

- Signed -
08/06/07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Aguadilla Municipal Landfill, Aguadilla,
Puerto Rico.

Municipality of Aguadilla, Puerto Rico

Landfill Technologies of Aguadilla Corp.

Respondents.

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

ADMINISTRATIVE ORDER
ON CONSENT

Docket No.:
RCRA-02-2007-7303

I. JURISDICTION

1. This Administrative Order (the "Order") is issued on consent to the Municipality of Aguadilla, Puerto Rico ("Municipality") and Landfill Technologies of Aguadilla Corp. ("Landfill Technologies"), collectively hereafter referred to as the "Respondent" or "Respondents."
2. Municipality and Landfill Technologies are or have been an owner and/or operator of the Aguadilla Municipal Solid Waste Landfill ("Landfill" or "Facility"). The Landfill is located in the Municipality of Aguadilla in the Commonwealth of Puerto Rico.
3. This Order is issued by the United States Environmental Protection Agency ("EPA") pursuant to the authorities vested in the Administrator of EPA by Section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.* ("RCRA" or "the Act"), which authority has been delegated to the Regional Administrator of EPA, Region 2.
4. ~~Notice of this Order has been provided to the Commonwealth of Puerto Rico, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973.~~

5. Respondents agree to undertake all actions required by the terms and conditions of this Order, consent to and will not contest EPA's jurisdiction to issue or, if necessary, enforce this Order.

II. PARTIES BOUND

6. a. This Order shall apply to and be binding upon each Respondent, every agent of each Respondent and upon all other persons and entities who are under the direct or indirect control of either Respondent (including but not limited to any contractor or independent agent retained to perform work related to this Order at the Landfill facility). Respondents shall supply any such contractor or agent with a complete copy of the Order.

b. Unless otherwise specified, Respondents are jointly and severally responsible for carrying out all the requirements of this Order, including those set forth in Sections V. ORDER and VI. ORDER WORK REQUIREMENTS. Respondents are jointly and severally liable for stipulated penalties for non-performance of any of the Order's requirements as set forth in Section XIV. STIPULATED PENALTIES.

c. Any change in ownership, control or corporate status of Respondent Landfill Technologies, including the sale of assets, shall not alter its responsibilities under this Order, except as may be provided by Sections XXII. Modification or XXIII. Transfer Of Obligations herein.

d. The obligations of the Respondent Municipality 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. Respondent Municipality shall give any such successor official notice of this Order.

III. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statutory and Regulatory Background

7. Municipal solid waste landfills are subject to the federal regulations promulgated at 40 C.F.R. Part 258, entitled Criteria for Municipal Solid Waste Landfills. These regulations "establish [the] minimum national criteria ... for all municipal solid waste landfill units."

8. The Facility, located at Road 443, Km 2.8, Caimital Bajo, Aguadilla, Puerto Rico, is a "municipal solid waste landfill unit," as that term is defined at 40 C.F.R. § 258.2.

9. As a municipal solid waste landfill, the Facility is subject to 40 C.F.R. Part 258.

10. The Landfill is also subject to the Non-Hazardous Solid Waste Management Regulations of Puerto Rico, administered by the Puerto Rico Environmental Quality Board ("EQB").

11. The Landfill is not authorized by EPA to accept or dispose of "hazardous waste," as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and in 40 C.F.R. § 261.3.

The Landfill's Owner and Operator

12. Respondent Municipality has been the "owner" of the Landfill, as that term is defined in 40 C.F.R. § 258.2, since at least 1969, and has contributed and continues to contribute to the handling, management and disposal of solid waste at the Landfill in its capacity as owner.

13. Respondent Landfill Technologies has been the "operator" of the Landfill, as that term is defined in 40 C.F.R. § 258.2, since approximately May 2002, and has contributed and continues to contribute to the handling, management and disposal of solid waste at the Landfill in that capacity.

Respondents are Persons

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

Geographic and Geological Background

15. The Landfill is located in the Municipality of Aguadilla.

16. The Landfill facility has an area of approximately 10 acres. It is surrounded by grasslands and cow pasture, and abuts the Moca Municipal Landfill.

17. The Landfill is located in a region that receives significant amounts of rainfall, averaging more than 70 inches per year.

18. The Landfill is located above the Aymamon and Aguada aquifer.

19. The Landfill is located within the northwest karstic province of Puerto Rico's North Coast Limestone belt.

20. The Municipality of Aguadilla has approximately 95 square kilometers and a population of about 65,000 people.

Landfill Background

21. The Landfill began receiving municipal solid waste since at least 1969 and temporarily ceased receiving waste in approximately 1992.

22. The Landfill again started receiving waste in April 2002 pursuant to a January 24, 2002 "Resolution and Notification" (Resolution Number R-02-1-5) which granted the Municipality authority to receive solid waste in order to reach optimum fill levels in preparation for closure.

23. The Landfill currently receives an average of 200 tons per day of solid waste from the Municipality of Aguadilla. The Landfill has also received solid waste from other Municipalities, including Las Marias, Camuy, Quebradillas and Rincón.

24. The Landfill receives primarily solid household waste and some commercial solid waste. These waste streams may include household hazardous waste (such as solvents, paints, pesticides and household chemicals), mixed paper, rubber, glass and food and yard wastes.

Landfill Inspections, Findings and Environmental Impact

25. On or about March 25, 2003 and July 25, 2006, authorized representatives of EPA inspected the Landfill (the "Inspections"). During and subsequent to the Inspections, EPA obtained information concerning the Landfill and its waste disposal practices, including the facts set forth herein.

26. During the 2006 Inspection, the Landfill did not have proper cover as required by 40 C.F.R. § 258.21. The surface cover was eroded in numerous locations exposing substantial quantities of waste including tires and household trash. Proper cover is required to control disease vectors, fires, odors, blowing litter and scavenging.

27. During the 2006 Inspection, some of the Landfill's surfaces visually appeared to have slope gradients exceeding a 3:1 ratio.

28. As of at least July 2006, the Landfill did not have surface water run-on controls as required by 40 C.F.R. § 258.26.

29. As of at least July 2006, the Landfill did not have adequate surface water run-off controls as required by 40 C.F.R. § 258.26.

30. Uncontrolled surface water run-off, which contains contaminants, can flow onto the adjacent cow pastures and grasslands, into karst sinkholes, and infiltrate and percolate into surface soils, potentially adversely impacting grazing lands, soil and groundwater. Significant uncontrolled run-off is more likely to occur in instances where, as at this Landfill, there is significant rainfall, steep surface gradients and eroded landfill cover.

31. As of at least July 2006, the Landfill did not have an impermeable liner. Liners, which are required for "new municipal solid waste landfill units" and "lateral expansions" as those terms are defined in 40 C.F.R. § 258.2, minimize the possibility that liquids, including leachate, can

percolate and seep through the landfill, infiltrate the subsurface, and contaminate soil and groundwater.

32. As of at least July 2006, the Landfill did not have a leachate collection system.

33. During the 2006 Inspection, significant quantities of flowing and/or ponding leachate were observed along the top, slopes, and base of the Landfill, within the grasslands areas surrounding the Landfill working area. Additionally, multiple gullies and similar surface channeling created by leachate (as indicated by staining) and other free flowing liquids were observed on slope surfaces of the Landfill.

34. Leachate is a "liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste." 40 C.F.R. § 258.2. Landfill leachate is contaminated with hazardous constituents such as toxic chemicals, heavy metals, complex organic compounds and microbial pathogens.

35. Increased volumes of leachate are generated by and released from landfill units, such as this one, that do not have requisite engineering controls in place such as surface water run-on controls, impermeable liners and leachate collection systems. Failure to have these controls increases the likelihood that the Aymamon and Agate water table aquifer beneath the Landfill can become contaminated by Landfill operations at the landfill. This is especially true because this Landfill is located in karst terrain in an area with significant rainfall.

36. As of at least July 2006, the Landfill did not have a groundwater monitoring system as required by 40 C.F.R. §§ 258.50- 258.51. An adequate groundwater monitoring system is necessary to determine if contaminants are being released into groundwater beyond the Facility's boundaries. Groundwater contaminated by landfill operations could contain hazardous constituents such as toxic chemicals, heavy metals, and complex organic compounds.

37. In general, the irregularity of the limestone karst makes it difficult to accurately and consistently monitor groundwater flows that reach sinkholes and any connected underlying aquifer because of the inherent instability of the limestone and unpredictable flows through the limestone formation.

38. An 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 terrain unless one is willing to risk no longer being able to use the subjacent aquifer as a source of potable water. The Puerto Rico Solid Waste Management Authority has similarly concluded that ~~karst terrain is unsuitable for municipal solid waste landfills.~~

39. As of at least July 2006, the Landfill did not have an operational explosive gases control system. A methane monitoring system is required by 40 C.F.R. § 258.23.

40. Landfill gas is generated during the natural process of anaerobic decomposition of refuse contained in a landfill. Landfill gas is predominantly methane and carbon dioxide, and small amounts of non-methane organic compounds ("NMOCs") such as ethane, toluene and benzene. NMOCs are a collection of toxic pollutants, which when released into the atmosphere can lead to adverse health effects. Methane gas is odorless and highly combustible. The accumulation of methane gas within a landfill can potentially cause fires and/or explosions. Through subsurface migration, landfill gas can also migrate off-site and pose a further threat to off-site structures or enclosures.

41. Carbon dioxide and methane are greenhouse gases that can contribute to climate change, and NMOCs contribute to ozone formation. Methane is of particular concern because it is extremely effective in trapping heat in the atmosphere. Some NMOCs which can be produced and released at a landfill are known or suspected carcinogens, and can also have non-cancerous adverse health effects.

42. As of at least July 2006, the Landfill did not have adequate control regarding public access to the Landfill as required by 40 C.F.R. § 258.25. Specifically, there were insufficient barriers between the Aguadilla Landfill and the adjacent Moca Municipal Solid Waste Landfill. In July 2006, unauthorized individuals were seen on the Moca Landfill site picking through a discarded automobile pile; nothing prevented these individuals from entering the Aguadilla Landfill. Failure to completely control public access increases the likelihood of individuals entering the Aguadilla Landfill and the potential for illegal dumping of wastes, thereby jeopardizing human health and the environment.

Conclusion

43. The lack of proper engineering and managerial controls at the Landfill, including run-off and run-on controls, leachate collection, use of impermeable liners, groundwater monitoring, explosive gases control, and access controls at the Landfill all contribute to the handling and disposal of solid waste in a manner that may present an imminent and substantial endangerment to human health and/or the environment.

IV. DETERMINATION

44. Based on the foregoing EPA'S FINDINGS OF FACT AND 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 and hazardous 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.

V. ORDER

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

VI. ORDER WORK REQUIREMENTS

46. REPORTS, NOTICES AND DOCUMENT SUBMISSIONS

All submissions to EPA by Respondents pursuant to this Order shall be in English. This includes, but is not limited to, progress reports, notices, letters, plans and specifications, certifications and other such submissions required by the terms of this Order.

47. CESSATION OF WASTE ACCEPTANCE AND INTERIM MEASURES

a. By no later than ten (10) calendar days after the effective date of this Order, Respondents shall permanently cease receiving all waste for disposal at the Landfill facility.

b. By no later than eighteen (18) months after the effective date of this Order, the Municipality will select a site or sites for the final disposal of its municipal solid waste. Such sites: (i) must be permitted by EQB; (ii) must be substantially in compliance with applicable EQB and EPA landfill disposal regulations; and (iii) must be maintained and operated in a manner protective of human health and the environment.

c. Within ten (10) calendar days after the Landfill facility ceases receiving waste, Respondents shall submit a written report to EPA documenting that Respondents no longer permit the disposal of any solid wastes at the Facility and that such disposal has ceased. The report shall be accompanied by a certification signed by a senior official of each Respondent in the form set forth in VIII. CERTIFICATIONS, herein.

d. Within five (5) calendar days after the effective date of this Order, Respondents shall cause the following NOTICE to be posted in large Spanish and English lettering at the Landfill facility entrances on mounted signs at least four feet by six feet in size. Respondents shall confirm in writing to EPA that the Notice has been posted, and shall send EPA one or more photographs either in digital form or clearly developed of the Notice signs.

NOTICE

**THIS LANDFILL IS PERMANENTLY CLOSED
FOR DISPOSAL BY THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
PURSUANT TO AN ADMINISTRATIVE ORDER
ON CONSENT WITH THE MUNICIPALITY OF
AGUADILLA.**

e. Within ten (10) calendar days of the effective date of this Order, Respondents shall provide security at the Facility, including adequate and secure fencing if not already provided, and entrance gates that are to be locked except when conducting activities pursuant to this Order.

f. Respondents shall file a written report with EPA within forty-five (45) calendar days of the effective date of this Order documenting compliance with the requirements of paragraph "d." above. The report shall be accompanied by the certification set forth in VIII. CERTIFICATIONS, herein.

48. INTERMEDIATE COVER INSTALLATION, CLOSURE AND POST CLOSURE PLANS

a. By no later than eleven (11) calendar days after the effective date of this Order, Respondents shall initiate installation of an Intermediate Cover for the entire Landfill or for those portions of the Landfill which are not being permanently closed immediately, which cover will remain in place until permanent closure activities are performed. The Intermediate Cover, if required, shall consist of at least twelve (12) inches of compacted earthen material for each sub-area at the Landfill, so as to prevent exposure of wastes and to control vectors, fires, odors, blowing litter and scavengers until a final landfill cover is installed.

b. By no later than six (6) months after the effective date of this Order, Respondents shall submit to EPA and EQB acceptable plans for permanent closure of the Landfill and necessary measures and procedures for post-closure care of the Facility (the "Closure Plan" and the "Post-Closure Plan"). These plans must provide for and include:

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

- ii. The Closure and Post-Closure Plans shall include all necessary engineering reports, associated plans and specifications for the permanent closure of the Landfill units including a detailed closure construction schedule, and a description of the necessary measures and procedures for post-closure care. The submitted closure schedule may include up to three sequential phases of closure.
- iii. The Closure and Post-Closure Plans also shall incorporate measures to meet applicable CWA requirements relating to storm water discharges and its implementing regulations, including permit requirements set forth in 40 C.F.R. Part 122, Subpart B, Section 122.26.
- iv. Cost estimates and factors affecting implementation of closure and post closure.
- v. Identification of any permits or other forms of prior approval(s) that may be required from other federal or Commonwealth agencies in order to implement the Closure Plan or the Post-Closure Plan.
- vi. Implementation of the Closure Plan following any required approval by EQB, and final acceptance by EPA. Closure must be completed by no later than April 1, 2010.
- vii. Implementation of the Post Closure Plan following any required approval by EQB, EPA's final acceptance of the Post Closure Plan, and completion of closure pursuant to the approved Closure Plan.
- c. EPA will review the submitted Closure and Post-Closure Plans within thirty (30) calendar days of their receipt and will notify Respondents in writing of EPA's acceptance or non-acceptance. In the event of non-acceptance, EPA will specify deficiencies in the Plan or Plans in writing and outline necessary revisions or modifications. Thereafter, Respondents shall within thirty (30) calendar days of receipt of EPA's notice of non-acceptance, modify/revise the Plan(s) and resubmit them to EPA for final review. This process shall be repeated in the event of EPA's non-acceptance 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 "d." immediately below. Throughout the process, EPA and Respondents should confer as necessary and appropriate in order to clarify and resolve any outstanding issues. EPA will notify Respondents in writing of its final acceptance or non-acceptance of the Closure and Post-Closure Plans.
- d. When EPA determines in its sole discretion that it is necessary to invoke the procedures in this subparagraph in order to achieve acceptable Closure and/or Post Closure Plans, EPA will notify Respondents in writing setting forth a final date for Respondents' submission of acceptable Plan(s) to EPA. The written notice will specify the corrections, amendments and/or changes that Respondents need to make to previously submitted Plan(s) to achieve EPA acceptance, 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) and approved by Respondents, must be submitted to EPA. After submission of the Plan(s) pursuant to the notification letter, EPA will notify Respondents in writing of its final acceptance or non-acceptance of the Closure and/or Post Closure Plans. Respondents' failure to submit acceptable Closure and/or Post Closure Plans by the date specified in the FINAL NOTIFICATION OF DEFICIENCIES shall constitute Respondents' failure to comply with a requirement of this Order, and Respondents shall be subject to stipulated penalties for such failure, in accordance with XIV. STIPULATED PENALTIES, herein.

e. Wherever in 40 C.F.R. §§ 258.60 and 258.61, there is reference to application(s) that may be made for modification of closure or post-closure care requirements contained in 40 C.F.R. Part 258, such application(s) or requests may be made by Respondents to the Chief, RCRA Compliance Branch, EPA Region 2.

49. PERMANENT CLOSURE AND POST-CLOSURE

a. Immediately following receipt of any approval required by EQB, the issuance of any required construction permits for closure work at the landfill, and EPA's written acceptance of the Closure Plan, pursuant to paragraph "48." above, Respondents shall proceed to carry out the Closure Plan, in accordance with its timetable, including making complete and timely applications for any permits or other prior approval(s) that may be necessary.

b. During the implementation of the approved Closure Plan, Respondents shall submit bi-monthly reports to EPA on the status of implementation activities. The bi-monthly reports shall be submitted by the fifteenth (15th) day of the month every other month after implementation of the Closure Plan begins.

c. Respondents shall notify EPA in writing within twenty (20) calendar days after completion of the Closure Plan work, and shall certify that the work has been performed in accordance with the provisions of the Closure Plan accepted by EPA, and its associated plans and specifications, and any permits or other forms of prior approval Respondents obtained for the Closure Plan. The notification shall be accompanied by a Certification signed by a professional engineer that the Closure Plan work has been completed in accordance with the Closure Plan, accepted by EPA, its associated plans and specifications, and any applicable permits or other forms of prior approval. A senior official of each Respondent shall also certify that the work has been completed, in accordance with VIII. CERTIFICATIONS, herein.

d. Respondents shall carry out the provisions of the Post-Closure Plan approved by EQB and accepted by EPA. ~~If monitoring discloses that repairs or alterations must be made to the~~ landfill cap, the gas monitoring system, the groundwater monitoring system, or any other component, Respondents shall timely make such repairs.

e. Respondents shall submit a report to EPA annually that fully describes post-closure activities during the preceding year. The report shall include information on the results of groundwater and gas monitoring and the status of the permanent landfill cap, operating and maintenance activities, financial assurance, and other relevant information. Unless otherwise agreed in writing, the annual report shall be submitted on or before September 30 of each calendar year beginning after the Closure Plan work has been completed. The annual post-closure report shall be signed by a senior official of Aguadilla, in accordance with VIII. CERTIFICATIONS, herein.

VII. FINANCIAL ASSURANCE

50. a. Respondents shall within ten (10) calendar days of submitting a Closure Certification pursuant to paragraph "49.c." above, 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. Respondents 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 "49.e." above.

c. In the event that corrective measures are required during the post-closure period, Respondents 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 their next annual post-closure report after the estimated cost of corrective measures has been established. Respondents 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 "49.e." above.

VIII. CERTIFICATIONS

51. Wherever this Order requires that a "Certification" be submitted to accompany written reports or documents, the following Certification form shall be submitted, and shall be dated and signed by a senior official of each Respondent, unless the Order clearly designates a specific Respondent as being responsible.

"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."

IX. RETENTION OF RECORDS

52. Respondents shall maintain business records pertaining to the operations of the facility and shall make such records available to EPA and its representatives for inspection upon request. Respondents shall also maintain business records pertaining to the work being performed pursuant to this Order and shall make such records available to EPA and its representatives for inspection upon request.

X. PROJECT COORDINATORS

53. On or before the effective date of this Order, EPA and the Respondents each shall designate a Project Coordinator ("PC") and the name of at least one alternate who may function in the absence of the designated Project Coordinator. The Project Coordinators shall be responsible for overseeing implementation of this Order. EPA and the Respondents shall each have the right to change the PC and shall inform the other parties should such change occur. The EPA has designated Leonard Grossman, Environmental Scientist, as Project Coordinator and Carl Plössl, Environmental Engineer, as Alternate Project Coordinator.

54. All communications between Respondents 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 Project Coordinators.

XI. NOTICES

55. 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 Respondents 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:

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

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

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

56. By no later than ten (10) calendar days after the effective date of this Order, Respondents each shall designate a person or persons to receive such written communications, notices or response to submissions required by this Order and shall provide a mailing address for such person(s).

XII. EMERGENCY PROVISIONS/CORRECTIVE ACTION

57. In the event either Respondent identifies a current or immediate threat to human health or the environment at the Landfill facility other than those identified in Section III herein, Respondents 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 Respondents 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 Respondents shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondents may act as they deem appropriate at their own risk.

58. In the event Respondents identify the need for corrective action due to conditions at the Landfill, or off-site, caused by contamination released from the Landfill, other than those conditions identified in Section III herein or identified by groundwater monitoring carried out pursuant to the Post-Closure Plan, Respondents shall notify EPA within ten (10) calendar days of such identification. After review of available information, EPA may, after consultation with Respondents, require Respondents 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.

59. 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(s), or may pose a threat to human health or the environment, EPA may direct Respondents 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 Landfill facility, or off-site, caused by contamination released from the Landfill, other than those conditions identified in Section III herein or identified by groundwater monitoring pursuant to the Post-Closure Plan, EPA will notify Respondents and may, after consultation with Respondents, require Respondents 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.

XIII. RESERVATION OF RIGHTS

60. 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 CERCLA to undertake removal or remedial actions.

61. 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 RCRA, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), or any other statutory, regulatory or common law authority of the United States.

62. This Order shall not limit or otherwise preclude EPA from taking any additional legal action against the Respondents, jointly or separately, should EPA determine that any such additional legal action is necessary or warranted.

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

XIV. STIPULATED PENALTIES

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

Period of Failure to Comply	Penalty for Non-compliance per Calendar Day
1 st through 15 th day	\$ 100.00
16 th through 60 th day	\$ 200.00
61 st through 120 th day	\$ 750.00
121 st through 180 th day	\$ 1,500.00
181 st day and thereafter	\$ 3,000.00

a. Stipulated penalties shall be paid by cashier's or certified check, payable to the Treasurer, United States of America, and mailed to the EPA - Region 2 (Regional Hearing Clerk), P.O. Box 360188M, Pittsburgh, Pennsylvania. Said payment(s) shall be identified as **Aguadilla Municipal Solid Waste Landfill, Aguadilla, Puerto Rico** and must reference the **Docket Number** set forth on the title page of this Order.

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

c. After receipt of a demand from EPA for stipulated penalties pursuant to this Section of the Order, Respondent(s) may within thirty (30) calendar days of such demand, provide EPA with a written explanation of why it believes the stipulated penalties are not appropriate for the act(s) of non-compliance cited by EPA. If Respondent(s) elect not to file such explanation, the stipulated penalties shall be paid within sixty (60) calendar days after receipt of the penalty demand.

d. The Director of the Division of Enforcement and Compliance Assistance may, in his or her sole discretion, reduce or eliminate such stipulated penalties based on Respondent(s) written explanation as specified in "c." immediately above. If Respondent(s) make a submission as specified in "c." above, and the Division Director does not eliminate the stipulated penalties, then EPA will again notify Respondent(s) in writing that the original or reduced stipulated penalties must be paid by Respondent(s). Respondent(s) shall pay the stipulated penalties as set forth in EPA's notice pursuant to this sub-section within thirty (30) calendar days of its receipt of the notice.

e. At any time prior to Respondent(s) payment of stipulated penalties, the Director of the Division of Enforcement and Compliance Assistance may, for good cause as independently determined by him or her, reduce or eliminate the stipulated penalties. If the Director makes such determination, EPA will notify Respondent(s) in writing of the change.

f. Except as provided in "c." above, all penalties owed to EPA under this Section XIV. **STIPULATED PENALTIES**, shall be due and owing within thirty (30) calendar days after receipt of EPA's written notice to Respondent(s), described in

“d.” or “e.” above. Interest shall also accrue on any amount not paid when due at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

g. If Respondent(s) fail to pay stipulated penalties as required under this Order, EPA may refer this matter to the U. S. Department of the Treasury or the Department of Justice for collection under applicable law. Nothing in this section, however, limits, or shall be construed as limiting, any rights or remedies available to EPA to enforce this Order and to seek compliance with the terms and conditions of this Order or any other applicable law or regulation.

XV. NON-RELEASE OF OTHER CLAIMS AND PARTIES

65. 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. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

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

XVII. OTHER APPLICABLE LAWS

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

XVIII. SEVERABILITY

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

XIX. FORCE MAJEURE AND EXCUSABLE DELAY

69. Respondents 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 Respondents which could not be overcome by due diligence and which delays or prevents performance by a date required by this Order. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, Commonwealth, or local permits. Nothing herein shall be read to prevent Respondents from requesting a change in the scheduling of the events or a modification of the Order pursuant to Section XXII of the Order.

70. The Respondent(s) shall notify in writing the EPA Project Coordinator within five (5) days after becoming aware of any event, which it knows or should know, constitutes a force majeure. Such notice shall detail the estimated length of delay, including necessary demobilization and remobilization, its causes, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondents 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(s) an extension of time for performance.

71. After receiving notice from Respondent(s) that Respondent(s) are 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 therefore.

72. 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 XXII. MODIFICATION, herein.

73. 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.

XX. ON-SITE AND OFF-SITE ACCESS

74. Respondents shall permit EPA representatives, including authorized designees, employees, agents, contractors, subcontractors, or consultants 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.

75. Respondents 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 pursuant to this Order.

76. To the extent that work required by this Order must be performed on property not owned or controlled by either Respondent, Respondents shall use best efforts to obtain "Site Access Agreements" to perform such work within thirty (30) days of the date Respondents become 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, Respondents shall notify EPA, in writing, documenting their best efforts to obtain such agreements.

77. 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.

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

XXI. NO FINAL AGENCY ACTION

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

80. In any action brought by EPA for a violation of this Order, Respondents 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 Respondents have violated a term or terms of this Order.

XXII. MODIFICATION

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

82. Notwithstanding the above, EPA's and Respondents' coordinators may agree to changes in the scheduling of events. Any such changes shall normally be requested in writing by the Respondent(s) and must be approved in writing by the EPA PC.

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

XXIII. TRANSFER OF OBLIGATIONS

84. Respondent(s) shall give notice, and a copy, of this Order to any successor in interest prior to any transfer of ownership or responsibility for the Landfill facility. Respondent(s) shall give notice to EPA at least sixty (60) days prior to any such transfer. No such transfer shall in any way alter, extinguish or otherwise affect Respondent(s)' responsibility to meet all the terms and obligations of this Order. Respondent(s) may, however, transfer the responsibility for unperformed obligations imposed by this Order to a new owner/operator of the Landfill facility, provided there is a demonstration provided to EPA's satisfaction that the new owner/operator is capable of undertaking these obligations and has expressly agreed to do so in writing, provided further that EPA has given its approval in writing to any such transfer of obligations, and provided finally that this Order has been modified to reflect the transfer. Any stipulated penalties which may have accrued pursuant to the terms of this Order shall remain the responsibility of the Respondent(s) against whom the penalties accrued. The Order Modification reflecting the transfer of obligations to a successor party or parties may, if appropriate, establish modified schedules for continuing obligations under the Order.

XXIV. DISPUTE RESOLUTION

85. All parties shall use their best efforts to informally and in good faith resolve all disputes and differences of opinion, which may arise concerning provisions of this Order. Notwithstanding the above, if Respondent(s) disagree, in whole or in part, with any disapproval or modification or other decision or directive made by EPA pursuant to this Order, Respondent(s) shall notify EPA in writing of its objections and the basis (bases) therefore within ten (10) days of receipt of EPA's disapproval, modification, decision, or directive. Said notice shall set forth the specific points of the dispute, the position Respondent(s) maintain, the basis (bases) for Respondent(s)' position, and any matters the Respondent(s) consider 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 shall provide to Respondents its decision 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.

86. The existence of a dispute as defined herein, and EPA's consideration of such matters as 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 Respondents' dispute is in good faith and Respondents exercise due diligence to resolve the dispute.

XXV. TERMINATION

87. 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 Respondents are so notified in writing by the EPA. Such notice shall be signed by the Regional Administrator, EPA Region 2. Respondents may request that EPA Region 2 provide Respondents with such notice, and shall supply EPA with such information, including certifications, as EPA may specify.

XXVI. ENFORCEMENT

88. The failure of Respondents 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.

89. 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 Landfill. 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.

XXVII. GENERAL PROVISIONS

90. Nothing in this Order constitutes a satisfaction or release from liability with respect to any conditions or claims arising as a result of past, current or future operation, ownership or use of the Landfill facility by the Respondents, their agents, officials, successors or assigns.

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

XXVIII. CONSENT

92. Respondents consent to and agree not to contest EPA's jurisdiction to issue this Order. In addition, whether brought in an administrative or judicial proceeding, Respondents consent to and agree not to contest EPA's jurisdiction to enforce or compel compliance with any term of this Order.

93. a. Finding this Order to be accurate and reasonable, Respondents consent to its issuance and its terms, and agree to undertake all actions required by the terms and conditions of this Order. Respondents consent to the issuance of this Order, as an Order, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and explicitly waive any rights they may have to request a hearing on this matter.

b. Respondents neither admit nor deny the EPA's Findings of Fact and Conclusions of Law stated herein. Respondents enter into this Order in good faith, and the execution of this Order is not intended and shall not be construed as an admission relating to any violations of any law or regulations or an assumption of liability beyond that expressly stated herein.

94. Respondents agree not to contest and agree to waive any defense concerning the validity of this Order, or any particular provision contained herein.

95. Each signatory to this Order certifies that he or she is fully authorized to sign this Order without reservation.

XXIX. EFFECTIVE DATE

96. The effective date of this Order shall be fifteen (15) days after the date the Order is signed by the Regional Administrator, EPA Region 2.

3/21/07

ADMINISTRATIVE ORDER ON CONSENT
Aguadilla Municipal Solid Waste Landfill, Aguadilla, Puerto Rico
Docket No. RCRA-02-2007-7303

Respondent Municipality of Aguadilla

By: _____

Name: Carlos Vindel-Martinez
(PRINT)

Title: Mayor

Date: July 2, 2007

ADMINISTRATIVE ORDER ON CONSENT
Aguadilla Municipal Solid Waste Landfill, Aguadilla, Puerto Rico
Docket No. RCRA-02-2007-7303

Respondent Landfill Technologies of Aguadilla Corp.

By: 

Name: ROY S. CONTRERAS

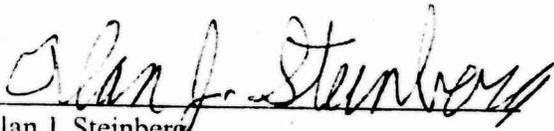
(PRINT)

Title: PRESIDENT

Date: JULY 2, 2007

ADMINISTRATIVE ORDER ON CONSENT
Aguadilla Municipal Solid Waste Landfill, Aguadilla, Puerto Rico
Docket No. RCRA-02-2007-7303

It is so Ordered:



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

Date: 5-6-07