

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In The Matter Of:

Toa Baja Municipal Solid Waste Landfill,  
Toa Baja, Puerto Rico

Puerto Rico Land Authority,

Respondent.

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

ADMINISTRATIVE ORDER  
FOR CLOSING THE TOA BAJA Municipal  
SOLID WASTE LANDFILL

TOA BAJA, PUERTO RICO

Docket No. RCRA-02-2008-7302

COPY

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## I. JURISDICTION

1. This Administrative Order (the "Order") is issued to the Puerto Rico Land Authority, hereinafter referred to as the "Authority" or "Respondent." Respondent until 2005 was the owner of the main part of the property used as a Municipal Solid Waste Landfill ("MSWLF") in the municipality of Toa Baja ("Toa Baja") in the Commonwealth of Puerto Rico. The 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. (collectively hereinafter referred to as "RCRA" or "the Act"), which authorities have been duly delegated to the Regional Administrator of EPA, Region 2. Notice of this Order has been provided to the Government of Puerto Rico, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973.

## II. PARTIES BOUND

2. a. This Order shall apply to and be binding upon the Respondent and each and every agent of Respondent. Respondent shall supply any person or entity who is under the direct or indirect control of Respondent (including but not limited to any contractor or independent agent retained to perform work related to this Order) with a complete copy of the Order. Respondent shall nonetheless be responsible for ensuring that its contractors, subcontractors and agents comply with the requirements of this Order and perform work in accordance with this Order.

b. Respondent is responsible for carrying out the requirements of this Order, and is liable for penalties for violation of the Order for non-performance of requirements of this Order or for failure or refusal to comply with this Order, pursuant to the Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. Section 3701 et seq.

c. The obligations of Respondent under this Order shall be binding on any successor, whether such successor is created by merger, expansion or otherwise, pursuant to the laws of the Commonwealth of Puerto Rico.

### III. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Order shall have the meaning assigned to them in RCRA or its implementing regulations. Whenever terms listed below are used in this Order, the following definitions shall apply:

a. The Toa Baja Municipal Solid Waste Landfill that is the subject of this Order consists of the MSWLF Facility, as defined below.

b. "MSWLF Facility" or the "MSWLF" or the "Facility" means the Municipal Solid Waste Landfill in Toa Baja, which is mainly located within an approximately 105 acre property owned by Toa Baja. Until 2005, the major part of the landfill property was owned by the Authority. The MSWLF Facility was created by the merger in 1994-95 of previously separate landfills operated by Bayamón and Toa Baja. Waste deposits at the Facility extend in several places into contiguous or adjacent property owned by others, including the United States, which deposits took place primarily prior to 1994-1995. For purposes of this Order, three sub-sections of the MSWLF Facility are delineated, as follows: Area A is the main part of the landfill consisting of approximately 69 acres; Area B, approximately seven (7) acres in size, is located north of Area A, and lies within an area designated by the Commonwealth of Puerto Rico as of March 2008 as a critical and essential habitat for an endangered species; and Area C, approximately 12 acres in size, is located in the southwestern part of the Facility, which also is denoted as the "Hoyo" area. The location and approximate boundaries of Areas A, B and C are shown in Exhibit 1, contained herein.

c. "Professional Engineer" means an engineer or engineers experienced in landfill design, development and closure, and licensed by the Commonwealth of Puerto Rico or permitted to practice engineering in Puerto Rico.

d. "Functional Closure" means establishing protective measures to reduce environmental and health risks pending final closure of the MSWLF Facility. The protective measures will be implemented in accordance with an approved plan and timetable prepared by a professional engineer, termed the "Plan for Intermediate Protective Measures" (see below). The measures include slope stabilization, storm water controls, leachate seepage interception and treatment or disposal, ground water and gas monitoring, and maintenance of landfill cover.

e. "Plan For Intermediate Protective Measures" ("PIPM") means the plan prepared by a professional engineer, approved by Respondent and by EPA (with any necessary modifications) to achieve Functional Closure, as set forth in this Order.

f. "Closure" or "Final Closure" means establishing conditions at a landfill pursuant to engineering plans that meet the closure criteria set forth in Title 40 of the Code of Federal Regulations ("C.F.R.") § 258.60. These include no further receipt of wastes, provision of a final cover designed to minimize infiltration and erosion, necessary slope stabilization, leachate control, ground water monitoring, storm water run-on and run-off controls, and explosive gas monitoring.

g. "Closure Plan" means a plan prepared by a professional engineer, in accordance with the requirements of 40 C.F.R. § 258.60, approved by Respondent and by EPA (with any necessary modifications), that is designed to achieve final closure.

h. "Gas Collection and Control System" ("GCCS") means a system designed, constructed and operated in accordance with the Clean Air Act, 42 U.S.C. § 7401 *et seq.* ("CAA") and its implementing regulations for municipal solid waste landfills.

i. "GCCS Plan" means a Plan prepared by a professional engineer that meets GCCS requirements, for approval by Respondent, and then approval by EPA (with any necessary modifications).

j. "Post-Closure Plan" means a plan prepared by a professional engineer for approval by Respondent, and then approval by EPA (with any necessary modifications) that meets the requirements for post-closure care set forth in 40 C.F.R. § 258.61, and that also incorporates GCCS maintenance and operating requirements.

#### IV. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. The MSWLF Facility has been used continuously as a municipal solid waste landfill, as that term is defined at 40 C.F.R. § 258.2, since at least the early 1970s.

5. The Facility was created from the merger of the Bayamón and Toa Baja Landfills in 1994-95. The Facility represents the "Active Portion" of the MSWLF, as that term is defined at 40 C.F.R. § 258.2.

6. Toa Baja, which currently controls the Facility, has

informed EPA that it has an operating permit for the Facility issued by the Puerto Rico Environmental Quality Board ("EQB").

7. Areas A and C of the MSWLF Facility are located on property currently owned by the Municipality of Toa Baja. Area B is located on property owned by the United States. A portion of the waste deposits in the Facility lie in adjacent property.

8. The United States Navy has permitted Toa Baja to maintain an entrance and access road to the MSWLF Facility, and a gatehouse, weigh station and leachate drainage channels on property owned by the United States adjacent to the MSWLF Facility.

9. The MSWLF Facility is located at Carr. PR 865 along Autopista 22, Barrio Candelaria, Municipality of Toa Baja, Puerto Rico. The approximate geographic coordinates are Latitude: N18.42066 Degrees; Longitude: W66.20520 Degrees.

10. From 1963 until 2005, the Authority owned the property on which the main part of the MSWLF Facility is located. The Authority permitted Toa Baja and the Municipality of Bayamón to operate landfills on its property.

11. The Authority was created by legislation enacted by the Commonwealth of Puerto Rico in 1941. The Authority is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and in Section 302(e) of the CAA.

12. Toa Baja and the municipality of Bayamón each previously operated a separate landfill on part of the MSWLF Facility until 1994-95, with permission from the Authority.

13. The Authority did not exercise supervision over landfill operations on its property that constituted the main part of the MSWLF, and did not take steps to prevent conditions arising at the landfill that may pose a threat to human health and the environment.

14. Landfill Technologies Corp. ("Landfill Technologies") is a corporation doing business in Puerto Rico. Landfill Technologies is responsible for the operation of the MSWLF Facility, acting under a contractual arrangement with Respondent Toa Baja.

15. The Puerto Rico Solid Waste Management Authority ("SWMA") estimated that in 2003 the MSWLF accepted approximately 500,000 tons of solid waste for disposal. The solid waste is primarily household waste and commercial solid waste. Construction debris is also deposited at the Facility.

16. According to a waste characterization study done as part of a report prepared for SWMA in 2003, 0.5% of the solid waste deposited into municipal landfills in Puerto Rico is composed of household hazardous waste ("HHW").
17. The Facility is subject to the federal regulations promulgated at 40 C.F.R. Part 258, entitled Criteria for Municipal Solid Waste Landfills.
18. The Facility is not authorized by EPA to accept or dispose of "regulated hazardous waste," as that term is defined in 40 C.F.R. Section 258.20(b). The MSWLF Facility is also subject to the Non-Hazardous Solid Waste Management Regulations of Puerto Rico, administered by EQB.
19. Pursuant to 40 C.F.R. § 258.1, MSWLF Facilities in operation as of 1994 that continue to accept solid waste for disposal, may only laterally expand if the expansion cell or area meets certain design criteria as set forth in 40 C.F.R. § 258.40.
20. The Toa Baja and Bayamón landfills were previously divided by an access road. The two separate landfills were combined in 1994-95, and the access road subsequently was eliminated.
21. Federal regulations set forth at 40 C.F.R. §§ 258.1 and 258.15 require that lateral expansions of MSWLF Facilities in operation since 1994 that are located in unstable areas must demonstrate that special engineering measures have been incorporated into the expansion design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. "Unstable area" is defined in 40 C.F.R. § 258.15 to include karst terrane, which is the geologic formation underlying the Facility.
22. Federal regulations set forth at 40 C.F.R. §§ 258.1 and 258.14 require that lateral expansions of landfills in operation since 1994 that are located in a seismic impact zone must demonstrate that special engineering measures have been incorporated into the expansion design to ensure that the integrity of the structural components of the landfill unit will not be disrupted. The MSWLF Facility is sited in a seismic impact zone.
23. The MSWLF Facility does not incorporate special engineering measures to protect the integrity of its structural components.
24. The MSWLF Facility is subject to the "New Source Performance Standards for Municipal Solid Waste Landfills," 40 C.F.R. Part

60, Subpart WWW, 40 C.F.R. §§ 60.750-60.759 ("NSPS for Landfills"), which applies to landfills constructed, reconstructed or modified after May 30, 1991, and to the "National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills", promulgated by EPA pursuant to Sections 112 and 114 of the CAA, 42 U.S.C. §§ 7412 and 7414, and set forth at 40 C.F.R. Part 63, Subpart AAAA, 40 C.F.R. §§ 63.1930-63.1990 ("Landfill MACT").

25. Based on its inspections in 2001-2002 and subsequent information, the EQB has rated the condition of the Toa Baja MSWLF Facility as poor.

26. These 2001-2002 EQB inspections revealed numerous deficiencies at the MSWLF Facility, including lack of an operating log, insufficient security, lack of leachate and storm water run-off controls, lack of a Closure Plan and lack of a required groundwater monitoring system to detect migration of contaminants from the Facility. The MSWLF Facility also was found to lack an explosive gas monitoring system. In addition, EQB found that the Facility did not properly apply daily cover or properly backfill to cover areas that had once been covered but had subsequently become exposed due to erosion.

27. Authorized representatives of EPA inspected the MSWLF Facility on or about March 20, 2003 (the "2003 EPA inspection") and on or about March 22, 2006 (the "2006 EPA inspection"). Before and subsequent to each inspection, EPA obtained additional information concerning waste disposal practices at the Facility.

28. The 2003 EPA inspection confirmed the deficiencies enumerated by EQB.

29. The 2003 EPA inspection also revealed that junked automobiles, scrap metal, appliances and other wastes were regularly disposed at the MSWLF Facility. Such wastes can contribute to the generation of leachate that may contain hazardous constituents.

30. The EPA representative observed seepage ("leachate seepage") from multiple areas of the MSWLF Facility during the 2003 EPA inspection. Observed flows were into adjacent Navy property.

31. At the time of the 2003 EPA inspection, leachate seepage was captured in two tanks from a drainage collection system on the southwestern flank of the Facility. The EPA representative observed that both tanks were full and overflowing.

32. Leachate is liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.
33. The 2003 EPA inspection also found evidence that disease vectors were present at the MSWLF Facility, such as feral dog packs and birds, and that there was inadequate security to prevent scavenging. The EPA representative observed unauthorized entry by a scavenger through an unlocked gate near a housing development.
34. The EPA representative in 2003 also observed potentially unstable slopes, exceeding the generally accepted engineering standard of a 3:1 ratio, e.g not less than three horizontal feet for each vertical foot.
35. EPA representatives again conducted a compliance evaluation inspection of the MSWLF Facility on or about March 22, 2006. While observing that daily and intermediate cover operations appeared improved, the EPA representatives observed leachate seepage and lack of storm water controls.
36. The EPA representative in 2006 also observed an increased potential for unstable slopes, compared to the 2003 inspection. Any potentially unstable slope is of particular concern in an unstable area, as that term is defined in 40 C.F.R. § 258.15.
37. During the 2006 inspection, EPA learned that a partial leachate interception and collection system had been installed on the eastern side of the Facility (partly on Navy property). The leachate that had been collected in tanks, however, had not been treated or removed from the site and the system had been abandoned. Leachate seepage flow continued unimpeded throughout the MSWLF Facility.
38. During the 2006 inspection, EPA also learned that security issues and problems with local scavengers were ongoing at the MSWLF Facility and that past problems associated with local scavengers had included burning of landfill machinery. And, in addition to the previously observed feral dog packs, problems also existed with feral monkeys that had escaped from the nearby Rhesus monkey facility.
39. Toa Baja has informed EPA that in 2007 it concluded an "Operation Compliance" agreement with EQB and SWMA concerning the MSWLF.
40. Due to the MSWLF's capacity which is equal to or greater

than 2.5 million Megagrams ("Mg") by mass and 2.5 million cubic meters by volume, and its non-methane organic compound emission rate, which equals or exceeds 50 Mgs per year, the MSWLF Facility is required under the CAA to design, install and operate a full Non-Methane Organic Compound ("NMOC") GCCS. Such a system has not been installed at the MSWLF Facility to collect and control air emissions of NMOCs and surface methane.

41. Landfill gas is generated during the natural process of anaerobic decomposition of refuse contained in a MSWLF. The emissions of concern are NMOCs, which include volatile organic compounds ("VOCs"), hazardous air pollutants ("HAPs"), and odorous compounds. VOC emissions contribute to ozone formation which can result in adverse effects to human health and the environment. The health effects of exposure to HAPs can include cancer, respiratory irritation and damage to the nervous system.

42. Methane gas is odorless and, at certain concentrations, is potentially combustible. The accumulation of methane gas within a MSWLF can potentially cause fires and/or explosions. Through subsurface migration, landfill gas may also migrate off-site and pose a further threat.

43. The MSWLF Facility is located directly adjacent to residential neighborhoods. The nearest residences are less than 200 feet from the toe of landfill slopes.

44. Leachate releases from the MSWLF Facility may potentially threaten human health through contamination of drinking water that may be drawn from the underlying aquifer.

45. Contaminated run-off and ground water from the MSWLF Facility have the potential to adversely impact the adjacent local karst and wetland ecosystems.

46. Lateral expansion of a landfill may increase the area available for both direct precipitation and storm water run-on, thus potentially increasing leachate formation within the landfill. Lateral expansion also increases landfill capacity.

47. The MSWLF Facility is located in a karst terrane geologic region. Karst characteristically is a limestone region marked by sinks and interspersed with abrupt ridges, irregular protuberant rocks, caverns and underground streams.

48. Karst terrane geology in Puerto Rico harbors rich biodiversity. More than 1,300 species of plants and animals are present in the karst ecosystems in Puerto Rico. It is habitat

for most of the native and endemic wildlife species, including 30 federally listed threatened and endangered species. Many of these species are only known from karst ecosystems.

49. Wetlands that exist to the north of the MSWLF Facility have been identified as habitat for numerous fish and bird species.

50. These wetlands may also serve other important environmental functions, including water quality improvement, sediment retention and flood water storage.

51. The MSWLF Facility does not have a operational leachate control system and, in the past, did not utilize adequate amounts of daily cover and did not utilize other engineering controls to minimize the amount of leachate generated by the landfill, particularly after a substantial rainfall event. The Toa Baja area receives an average of approximately seventy-five (75) inches of rainfall annually.

52. In the absence of a leachate control system, leachate releases from the MSWLF Facility can reach the underlying karst aquifer.

53. In the absence of a leachate and storm water control system, leachate releases from the MSWLF Facility may impact adjacent areas.

54. The nature of karstic terrane makes it difficult to monitor ground water flow since the numerous and haphazard formation of interconnecting dissolution chambers allows water to flow rapidly, and in an unpredictable manner.

55. A 1989 EPA technical study, "Ground-Water Monitoring in Karst Terranes," (U.S. EPA, EPA/600/X-89/050) concluded that waste disposal facilities should not be located within a karst terrane.

56. The foregoing EPA Findings of Fact describe conditions at the MSWLF Facility that EPA has determined may present an imminent and substantial endangerment to human health and the environment.

57. The foregoing EPA Findings of Fact and Conclusions of Law demonstrate that: a) Respondent Authority is a person under RCRA; b) Respondent Authority was owner of the main part of the MSWLF Facility until 2005; and Respondent Authority has in the past contributed to the handling and disposal of solid waste at the Facility and that the Facility may pose an imminent and

substantial threat to health and the environment.

#### V. DETERMINATION

58. Based on the foregoing EPA FINDINGS OF FACT AND EPA CONCLUSIONS OF LAW and the full Administrative Record, the Regional Administrator of EPA Region 2, upon receipt of evidence and information that the past and present handling and disposal of solid wastes at the Facility may present an imminent and substantial endangerment to health and the environment, has determined that issuance of this Order is necessary to protect public health and the environment.

#### VI. ORDER

59. Based on the foregoing EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW, the foregoing DETERMINATION, and the full administrative record, IT IS HEREBY ORDERED that Respondent shall perform all actions required by this Order and comply with all its provisions.

a. Respondent shall fully cooperate with EPA representatives in carrying out the provisions of this Order.

b. Respondent shall make best efforts to participate in the performance of the work required by the Order with Toa Baja and Landfill Technologies Corp., which are the Respondents in the Toa Baja Municipal Solid Waste Landfill Consent Order, Docket No. RCRA-02-2008-7308 (the "Consenting Parties" and the "RCRA Toa Baja Consent Order" or the "Consent Order"). Best efforts to participate shall include, at a minimum:

i. Performance of such portion of the work under this Order by Respondent as Respondent and the Consenting Parties may agree shall be undertaken by Respondent; and/or

ii. Payment of all amounts as may be agreed by Respondent and the Consenting Parties to be paid by Respondent in lieu of performance by Respondent of the work or portion of the work under this Order.

c. Respondent shall cooperate with and coordinate with the Consenting Parties in the performance of work requirements concerning the MSWLF Facility set forth in this Order to ensure their successful completion. Best efforts to cooperate and coordinate shall include at a minimum:

i. Within fifteen (15) calendar days of the

effective date of this Order, communicate in writing to the Consenting Parties as to Respondent's desire to comply with this Order and to participate in the performance of the work required by the Order (to the extent not already performed) or, in lieu of performance, to help pay for the performance of the work;

ii. Within thirty (30) calendar days of the effective date of the Order, submit a good faith offer to the Consenting Parties to perform the work required by the Order, in whole or in part (to the extent not already performed), or, in lieu of performance, to pay for the work, in whole or in part; and

iii. Engage in good faith negotiations with the Consenting Parties to perform the work required by the Order, in whole or in part (to the extent not already performed) or, in lieu of performance, to pay for the work, in whole or in part, if the Consenting Parties refuse Respondent's first offer.

d. Respondent at EPA's request shall submit one or more written reports concerning its negotiations with the Consenting Parties, and shall submit copies of its correspondence with the Consenting Parties concerning the negotiations.

e. The undertaking or completion of any work requirement under this Order by the Consenting Parties without the participation of Respondent shall not relieve Respondent of its obligation to perform each and every other work requirement under this Order.

f. Respondent is jointly and severally responsible with the Consenting Parties for carrying out the work requirements described in Section VII of this Order that are also contained in the Order issued to the Consenting Parties. Respondent is liable for penalties for non-performance of the work requirements. Any failure of the Consenting Parties to perform, in whole or in part, the work requirements under the EPA Order On Consent, Docket No. RCRA-02-2008-7308, except for the requirements described in paragraphs "63" and "66," herein, shall not relieve Respondent of its obligation to perform each and every work requirement under this Order.

## VII. ORDER WORK REQUIREMENTS

### 60. REPORTS, NOTICES AND DOCUMENT SUBMISSIONS

All submissions to EPA by Respondent pursuant to this Order shall be in English, unless otherwise agreed to by EPA on a

case-by-case basis. This includes progress reports, notices, letters, plans and specifications, certifications and other submissions required by the terms of this Order.

61. IDENTIFICATION SIGN

a. No later than sixty (60) calendar days after the effective date of this Order, Respondent shall insure that the following NOTICE is posted in Spanish and English at the MSWLF Facility entrance, in a location acceptable to Toa Baja, in large lettering on a mounted sign at least four feet by four feet in size. Respondent shall confirm in writing to EPA that the Notice has been posted, and, within twenty (20) calendar days thereafter, shall send EPA one or more photographs of the Notice sign, as posted at the Facility's entrance, either in digital form or as developed print(s).

**NOTICE**

**THIS LANDFILL FACILITY IS  
SUBJECT TO A UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY ORDER ISSUED TO THE  
PUERTO RICO LAND AUTHORITY**

62. OVERVIEW OF MAJOR ACTIONS

There are several major actions that will take place under this Order and the Consent Order to achieve final closure of the MSWLF Facility, installation and operation of a GCCS, and protective post-closure care. These major actions require close coordination by the Respondent, the Consenting Parties and the professional engineer(s). EPA will provide review, appropriate approvals, and oversight.

A summary description of these major actions is set forth below in this paragraph (the obligations and requirements under the Order for these actions are set forth below in subsequent paragraphs).

a. All waste depositions in Area A of the MSWLF Facility will cease by June 30, 2010.

b. Provided protective engineering controls are installed,

the Consenting Parties may elect to utilize Area C of the Facility for additional waste deposition, until Area C's defined capacity is reached, or until December 31, 2014, whichever is earlier, unless a later date is agreed upon by EPA in writing.

c. Within six months of the Consent Order's effective date, an Intermediate Protective Measures Plan for Area A designed to achieve Functional Closure of the MSWLF Facility will be developed by a professional engineer, subject to EPA review and approval. These measures will include protective cover maintenance, slope stabilization, storm water and leachate seepage controls, and ground water monitoring. The Plan will be implemented by September 30, 2010.

d. Within sixteen (16) months of the Consent Order's effective date, final Closure Plans, including implementation timetables, will be developed by a professional engineer for Areas A and C. The Closure Plans will be coordinated, will be based on sound engineering considerations, and will incorporate any modifications required by EPA.

e. Within five (5) months of the Consent Order's effective date, a GCCS Plan, including implementation timetables, will be developed by a professional engineer for the Facility in accordance with CAA requirements, subject to EPA review and approval.

f. After approval by EPA, the GCCS and Closure Plans will be carried out in accordance with their respective implementation timetables.

g. Within one year of the Consent Order's effective date, Post-Closure Plans that contain implementation timetables will be developed by a professional engineer for Areas A and C. The Post-Closure Plans will be coordinated and will be based on sound engineering considerations. After approval by EPA, (after incorporation of any required modifications under this Order), the Post-Closure Plans will be implemented.

63. SCHEDULE FOR CEASING RECEIPT OF WASTE AT AREA A;  
PROHIBITION OF WASTE RECEIPT IN AREA B; WASTE DEPOSITION  
LIMITATIONS IN AREA C; NOTICES

The requirements in paragraph "63" are the responsibility of the Consenting Parties under the Consent Order and are included herein for information and reference purposes.

a. Cessation of Waste Receipt In Area A: The Consenting Parties shall permanently cease receiving all waste for disposal in Area A of the MSWLF Facility no later than June 30, 2010, and the Consenting Parties shall thereafter prevent any further waste disposal in Area A.

b. Prohibition of Waste Receipt in Area B: There shall be no waste deposits in Area B, nor shall any waste from elsewhere in the Facility be moved or redeposited into Area B.

c. Waste Deposition In Area C: The Consenting Parties may elect to utilize Area C of the Facility for additional waste deposition. The engineering and other requirements for use of Area C are specified in paragraph "66" of the Consent Order. If so utilized, Area C will be limited to receipt of not more than approximately 1.2 million cubic yards of solid waste, and all additional waste deposition must cease in any event by December 31, 2014, unless a later date is agreed upon by EPA in writing. If Area C is not utilized for additional waste deposition, there shall be no waste deposits in Area C, nor shall any waste from elsewhere in the Facility be moved or redeposited into Area C without EPA's prior approval.

d. Notices To Landfill Users: The Consenting Parties will give appropriate advance notice to Landfill users at least thirty (30) days prior to ceasing to receive waste at the Facility.

e. Report To EPA That Waste Receipt Has Ceased At Area A: Within thirty (30) calendar days after Area A of the MSWLF Facility ceases receiving waste, but no later than July 30, 2010, the Consenting Parties shall submit a written report to EPA documenting that the Consenting Parties no longer permit the disposal of any solid wastes at Area A of the Facility and that such disposal has ceased. The report shall be accompanied by a certification signed by a senior official of Consenting Parties Toa Baja and Landfill Technologies in the form set forth in IX. CERTIFICATIONS, of the Consent Order.

f. Report To EPA That Waste Receipt Has Ceased at Area C: If Area C is utilized for additional waste deposition, the Consenting Parties within thirty (30) calendar days after Area C ceases receiving waste deposits shall submit a written report to EPA documenting that the Consenting Parties no longer permit the disposal of any solid wastes at Area C of the Facility and that such disposal has ceased. The report shall be accompanied by a certification signed by a senior official of Consenting Parties Toa Baja and Landfill Technologies.

64. PROFESSIONAL ENGINEERS; PRE-SUBMISSION CONFERENCES

As soon as practicable but no later than sixty (60) calendar days after the effective date of this Order, Respondent shall retain the services of a professional engineer or engineers to perform engineering services to meet the requirements of the Order.

In an effort to provide for appropriate technical consultation and early EPA input into the Plans required by the Order for intermediate protection, installation of a GCCS, possible utilization of Area C for additional waste deposition, and closure and post-closure for each Area of the Facility, EPA, Respondent, the Consenting Parties and the professional engineer(s) shall hold several pre-submission conferences, either in person or by telephone, to review the elements of the proposed Plans during their preparation. EPA will schedule the conferences and Respondent, the Consenting Parties and their professional engineers will participate to the fullest extent possible.

65. PLAN FOR INTERMEDIATE PROTECTIVE MEASURES FOR AREA A

The PIPM is intended to provide effective, practical environmental protective measures to achieve functional closure of Area A of the MSWLF Facility by September 30, 2010.

a. Submission Timetable: After preparation by the professional engineer(s), Respondent shall submit the PIPM, as described below, to EPA for review and approval within one hundred eighty (180) calendar days of the effective date of the Order unless the parties agree to a later date in writing.

b. EPA Review and Approval: After its receipt, EPA will review the PIPM timely and notify Respondent in writing as soon as practicable of its approval of the PIPM in whole or in part, and may propose modifications. After consultation with EPA by the professional engineer(s) and incorporation of modifications, Respondent shall resubmit the PIPM (or the part of the PIPM that is modified) to EPA within sixty (60) calendar days of its receipt of EPA's notification, or by such other deadline as is approved by EPA in writing. This review/modification process shall be repeated until EPA notifies Respondent in writing of its approval of the entire PIPM. If the repeated review/modification process does not result within a reasonable time in a PIPM that EPA approves, EPA in its discretion may mandate necessary modifications to the PIPM in writing and direct that Respondent carry out the modified PIPM according to its terms.

c. PIPM Components: Components of the PIPM should be designed to the maximum extent practicable so they can be integral parts of the final Closure Plan, and are compatible with the design and construction of the GCCS. The PIPM shall include:

1. Regrading work that will be consistent with slope stabilization measures and storm water controls.

2. Slope stabilization measures; these shall be implemented before September 30, 2010 in those sub-areas of Area A of the Facility where it is practical to do so. The slope stabilization design should be integrated with the storm water control system.

3. Regrading and slope stabilization design and construction work that shall give priority to providing protection to adjacent residential areas.

4. Storm water controls, which are designed to become part of the storm water control system that will be part of the final Closure Plan, and which are capable of achieving effective storm water control under the PIPM.

5. Installation and operation of ground water monitoring, in accordance with the requirements of 40 C.F.R. § 258.51.

6. A system for gas monitoring that meets the requirements of 40 C.F.R. § 258.23.

7. A partial leachate seepage interception and disposal program.

8. Maintenance of compacted earthen cover in order to prevent exposure of wastes, and to control vectors, fires, odors, blowing litter and scavengers until a final landfill cover is installed.

9. An implementation timetable that will contain start and completion dates for each component of the PIPM.

d. Implementation: Respondent shall implement components of the PIPM in accordance with the implementation timetable provided in "c. 9.", above, and approved by EPA, and shall complete the PIPM and achieve functional closure of Area A of the MSWLF Facility by September 30, 2010. In its discretion, EPA may request periodically that Respondent submit a written status report on the implementation of the PIPM, and Respondent shall

comply with any such request.

e. Certification of Completion: Respondent within thirty (30) calendar days of completion of work under the PIPM shall certify in writing to EPA that the PIPM work approved by EPA has been completed for Area A of the Facility.

66. REQUIREMENTS FOR UTILIZATION OF AREA C FOR ADDITIONAL WASTE DEPOSITION

The provisions of paragraph 66 apply to the Consenting Parties under the Consent Order and are included herein for information and reference purposes.

The Consenting Parties may elect to activate and utilize Area C of the Facility to receive additional waste deposition. Within one hundred eighty (180) calendar days after the effective date of the Order, unless EPA agrees in writing to a different date, the Consenting Parties shall notify EPA in writing whether they plan to utilize Area C for additional waste deposition. If the Consenting Parties elect to utilize Area C for additional waste deposition, the following requirements must be met:

a. A professional engineer shall prepare plans and specifications for use of Area C that are in accordance with federal landfill design criteria set forth in 40 C.F.R. Part 258, including provision for installation of a composite liner, leachate collection and control, and storm water controls. The plan shall incorporate the design, installation and operation of a GCCS, in accordance with CAA regulatory requirements, and the provisions of paragraph "78", of the Consent Order, as follows: the GCCS for the Facility, including Area C, to be submitted to EPA for approval, pursuant to paragraph "72. a.", of the Consent Order, shall include necessary components for all waste deposits in Area C as of the effective date of the Order ("pre-existing waste in Area C"); in addition, if Area C is to be used for additional waste deposition, an additional (or extended) GCCS shall be incorporated in the Area C plan, as provided in "f.", below. An engineering report, including plans and specifications for use of Area C, (including the GCCS provisions to be submitted for EPA approval, as described above), shall be submitted to EPA. The Consenting Parties shall complete the engineering report for Area C within three hundred sixty (360) calendar days after the effective date of the Consent Order, and shall provide EPA with a copy of the report. The Consenting Parties and the professional engineer shall certify, in accordance with the provisions of IX CERTIFICATIONS of the Consent Order, that the plan meets the requirements of federal landfill design criteria set forth in

40 C.F.R. Part 258, and CAA regulatory requirements.

b. The plan shall determine a boundary line to accurately demarcate Area C from Area A of the Facility.

c. The plan shall clearly show access and egress points to Area C and truck routes.

d. The Consenting Parties shall submit a plan showing cross-section details for Area C development to EPA for review at least sixty (60) calendar days prior to the start of development activity.

e. As a landfill unit, Area C shall be operated in compliance with the operating criteria set forth in 40 C.F.R. Part 258.

f. A GCCS shall be constructed, maintained and operated in accordance with CAA regulatory requirements, and the provisions of paragraph "78" of the Consent Order for all additional waste deposits permitted by this paragraph.

g. Waste deposition in Area C may not exceed approximately 1.2 million cubic yards in the aggregate, in accordance with the technical provisions of the Area C Closure Plan.

h. Waste deposits in Area C must cease when its aggregate capacity set forth in "g.", above, is reached or by the date established pursuant to paragraph "68. c." of the Consent Order, whichever occurs sooner.

i. Prior to receiving any additional waste in Area C, the Consenting Parties, and the professional engineer, shall certify that Area C has been constructed in accordance with the plans and specifications contained in the engineering report prepared pursuant to "a.", above, and submitted to EQB, pursuant to "d.", above.

j. Area C will be subject to preparation, submittal and implementation of Closure and Post-Closure Plans.

k. Consenting Party Toa Baja shall submit the Area C plan, prepared in accordance with "a", above, to EQB for its review and any necessary approval.

67. CONTROL SYSTEMS FOR AREA A OF THE FACILITY:  
GCCS PLAN; CLOSURE PLAN; IMPLEMENTATION TIMETABLES;  
SUBMITTALS TO EQB

a. GCCS Plan: After its preparation by the professional engineer(s), Respondent shall submit a GCCS plan for the Facility, which includes Areas A, B and C, to EPA for review and approval. The GCCS Plan for the Facility shall be submitted within five (5) months after the effective date of the Consent Order. The GCCS shall be designed, installed and operated in accordance with the CAA landfill regulatory requirements, and the provisions of paragraph "73," herein. Where necessary, the GCCS Plan shall extend from Area A into Area C so as to incorporate pre-existing waste in Area C. The GCCS Plan shall include a timetable for its implementation, which shall identify the start and completion dates for its components. The implementation timetable for the Area A (and Area C pre-existing waste) portions of the GCCS Plan shall be coordinated with the implementation timetable for the Closure Plan for Area A. After its submittal to EPA, the GCCS Plan and its implementation timetable shall be subject to the EPA review, modification and approval procedures set forth in paragraph "71," herein.

b. Closure Plan: After its preparation by the professional engineer(s), Respondent shall submit a permanent Closure Plan for Area A of the MSWLF Facility to EPA for review (the Plan also shall cover Area C under the circumstances specified in paragraph "69. b."). The Closure Plan shall be submitted within sixteen (16) months after the effective date of the Order. The Closure Plan shall include an engineering report and associated plans and specifications. The Closure Plan shall be designed to meet the closure criteria set forth in 40 C.F.R. § 258.60, and shall incorporate an appropriate, perimeter buffer system, including necessary access and security. The Closure Plan shall include provision for control systems (or incorporation and/or completion of previously installed or partially installed systems), and shall include provision for a GCCS, as required by "a," above. The Closure Plan for Area A shall include measures to ensure that appropriate engineering controls, including final cover and storm water run-off, are provided at the juncture of Area A and Area B, and that such controls are designed to minimize storm water run-off or other impacts on Area B. The Closure Plan shall include a Construction Quality Assurance Plan to be implemented during Closure Plan construction work. The Closure Plan shall also include measures to obtain any necessary permits or approvals that may be required, and shall incorporate measures to meet any applicable requirements of the Clean Water Act, 42 U.S.C. § 1252 et seq. ("CWA"). The Closure Plan shall include a timetable for

its implementation, which shall identify dates for the start and completion of all control systems, and which shall be coordinated with the implementation timetable for the GCCS in Area A. After its submittal to EPA, the Closure Plan will be subject to EPA review, modification and approval as set forth in paragraph "71," herein.

c. Submittals To Puerto Rico Environmental Quality Board: Respondent shall submit the GCCS and final Closure Plans for Area A of the MSWLF Facility to EQB for its review and any necessary approval, prior to or simultaneously with their submittal to EPA.

68. GCCS PLAN FOR AREA B OF THE FACILITY

a. The GCCS Plan for the Facility to be submitted by Respondent to EPA for approval, pursuant to paragraph "67.a.," above, shall include Area B. The GCCS Plan shall be designed in accordance with the CAA landfill regulatory requirements, and the provisions of paragraph "73," herein. A timetable for implementation of the GCCS Plan in Area B will not be established when the Plan for the Facility is submitted to, or approved by EPA (with any necessary modifications). Thereafter, EPA, in its discretion, may direct Respondent to implement the GCCS in Area B, so long as implementation of the GCCS in Area B is not inconsistent with essential and critical habitat designations made pursuant to Sections 107 and 107(a) of the Wildlife Act of 1999, Laws of Puerto Rico Annotated §§ 107 and 107(a). In that event, after consultation with Respondent, EPA may establish a timetable for implementation of the GCCS in Area B. Respondent shall implement the GCCS in Area B, in accordance with the timetable established by EPA.

b. The seven acre Area B is now substantially reforested and is overgrown with vegetation. Existing earthen cover, acting together with vegetation, reforestation and natural attenuation, provides protection against impacts from waste deposits in Area B.

69. CLOSURE PLANS FOR AREA C OF THE FACILITY

a. If the Consenting Parties elect to utilize Area C of the Facility for additional waste deposition, they shall submit a permanent Closure Plan for Area C of the MSWLF Facility to EPA for review, after its preparation by the professional engineer(s). The Closure Plan shall be submitted within three hundred sixty (360) days after the effective date of the Consent Order. The Closure Plan shall include an engineering report and associated plans and specifications. The Closure Plan shall be designed to meet the closure criteria set forth in 40 C.F.R. § 258.60. The

Closure Plan shall include provision for GCCS components for any pre-existing waste in Area C as well as for a GCCS for additional waste deposits in Area C, in accordance with the CAA regulatory requirements and the provisions of paragraph "78" of the Consent Order. The Closure Plan for Area C shall include measures to ensure that appropriate engineering controls, including final cover and storm water run-off, are provided at the juncture of Area A and Area C. The Plan shall also include measures to obtain any necessary permits or approvals that may be required, and shall incorporate measures to meet any applicable requirements of the CWA. The Closure Plan shall include a timetable for its implementation, which shall provide that final Closure will be completed not later than two (2) years after waste deposits cease, pursuant to paragraph "68.c." of the Consent Order. After its submittal to EPA, the Closure Plan will be subject to the review, modification and approval procedures set forth in paragraph "76" of the Consent Order.

b. In the event the Consenting Parties under the Consent Order do not elect to utilize Area C for additional waste deposition, Respondent shall include appropriate provision for GCCS components and closure of Area C as part of the GCCS and Closure Plans prepared and submitted for Area A, pursuant to paragraph "67.a." and "67.b.," herein.

#### 70. POST-CLOSURE PLANS

a. Area A of the Facility: After its preparation by the professional engineer, Respondent shall submit a Post-Closure Plan for Area A of the MSWLF Facility to EPA for review and approval. The Plan shall also cover Area C under the circumstances specified in "c.1.," below. The Post-Closure Plan shall be submitted within three hundred sixty (360) days after the effective date of the Consent Order. The Post-Closure Plan must meet the post-closure criteria set forth at 40 C.F.R. § 258.61. The Post-Closure Plan shall also provide for the maintenance and necessary repair of the GCCS, and for compliance with the applicable operating and reporting requirements of paragraph "73", herein. In addition, the Post-Closure Plan shall 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 ground water monitoring or otherwise.

b. Area B Of the Facility: EPA, in its discretion, may direct Respondent to prepare, submit and implement a Post-Closure Plan for Area B so long as implementation of the post-closure plan

in Area B is not inconsistent with essential and critical habitat designations made pursuant to Sections 107 and 107(a) of the Wildlife Act of 1999, Laws of Puerto Rico Annotated §§ 107 and 107(a). In that event, after consultation with Respondent, EPA may establish a timetable for the submittal of a Post-Closure Plan for Area B to EPA for review and approval (with any necessary modifications).

c. Area C of the Facility:

1. If the Consenting Parties do not elect to utilize Area C for additional waste deposition, in accordance with paragraph "71" of the Consent Order, the Post-Closure Plan for Area C shall be combined with the post-Closure Plan for Area A, required to be submitted pursuant to sub-paragraph "a.," above.

2. If the Consenting Parties elect to utilize Area C for additional waste deposition, pursuant to paragraph "71" of the Consent Order, a Post-Closure Plan for Area C shall be submitted to EPA for review within three hundred sixty (360) calendar days of the effective date of the Consent Order by the Consenting Parties. The Post-Closure Plan must meet the post-closure criteria set forth at 40 C.F.R. § 258.61. The Post-Closure Plan shall also provide for the operation, maintenance and necessary repair of the GCCS components for pre-existing waste in Area C and for the GCCS for the additional waste deposits in Area C, and for compliance with the applicable operating and reporting provisions of paragraph "78" of the Consent Order. In addition, 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 ground water monitoring.

d. Submittals To Puerto Rico Environmental Quality Board:

Respondent shall submit its final Post-Closure Plans to EQB for its review and comments prior to or simultaneously with their submittal to EPA. Respondent shall timely procure any required approvals from EQB for such Plans.

71. EPA REVIEW OF GCCS, CLOSURE AND POST-CLOSURE PLANS

a. Area A: After their submittal, EPA will review the GCCS, Closure and Post-Closure Plans for Area A of the Facility, including the implementation timetables contained in the Plans. EPA will notify Respondent in writing of EPA's approval or non-approval of the Plan(s).

b. Area B: After its submittal, EPA will review the GCCS Plan for Area B, and notify Respondent in writing of EPA's approval or non-approval of the Plan.

c. Modification of GCCS, Closure and Post-Closure Plans: In the event of non-approval by EPA of any Plan(s) submitted pursuant to sub-paragraphs "a.", "b." and/or "c.", above, EPA will specify deficiencies in the Plan(s) in writing, and outline necessary revisions or modifications. Thereafter, within thirty (30) calendar days of receipt of EPA's notice of non-approval of the Plan(s), or by such other deadline as approved by EPA in writing, Respondent shall modify/revise the Plan(s) and resubmit the revised Plan(s) to EPA for final review. This process shall be repeated in the event of EPA's non-approval of the resubmitted Plan(s), but if the repeated process does not produce acceptable revised Plan(s), EPA may in its discretion determine that it is necessary to invoke the procedures set forth in subparagraph "e.", immediately below. Throughout the process, EPA and Respondent shall confer as necessary and appropriate in order to clarify and resolve any outstanding issues. EPA will notify Respondent in writing of its final approval or non-approval of each of the Plans.

d. Final Notice(s) Of Deficiencies: When EPA determines in its sole discretion that it is necessary to invoke the procedures in this subparagraph in order to achieve acceptable GCCS, Closure and/or Post Closure Plans, it will notify Respondent in writing setting forth a final date for submission of acceptable Plan(s) to EPA. The written notice will specify the corrections, amendments and/or changes that Respondent need to make to previously submitted Plan(s) to achieve EPA approval, and the reasons why such corrections, amendments and/or changes are necessary. The notification letter will carry the caption: FINAL NOTIFICATION OF DEFICIENCIES across the top of the page and will specify the date by which the Plan(s), signed by the professional engineer(s), must be resubmitted to EPA. If the professional engineer(s) believes, in his/her or their best professional judgement, that certain proposed corrections, amendments and/or changes described in the FINAL NOTIFICATION cannot or should not be complied with, Respondent may provide notice to EPA that the matter is subject to the XXV. DISPUTE RESOLUTION provisions set forth herein. After a decision on any matter or matters submitted for dispute resolution, EPA will, if necessary, submit a SECOND FINAL NOTICE OF DEFICIENCIES letter specifying the date by which the Plan(s) must be resubmitted to EPA. Thereafter, EPA will promptly notify Respondent in writing of its final approval or non-approval of the Plan(s). Respondent's failure to submit acceptable GCCS, Closure 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.

72. PERFORMANCE OF WORK UNDER GCCS, CLOSURE AND POST-CLOSURE PLANS; QUARTERLY REPORTS; CERTIFICATIONS; ANNUAL REPORTS

a.  GCCS and Closure Plans: Within thirty (30) calendar days of EPA's written approval of each GCCS or Closure Plan submitted by Respondent under the Order, or within thirty (30) calendar days of any required EQB approval of such Plan(s), whichever comes later, Respondent shall proceed to carry out each GCCS and Closure Plan, in accordance with its EPA approved implementation timetable.

b.  Post-Closure Plans: Respondent shall carry out the provisions of its Post-Closure Plans submitted under the Order for Areas A and for Area B, if EPA directs the submission and implementation of a Post-Closure Plan for Area B, pursuant to paragraph "70. b.", herein. Consenting Party Toa Baja shall carry out the Post-Closure Plan submitted under the Consent Order for Area C. If monitoring discloses that repairs or alterations must be made to a landfill cap, the GCCS, the ground water monitoring system, or any other component for Areas A, or B, Respondent shall timely make such repairs in the affected Area(s). Ground water monitoring shall be conducted pursuant to the Post-Closure Plans. If information obtained through ground water monitoring or otherwise indicates that measures and procedures are necessary to conduct a corrective action assessment and/or a corrective action remedy, as those terms are described in 40 C.F.R. §§ 258.56; 258.57 and 258.58, Respondent shall undertake such measures or procedures in the affected Area(s).

c.  Quarterly Reports: During the implementation of the approved GCCS and Closure Plans, Respondent shall submit quarterly reports to EPA on the status of implementation activities for which it has responsibility. Once implementation begins, the quarterly reports shall be submitted no later than thirty (30) calendar days after March 31, June 30, September 30 and December 31, respectively, until completion of the installation of the GCCS and completion of Closure Plan work. The quarterly reports shall specifically identify and report on the status of implementation of each of the engineering control systems set forth in the approved Closure Plans.

d.  Certification of Completion of GCCS Installation and Completion of Closure Plan Work: Respondent shall notify EPA in

writing within thirty (30) calendar days after completion of the installation of the GCCS and completion of the Closure Plan work, for which it is responsible, pursuant to each approved Plan for such work, and shall certify that the work has been performed in accordance with the provisions of the Plans approved by EPA, their associated plans and specifications, and any permits or other forms of prior approval for the Plans. Each notification shall be accompanied by a Certification signed by a professional engineer that the GCCS and/or Closure Plan work has been completed in accordance with the GCCS and/or Closure Plan, associated plans and specifications, and any permits or other forms of prior approval. A senior official of Respondent shall also certify that the GCCS installation and/or Closure Plan work has been completed, in accordance with IX. CERTIFICATIONS, herein.

e. Annual Post-Closure Report: Respondent shall submit a report to EPA annually that fully describes post-closure activities during the preceding year at the Facility that are Respondent's responsibility pursuant to paragraph "70.a." and "70.b.," above. The reports shall include information on the results of groundwater and gas monitoring and the status of the landfill cap, operating and maintenance activities, financial assurance, and other relevant information. The annual reports shall be submitted on or before September 30 of each calendar year beginning after the Closure Plan work has been completed for each Area. The annual post-closure reports shall be signed by a senior official of Respondent, in accordance with IX. CERTIFICATIONS, herein.

### 73. LANDFILL GAS CONTROL REQUIREMENTS

a. Respondent shall comply with the NSPS for Landfills, 40 C.F.R. Part 60, Subpart WWW and the Landfill MACT, 40 C.F.R. Part 63, Subpart AAAA, 40 C.F.R. §§ 63.1930-63.1990 collectively hereinafter called the Landfill Regulations.

b. Within sixty (60) calendar days of the effective date of the Consent Order, Respondent shall submit a report which describes any modifications, as defined by 40 C.F.R. § 60.751, made to the Facility since May 30, 1991. This report shall include, but not be limited to, a description of the merging of the Toa Baja and Bayamon landfills and its effect on the capacity of the MSWLF.

c. Within sixty (60) calendar days of the effective date of the Consent Order, Respondent shall submit to EPA a design capacity report for the MSWLF Facility for the current calendar year, as required by 40 C.F.R. §§ 60.752 and 60.757(a) of the NSPS for Landfills.

- d. If the current calendar year design capacity report does not reflect the initial design capacity, previous design capacity calculations and/or reports should also be submitted within sixty (60) calendar days of the effective date of the Consent Order.
- e. With any design capacity report submitted pursuant to "c." or "d." of this paragraph, Respondent shall submit an NMOC emission rate report that reflects the emission rate calculation for the year(s) for which that design capacity report(s) was developed. Respondent shall calculate the NMOC rate using the procedures specified in 40 C.F.R. § 60.754 of the NSPS for Landfills.
- f. If a design capacity report and/or NMOC emission rate calculation does not meet the specifications of the Landfill Regulations, EPA will notify Respondent in writing.
- g. Within fifteen (15) calendar days of receipt of an EPA notification provided pursuant to sub-paragraph "f." above, Respondent shall modify the report and/or calculation in response to EPA's notification and resubmit the report to EPA.
- h. Under the Consent Order, the Consenting Parties have agreed to install a GCCS system at the MSWLF to comply with the Landfill Regulations. The Consenting Parties notified EPA of their intent to submit a design plan for a GCCS that meets the substantive requirements of the Landfill Regulations within one hundred fifty (150) calendar days of the effective date of the Consent Order. Within one hundred fifty (150) calendar days of the effective date of the Consent Order, Respondent shall submit a design plan for a GCCS that meets the substantive requirements of the Landfill Regulations.
- i. Within (150) calendar days of the effective date of the Consent Order, Respondent shall submit to EPA a design plan, that meets the substantive requirements of the Landfill Regulations, including but not limited to 40 C.F.R. § 60.752(b)(2)(ii) of the NSPS for Landfills, for a GCCS for the MSWLF Facility Areas A and B, and for pre-existing waste in Area C. If the Consenting Parties elect to utilize Area C for additional waste deposition, a GCCS design plan to cover additional waste deposition shall also be included in the GCCS design plan submitted by the Consenting Parties for the MSWLF Facility. The design plan submitted by the Consenting Parties and Respondent may provide for separate GCCS systems for Areas A, B and/or C or a combined system, and Respondent and the Consenting Parties shall coordinate plans.

- j. Within (150) calendar days of the effective date of the Consent Order, Respondent shall submit to EPA, together with the design plan for the GCCS for the MSWLF Facility, a start-up, shut-down, malfunction plan ("SSM") that contains the information specified in 40 C.F.R., Part 63, Subpart AAAA for the GCCS. The SSM Plan shall be developed and maintained on-site in accordance with the provisions of 40 C.F.R. § 63.6(e)(3), as required by 40 C.F.R. § 63.1960 of the Landfill MACT.
- k. Respondent shall install a GCCS and commence operation of the GCCS for Areas A and C in accordance with the implementation timetables approved by EPA in accordance with paragraph "71," herein.
- l. Respondent shall install a GCCS that captures the gas generated within the landfill at Areas A and C, as required by paragraphs 40 C.F.R. § 60.752 (b)(2)(ii)(A) or (B) and (b)(2)(iii). In addition, if directed by EPA pursuant to paragraph "68. a.", herein, Respondent shall install a GCCS that captures the gas generated within Area B at the landfill.
- m. Respondent shall operate the GCCS at Areas A and C, and for Area B, if a GCCS is implemented in Area B at EPA's direction pursuant to paragraph "73. a.", so that the methane concentration is less than 500 parts per million ("ppm") above background at the surface of the landfill, and conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals and where visual observations indicate elevated concentrations of landfill gas (such as distressed vegetation and cracks or seeps in the cover) in accordance with the operational standards specified in 40 C.F.R. § 60.753 of the NSPS for Landfills.
- n. Every calendar quarter after Respondent begin operation of the GCCS for the MSWLF Facility, Respondent shall monitor the surface concentrations of methane in accordance with the surface methane operational standards found in 40 C.F.R. § 60.753(d) of the NSPS for Landfills. Monitoring should be conducted with instrumentation that meets the specifications found at 40 C.F.R. § 60.755(d).
- o. Respondent shall take corrective action as specified in 40 C.F.R. § 60.755(a)(3) through (5) or 40 C.F.R. § 60.755(c) of the NSPS for Landfills for any exceedances of the 500 ppm standard as required by 40 C.F.R. § 60.753(g) of the NSPS for Landfills.
- p. Within sixty (60) calendar days after initial start-up of the GCCS for the MSWLF Facility, Respondent shall submit a

protocol for performance testing to EPA for approval.

q. Respondent shall comply with the test methods and procedures in Section 60.754 of the NSPS for Landfills. Within one hundred eighty(180) days after initial start-up of the GCCS for the MSWLF Facility, Respondent shall conduct an initial performance test using the test methods and procedures specified in 40 C.F.R. § 60.754(d) of the NSPS for Landfills and in accordance with the EPA approved protocol for performance testing, and submit notifications and reports in accordance with the substantive requirements of 40 C.F.R. § 60.8 and the Landfill Regulations.

r. Respondent shall monitor for oxygen or nitrogen, temperature and pressure at each wellhead of the GCCS system as required by 40 C.F.R. § 60.756 of the NSPS for Landfills. If an exceedance of oxygen or nitrogen, temperature or pressure occurs at any well during any round of testing Respondent shall take corrective action.

s. Within thirty (30) calendar days of each calendar quarter after Respondent begin operation of the GCCS for the MSWLF Facility, Respondent shall submit quarterly monitoring reports to EPA that contain the data specified in sub-paragraphs "o." and "s." of this paragraph, in accordance with the reporting requirements of the Landfill regulations.

t. Respondent shall comply with the reporting requirements as specified in 40 C.F.R. § 63.1980 of the Landfill MACT and 40 C.F.R. § 60.757 of the NSPS for Landfills, which include, but are not limited to, the following:

- i. Respondent shall submit semi-annual reports to EPA as required by 40 C.F.R. § 63.1980 of the Landfill MACT. The initial semi-annual report shall be submitted within 180 days of installation and start-up of the GCCS, and shall include the initial performance test report required under 40 C.F.R. § 60.8. After the initial report, semi-annual reports shall be submitted to EPA every year for the January 1 through June 30 reporting period on July 30, and for the July 1 through December 31 reporting period on January 1.
- ii. As required by and 40 C.F.R. § 60.757(f) of the NSPS for Landfills Respondent's semi-annual reports must include the following:

- (1) Value and length of time for exceedance of

- applicable parameters monitored under 40 C.F.R. § 60.756(a), (b), (c) and (d).
- (2) Description and duration of all periods when the gas stream is diverted from the control device through a bypass line or the indication of bypass flow as specified under 40 C.F.R. § 60.756.
  - (3) Description and duration of all periods when the control device was not operating for a period exceeding 1 hour and length of time the control device was not operating.
  - (4) All periods when the collection system was not operating in excess of 5 days.
  - (5) The location of each exceedance of the 500 parts per million methane concentration as provided in 40 C.F.R. § 60.753(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month.
  - (6) The date of installation and the location of each well or collection system expansion added pursuant to paragraphs (a)(3), (b), and (c)(4) of 40 C.F.R. § 60.755.

iii. Respondent shall submit an excess emissions and monitoring systems performance report in accordance with 40 C.F.R. § 60.7(c), as required by 40 C.F.R. § 63.1980 of the Landfill MACT.

u. Respondent shall comply with record keeping requirements as specified in 40 C.F.R. § 63.1980 of the Landfill MACT, and 40 C.F.R. § 60.758 of the NSPS for Landfills, which include, but are not limited to, the following:

- i. Respondent shall keep, for at least 5 years, up-to-date, readily accessible, on-site records of:
  - (1) the design capacity report, the current amount of solid waste in-place, and the year-by-year waste acceptance rate as required by 40 C.F.R. § 60.758(a) of the NSPS for Landfills.
  - (2) the equipment operating parameters specified to be monitored as required 40 C.F.R. § 60.756 of the NSPS for Landfills and 40 C.F.R. § 60.758(c) of the NSPS for Landfills, as well as records for periods of operation during which the parameter boundaries established

during the most recent performance test are exceeded as required by 40 C.F.R. § 60.758(c) of the NSPS for Landfills.

- (3) all exceedances of the GCCS operational standards in 40 C.F.R. § 60.753 of the NSPS for Landfills, records of the readings in the month subsequent to the recorded exceedance, whether or not the second reading is an exceedance, and records of the location of each exceedance as required by 40 C.F.R. § 60.758(e) of the NSPS for Landfills.

- ii. Respondent shall keep, for the life of the control equipment, up-to-date, readily accessible records of the data listed in 40 C.F.R. § 60.758(b)(1)–(b)(4) of the NSPS for Landfills as measured during the initial performance test or compliance determination. Records of the control device vendor specifications shall be maintained until removal as required by 40 C.F.R. § 60.758(b) of the NSPS for Landfills.

- iii. Respondent shall maintain a file of all measurements, including continuous monitoring system, monitoring device and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by 40 C.F.R. Part 60, recorded in a permanent form suitable for inspection in accordance with 40 C.F.R. § 60.7(f), as required by 40 C.F.R. § 63.1980 of the Landfill MACT.

#### VIII FINANCIAL ASSURANCE

74. a. Compliance Submittal: Respondent by no later than September 30, 2011 shall submit to EPA satisfactory evidence of compliance with the financial assurance requirements for post-closure care set forth in 40 C.F.R. §§ 258.72 and 258.74.

b. Requirement To Maintain Compliance: 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 "72.e.", above.

c. Financial Assurance For Corrective Action: 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 the 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 "72.e.", above, or in a separate letter submitted by the same deadline.

#### IX. CERTIFICATIONS

75. Wherever this Order requires that a "Certification" be submitted to accompany written reports or documents, the following Certification form shall be submitted to EPA, 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, including my inquiry of the person or persons who prepared the submission, the information contained in this submission is to the best of my knowledge, true, accurate and complete. I am aware that there are significant potential penalties for submitting false information."

#### X. RETENTION OF RECORDS

76. Respondent shall maintain business records pertaining to the work being performed pursuant to this Order and shall make such records available to EPA and its representatives upon request.

#### XI. PROJECT COORDINATORS

77. By no later than ten (10) calendar days after the effective date of this Order, EPA and the Respondent each shall designate a Project Coordinator ("PC") and the name of at least one alternate who may function in the absence of the designated PC. The PCs shall be responsible for overseeing implementation of this Order. EPA and the Respondent shall each have the right to change the PC and shall inform the other parties in writing within ten (10) days

should such change occur. The EPA has designated Carl Plossl, Environmental Engineer, as PC and Philip Flax, Senior Enforcement Team Leader, RCRA Compliance Branch, as Alternate PC.

78. All communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed to and through the respective PCs.

### XII. NOTICES

79. For purposes of this Order, all written communications, notices or submissions required by this Order shall be directed to a person specified by each party. EPA and the Respondent with written advance notice shall each have the right to change the person(s) who are to receive documents. The EPA has designated the EPA Project Coordinator as recipient, at the following address:

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

Also, a copy of GCCS plans to be submitted to EPA pursuant to the Order shall also be sent to Mr. Karl Mangels, Air Compliance Branch, EPA Region 2, 21<sup>st</sup> Floor, 290 Broadway, New York, New York 10007-1866.

80. By no later than ten (10) 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).

### XIII. EMERGENCY PROVISIONS

81. a. In the event Respondent identifies an immediate threat to human health or the environment at the MSWLF Facility, other than those identified in Section IV herein, Respondent shall immediately 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 oral notification shall be made to the PC or alternate PC, or, if the PC or alternate PC is unavailable, to the National Response Center ("NRC") at 800-424-8802. 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 Respondent shall implement this plan as approved or as 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 MSWLF Facility, or off-site, caused by contamination released from the MSWLF Facility, other than those conditions identified in Section IV herein or identified by ground water monitoring carried out pursuant to the Post-Closure Plan, Respondent shall notify EPA within ten (10) 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.

c. If during construction activities or otherwise at the MSWLF Facility, Respondent discovers any potentially regulated hazardous waste, Respondent shall notify EPA orally and in writing within seventy two (72) hours of such discovery summarizing the nature and quantity of the material. Thereafter, in accordance with a schedule to be established by EPA, Respondent shall proceed in accordance with sub-paragraph "a", above, to prepare and carry out a plan to identify and properly dispose of such material.

d. If due to unstable slopes or for other reasons relating to assuring safety during regrading, systems installation, construction or other physical activity at the MSWLF Facility, Respondent determines that any residences or businesses must be acquired and/or relocated, Respondent may confer with EPA concerning the matter and shall provide assistance to such residents or businesses in accordance with the provisions of the federal Uniform Relocation Assistance Act, 42 U.S.C. § 4601 et seq. and its implementing regulations.

82. a. If EPA determines that activities in compliance or non-compliance with this Order, have caused or may cause a release of a hazardous waste or hazardous constituent, or may pose a threat to human health or the environment, EPA may direct Respondent to stop further implementation of this Order, or a portion of this Order, for such period of time as EPA determines may be needed to abate any such release or threat, and/or to undertake any action authorized by law, which EPA determines to be necessary.

b. If EPA determines the need for corrective action due to conditions at the MSWLF Facility, or off-site, caused by contamination released from the MSWLF Facility, other than those conditions identified in Section IV, herein, or identified by ground water monitoring, EPA will notify Respondent and 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.

#### XIV. RESERVATION OF RIGHTS

83. EPA expressly reserves, without limitation, all of its statutory and regulatory powers, authorities, rights, remedies and defenses, both legal and equitable, including the right to seek injunctive relief, cost recovery, monetary penalties, or punitive damages. EPA may exercise its authority under Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675 to undertake removal or remedial actions.

84. This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any claim, rights, remedies, defenses, powers and or authorities which EPA has under CAA, RCRA, CERCLA, or any other statutory, regulatory or common law authority of the United States.

85. This Order shall not limit or otherwise preclude EPA from taking any additional legal action against Respondent should EPA determine that any such additional legal action is necessary or warranted.

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

#### XV. NON-RELEASE OF OTHER CLAIMS AND PARTIES

87. Nothing in this Order shall constitute, or be construed to constitute, a release from any claim, cause of action or demand in law or equity brought by EPA against any person, firm, partnership, or corporation for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituent, hazardous substance, solid waste, hazardous waste, pollutant, or contaminant found at, taken to, taken from, or emanating from the Facility.

## XVI. OTHER APPLICABLE LAWS

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

## XVII. SEVERABILITY

89. 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.

## XVIII. FORCE MAJEURE AND EXCUSABLE DELAY

90. 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, normal precipitation events, or failure to timely procure federal, Commonwealth, or local permits. Nothing herein shall be read to prevent Respondent from requesting a change in the scheduling of events or modification of the Order.

91. Respondent shall notify in writing the EPA Project Coordinator within ten (10) calendar days after becoming aware of any event, which they know 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 estimated timetable for implementation of these measures. Respondent shall adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall constitute a waiver of Respondent's right to assert a force majeure and may be grounds for EPA to deny Respondent an extension of time for performance.

92. After receiving notice from Respondent that Respondent is invoking the force majeure provisions of this Order, EPA will respond in writing indicating either EPA's agreement that the event constitutes a force majeure or its disagreement and the

reasons therefor.

93. If the Parties agree that a force majeure has occurred, the time for performance may be extended, upon EPA approval, for a period equal to the delay resulting from such circumstances. This shall be accomplished through written amendment to this Order, or modifying the schedule in a previously approved plan. Such an extension or modification will not alter the schedule for performance or completion of any other tasks required by this Order unless these are also specifically altered in accordance with XXI. MODIFICATION, herein.

94. In the event the parties cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, the dispute will be resolved in accordance with the Dispute Resolution provisions contained in this Order.

#### XIX. ON-SITE AND OFF-SITE ACCESS

95. Until this Order is terminated, Respondent shall cooperate with the Consenting Parties so as to permit EPA representatives, including authorized designees, employees, agents, contractors, subcontractors, or consultants at reasonable times to enter and freely move about the Facility for, but not limited to, the following purpose(s): observing conditions and/or activities at the Facility, including work performed pursuant to this Order, interviewing personnel, conducting sampling or monitoring, taking photographs and verifying information or data that have been submitted.

96. Respondent shall make available to EPA for inspection, copying, or photographing, all records, files, photographs, documents, or any other writing, including monitoring and sampling data that pertain to any work undertaken by Respondent or its agents, pursuant to this Order. Nothing herein is intended to waive the proper assertion of attorney-client privilege by or on behalf of Respondent with respect to records or documents.

97. To the extent that work required by this Order must be performed on property not owned or controlled by a Consenting Party, Respondent shall use best efforts to obtain "Site Access Agreements" to perform such work within thirty (30) days of the date Respondent becomes aware or should be aware of the need to perform such work. Any such access agreement shall provide for reasonable access by EPA. In the event that Site Access Agreements are not obtained within the thirty (30) day period, Respondent shall notify EPA in writing, documenting its best

efforts to obtain such agreements.

98. 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, including the Act and the Comprehensive Environmental Response Compensation and Liability Act of 1980 "CERCLA", as amended, 42 U.S.C. § 9601 et seq.

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

#### XX. NO FINAL AGENCY ACTION

100. 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 Respondent's compliance with the terms and conditions of this Order, or such other relief as may be available at law.

101. In any 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.

#### XXI. MODIFICATION

102. a. Modification/Amendment By EPA. This Order may be modified/amended by EPA. In the event EPA determines that such a modification/amendment is necessary, EPA will provide Respondent with an opportunity to confer concerning the modification/amendment.

b. Modification/Amendment By EPA At Respondent's Request. This Order may also be modified/amended by EPA in its discretion in response to Respondent's request. Any such request shall be in writing and contain detailed justification.

c. Scheduling Changes. EPA's and the Respondent's 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.

d. Limitation On Informal Advice Or Guidance. 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.

## XXII. DISPUTE RESOLUTION

103. The parties shall use their best efforts to informally and in good faith resolve all disputes and differences of opinion, which may arise during the life of this Order concerning provisions of this Order. Notwithstanding the above, if Respondent disagrees, in whole or in part, with any disapproval or modification or other decision or directive made by EPA pursuant to this Order, Respondent shall notify EPA in writing of such objections and the basis (bases) therefor within twenty (20) calendar days of receipt of EPA's disapproval, modification, decision, or directive. The notice shall set forth the specific points of the dispute, the position Respondent maintains, the basis (bases) for Respondent's position, and any matters Respondent considers necessary for EPA's determination. Within thirty (30) days of EPA's receipt of such written notice, or by such other date as may be agreed upon by the parties, EPA will provide Respondent its decision in writing on the pending dispute, which decision shall be binding. 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.

104. The existence of a dispute as defined herein, and EPA's consideration of such matters as are placed into dispute shall excuse, toll, or suspend during the pendency of the dispute resolution process the compliance obligation or deadline which is in dispute and any other obligation or deadline which is demonstrably dependent on the matters in dispute, and EPA shall not seek to assess a penalty for noncompliance with the obligation or deadline for the period of time during which the obligation or deadline was excused, tolled, or suspended, regardless of the final decision on the dispute. No obligation or deadline shall be excused, tolled, or suspended, unless EPA determines Respondent's dispute is in good faith and Respondent exercises due diligence to

resolve the dispute.

#### XXIII. TERMINATION

105. a. 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 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. Upon Respondent's request, EPA also will notify Respondent in writing confirming the appropriate completion of discrete tasks under the Order. In each instance, such confirmation by EPA will be based on the information then available to EPA, including reports and certifications submitted pursuant to the terms of the Order.

b. After five (5) years of Post-Closure Monitoring, Respondent may request that EPA terminate its post-closure obligations under this Order. In any such request, Respondent should state its reasons for the request and include documentation that EQB will continue to monitor post-closure care of the Facility. EPA will consider any such request and notify Respondent in writing within one hundred twenty (120) calendar days after receipt of the request of its decision concerning the request. EPA's termination of Respondent's post-closure obligations under the Order, pursuant to this sub-paragraph, shall not relieve Respondent of its obligations with respect to the Facility pursuant to other federal laws and regulations, including the CAA and the CWA.

#### XXIV. ENFORCEMENT

106. 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.

107. 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 imminent threat to public health or the environment arising from conditions at the MSWLF Facility, nor shall EPA be precluded from taking any such other enforcement actions under the Act or other laws as EPA may deem necessary based on additional information about conditions at the Facility.

XXV. GENERAL PROVISIONS

108. Nothing in this Order constitutes a satisfaction or release from liability with respect to any conditions or claims arising as a result of past, or future operation, ownership or use of the MSWLF Facility by the Respondent, its agents, officials, successors or assigns.

109. Nothing in this Order affects any right, claim, interest, defense or cause of action of EPA with respect to the Respondent or any third parties.

XXVI. EFFECTIVE DATE; NOTICE OF INTENT TO COMPLY;  
OPPORTUNITY TO CONFER

110. a. Effective Date; Modification Or Reissuance. This Order shall become effective on October 31, 2008 unless the Regional Administrator EPA Region 2 specifies a later date in writing, or unless the Order is withdrawn or modified and reissued.

b. Notice Of Intent To Comply: Respondent shall notify EPA in writing whether it intends to comply with the terms of this Order by no later than fifteen (15) calendar days after the effective date of the Order. If Respondent does not commit to comply with the terms of this Order, it shall be deemed to have failed or refused to comply with this Order.

c. Opportunity To Confer: Respondent has the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to the Respondent. Within ten (10) calendar days after receipt of this Order, Respondent may request a conference with EPA Region 2 concerning the Order. EPA shall deem a failure to request a conference as a waiver of the opportunity to confer. If Respondent desires a conference, Respondent shall contact:

Dore LaPosta, Director  
Division of Enforcement & Compliance Assistance  
EPA Region 2  
21<sup>st</sup> Floor  
290 Broadway  
New York, New York 10007-1866

The request may be made by facsimile sent to 212-637-3199, attention Robert Hazen, Office of Regional Counsel, or by

telephone to Mr. Hazen at (212) 637-3215. A telephone request will be confirmed in writing by EPA.

If requested, the conference shall occur prior to the Effective Date of the Order, set forth in "a.", above, unless the Effective Date and the date for the conference are extended by mutual agreement of the parties. The conference will be with the Region 2 RCRA Compliance Manager and staff and will be held at the offices of EPA Region 2, at:

290 Broadway  
New York, New York  
21<sup>st</sup> Floor

At Respondent's request, the conference may be held by telephone.

Respondent may be represented by counsel or other designated representative. The conference will be scheduled by EPA within fifteen (15) calendar days of Respondent's request for a conference, unless a later date is agreed to by the parties.

The conference is not an evidentiary hearing. At a conference, Respondent may present any information, comments or arguments concerning the Order, its applicability to Respondent, the factual determinations on which the Order is based, the appropriateness of actions Respondent is required to take under the Order, and any other relevant and material issue. Respondent is responsible for reducing any oral information, arguments or comments to writing and submitting them to EPA within five (5) calendar days following the conference. EPA will not make a transcript of the conference.

Whether or not Respondent requests a conference, Respondent has the opportunity to provide EPA with information concerning the validity and necessity of this Order, and the applicability of this Order to Respondent. Any relevant and material information that Respondent provides EPA prior to the effective date of the Order will be added to the administrative record. The administrative record supporting this Order will be available for public review at:

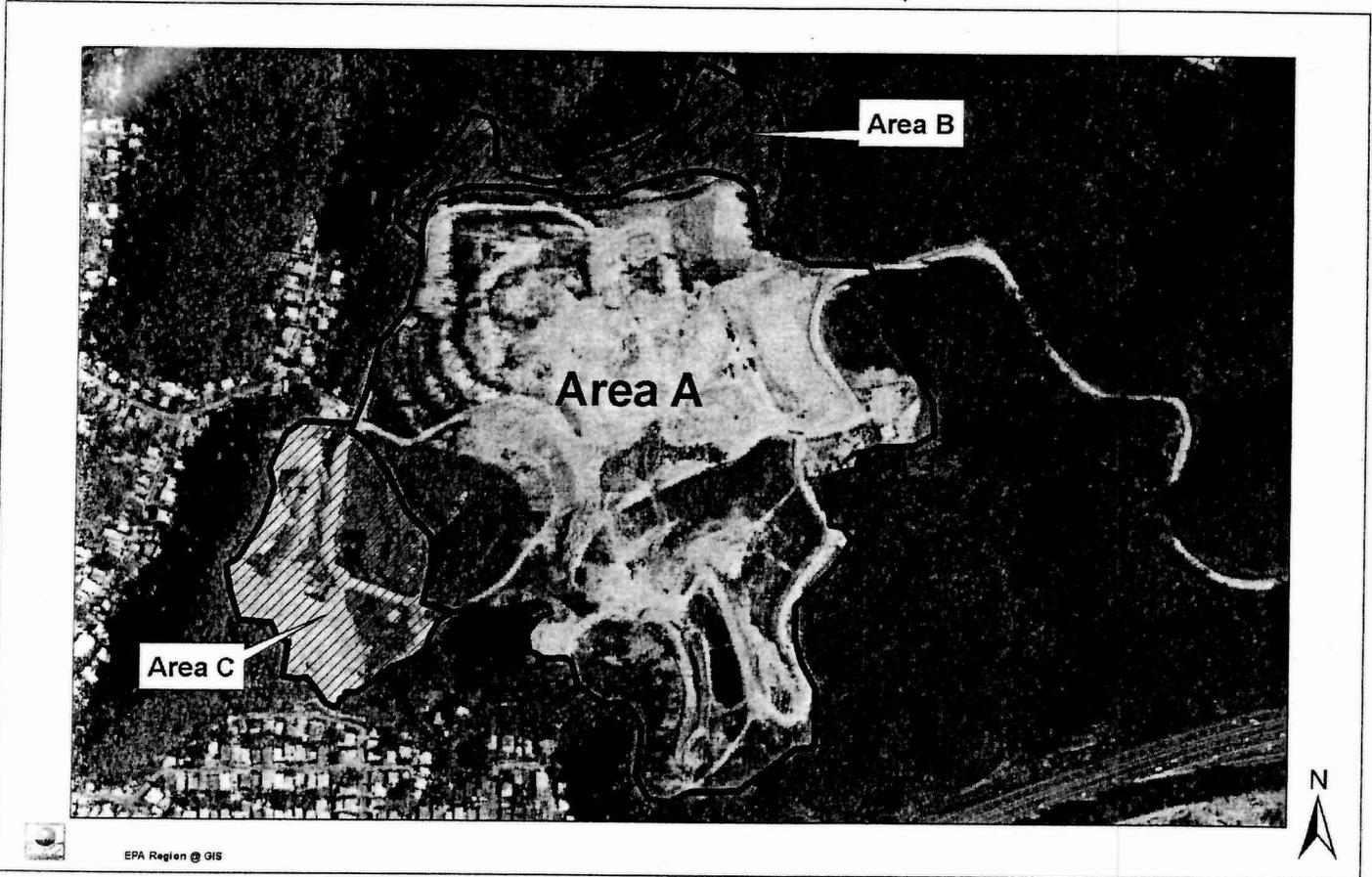
EPA Region 2  
RCRA Compliance Branch  
21<sup>st</sup> Floor

290 Broadway  
New York, New York 10007-1866

If after a conference is held and/or relevant and material information is submitted, EPA determines that the Order warrants modification or withdrawal, the EPA Regional Administrator will take appropriate action pursuant to "a," above.

EXHIBIT 1.

**Toa Baja MSWLF Facility  
Approximate Boundaries of Areas A, B & C**



Toa Baja Municipal Solid  
Waste Landfill  
Toa Baja, Puerto Rico  
Docket No. RCRA-02-2008-7302

IT IS SO ORDERED:



DATE: 9-29-08

Alan J. Steinberg  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, New York 10007-1866

