

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

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UNITED STATES OF AMERICA, :
: :
Plaintiff, :
: :
v. : : **Civil No.**
: :
MUNICIPALITY OF SANTA ISABEL, : : **COMPLAINT**
: :
Defendant. :
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The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Regional Administrator of the United States Environmental Protection Agency (“EPA”), Region 2, files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action against the Municipality of Santa Isabel, Puerto Rico (the “Municipality”) under Section 7003(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.* (“RCRA”) for non-compliance with administrative orders on consent (“AOCs” or “Orders”) issued by EPA under Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), regarding the Santa Isabel Municipal Landfill (the “Landfill”).

2. The United States seeks an award of civil penalties for the Municipality’s failure to comply with the AOCs, as well as an injunction requiring it to comply with the terms of the current AOC.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), and 28 U.S.C. §§ 1331, 1345, and 1335.

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1395(a), because the violations occurred in this District and the Municipality is located in this District.

AUTHORITY

5. Authority to bring this action is vested in the United States Department of Justice under 28 U.S.C. §§ 516 and 519.

DEFENDANT

6. The Municipality is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

7. The Municipality is the owner of the Landfill and/or is or has been the operator of the Landfill during various periods of its ownership as set forth in the AOCs.

STATUTORY BACKGROUND

8. The comprehensive federal program for the regulation of solid waste and hazardous waste is primarily based on RCRA. 42 U.S.C. § 6901 et seq.

9. RCRA, among other things, authorizes EPA to address circumstances involving an imminent and substantial endangerment to public health and the environment related to the handling and disposal of solid waste.

10. Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), provides, in pertinent part:

Notwithstanding any other provision of this chapter, upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste ... may present an imminent and substantial endangerment to health or the environment, the Administrator [or his/her delegatee] may ... take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

11. Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), provides that any person who fails to comply with an order of the Administrator issued under Section 7003(a), 42 U.S.C. § 6973(a), may, in an action brought in the appropriate district court to enforce such order, be liable for civil penalties.

GENERAL ALLEGATIONS

The Landfill

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

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

14. The Landfill is located over an alluvial unconfined (water-table) aquifer within the South Coast Aquifer System. Groundwater drawn from the South Coast Aquifer System is used in the Santa Isabel area for drinking water (publically and privately sourced), irrigation, and other purposes. One public drinking water supply well is located approximately 1.25 miles south of the Landfill and is operated by the Puerto Rico Aqueduct and Sewer Authority ("PRASA").

The 7003 Orders

15. On or about November 17, 2005, and/or March 24, 2006, EPA observed a number of improper waste practices at the Landfill. These practices included, but are not limited to, the following:

- Operation of the Landfill without adequate surface water run-off and run-on controls, potentially allowing contaminants from the Landfill to impact surface soils, streams, or groundwater;
- Operation of the Landfill without a groundwater monitoring system which is necessary to determine if contaminants from the Landfill are being released beyond the facility's boundaries and potentially impacting the aquifer system;
- Failure to conduct or perform adequate inspections of incoming waste potentially allowing hazardous and/or other inappropriate wastes to be deposited at the Landfill; and
- Failure to provide daily cover which leaves waste exposed, potentially inviting disease vectors such as rodents and mosquitoes, as well as scavenging. In addition uncovered waste may be odorous and can create fire risks.

16. As a result of these and other conditions, the Regional Administrator of EPA, Region 2 found that the past and present handling of solid wastes at the Landfill may present an imminent and substantial endangerment to human health and the environment, and, as described below, that the issuance of orders pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), requiring the Municipality to undertake certain action was necessary to protect human health and the environment.

17. In August 2007, the Municipality and two former operators of the Landfill entered into an AOC (EPA Docket No. RCRA-02-2007-7302), which EPA issued pursuant to its authority under Section 7003(a) of RCRA, 42 U.S.C. § 6973(a) (the "2007 Order"). Among other things, the 2007 Order set forth requirements relating to the operation and management of the Landfill ("operational requirements") and required the

Landfill to be permanently closed by July 1, 2010 pursuant to an EPA-approved closure plan.

18. In 2010, the Municipality represented to EPA that financial constraints prevented it from closing the Landfill pursuant to the timeframes set forth in the 2007 Order. The Municipality asked EPA to enter into a new AOC with a delayed closure schedule and which would include the implementation of a recycling program to reduce the amount of waste disposed of at the Landfill during its remaining life.

19. In September 2011, the Municipality entered into a new AOC (EPA Docket No. RCRA 02-2011-7303), which was issued by EPA pursuant to its Section 7003(a) authority (the “2011 Order”). Among other things, the 2011 Order requires the Municipality to implement operational requirements at the Landfill, implement a recycling program and close the Landfill in three phases, with final closure being completed pursuant to an EPA approved closure plan by no later than December 31, 2013. The 2011 Order became effective on October 15, 2011.

20. In September 2011, the parties to the 2007 Order entered into a modification of the 2007 Order to narrow the future obligations under the 2007 Order (“2007 Order Modification”). Pursuant to the 2007 Order Modification, the obligations set forth in the 2011 Order, except for specified record retention requirements, superseded the work obligations set forth in the 2007 Order upon the effective date of the 2011 Order. 2007 Order Modification, ¶¶ 6 and 8. The 2007 Order Modification did not release the parties from liability for past violations of the 2007 Order or potential future liability under RCRA. *Id.*, ¶ 9.

21. In signing the 2007 and 2011 Orders, the Municipality expressly agreed that the AOCs were accurate and reasonable, that it would undertake all actions required by the AOCs, and that it would not contest EPA's jurisdiction to enforce or compel compliance with any term in the AOCs.

22. In signing the 2007 and 2011 Orders, the Municipality agreed to pay a stipulated penalty for each failure to comply with any requirement, term, or condition required by the Order, and that such agreement did not prevent the United States from seeking civil penalties under applicable law. 2007 Order ¶ 73; 2011 Order ¶ 73.

FIRST CLAIM FOR RELIEF

FAILURE TO COMPLY WITH FIRST OPERATIONAL REPORTING REQUIREMENTS

23. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

24. Paragraph 51 of the 2011 Order sets forth operational requirements that the Municipality must perform during the active life of the Landfill. These requirements, among other things, include: securing fencing around the perimeter of the facility; inspecting incoming loads of waste to prevent the disposal of specified prohibited materials; maintaining a log of incoming waste; and providing daily cover for each waste disposal area at the Landfill

25. Paragraph 51.e. of the 2011 Order requires the Municipality to submit a certified written compliance report (the "First 30 Day Report") to EPA no later than thirty days from the effective date of the 2011 Order, November 12, 2011, documenting its compliance with the requirements set forth in Paragraph 51.

26. The Municipality did not submit a First 30 Day Report to EPA until June 1, 2012. Thus, between November 12, 2011 and June 1, 2012 the Municipality was in violation of Paragraph 51.e. of the 2011 Order.

27. Pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), the Municipality is liable for civil penalties for its violations of Paragraph 51.e of the 2011 Order.

SECOND CLAIM FOR RELIEF

FAILURE TO TIMELY SUBMIT CLOSURE PLAN

28. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

29. Paragraph 52 of the 2011 Order sets forth closure and post-closure care requirements for the Landfill.

30. Paragraph 52.e. required the Municipality to submit a Revised Closure and Post Closure Plan (collectively the “Closure Plan” herein) to EPA, for its review and approval, by no later than November 28, 2011. The Closure Plan must contain numerous engineering reports and associated plans, as well as provide for the phased closure of the Landfill over a three-year period, with closure being completed no later than December 31, 2013. See 2011 Order, ¶ 52.b-d.

31. The Municipality failed to submit a Closure Plan until June 20, 2012. Thus, the Municipality was in violation of Paragraph 52.e. of the 2011 Order between November 28, 2011 and June 20, 2012.

32. Pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), the Municipality is liable for civil penalties for its violations of Paragraph 52 of the 2011 Order.

THIRD CLAIM FOR RELIEF

FAILURE TO TIMELY PERFORM INTERIM CLOSURE OF PHASE ONE OF LANDFILL

33. Paragraphs 1 through 22 are realleged and incorporated herein by reference.
34. Paragraph 52 and 54 of the 2011 Order set forth requirements for placing intermediate cover on the Northern (or first) third of the Landfill immediately following the cessation of waste disposal in that area.
35. Paragraph 52.c states that “[b]y no later than December 31, 2011, Respondent shall cease depositing waste in the Northern [or first] third of the Landfill ...”
36. Paragraph 52.d.iii provides:

The placement, at a minimum, of an intermediate cover on each portion of the Landfill which is required to cease receiving waste under this Order, immediately following the cessation of waste deadline set forth in Paragraph 52.c . . . The intermediate cover, consisting of at least twelve (12) inches of compacted earthen material, shall be designed so that it will prevent exposure of wastes and will control vectors, fires, odors, blowing litter and scavengers until final Landfill cover is installed.
37. Paragraph 54.a provides:

Respondent shall apply Intermediate Cover immediately on all areas of the Landfill . . . subject to Interim Closure [i.e. the December 31, 2011 closure date.]...until a Final Cover is installed
38. On May 24, 2012, in a meeting with EPA, representatives of the Municipality stated that the Municipality ceased depositing waste on the Northern (or first) third of the Landfill by December 31, 2011 as required by the Order.
39. On March 15, 2012, EPA representatives conducted an inspection of the Landfill. As of at least March 15, 2012, the Northern (or first) third of the Landfill was not covered with intermediate cover. Thus, from January 1, 2012 to at least March 15, 2012, the Municipality was in violation of Paragraphs 52.d and 54.a of the 2011 Order.

In September 2012, the Municipality reported that the intermediate cover had been placed on the first third of the Landfill.

40. Pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), the Municipality is liable for civil penalties for its violations of Paragraphs 52.d. and 54.a of the 2011 Order.

FOURTH CLAIM FOR RELIEF

FAILURE TO TIMELY PERFORM INTERIM CLOSURE OF SECOND THIRD OF THE LANDFILL

41. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

42. Paragraph 52.c. states that “[b]y no later than December 31, 2012, Respondent shall cease depositing waste in a second area [the second third] that entails approximately one third of the Landfill....”

43. Paragraphs 52.d.iii and 54.a require the placement of an “intermediate cover” on each portion of the Landfill which ceases to receive waste under the Order.

44. Paragraph 52.d.iii further defines intermediate cover as at least twelve inches of compacted earthen material designed to prevent the exposure of wastes and to control disease vectors, fires, odors, blowing litter and scavengers until a final cover is installed.

45. Paragraph 54.d requires the Municipality to submit a certified notification of completion to EPA within 30 calendar days after completing each phase of Interim Closure.

46. In its quarterly report covering the quarter ending December 2012, the Municipality reported that the second third of the Landfill ceased receiving waste by December 31, 2012, and that the Municipality planned to place an intermediate or final

cover on that area in the future. In January 2014, the Municipality reported that the intermediate cover had been placed on the second third of the Landfill sometime in December 2013.

47. Thus, from January 1, 2013 to at least December 1, 2013, the Municipality's failure to place timely the intermediate cover on the second third of the Landfill is a violation of Paragraphs 52.d. and 54.a of the 2011 Order.

48. Pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), the Municipality is liable for civil penalties for its violations of Paragraphs 52.d. and 54.a of the 2011 Order.

FIFTH CLAIM FOR RELIEF

FAILURE TO COMPLY WITH QUARTERLY REPORTING REQUIREMENTS

49. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

50. Paragraph 54.c of the 2011 Order requires the Municipality to submit quarterly reports to EPA on the status of activities conducted pursuant to the Order, including the Closure Plans. The quarterly reports must be submitted by the fifteenth (15) day of the month immediately following the end of each quarter. Quarterly reports were due on January 15, 2012; April 15, 2012; and July 15, 2012.

51. Pursuant to Paragraph 91 of the 2011 Order, the schedule for submitting quarterly reports under Paragraph 54 of the Order was modified. Effective August 13, 2012, the Municipality must submit quarterly reports to EPA on the following dates: March 30, June 30, September 30 and December 31 of each year.

52. The Municipality did not submit its first quarterly report until June 1, 2012. Thus, between January 15, 2012 and June 1, 2012, the Municipality was in violation of Paragraph 54.c of the 2011 Order.

53. In addition, through February 12, 2014, the Municipality has failed to timely submit subsequent quarterly reports, and therefore remains and/or was in violation of Paragraph 54.c of the 2011 Order.

54. Pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), the Municipality is liable for civil penalties and injunctive relief for its violations of Paragraph 54.c of the 2011 Order.

SIXTH CLAIM FOR RELIEF

FAILURE TO DEVELOP AND SUBMIT A RECYCLING AND GREEN WASTE MANAGEMENT PROGRAM

55. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

56. Paragraph 55 of the 2011 Order requires the Municipality to develop and submit a Recycling and Green Waste Management Program (“Recycling Program”) to EPA by no later than November 13, 2011 for EPA review and approval.

57. The Recycling Program must include all of the requirements set forth in Paragraph 57 of the 2011 Order which, in addition to mandating recycling, requires the development of an education program, the development and implementation of a composting program, and the development and implementation of an enforcement program to ensure the public’s compliance with the Recycling Program.

58. The Municipality has not submitted a Recycling Program to EPA. Thus, the Municipality is in violation of Paragraph 55 of the 2011 Order since November 13, 2011.

59. Pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), the Municipality is liable for civil penalties and injunctive relief for its violations of Paragraph 55 of the 2011 Order.

SEVENTH CLAIM FOR RELIEF

FAILURE TO COMPLY WITH THE QUARTERLY RECYCLING REPORTING REQUIREMENTS

60. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

61. Paragraph 58 of the 2011 Order requires the Municipality to submit quarterly reports to EPA summarizing its efforts to implement the Recycling Program, including documenting its compliance with the Recycling Program requirements (“Recycling Report”).

62. The first Recycling Report was due by January 12, 2012, ninety days after the effective date of the 2011 Order. Subsequent reports were due on April 12, 2012, and July 12, 2012.

63. Pursuant to Paragraph 91 of the 2011 Order, the schedule for submitting Recycling Reports under Paragraph 58 was modified. Effective August 13, 2012, the Municipality must submit Recycling Reports to EPA on the following dates: March 30, June 30, September 30, and December 31 of each year.

64. The Municipality submitted its first Recycling Report in June 2012. Thus, between January 15, 2012 and June 1, 2012, the Municipality was in violation of Paragraph 58 of the 2011 Order.

65. In addition, the Municipality failed to timely submit subsequent quarterly Recycling Reports, and therefore remains and/or was in violation of Paragraph 58 of the 2011 Order

66. Pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), the Municipality is liable for civil penalties and injunctive relief for its violations of Paragraph 58 of the 2011 Order.

EIGHTH CLAIM FOR RELIEF

FAILURE TO COMPLETE FINAL CLOSURE

67. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

68. Pursuant to Paragraph 54.b of the 2011 Order, permanent closure of the entire Landfill must be completed by no later than December 31, 2013.

69. Although the Municipality has ceased accepting waste at the Landfill, and has installed an interim cover, the Municipality failed to complete the permanent closure of the entire Landfill by December 31, 2013. Among other omissions, the Municipality failed to install a permanent cover over the entire Landfill by December 31, 2013.

70. Thus the Municipality is in violation of Paragraph 54.b of the 2011 Order.

71. Pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), the Municipality is liable for civil penalties and injunctive relief for its violations of Paragraph 54.b of the 2011 Order.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Order the Municipality to comply with all provisions of the 2011 AOC, including *inter alia* the requirement for permanent closure of the Landfill and the installation of a permanent cover over the entire Landfill, and development of a Recycling Plan, as set forth in Paragraphs 54, 55, and 58 of the 2011 AOC;
2. Order the Municipality to pay civil penalties pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), for each day of each violation of the 2011 AOC;
3. Award the United States its costs of this action; and
4. Grant the United States such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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