoring system is required by 40 C.F.R.

environment, has determined that the issuance of this Order is necessary to protect public health and the environment.

V. ORDER

49. Based on the foregoing EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW, the foregoing DETERMINATION, and the full administrative record, IT IS HEREBY ORDERED that Respondent shall perform the actions required by this Order and comply with its provisions. Respondent shall fully cooperate with EPA representatives in carrying out the provisions of this Order.

VI. ORDER WORK REQUIREMENTS

50. REPORTS, NOTICES AND DOCUMENT SUBMISSIONS

a. All submissions to EPA by Respondent pursuant to this Order shall be in English. This includes progress reports, notices, letters, plans and specifications, certifications and other such submissions required by the terms of this Order.

51. CONTINUING OPERATIONAL REQUIREMENTS

a. No later than ten (10) calendar days after the effective date of this Order, Respondent shall cause the following NOTICE to be posted in Spanish and English at the Landfill Facility entrances in large lettering on mounted signs at least four feet by six feet in size.

NOTICE

THIS FACILITY IS SUBJECT TO A UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ADMINISTRATIVE ORDER ON CONSENT.

Respondent shall confirm in writing to EPA that the Notice has been posted, and shall send EPA one or more photographs either in digital form or clearly developed of the Notice signs. (To the extent a bilingual sign is already posted pursuant to the 2007 AOC, Respondent may retain that sign to meet this posting requirement.)

b. Within thirty (30) calendar days of the effective date of this Order, Respondent shall ensure that the Facility has proper fencing around its entire perimeter. Thereafter, Respondent shall provide security at the Facility, including maintenance of fencing and ensuring that entrance gates are locked during non-business hours or when the Facility is not operating and does not have someone inspecting incoming loads.

c. Starting no later than twenty-four (24) hours of the effective date of this Order and continuing until the Landfill Facility stops receiving waste for disposal, Respondent shall

December 31, 2013. Post closure shall be performed pursuant to the terms and time schedules set forth in the approved Post Closure Plan.

d. The Revised Closure and Post-Closure Plans, which shall be submitted to EPA for review and approval, shall incorporate all necessary engineering reports and associated plans and specifications to meet the requirements set forth above, including:

i. A detailed implementation schedule specifying the measures to be undertaken during each phase of Interim Closure and in the Final Closure of the Facility, and during post-closure care.

ii. Identification of any permits or other forms of prior approval(s) that may be required from other federal or Commonwealth agencies in order to implement the Revised Closure and Post-Closure Plans.

iii. The placement, at a minimum, of an intermediate cover on each portion of the Landfill which is required to cease receiving waste under this Order, immediately following the cessation of waste disposal deadline set forth in Paragraph 52.c. above (the "Intermediate Cover"). (Respondent may, pursuant to these same deadlines, install a final cover which meets EPA's approval, in lieu of an intermediate cover.) The intermediate cover shall remain in place until Permanent Closure activities are performed. The intermediate cover, consisting of at least twelve (12) inches of compacted earthen material, shall be designed so that it will prevent exposure of wastes and will control vectors, fires, odors, blowing litter and scavengers until a final Landfill cover is installed.

iv. The Revised Closure and Post-Closure Plans must at a minimum meet the closure and post-closure criteria set forth in 40 C.F.R. §§ 258.60 and 258.61; the Post-Closure Plan shall also include measures and procedures to be utilized in the event that a corrective action assessment and/or corrective action remedy, as those terms are described in 40 C.F.R. §§ 258.56, 258.57 and 258.58, become necessary as a result of information concerning contamination obtained through groundwater monitoring or otherwise.

v. The Revised Closure and Post-Closure Plans shall incorporate measures to meet applicable Clean Water Act (CWA) requirements relating to storm water discharges and its implementing regulations, including permit requirements set forth in 40 C.F.R. Part 122, Subpart B, Section 122.26.

vi. The Revised Closure and Post-Closure Plans shall use surveys, investigations, mapping, and related technical information and/or work to be developed and/or undertaken by the Engineer(s). In the alternative, the Engineer(s) may use existing maps, surveys and other technical information and/or work that in the Engineer(s)' professional judgment, are accurate and represent current conditions.

and/or Post Closure Plans by the date specified in the FINAL NOTIFICATION OF DEFICIENCIES, or in the event of a dispute resolution, by the date specified in the SECOND FINAL NOTIFICATION OF DEFICIENCIES, shall constitute Respondent's failure to comply with a requirement of this Order, and Respondent shall be subject to stipulated penalties for such failure, in accordance with Section XIV. STIPULATED PENALTIES of this Order.

53. SCHEDULE FOR CEASING RECEIPT OF WASTE AT THE LANDFILL

29
a. At least one hundred and twenty days (120) prior to the deadline for the cessation of waste receipt at the Landfill, Respondent shall give written notice to all commercial carters that deposit solid waste at the Landfill and to any municipality outside Santa Isabel that disposes of such waste at the Landfill specifying the date after which the Landfill will no longer accept waste for disposal. Respondent shall send copies of the notices to SWMA and to EQB. Respondent shall send EPA an English translation of the notices and copies of the notices themselves.

b. By no later than September 30, 2013, Respondent shall permanently cease receiving all waste for disposal at the Landfill, with the exception, as approved by EPA, of waste necessary to achieve the final closure configurations set forth in the approved Closure Plan. The signs posted pursuant to paragraph "51.a" herein, shall be removed and signs at least four feet by six feet shall be posted at the Landfill Facility entrances stating in large Spanish and English lettering that "**THIS LANDFILL IS PERMANENTLY CLOSED BY A UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ORDER ON CONSENT.**"

c. Within thirty (30) calendar days after the Landfill ceases receiving waste, Respondent shall submit a written report to EPA documenting that Respondent no longer permits the disposal of any solid wastes in the Landfill and that such disposal has ceased. The report shall be accompanied by a certification signed by a senior official of Respondent in the form set forth in VIII. CERTIFICATIONS, herein.

54. INTERMEDIATE COVER, PERMANENT CLOSURE AND POST-CLOSURE, AND NOTIFICATIONS REGARDING FUTURE WASTE DISPOSAL

a. Respondent shall apply Intermediate Cover immediately on all areas of the Landfill: 1) where waste is not being deposited on a regular basis; and/or 2) which are subject to Interim Closure, to the extent Respondent, under the Revised Closure Plan, has selected to use an intermediate cover prior to a Final Cover. Intermediate covers shall be maintained until a Final Cover is installed.

b. Within thirty (30) calendar days after receipt of EPA's written acceptance of the Revised Closure Plan, pursuant to paragraph "52.f or g" above, Respondent shall proceed to carry out the terms of the Revised Closure Plan, in accordance with its implementation schedule, including applying for any permits or other prior approval(s) that may be necessary. Permanent closure of the entire Landfill must be completed by no later than **December 31, 2013**.

all the definitions, requirements and time schedules set forth in Paragraphs 56 and 57 below, and shall, at a minimum, be implemented for as long as the Landfill receives any waste for disposal.

56. The following definitions apply to development and implementation of Respondent's Recycling and Green Waste Management Program:

- **"Agricultural waste"** is defined, for the purposes of the Order, as waste vegetation generated by residential sources, commercial sources and/or from agricultural activities including but not limited to bean, nut, and grain hulls and chaff, sugar cane bagasse, orchard pruning, and coffee bean hulls and grounds.
- **"Ash"** is defined, for the purposes of the Order, as the residue of matter that remains after burning, and includes, but is not limited to, such residues produced by manufacturing, energy production, burning coal and other commercial processes.
- **"Composting"** is defined, for the purposes of the Order, as the controlled biological aerobic decomposition of organic material that is sanitized through the generation of heat and stabilized to the point that it is beneficial to plant growth in that it has the unique ability to improve the chemical, physical, and biological characteristics of soils or growing media. (Material that is or will be composted is hereinafter referred to as "compostable material.")
- **"Green Waste"** is defined, for the purposes of the Order, as agricultural and yard waste, as defined herein, which are subject to the composting and mulching requirements in this Order.
- **"Mulching"** is defined, for the purposes of the Order, as the collection and processing of agricultural and yard wastes to reduce their volume and their subsequent application to soil to provide insulation, limit evaporation, and control weeds and erosion. (Material that is or will be mulched is hereinafter referred to as "mulch material.")
- **"Recycling"** is defined, for the purposes of the Order, as the collection, processing, and sale or distribution of waste glass, paper, metals, plastics, electronics, and batteries as defined in 40 C.F.R 273.9 (hereinafter "**recyclable materials**").
- **"Yard waste"** is defined, for the purposes of the Order, as waste vegetation, such as grass, bushes, shrubs, trees, and associated clippings, generated by residential and/or commercial sources through the maintenance of private or public lands.

57. Respondent's Recycling and Green Waste Management Program shall include the following requirements and implementation schedules:

Quarterly Reports on Implementation of the Recycling and Composting Program

58. Respondent shall submit quarterly reports to EPA summarizing the efforts undertaken by the Respondent during the prior quarter to implement the Program and shall document implementation of the Program included but not limited to verifying Respondent's compliance with each requirement set forth in Paragraphs 55 and 57 above. Upon request by EPA, Respondent shall further submit logs documenting the collection of recyclable materials and green waste, receipts regarding the sale and/or distribution of recyclable materials and green waste, documentation regarding the passage of any laws, regulations or ordinances and any enforcement actions taken, documentation regarding education and outreach, and any other information regarding the Program which EPA deems appropriate. The first quarterly report shall be submitted within ninety (90) days of the effective date of this Order.

VII. FINANCIAL ASSURANCE

59. By no later than December 31, 2013, Respondent shall submit to EPA satisfactory evidence that they are in compliance with the financial assurance requirements for post-closure care set forth in 40 C.F.R. §§ 258.72 and 258.74.

60. Respondent shall maintain compliance with the financial assurance requirements for post-closure care set forth in 40 C.F.R. §§ 258.72 and 258.74, and shall certify to such compliance in each annual post-closure report submitted pursuant to paragraph "54.f" above.

61. In the event that corrective measures are required during the post-closure period, Respondent shall come into compliance with the financial assurance requirements for corrective action as set forth in 40 C.F.R. § 258.73 by the time of submission of its next annual post-closure report after the estimated cost of corrective measures has been established. Respondent shall include evidence of the maintenance of the required financial assurance for corrective action in such annual post-closure report and succeeding annual reports filed pursuant to paragraph "54.f" above.

VIII. CERTIFICATIONS

62. Wherever this Order requires that a "Certification" be submitted to accompany written reports or documents, the following Certification form shall be submitted, and shall be dated and signed by a senior official of Respondent.

"I certify under penalty of law that this document [Identify Document] and all attachments being submitted were prepared under my direction or supervision in order to ensure that qualified personnel properly gathered, evaluated and prepared this submission. Based on my review of the documents, data and other information available at the time of this certification, including my inquiry of the

Leonard Grossman
Environmental Scientist
U.S. Environmental Protection Agency, Region 2
RCRA Compliance Branch
290 Broadway -21st Floor
New York, New York 10007-1866

Additionally, copies of all such correspondence shall be sent to the following person at the following address:

Carl Plössl
Environmental Engineer
U.S. Environmental Protection Agency, Region 2
RCRA Compliance Branch
290 Broadway - 21st Floor
New York, New York 10007-1866

a. By no later than fifteen (15) calendar days after the effective date of this Order, Respondent shall designate a person or persons to receive such written communications, notices or response to submissions required by this Order and shall provide a mailing address for such person(s).

XII. EMERGENCY PROVISIONS/CORRECTIVE ACTION

67. a. In the event Respondent identifies a current or immediate threat to human health or the environment at the Landfill other than those identified in Section III herein, Respondent shall immediately upon becoming aware of it, notify EPA orally and in writing within twenty four (24) hours summarizing the immediacy and magnitude of the potential threat to human health or the environment. The Respondent shall thereafter submit to EPA for approval, as soon as possible, a plan to mitigate this threat. EPA will approve or modify this plan, and the Respondent shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondent may act as it deems appropriate at its own risk.

b. In the event Respondent identifies the need for corrective action due to conditions at the Landfill, or off-site, caused by contamination released from the Landfill, other than those conditions identified in Section III herein or identified by groundwater monitoring carried out pursuant to the Post-Closure Plan, Respondent shall notify EPA within fifteen (15) calendar days of such identification. After review of available information, EPA may, after consultation with Respondent, require Respondent to prepare and implement a corrective action assessment and/or corrective action remedy. The corrective action assessment and/or corrective action remedy shall be implemented subject to EPA oversight.

72. Notwithstanding compliance with the terms of this Order, the Respondent is not released from liability for violations of the 2007 AOC or for the costs of any response actions taken by EPA. EPA reserves the right to seek reimbursement from Respondent for any costs incurred by the United States.

XIV. STIPULATED PENALTIES

73. Unless the Respondent is excused under the "Force Majeure and Excusable Delay" provision of the Order, Respondent shall pay a stipulated penalty for failure to comply with any requirement, term, or condition set forth in or required by this Order. The stipulated penalty for each non-complying act is as follows:

<u>Period of Failure to Comply</u>	<u>Penalty for Non-compliance Per Calendar Day</u>
1st through 15 th day	<u>\$100.00</u>
16 TH through 60 th day	<u>\$200.00</u>
61 st through 120 th day	<u>\$750.00</u>
121st through 180 th day	<u>\$1,000.00</u>
181 st day and thereafter	<u>\$3,000.00</u>

a. Stipulated penalties shall be paid by cashier's or certified check, payable to the Treasurer, United States of America, and mailed to the

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Said payment(s) shall be identified as **Santa Isabel Municipal Solid Waste Landfill, Santa Isabel, Puerto Rico** and must reference the **Docket Number** set forth on the title page of this Order.

b. All stipulated penalties begin to accrue on the day each act of noncompliance with any requirement, term, or condition set forth in or required by this Order first takes place. Said stipulated penalties shall continue to accrue through, and including, the day on which any failure to comply with such requirement, term, or condition is remedied. Nothing herein shall preclude, or is intended to preclude, the simultaneous accrual of separate stipulated penalties for each separate act of noncompliance with this Order. Penalties shall accrue regardless of whether EPA has notified Respondent of the act or acts of non-compliance, but need only be paid upon demand.

c. After receipt of a demand from EPA for stipulated penalties pursuant to this Section of the Order, Respondent may within thirty (30) calendar days of such demand, provide EPA

or consent order relating to the closure of the Landfill at the Santa Isabel Landfill Facility. Respondent shall keep all such third parties fully informed of its activities pursuant to the Order's requirements and shall, unless otherwise agreed to by the parties, provide copies to such parties of all correspondence and submissions to EPA under the Order.

XVI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

75. Respondent shall indemnify, save and hold harmless the United States Government, its agencies, departments, agents, and/or employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its agents, independent contractors, receivers, trustees, subcontractors or successors and/or assigns in carrying out activities required by this Order. This indemnification shall not be construed as in any way affecting or limiting the rights or obligations of the Respondent or the United States under their various contracts or statutes.

XVII. OTHER APPLICABLE LAWS

76. Nothing herein shall relieve Respondent of its obligations to undertake all actions required by this Order in accordance with local, Commonwealth and federal laws and regulations. Respondent shall obtain all permits or approvals necessary to perform the work required by this Order.

XVIII. SEVERABILITY

77. If any provision or authority of this Order or the application of this Order to any party or circumstance is found to be invalid, or is temporarily stayed, the remainder of this Order shall remain in force and shall not be affected thereby.

XIX. FORCE MAJEURE AND EXCUSABLE DELAY

78. Respondent shall perform all the requirements of this Order within the time limits set forth, approved, or established herein, unless the performance is prevented or delayed solely by events which constitute a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of the Respondent which could not be overcome by due diligence and which delays or prevents performance by a date required by this Order. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, Commonwealth, or local permits. Nothing in this Section XIX. bars Respondent from seeking a scheduling modification pursuant to XXII. MODIFICATION, herein.

79. The Respondent shall notify in writing the EPA Project Coordinator within ten (10) days after becoming aware of any event, which it knows or should know, constitutes a force majeure. Such notice shall detail the estimated length of delay, including necessary demobilization and remobilization, its causes, measures taken or to be taken to minimize the delay, and an

86. Nothing in this Order shall be construed to limit or otherwise affect EPA's right of access and entry pursuant to any applicable laws and regulations.

87. Nothing in this Order shall be construed to limit or otherwise affect Respondent's liabilities and obligations to perform corrective action, including corrective action beyond the Landfill property boundary, notwithstanding the lack of access. EPA may determine that additional on-site measures must be taken to address releases beyond the Landfill Facility boundary if access to off-site areas cannot be obtained.

XXI. NO FINAL AGENCY ACTION

88. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, Region 2, or any authorized representative of EPA, shall constitute final agency action giving rise to any rights of judicial review prior to EPA's initiation of a judicial action for a violation of this Order, which may include an action for penalties, an action to compel one or more Respondents' compliance with the terms and conditions of this Order, or such other relief as may be available at law.

89. In an action brought by EPA for a violation of this Order, Respondent shall bear the burden of proving that EPA's action was arbitrary and/or capricious and not in accordance with law, or this Order. In any such action, EPA shall bear the burden of proving that Respondent has violated a term or terms of this Order.

XXII. MODIFICATION

90. This Order may be amended by Respondent and EPA. Such amendment(s) shall be in writing, shall first be signed by Respondent, and shall have as their effective date the date on which they are signed by the EPA Regional Administrator.

91. Notwithstanding the above, EPA's and the Respondent's Project Coordinators may agree to changes in the scheduling of events. Any such changes shall normally be requested in writing by the Respondent and must be approved in writing by the EPA PC.

92. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as an amendment or modification to this Order.

XXIII. TRANSFER OF OBLIGATIONS

93. Respondent shall give notice, and a copy, of this Order to any successor in interest prior to any transfer of ownership or responsibility for the Landfill Facility. Respondent shall give notice to EPA at least sixty (60) days prior to any such transfer. No such transfer shall in any way alter, extinguish or otherwise affect Respondent's responsibility to meet all the terms and

97. EPA's determination shall be incorporated into and become an enforceable part of this AOC and shall no longer be subject to dispute pursuant to this AOC. Respondent shall proceed in accordance with the Director's or her representative's determination regarding the matter in dispute, regardless of whether Respondent agrees with the determination. If Respondent does not agree to perform or does not actually perform the Work in accordance with EPA's decision, EPA reserves the right in its sole discretion to conduct the Work itself, seek reimbursement from Respondent, seek enforcement of this AOC, seek stipulated penalties, and/or seek any other appropriate relief. Any disputes arising under this AOC are not subject to judicial review until such time as EPA seeks to enforce this AOC.

98. The parties may continue to confer and to use informal efforts to resolve the dispute during the period that EPA's final determination is pending. If EPA and Respondent reach agreement on the dispute at any stage, the agreement shall be set forth in writing and shall, upon signature of both parties, be incorporated into and become an enforceable part of this AOC.

99. The existence of a dispute and EPA's consideration of matters placed in dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this AOC during the pendency of the dispute resolution process except as agreed by EPA in writing. Stipulated penalties shall continue to accrue but need not be paid on obligations subject to dispute during the dispute resolution period provided Respondent has met its obligations under this Section. If Respondent does not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid. In the event that Respondent prevails in part, penalties shall be due on those matters in which Respondent did not prevail.

XXV. TERMINATION

100. This Order and all of its terms and provisions shall remain in effect until all of the activities called for by the Order are completed and Respondent is so notified in writing by the EPA. Such notice shall be signed by the Regional Administrator, EPA Region 2. Respondent may request that EPA Region 2 provide Respondent with such notice, and shall supply EPA with such information, including certifications, as EPA may specify. EPA reserves the right to unilaterally terminate this Order in its unreviewable discretion.

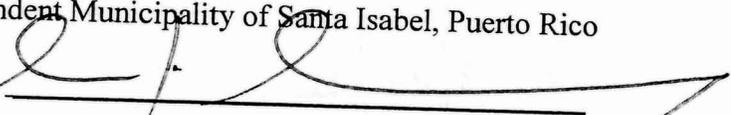
XXVI. ENFORCEMENT

101. The failure of Respondent to comply with any provision of this Order may be considered a violation of this Order. Such violation may give rise to an enforcement action pursuant to Section 7003(b) of the Act, 42 U.S.C. § 6973(b), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. Section 3701 et seq.

102. Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or such other actions as it may deem necessary for the abatement or prevention of an

Administrative Order On Consent
Santa Isabel Municipal Landfill
Santa Isabel, Puerto Rico
Docket No.: RCRA-02-2011-7303

Respondent Municipality of Santa Isabel, Puerto Rico

By: 

Name: Enrique Questell Alvarado
(PRINT)

Title: Mayor, Municipality of Santa Isabel

Date: August 25, 2011