

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

UNITED STATES OF AMERICA,

Plaintiff,

Civ. No. 21-01087 (SCC)

v.

MUNICIPALITY OF TOA ALTA,
PUERTO RICO,

**SECOND STIPULATION
AND FINAL ORDER**

Defendant

WHEREAS the United States has filed a complaint (Dkt. No. 1) in this action alleging that certain conditions at the landfill owned by the Municipality of Toa Alta (“MTA”) constitute imminent and substantial endangerments to human health and the environment under Section 7003(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6973(a), and seeking civil penalties under Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), for the alleged failure by MTA to comply with a 2017 administrative order issued by the U.S. Environmental Protection Agency (“EPA”) regarding MTA’s landfill (RCRA-02-2017-7303) (the “2017 Administrative Order”).

WHEREAS the conditions that the United States claimed constituted an imminent and substantial endangerment comprised: (a) the failure to prevent releases of leachate generated within the landfill into the environment; (b) the failure to prevent releases of leachate that accumulates on the liner underneath the waste in the “Southeast Cell” (“SE Cell”) of the landfill; (c) the maintenance of steep side slopes at the landfill; and (d) the failure to place and maintain soil cover over deposited waste.

WHEREAS MTA does not admit that conditions at the landfill constitute imminent and substantial endangerments to human health and the environment and does not admit that it is liable for civil penalties for failure to comply with EPA's 2017 Administrative Order.

WHEREAS the Department of Natural and Environmental Resources of Puerto Rico ("DNER") initiated an administrative action against MTA in which DNER seeks to require MTA to file and implement, with DNER oversight, a revised permanent final closure plan for the landfill.

WHEREAS MTA has filed an Amended Third-Party Complaint against Landfill Technologies of Toa Alta, LLC ("LandTech-Toa Alta"), the former operator of the landfill, and Landfill Technologies, LLC ("LandTech") (Dkt. No. 106) alleging, among other things, that LandTech-Toa Alta and/or LandTech are responsible, under EPA's 2017 Administrative Order, for performing several actions to repair or rehabilitate the leachate collection and liner system for the SE Cell and that LandTech is the successor in interest to LandTech-Toa Alta.

WHEREAS on August 12, 2022, this Court entered a "Stipulation and Preliminary Injunction Order" ("SPIO") between the United States and MTA which addressed three of the four endangerments alleged by the United States (Dkt. No. 127). The SPIO did not address:

- (a) the claim that failure to remove leachate from the SE Cell constituted an endangerment; and
- (b) the United States' claim for civil penalties.

WHEREAS: (a) the SE Cell was constructed with a bottom liner whose purpose was to prevent releases of leachate to the subsurface underlying the cell; (b) the SE Cell was equipped with a leachate collection system whose purpose was to enable the removal of leachate that collects on the bottom liner as needed to preserve the liner; (c) for a period of time the leachate collection system has been non-operational; (d) LandTech-Toa Alta and/or its alleged successor

in interest have replaced the above-ground portion of the leachate collection system and implemented repairs to the accessible part of the subsurface leachate collection system with the goal of restoring partial functionality; but (e) the short term reliability and utility of the partially rehabilitated system remains unknown as testing has not been completed, and MTA has not been trained to operate nor has it assumed control of the operation of, the system.

WHEREAS EPA contends that: (a) leachate collection system rehabilitation work should be completed and the system operated; (b) long-term operation of the partially rehabilitated leachate collection system is likely not sustainable; (c) a reliable long-term solution is needed; and (d) MTA could economically and should expeditiously install a new leachate removal system at the SE Cell in coordination with implementation of permanent final closure measures at the landfill under DNER's oversight.

WHEREAS DNER has requested that MTA describe in its proposed permanent final closure plans near term and long-term measures to address the SE Cell leachate problem.

WHEREAS DNER has advised EPA that, (a) if MTA achieves a means to dispose of leachate and if the SE Cell leachate pumping system is functional, DNER will ensure that MTA operates the SE Cell leachate pumping system, and (b) in the course of its oversight of MTA's implementation of permanent final closure of the landfill and/or through implementation of nearer term options, DNER will ensure that MTA addresses the SE Cell leachate problem.

WHEREAS the United States and MTA recognize, and the Court by approving this Second Stipulation and Final Order ("SSFO") finds, that this SSFO has been negotiated by the United States and MTA in good faith, that implementation of this SSFO will avoid unnecessary litigation, and that this SSFO is fair, reasonable, in the public interest, and consistent with RCRA.

NOW, THEREFORE, the United States and MTA hereby stipulate, and it is ORDERED as follows:

1. **Definitions.**

- a. “2017 Administrative Order” means the administrative order issued by EPA on June 14, 2017, regarding MTA’s landfill (RCRA-02-2017-7303).
- b. “Effective Date” means the date that the Court’s approval of this SSFO is recorded on the Court’s docket.
- c. “EPA” means the U.S. Environmental Protection Agency.
- d. “DNER” means the Department of Natural and Environmental Resources of Puerto Rico.
- e. The “Landfill” means the Toa Alta Municipal Solid Waste Landfill and areas with any ancillary operations and facilities related to the Landfill under MTA’s control.
- f. “LandTech Companies” means Landfill Technologies of Toa Alta, LLC and Landfill Technologies, LLC in its capacity as the alleged successor in interest to Landfill Technologies of Toa Alta, LLC.
- g. “Leachate” means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.
- h. “MTA” means the Municipality of Toa Alta, Puerto Rico.
- i. “Second Stipulation and Final Order” or “SSFO” means this second stipulation and final order.
- j. “Stipulation and Preliminary Injunction Order” or “SPIO” means the stipulation and preliminary injunction order entered at Dkt. No. 127-1 in this matter.
- k. “SE Cell” means the 4.4-acre Southeast area of the Landfill.

1. “SE Cell leachate problem” means the accumulation and need for removal of Leachate on the liner beneath the waste in the SE Cell.

m. “SSFO Lodging Date” means the date that the SSFO is lodged with this Court pending public notice and comment and an opportunity for a public meeting.

2. The SPIO is converted into a permanent injunction order. All provisions of the SPIO other than its Paragraph 17.e, the reservation regarding the SE Cell, and its Paragraph 17.f, the reservation regarding further claims under Section 7003 of RCRA, remain in full force and effect.

3. **Southeast Cell.**

a. MTA shall cooperate with the LandTech Companies regarding the completion of any of their remaining obligations under the 2017 Administrative Order, including, upon MTA achieving a means to dispose of leachate in accordance with Paragraph 9.b of the SPIO, disposing of leachate in connection with the testing of the SE Cell leachate pumping system.

b. The 2017 Administrative Order provides for the LandTech Companies to submit a certification to EPA regarding the completion of their obligations under the 2017 Administrative Order and for EPA to confirm, if appropriate, the LandTech Companies’ completion of such obligations.

c. After completion of testing of the SE Cell leachate pumping system and EPA’s receipt of the LandTech Companies’ certification that they have completed their obligations under the 2017 Administrative Order; and provided EPA confirms the LandTech Companies’ completion of their obligations and notifies MTA of such confirmation, then, subject to Paragraph 3.e, MTA shall within 10 days commence to operate the SE Cell leachate pumping

system and shall commence to dispose of all leachate removed from the SE Cell at a Puerto Rico Aqueduct and Sewer Authority publicly owned treatment works facility or by an on-site wastewater treatment process.

d. After commencing operation of the SE Cell leachate pumping system, MTA shall, upon DNER's direction and under DNER's oversight, continue to operate the SE Cell leachate pumping system and shall continue to dispose of all leachate removed from the SE Cell at a Puerto Rico Aqueduct and Sewer Authority publicly owned treatment works facility or by an on-site wastewater treatment process.

e. If DNER determines that the SE Cell leachate pumping system is not capable of effectively pumping leachate, then MTA's obligations under Paragraphs 3.c and 3.d will be deemed to be complete.

f. MTA shall cooperate with DNER in its oversight of MTA's implementation of near-term measures, including, if required, operation of the SE Cell leachate pumping system and proper disposal of all produced leachate, and long-term measures to address the SE Cell leachate problem.

4. Civil Penalty.

a. Within 30 days after the Effective Date, MTA shall pay the sum of \$50,000 as a civil penalty. MTA shall pay this sum by FedWire Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions provided to MTA by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Puerto Rico after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which MTA shall use to identify the payment required to be made in accordance with this SSFO.

b. At the time of payment, MTA shall send notice in accordance with Paragraph 16 of the SPIO that payment has been made to EPA and DOJ.

c. Subject to Paragraph 4.d, if the payment due under Paragraph 4.a is not paid by the required date, MTA shall pay to EPA: (a) as a stipulated penalty, \$500 per day that such payment is late; and (b) interest accruing from the date on which the SSFO is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging through the date of payment.

d. The United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this SSFO.

e. Payments made under Paragraph 4.c are in addition to any other remedies or sanctions available to the United States by virtue of MTA's failure to comply with this SSFO.

5. **Costs.** The United States and MTA shall bear their own costs of this action, including costs of attorney time, except that the United States is entitled to collect the costs (including the costs of attorney time) incurred in any action necessary to obtain MTA's compliance with the SPIO and/or the SSFO.

6. **Effect of Settlement and Reservations.**

a. The SPIO and the SSFO together resolve the civil claims of the United States for the violations alleged in the Complaint filed in this action through the SSFO Lodging Date, including any alleged violations by MTA of the 2017 Administrative Order.

b. The SPIO and the SSFO together supersede, as of the Effective Date, the requirements of the 2017 Administrative Order that apply to MTA.

c. Nothing in the SPIO or SSFO limits the United States from asserting in this action or in a separate action that any conditions that exist at the Landfill after the SSFO

Lodging Date, including the SE Cell leachate problem, present an imminent and substantial endangerment subject to Section 7003 of RCRA. Subject to Paragraph 6.f, nothing in the SSFO limits any right of MTA to assert any defense against any such claim asserted by the United States.

d. Nothing in the SPIO or SSFO limits the United States from seeking orders from the Court effectuating or enforcing MTA's compliance with the SPIO or SSFO.

e. Nothing in the SPIO or SSFO affects MTA's third-party claims against the LandTech Companies regarding responsibilities for the leachate collection and liner system for the SE Cell or the resolution of the SE Cell leachate problem. For the avoidance of doubt, the claims raised by the MTA in the Amended Third-Party Complaint at Docket No. 106 are expressly preserved.

f. In any subsequent administrative or judicial proceeding initiated by the United States (including EPA) for injunctive relief, civil penalties, or other appropriate relief relating to the Landfill, MTA shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (*res judicata*), issue preclusion (*collateral estoppel*), 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.

g. The United States reserves, and the SPIO and SSFO are without prejudice to, all rights against MTA with respect to all other matters not asserted by the United States in the Complaint, including any criminal liability.

7. **Termination.**

a. After MTA has completed all requirements of the SPIO and the SSFO other than the requirements under SSFO Paragraph 3.d, MTA may serve upon the United States a Request for Termination, asserting that MTA has satisfied those requirements, together with all necessary supporting documentation.

b. Following the United States' receipt of MTA's Request for Termination, the United States and MTA shall confer informally concerning the Request and any disagreement that they may have as to whether MTA has satisfactorily complied with the requirements of the SPIO and SSFO other than the requirements under SSFO Paragraph 3.d. If the United States agrees that the SPIO and SSFO may be terminated, the United States and MTA shall submit, for the Court's approval, a joint stipulation terminating the SPIO and SSFO.

c. If the United States does not agree that the SPIO and SSFO may be terminated, MTA may, after 75 days after service of its Request for Termination, invoke the Court's jurisdiction to resolve the dispute.

8. **Jurisdiction.** The Court retains jurisdiction over this case for the purpose of: (a) resolving disputes arising under the SPIO and SSFO; (b) entering orders modifying the SPIO and SSFO; (c) effectuating or enforcing compliance with the SPIO and SSFO; and (d) for the resolution of the third-party claims between MTA and LandTech Companies.

9. **Public Participation.** This SSFO shall be lodged with the Court for a period of not less than 30 days for public notice and comment and an opportunity for a public meeting in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the SSFO disclose facts or considerations indicating that the SSFO is inappropriate, improper, or

inadequate. MTA consents to entry of this SSFO without further notice and agrees not to withdraw from or oppose entry of this SSFO by the Court or to challenge any provision of the SSFO, unless the United States has notified MTA in writing that it no longer supports entry of the SSFO.

10. **Signatories.** The undersigned representatives of the United States and of MTA each certifies that they are fully authorized to enter into the terms and conditions of this SSFO and to execute and legally bind such Party to this document.

11. **Final Order.** Upon approval and entry of this SSFO by the Court, this SSFO constitutes a partial judgment of the Court as to the United States and MTA.

**FOR THE UNITED STATES ON BEHALF OF THE U.S.
ENVIRONMENTAL PROTECTION AGENCY:**

Todd Kim
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

Feb. 12, 2024
Dated

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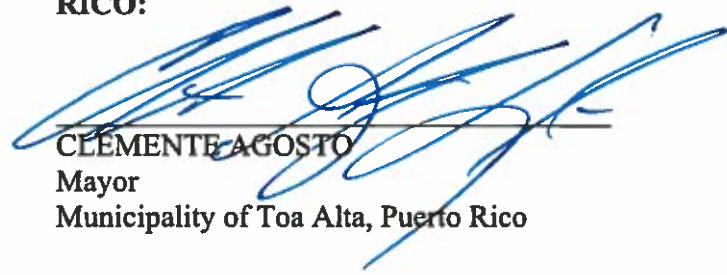
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U.S. v. Municipality of Toa Alta, Second Stipulation and Final Order

FOR THE MUNICIPALITY OF TOA ALTA, PUERTO RICO:

Dated



CLEMENTE AGOSTO
Mayor
Municipality of Toa Alta, Puerto Rico

IT IS SO ORDERED:

Dated

HON. SILVIA L. CARRENO-COLL
UNITED STATES DISTRICT JUDGE