

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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UNITED STATES OF AMERICA, :  
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 Plaintiff, :  
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 :  
 v. : Civil No. \_\_\_\_\_  
 :  
 MUNICIPALITY OF SANTA ISABEL, :  
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 :  
 Defendant. :  
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**CONSENT DECREE**

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## **I. INTRODUCTION**

- A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint in this action pursuant to Section 7003(b) of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act (collectively, “RCRA”), 42 U.S.C. § 6901, *et. seq.*, alleging that the Defendant Municipality of Santa Isabel (“the Municipality”) failed to fully comply with certain provisions of administrative orders on consent (“AOCs” or “Orders”) issued by EPA under Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), regarding the municipal landfill, located at Km. 4.0, PR 543, in Santa Isabel, Puerto Rico (“the Landfill”).
- B. The Landfill is located over a water-table aquifer within the South Coast Aquifer System, near an intermittent tributary of the Jueyes River. In late 2005 and early 2006 EPA observed a number of improper waste practices at the Landfill. To address these issues, in 2007, an AOC was entered into between the Municipality and two former operators of the Landfill (“the 2007 Order”).
- C. Citing financial constraints, the Municipality asked EPA in 2010 to enter into a new AOC with a delayed closure schedule for the Landfill. EPA consented and in 2011 the Municipality entered into a new AOC (“the 2011 Order” or “2011 AOC”), incorporating relevant provisions from the 2007 Order, as well as new requirements related to the recycling and composting of solid waste.
- D. The Municipality has represented that it is subject to certain financial limitations regarding the funding for the closure of the Landfill and other compliance measures required by the 2011 Order.
- E. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties 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 7003(b) of RCRA, 42 U.S.C. § 6973(b), and over the Parties. Venue properly lies in this District pursuant to 28 U.S.C. §§ 1391(b) and 1395(a) because the violations occurred in this District and because the Municipality is located in this District. For purposes of this Consent Decree, or any action to enforce this Consent Decree, the Municipality consents to the Court’s jurisdiction over this Consent Decree and any such action and over the Municipality and consents to venue in this judicial district.

2. For purposes of this Consent Decree, the Municipality agrees that the complaint filed in this action states claims upon which relief may be granted pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b).

### **III. APPLICABILITY**

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon the Municipality 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 the Municipality of its obligation to ensure that the terms of the Consent Decree are implemented. At least 30 Days prior to such transfer, the Municipality 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 XIV (Notices/Submissions). Any attempt to transfer, or transfer of, ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.
5. The Municipality shall provide: a) a copy of this Consent Decree to all officers, supervisors and managers whose duties include the performance of work required under this Consent Decree; and b) summaries in English and Spanish of applicable requirements of the Consent Decree to all employees and agents whose duties include the performance of work required under the Consent Decree or whose jobs include tasks affected by the provisions of this Consent Decree.
6. In any action to enforce this Consent Decree, the Municipality shall not raise as a defense the failure by any of its officers, directors, supervisors, managers, 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 RCRA or in regulations promulgated under RCRA shall have the meanings assigned to them in RCRA or such regulations, unless otherwise provided in this Consent Decree or Statement of Work (“SOW”). Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“2011 Order” or “2011 AOC” shall mean the Administrative Order on Consent between the Municipality and EPA issued by EPA on September 29, 2011 pursuant to Section 7003 of RCRA.

“Consent Decree” means this Consent Decree and the SOW attached as Appendix A.

“Commonwealth” means the Commonwealth of Puerto Rico.

“Day” or “day” means a calendar 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 working day.

“EPA” means the United States Environmental Protection Agency and any successor departments or agencies.

“Effective Date” means the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“Interest” shall mean that amount of interest computed daily and compounded annually calculated at the rate specified in 28 U.S.C. § 1961 as of the Effective Date.

“Landfill” means the municipal landfill, located at Km. 4.0, PR 543, in Santa Isabel, Puerto Rico.

“Municipality” means the Municipality of Santa Isabel, Puerto Rico.

“Paragraph” or “¶” means a portion of this Consent Decree identified by an Arabic numeral.

“Parties” means the United States and the Municipality.

“RCRA” means the Solid Waste Disposal Act as amended, commonly referred to as the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et. seq.*

“Section” means a portion of this Consent Decree identified by a roman numeral.

“Statement of Work” or “SOW” means Appendix A to this Consent Decree, which is integrated and incorporated into this Consent Decree.

“Work” means all activities the Municipality is required to perform under this Consent Decree, including but not limited to the SOW, except those required by Section XI (Information Collection and Retention) of the Consent Decree.

“United States” means the United States of America, acting on behalf of EPA.

## **V. CIVIL PENALTY**

### **8. Payment Amount and Process.**

- a. The Municipality shall pay to the United States \$20,000, plus Interest, on the following payment schedule:
  - (1) Within 30 days after the Effective Date, the Municipality shall pay \$2,000;

- (2) On or before July 5, 2017, the Municipality shall pay \$8,000, plus Interest on the amount of \$18,000 accruing from the Effective Date through the date of payment; and
  - (3) On or before January 2, 2018, the Municipality shall pay \$10,000, plus Interest on the amount of \$10,000 accruing from the Effective Date through the date of payment.
- b. The above payments shall be made according to the following process.
- (1) The Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Puerto Rico shall provide the Municipality with instructions regarding payments under this Consent Decree. The instructions shall include a Consolidated Debt Collection System number (“CDCS No.”), which shall be used to identify all payments required to be made in accordance with this Consent Decree.
  - (2) The Municipality shall make the payment(s) at <https://www.pay.gov>. Each such payment shall: (i) be paid to the U.S. Department of Justice account; (ii) be paid in accordance with the instructions provided under ¶ 8(b)(1); and (iii) reference the CDCS No., and DJ No. 90-7-1-10627.
  - (3) At the time of payment, the Municipality shall send notice that payment has been made: (i) to EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Center, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to the United States via email or regular mail in accordance with Section XIV (Notices/Submissions). Such notice shall reference the CDCS Number and the DJ number.
  - (4) The Municipality shall not deduct any civil penalties paid under this Consent Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal, Commonwealth, or local income tax.

## **VI. COMPLIANCE/WORK REQUIREMENTS**

9. The Municipality shall finance and perform the Work in accordance with this Consent Decree, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or subsequently developed by the Municipality and approved by EPA pursuant to this Consent Decree.
10. The Municipality’s obligations under the Consent Decree continue and are enforceable under the Decree until the Municipality demonstrates compliance with all its Work obligations, including, but not limited to, permanent closure of the Landfill with a final engineered cap and, for a period of two years thereafter, continuous compliance with the

post closure care and maintenance obligations regarding the final engineered cap, and the recycling and composting obligations, as set forth in the SOW respectively for the Post Closure, Recycling and Composting Plans. If such conditions are satisfied the Decree may be terminated pursuant to Section XVII (Termination).

11. **Compliance with Applicable Law and the 2011 AOC.** Nothing in this Consent Decree, or any plan incorporated into, or approved under this Consent Decree, limits the Municipality's obligations to comply with the requirements of all applicable federal and Commonwealth laws and regulations. Upon the Effective Date of this Consent Decree, the requirements set forth in the 2011 AOC are stayed until termination of the Consent Decree as set forth in Paragraph 65 of this Consent Decree.

## **VII. DELIVERABLES/AGENCY APPROVALS**

12. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree the approved or modified portion shall be enforceable under this Consent Decree.
13. After review of any plan, report, or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Municipality modify and re-submit the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing the Municipality at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submissions have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.
14. In the event of approval, conditional approval, or modification by EPA, pursuant to Paragraph 13(a), (b), or (c), the Municipality shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA, subject only to its right to invoke the Dispute Resolution procedures set forth in Section X (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section VIII (Stipulated Penalties).
15. Upon receipt of a notice of disapproval pursuant to Paragraph 13(d), the Municipality shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section VIII (Stipulated Penalties), shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in the two Paragraphs below.

16. Notwithstanding the receipt of a notice of disapproval, the Municipality shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve the Municipality of any liability for stipulated penalties under Section VIII (Stipulated Penalties). In the event that a resubmitted plan, report, or other item, or portion thereof is disapproved by EPA, EPA may again require the Municipality to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. The Municipality shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section X (Dispute Resolution).
17. If, upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, the Municipality shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Municipality invokes the dispute resolution procedures set forth in Section X (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section X (Dispute Resolution) and Section VIII (Stipulated Penalties) shall govern the implementation of Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties will accrue for such violation from the date on which the initial submission was originally required, as provided in Section VIII (Stipulated Penalties).

#### **VIII. STIPULATED PENALTIES**

18. The Municipality 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 X (Dispute Resolution), reduced or waived pursuant to Paragraph 28, or paid pursuant to Paragraph 30. 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.
19. **Late Payment of Civil Penalty.** If the Municipality fails to pay the amount(s) required to be paid under Section V (Civil Penalty) when due, the Municipality shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.
20. **Compliance with Work.** The following stipulated penalties shall accrue per violation per day for (a) each failure to comply with the Closure Plan requirements; (b) each failure to comply with the Recycling Plan requirements; (c) each failure to comply with the Composting Plan requirements; and (d) each failure to perform any obligation required by the SOW, or any work plan or schedule approved or otherwise established under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree:



<b>Penalty Per Violation Per Day</b>	<b>Period of Noncompliance</b>
\$500	1st through 30th day
\$1,000	31st through 90th day
\$2,500	91st day through 179 <sup>th</sup> day
\$3,000	180th day and beyond

21. **Compliance with Final Closure Milestone.** If the Municipality fails to complete final closure of the Landfill by July 2019 or other date approved by EPA, the Municipality shall pay a stipulated penalty of \$5,000, and an additional \$1,000 per Day for each Day thereafter that the Municipality fails to complete final closure of the Landfill under Section VI (Compliance Requirements).
22. **Post Closure and Financial Assurance Requirements.** The following stipulated penalties shall accrue per violation per day for each failure to perform Post Closure Plan obligations such as monitoring or maintenance as required pursuant to the SOW and for failure to maintain financial assurance for Post Closure care.

<b>Penalty Per Violation Per Day</b>	<b>Period of Noncompliance</b>
\$300	1st through 30th day
\$500	31st through 90th day
\$800	91st day through 179 <sup>th</sup> day
\$1000	180th day and beyond

23. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.
24. The Municipality shall pay any stipulated penalty within 30 days of receiving the United States' written demand.
25. Stipulated penalties shall continue to accrue as provided in Paragraphs 18-23 during any Dispute Resolution proceeding regarding such stipulated penalties 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, the Municipality 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, the Municipality 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, the Municipality 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.
26. The Municipality shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 30.
27. If the Municipality fails to pay stipulated penalties according to the terms of this Consent Decree, the Municipality shall be liable for Interest on such penalties, accruing as of the date payment became due pursuant to this Section. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for the Municipality's failure to pay any stipulated penalties.
28. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Section.
29. Subject to the provisions of Section XII (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 the Municipality's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of RCRA or its implementing regulations, the Municipality shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.
30. Stipulated penalties pursuant to this Section shall be paid according to the following procedures:
  - a. The Municipality shall make the payments under this Paragraph at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to the Municipality by EPA following lodging of the Consent Decree. Each such payment shall reference the CDCS No. and DJ No. 90-7-1-10627.
  - b. At the time of payment, the Municipality shall send notice that payment has been made: (i) to the EPA Cincinnati Finance Center in accordance with Paragraph 8(b)(3); (ii) to the United States via email or regular mail in accordance with Section XIV (Notices/Submissions); and (iii) to the EPA RCRA Contact in accordance with Section XIV (Notices/Submissions). Such notice shall reference the CDCS No. and DJ No. 90-7-1-10627, and the transmittal letter shall state that the payment is for stipulated penalties and shall identify the violation(s) for which the penalties are being paid.

## **IX. FORCE MAJEURE**

31. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Municipality, any entity controlled by the Municipality, or any of the Municipality's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Municipality's best efforts to fulfill the

obligation. The requirement that the Municipality 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” does not include the Municipality’s financial inability to perform any obligation under this Consent Decree.

32. 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 event, the Municipality shall provide notice orally or by electronic transmission to the EPA within 72 hours of when the Municipality first knew that the event might cause a delay. Within 14 days thereafter, the Municipality 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; the Municipality’s rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Municipality, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Municipality 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 the Municipality 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. The Municipality shall be deemed to know of any circumstance of which the Municipality, any entity controlled by the Municipality, or the Municipality’s contractors knew or should have known.
33. If EPA agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event 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 the Municipality in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.
34. 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 the Municipality in writing of its decision.
35. If the Municipality elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 30 days after receipt of EPA’s notice. In any such proceeding, the Municipality 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 the Municipality complied with the requirements of Paragraph 32. If the Municipality carries this burden, the delay at issue shall be deemed not to be a violation by the Municipality of the affected obligation of this Consent Decree identified to EPA.

**X. DISPUTE RESOLUTION**

36. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. The Municipality's failure to seek resolution of a dispute under this Section shall preclude the Municipality from raising any such issue as a defense to an action by the United States to enforce any obligation of the Municipality arising under this Consent Decree.
37. **Informal Dispute Resolution.** Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The informal negotiations shall be initiated when the Municipality sends EPA a written Notice of Dispute requesting the initiation of informal negotiations. Such Notice of Dispute shall state clearly the matter in dispute, and shall be submitted to EPA prior to the date on which the Municipality must commence compliance with the obligation under dispute. EPA will respond to the Notice of Dispute by sending the Municipality a written Notice of Commencement of Informal Negotiations triggering the commencement of the informal negotiations period. The period of informal negotiations shall not exceed 30 Days from the date of the Notice of Commencement of Informal Negotiations, unless that period is modified by written agreement between the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the final written position advanced by EPA shall be considered binding unless the Municipality invokes formal dispute resolution procedures as set forth below.
38. **Formal Dispute Resolution.** The Municipality shall invoke formal dispute resolution procedures by serving on EPA a written Statement of Position regarding the matter in dispute within 30 Days after the conclusion of the informal negotiation period. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the Municipality's position and any supporting documentation relied upon by the Municipality. EPA shall serve its Statement of Position within 45 Days of receipt of the Municipality's Statement of Position or as soon as practicable. EPA's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by EPA. EPA's Statement of Position shall be binding on the Municipality, unless the Municipality files a motion for judicial review of the dispute in accordance with Paragraph 39.
39. The Municipality may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices/Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of EPA's Statement of Position pursuant to Paragraph 38. The motion shall contain a written statement of the Municipality's 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.

40. The United States shall respond to the Municipality's motion within the time period allowed by the Local Rules of this Court. The Municipality may file a reply memorandum, to the extent permitted by the Local Rules.
41. **Standard of Review**
- a. **Disputes Concerning Matters Accorded Record Review.** Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 38 (Formal Dispute Resolution) 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, 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, the Municipality 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.
- b. **Other Disputes.** Except as otherwise provided in this Consent Decree, in any other dispute brought under this Section, the Municipality shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.
42. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the Municipality 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 25. If the Municipality does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

## **XI. INFORMATION COLLECTION AND RETENTION**

43. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Landfill, 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 the Municipality or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including records, photographs and/or similar data; and
- e. assess the Municipality's compliance with this Consent Decree.

44. Upon request, the Municipality shall provide EPA, or its authorized representatives, splits of any samples taken by the Municipality. Upon request, EPA shall provide the Municipality splits of any samples taken by EPA.
45. Until five years after the termination of this Consent Decree, the Municipality shall retain, and shall instruct its 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 its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the Municipality's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, the Municipality shall provide copies of any documents, records, or other information required to be maintained under this Paragraph. These retention provisions do not supersede any recordkeeping requirements set forth in the 2011 AOC with longer retention periods.
46. At the conclusion of the information-retention period provided in the preceding paragraph, the Municipality 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, the Municipality shall deliver any such documents, records, or other information to EPA. The Municipality may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Municipality asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the Municipality. 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.
47. The Municipality 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 the Municipality seeks to protect as CBI, the Municipality shall follow the procedures set forth in 40 C.F.R. Part 2.
48. This Consent Decree does not limit or affect any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, and does not limit or affect any duty or obligation of the Municipality to maintain documents, records, or other information imposed by applicable federal or Commonwealth laws, regulations, or permits.

## **XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

49. This Consent Decree resolves the civil claims of the United States for the violations alleged in the complaint filed in this action through the date of lodging, including claims for stipulated penalties arising under the 2011 AOC through the date of lodging.
50. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as provided in the previous paragraph. This Consent Decree does not limit the rights of the United States to obtain penalties or injunctive relief under federal laws, regulations, or permit conditions, except as expressly specified in the previous paragraph. 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.
51. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Landfill, the Municipality 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 49.
52. This Consent Decree is not a permit, or a modification of any permit, under any federal, Commonwealth, or local laws or regulations. The Municipality is responsible for achieving and maintaining complete compliance with all applicable federal, Commonwealth, and local laws, regulations, and permits; and the Municipality's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that the Municipality's compliance with any aspect of this Consent Decree will result in compliance with provisions of RCRA or with any other provisions of federal, Commonwealth, or local laws, regulations, or permits.
53. This Consent Decree does not limit or affect the rights of the Municipality 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 the Municipality, except as otherwise provided by law.
54. 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.

## **XIII. COSTS**

55. 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 the civil penalty and any stipulated penalties due but not paid by the Municipality.

#### **XIV. NOTICES/SUBMISSIONS**

56. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, reports, or communications are required by this Consent Decree, they shall be made in writing and addressed to EPA's and the Municipality's Project Coordinators as specified in the SOW and as follows:

DOJ contact: EES Case Management Unit  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044-7611  
eesdcopy.enrd@usdoj.gov  
Re: DJ #90-7-1-10627

EPA RCRA contact: Meghan LaReau  
Project Coordinator  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. EPA - Region II  
290 Broadway, 21st Floor  
New York, New York 10007-1866  
Tel: 212-637-1473  
lareau.meghan@epa.gov

Municipality contact: Frances Rodriguez  
Project Coordinator  
Urb. Villa Serena Street Danube A-18  
Santa Isabel, Puerto Rico 00757  
Tel: 787-612-0106  
fmeneve@gmail.com

57. Any Party may, by written notice to the other Party, change its designated notice recipient or notice address provided above.
58. 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.

#### **XV. RETENTION OF JURISDICTION**

59. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree, entering orders modifying this Consent Decree, or effectuating or enforcing compliance with the terms of this Consent Decree.



## **XVI. MODIFICATION**

60. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties, except that schedules may be modified by EPA as set forth in the SOW. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.
61. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by ¶ 41 (Standard of Review), 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).

## **XVII. TERMINATION OF CONSENT DECREE AND RESUMPTION OF 2011 ORDER**

62. After the Municipality has completed the requirements of Section VI (Compliance/Work Requirements), and paid all the penalties owed under Section V (Civil Penalty) and, if any, under Section VIII (Stipulated Penalties) of this Consent Decree, the Municipality may serve upon the United States a Request for Termination of this Consent Decree, stating that the Municipality has satisfied those requirements, together with all necessary supporting documentation.
63. Following receipt by the United States of the Municipality's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the Municipality has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall file a joint stipulation terminating the Consent Decree.
64. If the United States does not agree that the Consent Decree may be terminated, the Municipality may invoke Dispute Resolution under Section X (Dispute Resolution). However, the Municipality shall not seek Dispute Resolution of any dispute regarding termination until at least 15 days after notice of the United States' decision that the Consent Decree may not be terminated.
65. Upon termination of the Consent Decree, the 2011 Order shall resume its full force and effect. Any plans approved under the Consent Decree shall be deemed approved under, incorporated into or by, and enforceable under, the 2011 Order, including the Post Closure Plan, the Recycling Plan and the Composting Plan.

## **XVIII. PUBLIC PARTICIPATION**

66. This Consent Decree will be lodged with the Court for at least 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. This Consent Decree is also subject to opportunity for public meeting under

Section 7003(d) of RCRA, which may further extend the period of lodging. The Municipality consents to entry of this Consent Decree without further notice and agrees 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 the Municipality in writing that it no longer supports entry of the Consent Decree.

**XIX. SIGNATORIES/SERVICE**

67. Each undersigned representative of the Municipality and the Assistant Attorney General for 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.
68. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The Municipality agrees to accept service of process by mail 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.

**XX. INTEGRATION/APPENDICES**

69. Upon the Effective Date, this Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein.
70. Upon the Effective Date, other than deliverables that are subsequently submitted and approved pursuant to this Consent Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.
71. Appendix A, the Statement of Work, is attached to and is a part of this Consent Decree.

**XXI. FINAL JUDGMENT**

72. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court between and among the United States and the Municipality. 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 \_\_\_\_\_, 2017

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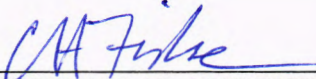
UNITED STATES DISTRICT JUDGE

Signature Page for Consent Decree in *U.S. v. Municipality of Santa Isabel* (D. P.R.)

**FOR THE UNITED STATES OF AMERICA**

4/13/17  
Dated


ELLEN M. MAHAN  
Deputy Section Chief  
Environmental Enforcement Section  
U.S. Department of Justice

  
\_\_\_\_\_  
CATHERINE ADAMS FISKE  
Senior Counsel  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
One Gateway Center - Suite 616  
Newton, MA 02458  
(617) 450-0444

ROSA E. RODRIGUEZ-VELEZ  
United States Attorney  
District of Puerto Rico

HECTOR RAMIREZ  
Civil Chief  
Office of the United States Attorney  
District of Puerto Rico  
Torre Chardon, Suite 1201  
350 Carlos Chardon Street  
San Juan, PR 00918

Signature Page for Consent Decree in *U.S. v. Municipality of Santa Isabel* (D. P.R.)



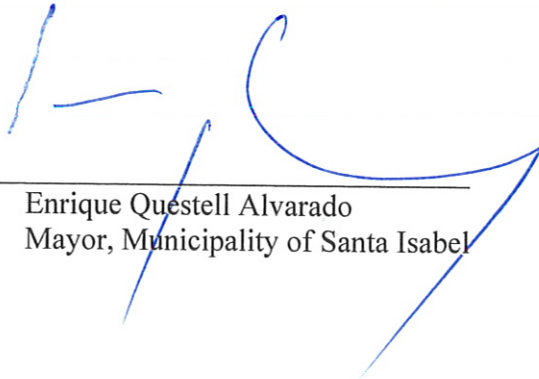
ERIC SCHAAF  
Regional Counsel, Region 2  
U.S. Environmental Protection Agency  
290 Broadway  
New York, New York 10007-1866

Signature Page for Consent Decree in *U.S. v. Municipality of Santa Isabel* (D. P.R.)



**FOR THE MUNICIPALITY OF SANTA ISABEL:**

3/10/17  
Dated



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Enrique Questell Alvarado  
Mayor, Municipality of Santa Isabel