

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil No. 3:14-cv-01438

LANDFILL TECHNOLOGIES OF ARECIBO CORP.,
MUNICIPALITY OF ARECIBO, and
PUERTO RICO LAND AUTHORITY,

Defendants.

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CONSENT DECREE

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I. INTRODUCTION

- A. WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint ("Complaint") in this action, pursuant to Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(b), alleging that Defendants Landfill Technologies of Arecibo Corp. ("LTA"), the Municipality of Arecibo ("Arecibo"), and the Puerto Rico Land Authority ("PRLA") (collectively, the "Defendants"), violated Part VII of the Puerto Rico Air Regulations ("Part VII Regulations"), as well as 43 C.F.R. § 63.1930, by failing, on or before November 5, 2005, to construct a gas collection and control system ("GCCS") for the landfill owned and/or operated by the Defendants located at Road PR 682 Interior, Garrochales Sector, Factor Ward, Arecibo, Puerto Rico (the "Landfill"), and seeking penalties and injunctive relief.
- B. WHEREAS, LTA began construction of the GCCS in May, 2011, in accordance with a design plan conditionally approved by EPA on May 13, 2011, and completed construction of the GCCS on or about June 21, 2012.
- C. WHEREAS, the Defendants have also agreed to implement certain additional improvements to the Landfill and its operation ("RCRA Improvements").
- D. WHEREAS, Defendants do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the Complaint. The United States and Defendants agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Defendants.
- E. WHEREAS, the Parties agree and this Court, by entering this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and over the parties. Venue lies in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and 28 U.S.C. §§ 1391(b) and 1395(a) because the violations alleged in the Complaint are alleged to have occurred in this District and Defendants each resides in this District. For purposes of this Decree, or any action to enforce this Decree,

Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district.

2. Notice of commencement of this action has been given to the Commonwealth.

III. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.
4. No transfer of ownership or operation of the Landfill, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented. At least 30 days prior to any such transfer, Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 2, the United States Attorney for the District of Puerto Rico and the United States Department of Justice, in accordance with Section XVI (Notices). However, if LTA, at any time, ceases to be the operator of the Landfill, it will be relieved of certain of its obligations under this Decree, as provided herein and, if PRLA transfers a deed to the Landfill to Arcibo and records such deed, PRLA will be relieved of certain of its obligations under this Decree, as provided herein.
5. Defendants shall provide a copy of this Consent Decree to all officers, supervisors and managers whose duties include work required under the Consent Decree, and a summary of applicable requirements of this Consent Decree to all employees and agents whose duties include work required under the Consent Decree.
6. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the CAA or in Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* ("RCRA") or regulations promulgated pursuant to the CAA or RCRA shall have the meanings assigned to them in the statutes or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

"Annual RCRA Report" shall mean the annual report required by Section VII (RCRA Improvements), which is due on or before July 1 of each year until the Consent Decree is terminated pursuant to Section XXI (Termination);

"Approved GCCS Design Plan" shall mean the March 7, 2011 Design Basis and Specifications – Arecibo Landfill for the Gas Collection and Control System, prepared by I.T.S. Corporation, which was conditionally approved by EPA on May 13, 2011, as further revised pursuant to LTA's submission to EPA dated February 6, 2012, and finally approved by EPA on June 12, 2012;

"Arecibo" shall mean the Municipality of Arecibo, Puerto Rico;

"business day" shall mean any day Monday through Friday, except for any federal or Commonwealth holiday;

"CAA" shall mean the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*;

"Complaint" shall mean the complaint filed by the United States in this action;

"Consent Decree" or "Decree" shall mean this Decree, and the appendix attached hereto;

"Commonwealth" shall mean the Commonwealth of Puerto Rico;

"CWA" shall mean the Clean Water Act, 33 U.S.C. 1251, *et seq.*;

"day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or Commonwealth holiday, the period shall run until the close of business of the next business day;

"Defendants" shall mean LTA, Arecibo, and PRLA;

"EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

"EQB" shall mean the Puerto Rico Environmental Quality Board and any of its successor departments or agencies;

"Effective Date" shall have the definition provided in Section XVIII (Effective Date);

“GCCS” shall mean gas collection and control system;

“HAP” or “Hazardous air pollutant” shall mean any air pollutant listed in or pursuant to Section 112(b) of the CAA;

“Interest,” as that term is used in Section V (Civil Penalty), shall mean interest, accruing from the date of lodging of this Consent Decree, until the date of payment, at the rate set forth at 28 U.S.C. § 1961. In order to determine the applicable interest rate under 28 U.S.C. § 1961 for the payments required by Section V (Civil Penalty), the “date of judgment,” as that term is used in 28 U.S.C. § 1961, shall be deemed to be the date of lodging of the Consent Decree. “Interest,” as that term is used in Section X (Stipulated Penalties), shall mean interest, accruing on the date that the stipulated penalty payment was due until the date of payment, at the rate set forth at 28 U.S.C. § 1961. In order to determine the applicable interest rate under 28 U.S.C. § 1961 for late stipulated penalty payments, the “date of judgment,” as that term is used in 28 U.S.C. § 1961, shall be deemed to be the date that the stipulated penalty payment was due. All Interest shall be compounded on an annual basis calculated from the date the Interest began to accrue;

“Landfill” shall mean the landfill owned and/or operated by the Defendants located at Road PR 682 Interior, Garrochales Sector, Factor Ward, Arecibo, Puerto Rico;

“Landfill MACT” shall mean the National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills, 40 C.F.R. Part 63, Subpart AAAA, 40 C.F.R. §§ 63.1930-63.1990, which establish national emission standards for hazardous air pollutants for new and existing Municipal Solid Waste landfills;

"LTA" shall mean Landfill Technologies of Arecibo Corp.;

“Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

"Part VII Regulations" shall mean the Emission Guidelines and Compliance Schedule for Municipal Sanitary Landfill System regulations issued by EQB;

“Parties” shall mean the United States and Defendants;

“ppm” shall mean parts per million;

"PRLA" shall mean the Puerto Rico Land Authority;

“RCRA” shall mean the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.*;

“Section” shall mean a portion of this Decree identified by a Roman numeral;

“Stormwater” shall mean water that originates during precipitation events. Stormwater that does not soak into the ground becomes surface run-off (less evapotranspiration effects). If stormwater enters the Landfill and contacts waste (including water within daily cover), the stormwater becomes leachate and must be managed as leachate;

"United States" shall mean the United States of America, acting on behalf of EPA.

V. CIVIL PENALTY

8. Within 30 days of the Effective Date, LTA shall pay \$250,000 as a civil penalty to the United States. PRLA shall pay \$50,000 as a civil penalty to the United States, of which \$10,000 shall be paid within 30 days of the Effective Date, \$10,000 within 60 days of the Effective Date, \$10,000 within 90 days of the Effective Date, \$10,000 within 120 days of the Effective Date, and the remaining \$10,000 within 150 days of the Effective Date. Arcibo shall pay \$50,000 as a civil penalty to the United States, of which \$25,000 shall be paid within 30 days of the Effective Date and the remaining \$25,000 within 180 days of the Effective Date. All of these payments shall include Interest. Payment of the civil penalties by Defendants shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Puerto Rico. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to: (a) Santos Conde-Navarro, Finance Vice-President, PO Box 1322, Gurabo, Puerto Rico 00778 (787-273-7639 Ext. 272; sconde@landfillpr.com) on behalf of LTA, (b) Olga Sanchez, Director, PRLA Finance, Puerto Rico Land Authority, PO Box 9745, San Juan, Puerto Rico 00908-9745 (787-723-9090, Ext. 2221; osanchez@agriculture.pr.gov) on behalf of PRLA, and (c) Carmen Paniagua, Finance Department, Municipality of Arcibo, PO Box 1086, Arcibo, Puerto Rico 00613 (787-397-9398; cpaniagua@outlook.com) on behalf of the Arcibo. At the time of payment, Defendants shall send notice that payment has been made by email to EPA and DOJ at acctsreceivable.cinwd@epa.gov and EESCaseManagement.ENRD@usdoj.gov, or by First Class mail to the addresses listed below:

EPA Cincinnati Finance Office
Martin Luther King Drive
Cincinnati, Ohio 45268

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, DC 20044-7611
Re: DJ No. 90-5-2-1-10426

Such notice shall reference the CDCS Number, United States v. Landfill Technologies of Arcibo Inc. et. al, DOJ case number 90-5-2-1-09629. Notice of payment shall also be sent to the United States and EPA pursuant to Section XVI (Notices).

VI. CAA INJUNCTIVE RELIEF

9. Defendants shall comply with the Part VII Regulations and the Landfill MACT with respect to the Landfill including, without limitation, the requirements specifically set forth below (which include certain requirements that go beyond the Part VII Regulations and the Landfill MACT). LTA's obligations set forth at Paragraphs 14-20 below shall terminate if, at any time, LTA ceases to be the operator of the Landfill. PRLA's obligations set forth at Paragraphs 14-20 shall terminate if PRLA transfers a deed to the Landfill to Arcibo and records such deed.
10. Defendants may propose revisions to the GCCS as necessary to reflect changed circumstances or conditions at the Landfill. Any proposed revised design plan shall include a timetable for completion of such revisions. The revised design shall be submitted to EPA for review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval). Defendants may implement non-material changes to the GCCS upon EPA's prior written approval without a design plan.
11. Within 10 days of the lodging of this Consent Decree, Defendants shall complete the connection of the landfill gas collection system and air pollution control equipment in accordance with the Approved GCCS Design Plan such that they are fully operational. Within 20 days of the lodging of this Consent Decree, Defendants shall notify EPA of the date on which it became fully operational.
12. Within 30 days of lodging of this Consent Decree, Defendants shall conduct monitoring of the temperature, pressure, and either oxygen or nitrogen on each well and the gas flow rate to the flare(s) and provide copies of the data collected to EPA and EQB.

13. If any of the initial performance tests indicate that the GCCS is not meeting the applicable emission standards, Defendants shall submit to EPA, for review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval), a plan for achieving compliance. After implementation of the approved plan, Defendants shall send a notice to EPA concerning the date for the re-testing of the GCCS (which shall be no less than 30 days from the date of the notice in order to allow sufficient time for EPA, if it decides to attend the test, to make arrangements to attend.)
14. On a monthly basis, Defendants shall monitor each interior wellhead and record the gauge pressure in the gas collection header, the nitrogen or oxygen concentration in the gas, and the temperature of the gas, as required by Rule 706(a) of the Part VII Regulations, and shall take any corrective action required by Rules 703(a)(3) and 703(a)(5) of the Part VII Regulations. Defendants shall also monitor the gas flow as required by Rule 706 of the Part VII Regulations. Calibrations of the equipment used to monitor the data shall be conducted in accordance with the manufacturers' recommendations and guidelines and copies of such calibrations shall be provided to EPA and EQB as part of the semi-annual reports required by Rule 707(f) of the Part VII Regulations and 40 C.F.R. § 63.1980.
15. Defendants shall operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the Landfill at all times and, whenever such concentration is exceeded, shall implement the actions required by Rule 705(c)(4) of the Part VII Regulations and shall report the exceedance and the results of the Landfill's quarterly surface scanning to EPA and EQB in the semi-annual reports required by Rule 707(f) of the Part VII Regulations and 40 C.F.R. § 63.1980, including the reason for such exceedance and what actions were taken to reduce the methane concentration in accordance with Rule 705(c)(4) of the Part VII Regulations.
16. As provided in 40 C.F.R. § 63.10(d)(5), if actions taken during a startup, shutdown or malfunction are consistent with the procedures in the startup, shutdown or malfunction plan, Defendants shall include such information in the semi-annual startup, shutdown and malfunction report. If any action taken during a startup, shutdown, or malfunction is not consistent with the startup, shutdown and malfunction plan, Defendants shall report the actions taken to EPA within two business days after commencing such actions, followed by a letter report submitted to EPA within seven days of the event.
17. If the GCCS becomes inoperative, Defendants shall follow the applicable requirements of the Part VII Regulations and shall submit a report to EPA and EQB concerning the incident within seven days of the date the GCCS becomes inoperative.

18. If, at any time, Defendants seek to close a well or relocate a well that was required by the Approved GCCS Design Plan, Defendants shall submit a plan to EPA for review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval), describing the closure or relocation and setting forth the reasons for the closure or relocation.
19. Defendants shall submit semiannual reports to EPA and EQB required by Rule 707(f) of the Part VII Regulations and 40 C.F.R. § 63.1980.
20. At the time of closure of the Landfill, Defendants shall submit a closure report to EPA and EQB, as provided in Rule 707(d) of the Part VII Regulations.

VII. RCRA IMPROVEMENTS

21. Defendants shall comply with 40 C.F.R. Part 258 and the Commonwealth of Puerto Rico Regulations for the Management of Non-Hazardous Waste with respect to the Landfill including, without limitation, the specific requirements listed below (which include certain requirements that go beyond the requirements of 40 C.F.R. Part 258 and the Puerto Rico Regulations for the Management of Non-Hazardous Waste). If LTA, at any time, ceases to be an operator of the Landfill, LTA's obligations under Paragraphs 22 (Security), 23 (Pathogen Control), 31, 32, 35 and 37 shall terminate at such time. LTA's obligations under Paragraph 30 shall terminate, with respect to each structure at the Landfill, at the earlier of (a) six months after LTA ceases to be an operator of the Landfill or (b) the time any substantial modification is made to such structure by the subsequent operator of the Landfill. If the PRLA transfers a deed to the Landfill to Arecibo and records such deed, PRLA's obligations under Paragraphs 22 (Security), 23 (Pathogen Control), 30, 31, 32, 35 and 37 shall terminate at such time.
22. **Security**. Prior to the lodging of this Consent Decree, Defendants took certain steps to restrict unauthorized access to the Landfill. If EPA determines that the measures already implemented are insufficient, Defendants shall submit to EPA, for review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval), a plan for substantial, additional steps to ensure that unauthorized access to the Landfill is restricted so that theft, scavenging, and trespass incidences are minimized. Such additional measures may include, for example, installation and maintenance of additional gates and perimeter fencing (chain link with barbed wire). Defendants shall report all trespass incidents they become aware of to EPA within 30 days of such incidents.

23. **Pathogen Control.** In order to control pathogens, Defendants shall:
- a. Use only a single active face unless, for operational reasons, the use of multiple active faces cannot be avoided.
 - b. Cover disposed solid waste with six inches of earthen material, and/or an acceptable alternative daily cover, at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging. Daily cover must be maintained.
 - c. Take additional steps, as necessary, to control identified site disease vectors.
24. **Waste Extent Determination.** Within 60 days of the Effective Date, Defendants shall submit to EPA, for review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval), a Solid Waste Delineation Protocol ("SWDP") designed to determine the full extent of solid waste disposal beyond the currently recognized operational perimeter of the Landfill ("Current Operational Perimeter"). Unless otherwise agreed to by EPA, this protocol shall be designed so that the waste extent survey will be conducted in two distinct phases:
- a. Phase 1: Bulk Waste Extent Delineation. Defendants shall determine, in areas where the waste extent is not clear along the Current Operational Perimeter (e.g., the northern perimeter), the actual extent of bulk waste disposal through the use of soil borings and/or trenching. After performing this study, Defendants shall delineate the extent of bulk waste disposal along the entire perimeter of the Landfill ("Bulk Waste Perimeter") by a series/system of highly visible markers (except as delineated by the existing canal or other natural or manmade landmarks that clearly define the boundary). The Bulk Waste Perimeter shall be defined via GPS mapping and kept in the facility records and shall constitute the existing landfill under this Consent Decree until the establishment of a Final Operational Perimeter (as provided in Paragraphs 25 and 26).
 - b. Phase 2: Peripheral Waste Extent Delineation. Defendants shall determine, to the extent practicable, the location of other solid waste deposits including, but not limited to, scrap metal, between the Bulk Waste Perimeter and the Caño Tiburones Nature Reserve. The location and characteristics of these solid waste deposits shall be documented and entered into the facility records and a report shall be provided to EPA. In particular, any scrapped vehicles, tanks, drums, and any other vessels potentially containing fluids shall be identified.
25. Within 270 days of EPA's approval of the SWDP, Defendants shall submit to EPA, for review and approval pursuant to Section IX (Submission of Deliverables for Review and

Approval), a Solid Waste Delineation Report and Plan ("SWDRP") that provides the results of the Phase 1 and Phase 2 investigations and an action plan to implement the following requirements:

- a. Delineate a Final Operational Perimeter, which shall be used for all relevant construction, maintenance, and planning activities, based on one or both of the following:
 - (1) Relocation of existing, bulk, solid waste disposed beyond the Current Operational Perimeter, as delineated in Phase 1, to an area within the Current Operational Perimeter or other disposal site as approved by EPA (in which case the Final Operational Perimeter shall be the same as the Current Operational Perimeter); or
 - (2) Establishment of the Bulk Waste Perimeter as the Final Operational Perimeter.
- b. To the extent not previously achieved, delineation of the Final Operational Perimeter through a system of substantial engineering constructs (e.g., existing U.S. Corp of Engineers stormwater channel along the eastern and southern boundaries, constructed dike along the northern boundary, and permanent roadway and/or concrete post systems).
- c. Identification and removal of scrapped vehicles, tanks, drums, and any other vessels potentially containing fluids, and any other waste material representing a significant, ongoing risk, located between the Final Operational Perimeter and the Caño Tiburones Nature Reserve, to relocation/disposal site(s) as approved by EPA. LTA shall assist in the identification of such waste material, but shall not be responsible for the removal, handling or disposal of any such waste material that was disposed of prior to the time that LTA began to operate the Landfill (summer of 1999).
- d. The activities required herein under subparagraphs a, b and c shall be implemented only upon prior EPA approval and, if so requested by EPA, under EPA's direct oversight. Except as provided above, Defendants are not required by this Consent Decree to recover, handle, remediate or dispose of any solid waste disposed beyond the Final Operational Perimeter. Defendants shall take steps to limit the negative impacts of any investigative and/or removal activities taking place in the wetlands located between the Landfill and the Caño Tiburones Nature Reserve.

26. Within 180 days of EPA approval of the SWDRP, Defendants shall incorporate the Final Operational Perimeter into all required Landfill system designs, appurtenances, and plans including, without limitation, the GCCS.
27. **Stormwater and Leachate Management.** Within 180 days of EPA's approval of the SWDRP, Defendants shall submit to EPA, for review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval), an updated Erosion Sedimentation Control Plan ("ESCP"). The ESCP must meet the following criteria:
 - a. Meet the engineering standards set forth in 40 C.F.R. § 258.11. Engineered systems must include dike designs along the northern boundary of the Landfill, as described in EPA's *Solid Waste Disposal Facility Criteria*, EPA 530-R-93-017, Figure 2-3 or an acceptable equivalent and must account for hurricane-strength winds and rainfall.
 - b. Meet the criteria set forth at 40 C.F.R. § 258.26, which include ensuring that the Landfill is designed, constructed, and maintained to prevent stormwater run-on flow onto the active portion of the Landfill during the peak discharge from a 25-year storm and that the Landfill is designed, constructed, and maintained to collect and control at least the water volume resulting from a 24-hour, 25-year storm from the active (i.e., not closed and capped) portion of the Landfill.
 - c. Prevent the discharge of a point or nonpoint source of pollution into the adjacent wetlands, any waterways (e.g., canal or channel) leading to wetlands, or any navigable waters of the United States that violates Section 301(a) of the CWA or any requirement of an area-wide or Commonwealth-wide water quality management plan that has been approved under Section 208 or 319 of the CWA.
28. **Groundwater Monitoring.**
 - a. Within 30 days of the Effective Date, Defendants shall submit to EPA a copy of the Groundwater Monitoring Plan for the Landfill as well as sufficient information concerning the implementation of such plan to allow EPA to determine whether the plan and its implementation are sufficient to detect contamination, above background levels, in the uppermost aquifer.
 - b. If EPA determines that the Groundwater Monitoring Plan and its implementation are insufficient to detect contamination, above background levels, in the uppermost aquifer, Defendants shall, within 90 days of being notified of such determination, submit to EPA, for review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval), a

revised Groundwater Monitoring Plan and implementation schedule that will be sufficient to detect such contamination.

- c. Defendants shall provide to EPA the preceding year's analytical results from any required periodic groundwater monitoring on or before July 1 of each calendar year (as part of the Annual RCRA Report to EPA).
29. **Corrective Action**. If information obtained through groundwater 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, Defendants shall undertake such measures or procedures in the affected area(s).
 30. **Structural Integrity**. Defendants shall meet the criteria set forth at 40 C.F.R. §§ 258.1, 258.14, and 258.15 in order to ensure that the integrity of the northern Landfill slopes, stormwater channels, berms, and other structures will not be disrupted. Such structures must be designed, constructed, and maintained to:
 - a. Resist the maximum horizontal acceleration expected in lithified earth material for the Landfill; and
 - b. Preserve integrity under natural and man-made unstable conditions including, as site applicable, soil foundations subject to expansion or subsidence, differential settlements (e.g., old waste settlement, karst-type void collapses), and the impacts of hurricane-strength winds and rainfall.
 31. The Landfill shall be graded to a maximum slope of 3:1 (i.e., 3 horizontal to 1 vertical) unless an equivalent or better slope stability (as determined by a professional geotechnical engineer) can be engineered (e.g., geo-grid reinforcement and buttressing). Such engineered, steeper slopes must be designed and maintained to allow for inspection and monitoring (maximum of 20 degrees, i.e., 2.7 horizontal to 1 vertical).
 32. Beginning 90 days after the Effective Date, and every 180 days thereafter, as per conclusion/recommendation #16 of the October 2011 report entitled "Slope Stability Analysis Municipal Solid Waste Landfill Arcibo, Puerto Rico," prepared by GEO Engineering, Defendants shall continue to monitor installed inclinometers and observation wells to determine whether a reevaluation of slope stability is required. Defendants shall provide to EPA a summary report of monitoring results on or before July 1 of each calendar year (as part of the Annual RCRA Report). At such time as the Defendants submit a request for the partial termination of the Consent Decree pursuant to Paragraph 94, Defendants shall provide EPA with a final report of the findings.

33. **Closure Plan Submittal and Procedures.** Within 270 days of EPA's approval of the ESCP, Defendants shall submit a revised Closure Plan, incorporating the findings of the SWDPR and ESCP, for EPA review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval).
34. Within 90 days of EPA approval of the revised Closure Plan, Defendants shall submit to EPA a certification that the Landfill is being operated in accordance with the approved Closure Plan. Such certification shall thereafter be submitted to EPA on an annual basis, on or before July 1 of each year (as part of the Annual RCRA Report).
35. If conditions arise that require a modification of the approved Closure Plan, Defendants shall submit a request for the modification of the Closure Plan to EPA for review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval). Such modification request shall include a proposed schedule for implementing any necessary structural, design or operational changes to the Landfill as a result of the modification.
36. **Post-Closure Plan Submittal and Procedures.** Within 270 days of EPA's approval of the ESCP, Defendants shall submit a revised Post-Closure Plan for EPA review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval) incorporating the findings and requirements of the SWDRP and ESCP.
37. If conditions arise that require modification of the approved Post-Closure Plan, Defendants shall submit a request for modification of the Post-Closure Plan to EPA for review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval). Such modification request shall include a proposed schedule for the implementation of any necessary structural, design or operational changes to the Landfill required by the modification.
38. **Financial Assurance.** Within 120 days of the Effective Date, Arcibo shall submit to EPA, for review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval), a Financial Assurance Plan ("FAP") describing how Arcibo will comply with the requirements of 40 C.F.R. Part 258, Subpart G with respect to financial assurance for closure and post-closure care.
39. Within 60 days of EPA's approval of the revised Closure and Post-Closure Plans, Arcibo shall submit to EPA, for review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval), a Revised Financial Assurance Plan ("RFAP") describing how Arcibo will comply with the requirements of 40 C.F.R. Part 258 Subpart G with respect to financial assurance for closure and post-closure care. In addition, if, at any time prior to the partial termination of this Decree, it is determined that a corrective action for the Landfill is required by 40 C.F.R. Part 258, Subpart E, Defendants

shall, within 120 days of such determination, submit to EPA, for review and approval pursuant to Section IX (Submission of Deliverables for Review and Approval), a Supplemental Financial Assurance Plan ("SFAP") describing how Defendants will comply with the financial assurance requirements of 40 C.F.R. Part 258 Subpart G with respect to any such corrective action.

40. Within 90 days of approval of the FAP or RFAP, and on or before July 1 of each subsequent calendar year (as a part of the Annual RCRA Report), Arcibo shall submit to EPA satisfactory documentation of compliance with the financial assurance requirements for closure and post-closure. Within 90 days of approval of a SFAP, and on or before July 1 of each subsequent calendar year (as part of the Annual RCRA Report), Defendants shall submit to EPA satisfactory documentation of compliance with the financial assurance requirements for any corrective action required by 40 C.F.R. Part 258, Subpart E. Such reports shall continue until the completion of closure for financial assurance required for closure, until three years after the start of post-closure care for financial assurance required for post-closure care, and until the completion of corrective action for financial assurance required for any corrective action determined to be to be required at any time prior to partial termination of the Decree.
41. **Closure.** Arcibo shall commence closure activities in compliance with the approved Closure Plan and 40 C.F.R. Part 258, Subpart F by the earlier of the following dates: (a) the date that is 30 days after the date final capacity is reached, according to the approved Closure Plan, (b) the date that is 30 days after the date which the Landfill receives the known final receipt of waste, or (c) if the Landfill has remaining capacity (according to the approved Closure Plan) and there is a reasonable likelihood that the Landfill will receive additional waste, the date that is one year after the most recent receipt of waste. Arcibo shall complete Closure activities in compliance with the approved Closure Plan and 40 C.F.R. Part 258, Subpart F according to the schedule contained within the approved Closure Plan.
42. **Post-Closure Care.** Following closure of the Landfill, Arcibo shall implement post-closure care in compliance with the approved Post-Closure Plan and 40 C.F.R. Part 258, Subpart F.
43. **Recycling and Composting Plan.** Arcibo and LTA shall implement the Recycling and Composting Plan set forth at Appendix A.

VIII. PERMITS

44. **Title V Air Permit.** Arcibo and LTA shall provide to EQB, in a timely manner, any additional information requested by EQB in connection with the issuance of a Title V Operating Permit for the Landfill and shall not oppose any requirements of such permit

that are consistent with the CAA requirements of Paragraphs 9-20 of this Consent Decree.

45. **Other Permits.** Where any compliance obligation under Section VI (Clean Air Act Injunctive Relief) or Section VII (RCRA Improvements) requires Defendants to obtain a federal, Commonwealth or local permit or approval, other than the EPA approvals required by this Consent Decree, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section XI (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any such permit or approval, if Defendants have submitted timely and complete applications and have timely taken all other actions necessary to obtain such permits or approvals.

IX. SUBMISSION OF DELIVERABLES FOR REVIEW AND APPROVAL

46. With respect to deliverables submitted to EPA for review and approval under this Consent Decree, EPA may (a) approve the submission; (b) approve the submission with specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.
47. If EPA approves the submission pursuant to Paragraph 46 herein, Defendants shall take all actions required by the deliverable, in accordance with the schedules and requirements of the deliverable as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 46 herein, Defendants shall, upon written direction of EPA, take all actions required by the approved deliverable that EPA determines are technically severable from any disapproved portions, subject to Defendants' right to dispute only the specified conditions or the disapproved portions, under Section XII (Dispute Resolution).
48. If the submission is disapproved in whole or in part pursuant to Paragraph 46 herein, Defendants shall, within 60 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the deliverable, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. Alternatively, Defendants may invoke Section XII (Dispute Resolution).
49. If a resubmitted deliverable is approved, Defendants shall take all actions required by the deliverable, in accordance with the schedules and requirements of the deliverable as approved. If a resubmitted deliverable, or portion thereof, is disapproved in whole or in part, EPA may itself correct the deficiencies and approve the deliverable upon specified conditions. Defendants shall, upon written direction of EPA, take all actions

required by the approved deliverable, subject to Defendants' right to invoke dispute resolution under Section XII (Dispute Resolution).

X. STIPULATED PENALTIES

50. Defendants shall be liable for stipulated penalties to the United States for non-compliance with or violation of this Consent Decree as specified below, unless excused under Section XII (Dispute Resolution), or unless reduced or waived pursuant to Paragraph 59. Non-compliance or violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

51. Late Payment of Civil Penalty. If any Defendant fails to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, such Defendant shall pay a stipulated penalty of \$500 per day for each day that the payment is late.

52. CAA Relief and RCRA Improvements. Defendants shall be liable for the following stipulated penalties, which shall accrue per violation per day, for each violation of the obligations set forth in Section VI (CAA Injunctive Relief) and Section VII (RCRA Improvements), except for the requirements of Paragraph 43 and Appendix A (Recycling and Composting Plan).

| <u>Penalty Per Violation Per day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|------------------------------------|
| \$300 | 1st through 30th day |
| \$500 | 31st through 90th day |
| \$750 | 91st through 180 th day |
| \$1,500..... | 181 st day and beyond |

53. Arcibo and LTA shall pay a stipulated penalty of \$200 per day for each violation of the requirements of Paragraph 43 and Appendix A (Recycling and Composting Plan) particularly attributed to each one of them.

54. For all other violations of this Consent Decree, Defendants shall pay a stipulated penalty of \$300 per day for each such violation.

55. LTA is not liable for stipulated penalties for violations of those requirements of this Consent Decree for which it is not jointly responsible after it ceases to be an operator of the Landfill. PRLA is not liable for stipulated penalties for violations of those requirements of this Consent Decree for which it is not jointly responsible after the recordation of a deed transferring title to the Landfill to Arcibo.

56. Stipulated penalties shall become due and owing, and shall be paid by Defendants, within 30 days of receipt of a written demand for them from the United States. If any demanded stipulated penalties are not paid in full when due, Defendants shall pay the unpaid penalties and Interest thereon.
57. Stipulated penalties shall continue to accrue during any Dispute Resolution proceeding regarding such stipulated penalties and during any appeal, but need not be paid until the following:
 - a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with Interest, to the United States within 45 days of the effective date of the agreement or the receipt of EPA's written decision or order unless a later date is agreed to by the parties.
 - b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 60 days of receiving the Court's decision or order unless a later date is agreed to by the parties, except as provided in the next subparagraph.
 - c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined by the final appellate court to be owing, together with Interest, within 45 days of receiving the final appellate court decision, unless a later date is agreed to by the parties.
58. Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 8, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.
59. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to the United States under this Section.
60. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CAA or RCRA, or their implementing regulations, Defendants shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

XI. FORCE MAJEURE

61. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force majeure" shall not include Defendants' failure to obtain funding necessary to perform such obligations.
62. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure, Defendants shall provide notice by telephone, with confirmation by facsimile transmission, to the EPA CAA and RCRA contacts in accordance with Section XVI (Notices) (and to any other persons that EPA may later designate in writing) within 72 hours of when Defendants first knew that the event might cause a delay. The United States may, in its unreviewable discretion, extend the time within which notice must be given. Such extension shall be effective only if in writing. Within seven days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. If, despite good faith efforts, Defendants have not determined all actions to be taken to prevent or minimize delay, then they shall identify in the notice the date by which Defendants anticipate that they will determine the actions to be taken to prevent or minimize delay. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or reasonably should have known.
63. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA for such time as is necessary to complete

those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

64. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.
65. If any of the Defendants elect to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), they shall do so no later than 30 days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 61 and 62. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XII. DISPUTE RESOLUTION

66. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.
67. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 45 days from the date the dispute arises, unless that period is modified by the Parties by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 45 days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.
68. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The

Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

69. The United States shall serve its Statement of Position within 45 days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting its position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.
70. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVI (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.
71. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.
72. Standard of Review
 - a. Disputes Concerning Matters Accorded Record Review. Except as provided in Section XX (Modification), Defendants shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law, in any dispute brought under Paragraph 68 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree, or pertaining to the adequacy of the performance of work undertaken pursuant to this Consent Decree, and all other disputes that are accorded review on the administrative record under applicable principles of administrative law.
 - b. Other Disputes. Except as provided in Section XX (Modification), in any other dispute brought under this Section, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

73. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 57. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. INFORMATION COLLECTION AND RETENTION

74. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry onto the Landfill and other locations where work is being performed pursuant to this Consent Decree, at all reasonable times, upon presentation of credentials, to:
- a. monitor the progress of activities required under this Consent Decree;
 - b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
 - c. obtain samples and, upon request, splits of any samples taken by Defendants or its representatives, contractors, or consultants;
 - d. obtain documentary evidence, including photographs and similar data; and
 - e. assess Defendants' compliance with this Consent Decree.
75. Upon request, Defendants shall provide EPA or its authorized representatives splits of any samples taken by Defendants. Upon request, EPA shall provide Defendants splits of any samples taken by EPA.
76. Until five years after the partial termination of this Consent Decree pursuant to Section XXI (Termination), Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of their obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary government, corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants shall provide copies of

any documents, records, or other information required to be maintained under this Paragraph within 30 days of receipt of such request by the United States.

77. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendants shall deliver any such documents, records, or other information to EPA. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.
78. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2. Any assertion of confidentiality shall be accompanied by sufficient documentation to satisfy the requirements of 40 C.F.R. § 2.204(e)(4). Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies information when it is submitted to EPA, it may be made available to the public by EPA, without further notice to Defendants. No confidentiality claim shall be made with respect to any analytical data required pursuant to CAA, RCRA, and this Consent Decree.
79. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or EPA pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal, Commonwealth or local regulations or permits.

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

80. This Consent Decree resolves the civil claims of the United States for the CAA violations alleged in the Complaint filed in this action through the date of lodging of this Consent

Decree with the Court. This Consent Decree does not limit any rights or remedies available to the United States for any criminal violations.

81. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit in any way the rights of the United States to obtain penalties or injunctive relief or other relief under the CAA, except as expressly specified in Paragraph 80, or under RCRA or other federal laws, regulations, or permit conditions. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Landfill, whether related to the violations addressed in this Consent Decree or otherwise. The United States further reserves the right to seek injunctive or other relief with respect to any solid waste located outside the Final Operational Perimeter of the Landfill, in addition to the requirements of Paragraph 25.c, and Defendants reserve all defenses and legal remedies in connection with any such action.
82. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, and/or other appropriate relief relating to the Landfill, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 80.
83. This Consent Decree is not a permit, or a modification of any permit, under any federal, Commonwealth or local laws or regulations. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA or RCRA, or with any other provisions of federal, Commonwealth or local laws, regulations, or permits. Nothing in this Consent Decree shall be interpreted to relieve the Defendants of any requirements imposed by federal, Commonwealth or local laws, regulations or permits.
84. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law. The Consent Decree does not affect the Defendants' private rights, duties or obligations as to the other Defendants, including, but not limited to, any contract rights.

85. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XV. COSTS

86. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants or to otherwise enforce the requirements on this Consent Decree.

XVI. NOTICES

87. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-09629

Donald G. Frankel
Senior Counsel
Environmental Enforcement Section
Department of Justice
Suite 616
One Gateway Center
Newton, MA 02458
617-450-0442
donald.frankel@usdoj.gov

EPA CAA contact:

US Environmental Protection Agency
Region 2
Caribbean Environmental Protection Division
Air Enforcement Chief
City View Plaza II, Suite 7000
45 Road 165
Guaynabo, PR 00968-8069

EPA RCRA contact: Carl F. Plössl
Environmental Engineer, Enforcement Officer
U.S. Environmental Protection Agency
Region 2
Division of Enforcement and Compliance
Assistance
RCRA Compliance Branch
Senior Enforcement Team
290 Broadway, 21st Floor
New York, N.Y. 10007-0587
212-637-4088
plossl.carl@epa.gov

EPA ORC Contact: Carolina Jordan-Garcia, Esq.
US Environmental Protection Agency
Region 2
Office of Regional Counsel
City View Plaza II, Suite 7000
45 Road 165
Guaynabo, PR 00968-8069
787- 977-5834
jordan-garcia.carolina@epa.gov

EQB Contact: Eng. Luis Sierra
Director
Air Quality Area
P.O. Box 11488
San Juan, PR 00910

LTA Contact: Francis Torres
Torres & García, P.S.C.
PO Box 19539
San Juan, Puerto Rico 00910-1539
787-721-8220
ftorres@envirolawpr.com

Arecibo Contact: Mayor
Municipality of Arecibo
P.O. Box 1086
Arecibo, PR 00613

PRLA Contact: Alberto L. Ramos
Alberto L. Ramos Law Offices
P.O. Box 750
Mercedita, Puerto Rico 00715-0750
787-284-2971
alberto_ramosperez@yahoo.com

88. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above, or may add an additional notice recipient.

Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVII. APPENDIX

89. The following Appendix is attached to and is a part of this Consent Decree:

"Appendix A" - Recycling and Composting Plan.

XVIII. EFFECTIVE DATE

90. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket, provided, however, that Defendants hereby agree that they shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall not be enforceable under this Consent Decree.

XIX. RETENTION OF JURISDICTION

91. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XII (Dispute Resolution) and XX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XX. MODIFICATION

92. This Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.
93. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that instead of the burden of proof provided by Paragraph 72, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XXI. TERMINATION

94. Partial Termination: On or after four years from the Effective Date, Defendants may submit to the United States a written request for partial termination of the Consent Decree, which will terminate all requirements of the Decree, except as provided in Paragraphs 95-98, if Defendants have (a) completed all of the injunctive relief required by, and are otherwise in compliance with, Section VI (CAA Injunctive Relief), (b) completed all of the injunctive relief required by, and are otherwise in compliance with, Paragraphs 22-28 and 30-40 of Section VII (RCRA Improvements), (c) operated the Landfill for three consecutive years up to the date of the request in compliance with this Consent Decree (including the Recycling and Composting Plan), and (d) paid the civil penalties and any accrued stipulated penalties as required by this Consent Decree. The request shall state that all of these requirements have been satisfied and shall include all necessary supporting documentation.
95. Partial termination of this Consent Decree shall not terminate the requirements of Paragraph 41 related to closure of the Landfill, which shall remain in effect until Arecibo has closed the Landfill in compliance with 40 C.F.R. Part 258, Subpart F and the approved Closure Plan, or the requirements of Paragraph 42 related to post-closure care of the Landfill, which shall remain in effect until Arecibo has implemented post-closure care in compliance with 40 C.F.R. Part 258, Subpart F and the approved Post-Closure Plan, for a period of three years following closure.
96. Partial termination of this Consent Decree shall not terminate the requirements of Paragraph 29 with respect to corrective action, which shall continue until completion of corrective action if, prior to the partial termination of the Consent Decree, information obtained through groundwater 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.

97. Partial termination of this Consent Decree shall not terminate the requirements of Paragraphs 38-40 related to financial assurance. Arcibo shall continue to meet the financial assurance requirements of 40 C.F.R. Part 258, Subpart G for closure and post-closure during the periods of time set forth at 40 C.F.R. Part 258, Subpart G. Arcibo shall provide evidence of such financial assurance on an annual basis (at the time that the RCRA Annual Report would have been submitted had the Consent Decree not been partially terminated) until closure is completed (with respect to financial assurance for closure) and until three years of post-closure care has been implemented (with respect to financial assurance for post-closure). Defendants shall continue to meet the financial assurance requirements of 40 C.F.R. Part 258, Subpart G for any corrective action determined to be necessary on or before partial termination of this Consent Decree under Paragraph 94 and shall continue to provide evidence of such financial assurance on an annual basis (at the time that the RCRA Annual Report would have been filed had the Consent Decree not been partially terminated) until completion of any such corrective action.
98. Partial termination of this Consent Decree shall not terminate the requirements of Paragraph 43 and Appendix A ("Recycling and Composting Plan"), which shall continue for the period of time set forth in Appendix A.
99. Final Termination: Defendants may submit a request for final termination of this Consent Decree after (a) the Court has entered an order partially terminating this Consent Decree, (b) Arcibo and LTA have completed the Recycling and Composting Plan required by Paragraph 43 and Appendix A, (c) the Landfill has been closed in accordance with 40 C.F.R. Part 258, Subpart F and the approved Closure Plan, (d) post-closure care has been implemented in accordance with 40 C.F.R. Part 258, Subpart F and the approved Post-Closure Plan for at least three years, (e) all corrective actions determined to be required (at any time before the partial termination of this Consent Decree) have been completed, (f) Arcibo has complied with and continues to be in compliance with the financial assurance obligations of 40 C.F.R. Part 258, Subpart G for post-closure care, and (g) any additional stipulated penalties have been paid.
100. Following receipt by the United States of a request for partial termination or final termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for partial termination or final termination of this Consent Decree. If the United States agrees that the Decree may be partially terminated or finally terminated, the Parties involved shall submit, for the Court's approval, a joint stipulation calling for the partial termination or final termination of the Decree.

101. If the United States does not agree that the Decree may be partially terminated or finally terminated after receiving a request for partial termination or final termination, any of the Defendants may invoke Dispute Resolution under Section XII (Dispute Resolution).

XXII. PUBLIC PARTICIPATION

102. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.

XXIII. SIGNATORIES/SERVICE

103. Each undersigned representative of Defendants and the Deputy Section Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.
104. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail, at the addresses set forth in Section XVI (Notices), with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIV. INTEGRATION

105. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXV. FINAL JUDGMENT

106. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants in this action. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this __ day of _____, 2014

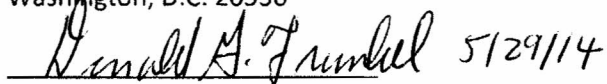
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Landfill Technologies of Arecibo Corp. et al. (D.P.R.).

FOR THE UNITED STATES OF AMERICA:



ELLEN MAHAN Date
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

 5/29/14

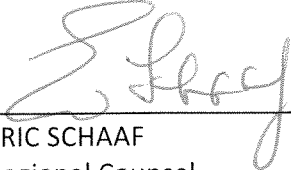
DONALD G. FRANKEL Date
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
One Gateway Center
Suite 616
Newton, MA 02458
617-450-0442

ROSA E. RODRIGUEZ-VALEZ
United States Attorney for the
District of Puerto Rico

HECTOR E. RAMIREZ-CARBO
Assistant U.S. Attorney
Chief, Civil Division
USDC No. 214902
District of Puerto Rico
Torre Chardon
Suite 1201
350 Carlos Chardon Avenue
San Juan, PR 00918
787-766-5656

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Landfill Technologies of Arecibo Corp. et al. (D.P.R.).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

 5/28/14
Date

ERIC SCHAAF
Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, N.Y. 10007

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Landfill Technologies of Arecibo Corp. et al. (D.P.R.).

FOR LANDFILL TECHNOLOGIES OF ARECIBO CORP:



April 11, 2014

CARLOS CONTRERAS Date

President

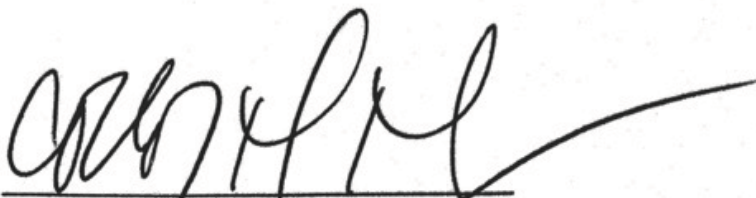
Landfill Technologies of Arecibo Corp.

P.O. Box 1322

Gurabo, PR 00778

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Landfill Technologies of Arecibo Corp. et al. (D.P.R.).

FOR THE MUNICIPALITY OF ARECIBO:



A handwritten signature in black ink, appearing to read 'CARLOS MOLINA', is written over a horizontal line. The signature is stylized and extends to the right beyond the line.

HON. CARLOS MOLINA

Date

Mayor

Municipality of Arecibo

P.O. Box 1086

Arecibo, PR 00613

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Landfill Technologies of Arecibo Corp. et al. (D.P.R.).

FOR THE PUERTO RICO LAND AUTHORITY:



SALVADOR RAMIREZ April 7, 2014
Executive Director Date
Puerto Rico Land Authority
PO Box 9745
San Juan, Puerto Rico 00908-9745
Tel. (787) 723-9090

APPENDIX A

Recycling and Composting Plan

1. Recycling Management Program Development.

- 1.1. Within 90 days of the Effective Date of the Consent Decree, the Municipality of Arecibo ("Municipality") and Landfill Technologies of Arecibo, Inc. ("LTA") shall submit a Recycling and Composting Plan ("Recycling Program") to the Environmental Protection Agency ("EPA") for its review and approval pursuant to Section IX of the Consent Decree (Submission of Deliverables for Review and Approval). The Recycling Program, which shall be implemented by the Municipality and LTA, as particularly described in this document, shall have the goal of eliminating the disposal of Recyclable Material, Green Waste, Ash, Scrap Tires, and White Goods generated in the Municipality at the municipal solid waste landfill located in the Municipality ("Landfill") or at any other solid waste landfill or incinerator. The Recycling Program shall also have the goal of eliminating White Goods, Scrap Tires, and the Bulk Disposal of Recyclable Material, Ash or Green Waste, in loads of waste brought to the Landfill from other municipalities. All Recyclable Material managed under the Recycling Program shall be delivered by the Municipality to a MRF or other facility permitted by the Commonwealth of Puerto Rico for Recycling.
- 1.2. The obligations assumed respectively by the Municipality and LTA under the Recycling Program shall continue until the later of (a) December 31, 2021 (except for LTA's obligation to make contributions to the educational program, which shall continue until a total of eleven annual payments in the amount of \$10,000 each have been made), or (b) the date that closure of the Landfill has been completed, in accordance with 40 C.F.R. Part 258, Subpart F. However, if LTA, at any time, ceases to be the operator of the Landfill, LTA's obligations under this Recycling Program including, without limitation, the requirements of Paragraph 1.2.9, shall expire three months after such cessation, or on the date determined under the prior sentence of this paragraph, whichever occurs first. Any monies or equipment provided by LTA to the Municipality prior to the expiration of LTA's obligations shall be retained by the Municipality, which shall continue to implement this Recycling Program and shall be solely responsible for implementing any obligations of LTA under the Recycling Program not already completed. The Recycling Program shall include the following:
 - 1.2.1. The development and implementation of Disposal Restrictions to ensure, among other things, that all persons covered by the Recycling Program, in accordance with

the phased schedule set forth below, place all of their Recyclable Material in bins or other suitable containers.

- 1.2.2. The development and implementation of a monitoring program at the Landfill to assist in the effort to eliminate the presence of White Goods, Scrap Tires, or any Bulk Disposal of Recyclable Material, Ash or Green Waste, in incoming loads from the Municipality or elsewhere.
- 1.2.3. The identification of a specific area at the Landfill to temporarily store any Green Waste or Recyclable Material detected in incoming loads as a Bulk Disposal, pending proper disposition of such material, to be used when the truck that delivered the material to the Landfill is no longer available to transport the material from the Landfill for proper handling, provided that LTA will not be responsible for the handling, transportation or ultimate disposition of such Green Waste or Recyclable Material during a 60-day period after delivery of the material to the Landfill in order to allow time for the person who delivered the material to the Landfill to arrange for proper disposition of the material.
- 1.2.4. An educational and community outreach program, including community workshops, to educate the community regarding Composting, its benefits, and guidelines for household and/or commercial implementation.
- 1.2.5. The development of a continuous education program to be implemented in each phase of the Recycling Program focused on the participant communities.
- 1.2.6. The Recycling Program shall be implemented in three phases, starting on the Recycling Program Start Date, and ending on the later of (a) December 31, 2021 (except for LTA's obligation to make contributions to the educational program, which shall continue until a total of eleven annual payments in the amount of \$10,000 each have been made or until three months after LTA ceases to operate the Landfill, whichever occurs first), or (b) the date that closure of the Landfill has been completed, in accordance with 40 C.F.R. Part 258, Subpart F. The Parties expect that the Recycling Program will continue beyond this period of time, but the specific requirements of the Recycling Program will only continue during this period of time.
- 1.2.7. LTA shall provide a total of 20,800 14-gallon rectangular collection bins to the Municipality to be distributed by the Municipality to households in the Municipality to be used for the Curbside Collection of Recyclable Material in urban areas, according to the schedule set forth below.

- 1.2.8. Within 90 days of the Effective Date of the Consent Decree, LTA shall provide a 25-cubic-yard capacity recyclables collection and compacting vehicle to the Municipality.
- 1.2.9. An affiliate of LTA currently operates a MRF in Carolina, Puerto Rico. Another affiliate of LTA is currently constructing a MRF in Toa Baja, Puerto Rico. In the event that the Municipality decides to send Recyclable Material collected in the Municipality to the MRF located in Carolina or, when it becomes operational, the MRF at Toa Baja, LTA shall assume all processing costs in connection with all such Recyclable Material (brought by the Municipality, or an authorized contractor of the Municipality) to such facilities.
- 1.2.10. The Municipality shall establish easily accessible Recycling collection centers in those areas where there is no Curbside Collection of trash, in accordance with the three phases of the Recycling Program. LTA shall provide to the Municipality two 40-cubic-yard covered roll off recycling containers, with doors on the side. The roll offs shall be provided on or before the beginning of the first phase of the Recycling Program.
- 1.2.11. The development, adoption, implementation, and enforcement of a Recycling Management Municipal Ordinance. Within 120 days of EPA's approval of the Recycling Program, the Municipality shall revise existing Recycling municipal ordinances to assure that they are in compliance with the Recycling Program and any federal or Commonwealth law that requires the Recycling of any material.
- 1.2.12. LTA's responsibilities under the Recycling and Composting Plan will be limited to the following:
 - 1.2.12.1. Assisting the Municipality in the preparation of the Recycling and Composting Plan for submittal to EPA under Paragraph 1.1;
 - 1.2.12.2. Providing a total of eleven annual payments in the amount of \$10,000 for the educational program under Paragraphs 1.2 and 2.2;
 - 1.2.12.3. Monitoring the incoming waste loads into the Landfill to assist in the effort to eliminate the presence of White Goods, Scrap Tires, or any Bulk Disposal of Recyclable Material, Ash or Green Waste under Paragraph 1.2.2;

- 1.2.12.4. Providing a total of 20,800 14-gallon rectangular collection bins to the Municipality to be distributed by the Municipality to households in Arecibo to be used for the Curbside Collection of Recyclable Material in urban areas, as provided in Paragraph 1.2.7, according to the schedule set forth under Paragraph 2;
 - 1.2.12.5. Providing a 25-cubic-yard capacity recyclables collection and compacting vehicle to the Municipality, as provided in Paragraph 1.2.8;
 - 1.2.12.6. Assuming all processing costs, excluding transportation related expenses, in connection with the Recyclable Material (brought by the Municipality, or an authorized contractor of the Municipality) to the MRFs operated by affiliates in Carolina and/or Toa Baja, as provided in Paragraph 1.2.9;
 - 1.2.12.7. Providing to the Municipality two 40-cubic-yard covered roll off recycling containers, with doors on the side, as provided in Paragraph 1.2.10;
 - 1.2.12.8. Identifying a specific area at the Landfill to temporarily store any Green Waste or Recyclable Material detected in incoming loads as a Bulk Disposal, pending proper disposition of such material, to be used when the truck that delivered the material to the Landfill is no longer available to transport the material from the Landfill for proper handling, as provided in Paragraph 1.2.3;
 - 1.2.12.9. During the implementation of the Recycling Program, making available a Recycling Manager, certified by the Solid Waste Association of North America, to participate in strategic meetings related to the marketability of Recyclable Material, as provided in Paragraph 1.3; and
 - 1.2.12.10. When any compliance obligation under this Recycling Program requires LTA to obtain a Commonwealth or local permit or approval, submitting timely and complete applications and taking all other actions necessary to obtain such permits or approvals, as provided in Paragraph 1.4.
- 1.2.13. LTA's responsibilities under the Recycling and Composting Plan will terminate upon completion of the specific tasks listed under Paragraph 1.2.12 above or three months after it ceases to be the operator of the Landfill, as provided in Paragraph 1.2.6, whichever occurs first. Nothing herein, however, shall limit the ability of the Municipality to enter into contracts with LTA pursuant to which LTA will implement certain responsibilities of the Municipality under this Recycling Program.

- 1.3. The Municipality shall evaluate the feasibility of entering into agreements with MRFs to take the Recyclable Material and shall also identify appropriate haulers of the Recyclable Material. The Recycling Program shall outline a plan and schedule that enables the Municipality to transfer Recyclable Material to the MRF(s) when the first phase of implementation of the Recycling Program commences and shall address, at a minimum, the following waste categories: electronics, batteries, glass, paper, cardboard, metals and plastics. The Recycling Program shall also address the handling by the Municipality of Compostable Material. During the implementation of the Recycling Program, LTA shall make available a Recycling Manager, certified by the Solid Waste Association of North America, to participate in strategic meetings related to the marketability of Recyclable Material.
- 1.4. When any compliance obligation under this Recycling Program requires the Municipality or LTA to obtain a Commonwealth or local permit or approval, the Municipality and/or LTA shall submit timely and complete applications and take all other actions necessary to obtain such permits or approvals. Nothing in this Appendix A shall be interpreted to relieve the Municipality or LTA of any requirements imposed by Commonwealth or local law governing Recycling.
- 1.5. The Municipality and/or LTA may apply for federal or local grants in connection with the implementation of this Recycling Program. However, the Municipality and LTA shall be obligated to implement their respective obligations under the Recycling Program regardless of whether they are successful in obtaining any such grants.

2. Recycling Program Implementation

- 2.1. The Municipality shall start the implementation of the Recycling Program by the Recycling Program Start Date.
- 2.2. Within 60 days of the Recycling Program Start Date, the Municipality shall begin to implement an educational and outreach program concerning Recycling and Composting. Refreshers shall be offered on an annual basis. The educational program shall include households, schools, industries, municipal facilities, and businesses. LTA shall provide \$10,000 annually to the Municipality to finance the educational and community outreach program and/or the household Composting program. Payment by LTA of this annual contribution shall satisfy its educational and outreach program obligations under this Recycling Program. The first such deposit shall be made within 30 days of the Effective Date of the Consent Decree. Subsequent deposits, starting with the calendar year following the year of the first deposit, shall be made on or before June 30 of each year

until a total of eleven payments (\$110,000 total) have been made or until three months after LTA ceases to operate the Landfill, whichever occurs first. The Municipality shall use the funds deposited in the special account only for the purposes stated herein.

2.3. Prior to each phase of the Recycling Program, the Municipality shall develop and implement a plan to ensure that Recyclable Material, Green Waste, Ash, Scrap Tires and White Goods are not disposed of at the Landfill from those units within the Municipality covered by the Recycling Program, in accordance with the phased schedule set forth below. The program shall include routine documented monitoring of incoming loads.

2.4. The Municipality shall implement the Recycling Program based on the following schedule:

2.4.1. **First Phase:** The first phase of the Recycling Program, which shall run from the Recycling Program Start Date until December 31, 2016, shall include the following:

2.4.1.1. The first phase shall cover residences, apartment buildings, schools, hospitals, and/or small businesses that are expected to generate and recycle a total of at least 24,000 Units of Recyclable Material on an annual basis. At least 80% of these Units (19,200) shall be covered by Curbside Collection. The first phase shall include at least three easily accessible "Drop Off" collection points. On or before the start of the first phase, LTA shall provide 11,200 14-gallon rectangular collection bins to the Municipality to be used in connection with Curbside Collection of Recyclable Material. The expectation is that the 8,000 20-gallon bins distributed to residents of Arecibo in 2008 will be used in addition to the 11,200 bins provided by LTA pursuant to this Paragraph.

2.4.1.2. During this first phase, waste characterization shall be performed by the Municipality to determine material quality, quantity, and percentage composition in order to assist in identifying potential markets.

2.4.1.3. During this first phase, a community survey shall be conducted by the Municipality to measure participation rates.

2.4.1.4. The first phase shall include an aggressive educational and community outreach program that will educate the community in Arecibo about Composting, its benefits and uses, as well as practical guidelines on how to begin Composting. Such program shall include no less than four community workshops during the first phase.

- 2.4.1.5. In the first annual report required under Section 3, the Municipality shall submit to EPA, for its review and approval pursuant to Section IX of the Consent Decree (Submission of Deliverables for Review and Approval), a plan for a pilot municipal Composting program. The Composting program shall involve: (a) increasing composting by residences, government, and businesses, as well as community participation in the creation of compost, and/or (b) the bulk collection of Compostable Material for Composting by the Municipality. The composting program shall be implemented during the second phase of the Recycling Program.
- 2.4.2. **Second Phase:** The second phase of the Recycling Program, which shall run from January 1, 2017 until December 31, 2018, shall include the following:
- 2.4.2.1. The second phase shall cover residences, apartment buildings, schools, hospitals and/or small businesses that are expected to generate and recycle a total of at least 32,000 Units of Recyclable Material on an annual basis. At least 80% of these Units (25,600) shall be covered by Curbside Collection. On or before the start of the second phase, LTA shall provide 6,400 additional 14-gallon rectangular collection bins to the Municipality, to be used in connection with Curbside Collection of Recyclable Material.
- 2.4.2.2. The second phase shall include an additional easily accessible "Drop Off" collection point, resulting in a total of four "Drop Off" locations.
- 2.4.2.3. During the second phase, the Municipality shall implement the Composting pilot program developed pursuant to Paragraph 2.4.1.5.
- 2.4.3. **Third Phase:** The third phase of the Recycling Program, which shall run from January 1, 2019 until the later of (a) December 31, 2021, or (b) the date that closure of the Landfill has been completed, in accordance with 40 C.F.R. Part 258, Subpart F, shall include the following:
- 2.4.3.1. The third phase shall cover residences, apartment buildings, schools, hospitals, and/or small businesses that are expected to generate and recycle a total of at least 36,000 Units of Recyclable Material on an annual basis. At least 80% of these Units (28,800) shall be covered by Curbside Collection. On or before the start of the third phase, LTA shall provide 3,200 additional 14-gallon rectangular collection bins to the Municipality be used in connection with Curbside Collection of Recyclable Material.

2.4.3.2. The third phase shall include one additional easily accessible "Drop Off" collection points, resulting in a total of five "Drop Off" locations.

2.4.3.3. In the first annual report filed during the third phase of the Recycling Program, as required under Section 3, the Municipality shall submit to EPA (a) a report describing the results of its pilot Composting program, and (b) for its review and approval, pursuant to Section IX of the Consent Decree (Submission of Deliverables for Review and Approval), a plan addressing areas of potential improvement and/or expansion of the Composting program.

2.4.3.4. The third phase shall involve continued operation of the pilot Composting program developed by the Municipality. Any revisions of the program approved pursuant to Paragraph 2.4.3.3 shall be implemented within 30 days of EPA approval.

3. Recycling Program Reports

- 3.1. The Municipality shall submit annual reports to EPA, on or before March 1 of each year, summarizing the efforts undertaken during the prior calendar year to implement the requirements of the Recycling Program and pilot Composting program including, without limitation, the following information for the prior calendar year: (a) the number of households serviced with Curbside Collection, (b) the number and type of other locations serviced with Curbside Collection, (c) the tons of waste material generated in the Municipality that were Recycled under the Recycling Program, including a breakdown of the amount of Recyclable Material obtained using Curbside Collection and the amount of Recyclable Material obtained using "Drop-Off" locations, (d) if known, tons of waste material generated in the Municipality that were Recycled outside of the Recycling Program, (e) tons of waste material generated in the Municipality that were sent to the Landfill or other solid waste landfills for disposal, (f) with respect to the Recyclable Material collected under the Recycling Program, the percentage composition of each type of material in the wastestream, (g) the amount charged by MRFs to take Recycled Materials, and (h) a calculation showing that the Recycling Program covered locations expected to generate and recycle at least the minimum number of Units of Recyclable Material for each phase of the program and that at least 80% of the minimum number of Units involved Curbside Collection. The first such report shall be submitted by March 1 of the first full calendar year following the Recycling Program Start Date. The Municipality shall continue to submit such reports until March 1 of the year after the end of the Recycling Program under this Appendix A. The Municipality may submit supplemental reports to EPA to inform EPA of any information concerning market conditions, Commonwealth regulations, or other factors that may affect the Recycling Program.
- 3.2. In any of the annual or supplemental reports, the Municipality may submit to EPA, for review and approval pursuant to Section IX of the Consent Decree (Submission of Deliverables for Review and Approval), proposed changes to the Recycling Program

based on the information obtained during operation of the Recycling Program prior to the submission of the report, in order to improve the efficiency of the recovery efforts or to vary the quantity, quality, and diversity of Recyclable Material collected. Such reports may include a request to temporarily exempt certain materials from the list of Recyclable Material based on market conditions.

4. Definitions

4.1. "Ash" shall mean the residue matter that remains after burning and includes, but is not limited to, such residues produced by manufacturing, energy production, burning coal and other commercial processes.

4.2. "Agricultural Waste" shall mean plant waste generated by residential sources, commercial sources and/or from agricultural activities including, but not limited to, bean, nut and grain hulls and chaff, sugar cane bagasse, orchard pruning, and coffee bean hulls and ground.

4.3. "Bulk Disposal" shall mean the disposal of an agglomeration of waste consisting of predominantly the same material. Examples of bulk disposal of a given waste material include:

- a clear, plastic bag containing mixed plastic;
- 55-gallon drums of incinerator ash; and
- A pickup truck bed of yard waste.

Bulk Disposal does not mean the disposal of a given waste material within a mixed, residential wastestream.

4.4. "Compostable Material" shall mean Green Waste, food waste, and other biodegradable material not otherwise included in the definition of Recyclable Material.

4.5. "Composting" shall mean the controlled biological aerobic decomposition of Compostable Material that is sanitized through the generation of heat and stabilized to the point that it is beneficial to plant growth in that it has the unique ability to improve the chemical, physical, and biological characteristics of soils or growing media.

4.6. "Curbside Collection" shall mean regular collection by the Municipality of Recyclable Material.

4.7. "Disposal Restrictions" shall mean municipal ordinances mandating household Recycling of Recyclable Material.

- 4.8. "Green Waste" shall mean Agricultural and Yard Waste.
- 4.9. "Material Recovery Facility" or "MRF" shall mean a facility where Recyclable Material is sorted into specific categories and processed, or transported to processors, for re-manufacturing (i.e., making the recycled material into new products).
- 4.10. "Recyclable Material" shall mean waste glass, paper, cardboard, metals, plastics, electronics, batteries, and other material identified by EPA as economically recyclable in Puerto Rico.
- 4.11. "Recycling" shall mean the separation, collection, processing, and sale or distribution of Recyclable Material as a precursor to making the recycled material into new products.
- 4.12. "Recycling Program Start Date" shall mean the date that is 30 days after EPA's approval of the Recycling Program submitted to EPA by the Municipality pursuant to Paragraph 1.1.
- 4.13. "Scrap Tires" shall mean motor vehicle, truck or heavy equipment tires that are discarded.
- 4.14. "Unit" shall be defined as follows. The Curbside Collection of Recyclable Material from a single-family residence, or coverage of a single-family residence with a "Drop-Off" location, shall be viewed as covering one Unit. The Curbside Collection of Recyclable Material from an apartment building, or coverage of an apartment building with a "Drop-Off" location, shall be viewed as covering a number of Units equal to the number of occupied apartments in the building. For the Curbside Collection of Recyclable Material from schools, hospitals, or small businesses, or coverage of such entities with a "Drop-Off" location, Unit shall mean the average amount of Recyclable Material generated by an individual household in Puerto Rico on an annual basis. The daily solid waste generation rate for Puerto Rico has been calculated at 4.20 lbs per person (excludes C&D, special and automobile waste). At a Recyclable Material composition of 44.0% of the solid waste rate and an average household population of 2.68/household, this equates to 4.95 lbs/day of Recyclable Material per household. Thus, for schools, hospitals and small businesses, a Unit is 1,810 lbs/year of Recyclable Material.
- 4.15. "Yard Waste" shall mean vegetation waste, such as grass, bushes, shrubs, trees and associated clippings, generated by residential and/or commercial sources through the maintenance of private or public lands.

4.16. "White Goods" shall mean refrigerators, stoves, washers, dryers, sinks or other such objects that are discarded.