

US EPA ARCHIVE DOCUMENT

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil Action No.
 v.) 2:08-cv-1024
)
)
 REPUBLIC DUMPCO, INC., et al.,)
)
 Defendants.)
)
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CONSENT DECREE AND SETTLEMENT AGREEMENT

US EPA ARCHIVE DOCUMENT

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CONSENT DECREE AND SETTLEMENT AGREEMENT

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint against Settling Defendants in this action concurrently with this Consent Decree and Settlement Agreement ("Consent Decree," "Consent Decree and Settlement Agreement," or "Decree"), pursuant to the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251-1387, and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k.

The Complaint against Settling Defendants alleges that Settling Defendants are liable for penalties and injunctive relief arising out of their operation of the Sunrise Mountain Landfill, pursuant to 33 U.S.C. § 1319(d), because they failed to comply with CWA storm water provisions and with the terms and conditions of the Nevada General Permit. On April 26, 1999, EPA Region IX issued to, inter alia, the Settling Defendants, an Administrative Order pursuant to the Clean Water Act ("CWA Administrative Order").

On April 26, 1999, EPA Region IX issued to, inter alia, the Settling Defendants, an Administrative Order pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), ("RCRA Administrative Order"). The Complaint alleges that Settling Defendants are liable for injunctive relief pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, because they have caused or contributed to an

imminent and substantial endangerment at the Sunrise Mountain Landfill, and are liable for penalties pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, because they failed to comply with the RCRA Administrative Order.

In addition, the Complaint alleges that the Settling Defendants are liable for trespass to the United States, on behalf of the Bureau of Land Management, and that the County is liable to the United States under leases and permits, including amendments, issued or agreed to by the United States relating to the Landfill. The Settling Defendants may also have counterclaims against the United States, including against the Bureau of Land Management.

The United States, by entry into this Consent Decree, does not admit any liability arising out of the transactions or occurrences allegedly forming the basis of any potential counterclaim.

The execution of this Decree is not an admission of liability by any or all of the Settling Defendants, nor is it an admission of the factual or legal allegations arising out of the transactions or occurrences alleged in the Complaint.

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 prolonged

and complicated 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 except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. 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 309(b) of the CWA, 33 U.S.C. § 1319(b), and Section 7003(a) of RCRA, 42 U.S.C. § 6973(a); the Court also has personal jurisdiction over the Parties.

2. Venue lies in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), and 28 U.S.C. §§ 1391(b) and 1395(a), because it is the judicial district in which Settling Defendants are doing business and in which the Landfill is located, and the causes of action alleged herein arose in this District.

3. Solely for purposes of this Decree, Settling Defendants do not contest the Court's jurisdiction over the subject matter of this action or over Settling Defendants, and do not contest venue in this judicial district.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, the Settling Defendants, and any successors or assigns.

5. No transfer of the ownership of, the lease for, or the operation of, the Landfill, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Settling Defendants of their obligations to ensure that the terms of the Decree are implemented. At least 30 days prior to any such transfer by a Settling Defendant or Defendants (assuming such Settling Defendant or Defendants have 30 days prior notice of such transfer), such Settling Defendant or 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 with the transferee, to EPA Region 9, the United States Attorney for the District of Nevada, and the United States Department of Justice, in accordance with Section XIV of this Decree (Notices). Notwithstanding the previous sentence, if such Settling Defendant or Defendants are unable because of confidentiality reasons to provide the required 30 day notice, Settling Defendants shall provide reasonable notice given the nature of the confidentiality issues. Any attempt to transfer the ownership of, the lease for, or the operation of, the

Landfill without complying with this Paragraph constitutes a violation of this Decree.

6. Settling Defendants shall provide a copy of the applicable provisions of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree. RSSN and Republic Dumpco shall also provide a copy of the relevant provisions of this Consent Decree to each contractor with a contract exceeding \$100,000 that is retained to perform Work required under Appendix A of this Consent Decree upon execution of any contract relating to such Work. RSSN and Republic Dumpco shall condition any such contract upon performance of the Work in conformity with the terms of this Consent Decree. Copies of relevant provisions of the Consent Decree do not need to be supplied to firms who are retained solely to supply materials or equipment to satisfy requirements under Appendix A of this Consent Decree.

7. In any action to enforce this Consent Decree, Settling Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors retained to provide Work required under Appendix A to take any actions necessary to comply with the provisions of this Consent Decree. Nothing in this Paragraph alters the provisions of Section IX ("Force Majeure") of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CWA or RCRA or in regulations promulgated pursuant to those statutes shall have the meanings assigned to them therein, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "BLM" shall mean the Bureau of Land Management of the United States Department of the Interior, and any of its successor departments or agencies.

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

c. "Consent Decree," "Consent Decree and Settlement Agreement," and "Decree" shall mean this Consent Decree and Settlement Agreement and all appendices attached hereto (listed in Section XXII).

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

e. "Defendants" or "Settling Defendants" shall mean Republic Silver State Disposal, Inc., d/b/a Republic Services of

Southern Nevada (hereinafter "RSSN"), Republic Dumpco, Inc. ("Republic Dumpco"), and Clark County Nevada, a political subdivision of the State of Nevada ("County").

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

g. "Landfill" or "Sunrise Mountain Landfill" shall mean the areal extent of waste disposal at the former operating landfill generally situated within portions of Section 1 and 12, Township 21 South, Range 62 East, Mount Diablo Meridian, which for purposes of this Decree shall include disposal areas adjacent to the permitted disposal area, including the waste deposited on the approximately 40 acres of the Northeast Canyon Landfill, as well as waste deposited on 23 acres in the Eastern Perimeter area, and any disturbed land associated with waste disposal, even if these areas are not part of the land leased by Clark County from the BLM for waste disposal. "Landfill" and "Sunrise Mountain Landfill" shall also include the drainage facilities and conveyances required by this Consent Decree as well as existing drainage structures and facilities, and any additional land necessary for the implementation of the Work. The boundary of the Sunrise Mountain Landfill as defined herein is generally shown on the Site Map provided in Attachment 1 to Appendix A.

h. "Northeast Canyon Landfill" shall mean the

approximately 40 acres of waste disposal located to the northeast of the former operating landfill generally situated within portions of Section 1 and 12 Township 21 South, Range 62 East, Mount Diablo Meridian on land leased by Clark County, Nevada from the BLM. The Northeast Canyon Landfill is not part of the land leased by Clark County for waste disposal. The approximate boundary of the Northeast Canyon Landfill is shown on the Site Map provided in Attachment 1 to Appendix A.

i. "Nevada General Permit" shall mean the State of Nevada-issued General Permit GNV0022233 for storm water.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

k. "Party" shall mean the United States or any of the Settling Defendants, respectively, and "Parties" shall mean the United States and Settling Defendants.

l. "Section" shall mean a portion of this Decree identified by a roman numeral.

m. "United States" shall mean the United States of America, including EPA and BLM.

n. "Work" means all activities that Defendants are required to perform under this Consent Decree, including activities required under Appendix A.

IV. CIVIL PENALTY

9. RSSN and Republic Dumpco shall be jointly and severally liable for and shall pay the sum of \$1 million as a civil penalty within 30 days after the Effective Date of this Consent Decree, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to RSSN and Republic Dumpco, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Nevada. At the time of payment, RSSN and Republic Dumpco shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-7-1-06725/2 and the civil action number of this case) to the United States in accordance with Section XV of this Decree (Notices).

10. If RSSN and Republic Dumpco fail to pay the civil penalty according to the terms of this Consent Decree, RSSN and Republic Dumpco shall be liable for interest on such penalty, as provided for in 28 U.S.C. § 1961, accruing as of the date when such penalty was due.

11. RSSN and Republic Dumpco shall not deduct the civil penalty paid under this Section in calculating their federal

income tax.

V. COMPLIANCE REQUIREMENTS

12. Settling Defendants shall comply with all applicable state, federal and local laws and regulations, including RCRA and CWA requirements, during the period of their implementation of the Work.

13. RSSN and Republic Dumpco shall fund and perform all Work described in, and comply with all requirements of, Appendix A, subject to Paragraph 74.

14. Approval of Deliverables. RSSN and Republic Dumpco shall submit any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Consent Decree to EPA. EPA may approve the submittal or decline to approve it and provide written comments. Within 30 days of receiving EPA's written comments, or such longer time as specified by EPA, RSSN and Republic Dumpco shall either: (i) alter the submittal consistent with EPA's written comments and provide the submittal to EPA for final approval; or (ii) submit the matter for dispute resolution under Section X of this Decree. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, RSSN and Republic Dumpco shall implement the submittal in accordance with the schedule in the approved submittal.

15. Permits. Where any compliance obligation under this Section requires RSSN and Republic Dumpco to obtain a federal, state, or local permit or approval, RSSN and Republic Dumpco shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. County shall cooperate with and support RSSN and Republic Dumpco with regard to their efforts to obtain all such federal or state permits or approvals. For any discretionary approvals that may be required from the County, County agrees to diligently process RSSN and Republic Dumpco applications once the applications are determined to be complete. RSSN and Republic Dumpco may seek relief under the provisions of Section IX of this Consent Decree (Force Majeure) for any delay in the performance of any compliance obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if RSSN and Republic Dumpco have submitted timely and complete applications and have timely taken all other actions necessary to obtain all such permits or approvals.

16. Indemnification.

a. The United States does not assume any liability by entering into this Consent Decree. RSSN and Republic Dumpco shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of

action arising from, or on account of, negligent or other wrongful acts or omissions of RSSN and Republic Dumpco, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Further, RSSN and Republic Dumpco agree to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of RSSN and Republic Dumpco, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of RSSN and Republic Dumpco in carrying out activities pursuant to this Consent Decree. Neither RSSN and Republic Dumpco nor any such contractor shall be considered an agent of the United States.

b. The United States shall give RSSN and Republic Dumpco timely notice of any receipt of any claim by a third party for which the United States plans to seek indemnification pursuant this Paragraph, and shall consult with RSSN and Republic Dumpco a reasonable period of time prior to settling such claim.

c. Notwithstanding the above Subparagraph, RSSN and Republic Dumpco retain the right to settle any such claim at any time on any basis acceptable to them, so long as such settlement imposes no liability on the United States, does not commit the United States to any legal position, or, except for ministerial actions necessary to effectuate any such settlement, imposes no other obligations on the United States, and provided that no such settlement shall in any way alter RSSN and Republic Dumpco's obligations under this Consent Decree.

d. RSSN and Republic Dumpco waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between RSSN and Republic Dumpco and any person for performance of activities pursuant to this Consent Decree, including, but not limited to, claims on account of construction delays. In addition, RSSN and Republic Dumpco shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between RSSN and Republic Dumpco and any person for performance of activities pursuant to this Consent Decree, including, but not limited to, claims on account of construction delays.

17. Insurance. After entry of the Consent Decree, and no later than 15 days before commencing any on-site activities pursuant to this Consent Decree, RSSN and Republic Dumpco shall secure, and shall maintain until completion of all on-site activities pursuant to this Consent Decree, comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, RSSN and Republic Dumpco shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of RSSN and Republic Dumpco pursuant to this Consent Decree. After entry of this Consent Decree, and prior to commencement of the Work under this Consent Decree, RSSN and Republic Dumpco shall provide to EPA certificates of such insurance and a copy of each insurance policy. RSSN and Republic Dumpco shall resubmit such certificates each year on the anniversary of the Effective Date, or at the time of policy renewal, whichever is later. If RSSN and Republic Dumpco demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser

amount, then, with respect to that contractor or subcontractor, RSSN and Republic Dumpco need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

VI. ASSURANCE OF PERFORMANCE

18. In order to ensure the full and final completion of the Work in accordance with this Consent Decree, RSSN and Republic Dumpco shall establish and maintain financial assurance for the benefit of EPA in the amount of \$36.3 million (hereinafter "Estimated Cost of the Work") in one or more of the forms listed in Subparagraphs a through f of this Paragraph. At the time of establishing any financial assurance under this Paragraph, the Parties shall agree on the form and substance of the particular financial instrument chosen.

a. A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under Federal or State law and whose trust operations are regulated and examined by a Federal or State agency. The trust agreement shall provide that the trustee shall make payments from the fund: (1) to reimburse RSSN and Republic Dumpco from the fund for expenditures made by RSSN and Republic Dumpco for Work performed in accordance with this Consent Decree; or (2) to pay any other person who has performed or will perform the Work in accordance with this Consent Decree. The trust agreement shall

provide that no payments will be made by the trustee unless EPA directs the trustee in writing that the Work described in a particular invoice, bill or similar document has been performed in accordance with this Consent Decree. Specific procedures for submission of bills and review of bills by EPA may be set forth in the trust agreement or associated documents. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the Work under this Consent Decree has been successfully completed.

b. A surety bond unconditionally guaranteeing performance of the Work in accordance with this Consent Decree, or guaranteeing payment at the direction of EPA pursuant to Paragraph 25.b. into a standby trust fund that meets the requirements of the trust fund in Paragraph 18.a. above. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of the Treasury.

c. An irrevocable letter of credit, payable at the direction of EPA pursuant to Paragraph 25.b. into a standby trust fund that meets the requirements of the trust fund in Paragraph 18.a above. The letter of credit shall be issued by a financial institution (i) that has the authority to issue letters of credit, and (ii) whose letter-of-credit operations are regulated

and examined by a Federal or State agency.

d. A policy of insurance that: (i) provides EPA with acceptable rights as a beneficiary; and (ii) is issued by an insurance carrier that (a) has the authority to issue insurance policies in the applicable jurisdiction(s), and (b) whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy shall be issued for a face amount at least equal to the current Estimated Cost of the Work to be performed under this Consent Decree, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted by Paragraph 22. The policy shall provide that the insurer shall make payments: (i) to reimburse RSSN and Republic Dumpco for expenditures made by RSSN and Republic Dumpco for Work performed in accordance with this Consent Decree; or (ii) to pay any other person who has performed or will perform the Work in accordance with this Consent Decree. The policy shall provide that no payments will be made by the insurer unless EPA directs the insurer in writing that the Work described in an invoice, bill or similar document has been performed in accordance with this Consent Decree. Specific procedures for submission of bills and review of bills by EPA may be set forth in the insurance policy or associated documents. The policy shall also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full

force and effect in the event that (i) RSSN and Republic Dumpco are named as debtors in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of RSSN and Republic Dumpco's failure to perform under Paragraph 25.

e. A corporate guarantee, executed by one or more of the following: (i) a direct or indirect parent company, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with RSSN and Republic Dumpco, to perform the Work in accordance with this Consent Decree or to establish a trust fund as permitted by Paragraph 18.a. above; provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work.

f. A demonstration by RSSN and Republic Dumpco that RSSN and/or Republic Dumpco meet the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

19. RSSN and Republic Dumpco have selected, and EPA has approved, as initial financial assurance a written guarantee by a direct parent company of RSSN, pursuant to Paragraph 18.e., in the form attached hereto as Appendix B. Within ten days after

the entry of this Consent Decree, RSSN and Republic Dumpco shall execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the documents attached hereto as Appendix B, and such financial assurance shall thereupon be fully effective. Within thirty days of entry of this Consent Decree, RSSN and Republic Dumpco shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Regional Financial Management Officer, in accordance with Section XV ("Notices") of this Consent Decree, and to the United States and EPA as specified in Section XV.

20. If at any time during the effective period of this Consent Decree, RSSN and Republic Dumpco provide financial assurance for completion of the Work by means of a corporate guarantee or financial test pursuant to Paragraph 18.e. or Paragraph 18.f. above, RSSN and Republic Dumpco shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in this Consent Decree, including but not limited to: (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public

accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). RSSN and Republic Dumpco further agree that if RSSN and Republic Dumpco provide financial assurance by means of a corporate guarantee or financial test, EPA may request relevant additional existing financial information (including financial statements and accountant's reports) relating to the corporate guarantee or financial test from RSSN and Republic Dumpco or the corporate guarantor at any time.

21. For purposes of the corporate guarantee or the financial test described in Paragraphs 18.e. and 18.f. of this Section, references in 40 CFR 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations" (including obligations under CERCLA, RCRA, the underground injection control program under the Safe Drinking Water Act, and the Toxic Substances Control Act) guaranteed by such company or for which such company is otherwise financially obligated, in addition to the Estimated Cost of the Work.

22. RSSN and Republic Dumpco may combine more than one mechanism to demonstrate financial assurance for the Work to be performed in accordance with this Consent Decree.

23. In the event that EPA determines at any time that financial assurance provided by RSSN and Republic Dumpco pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that RSSN and Republic Dumpco become aware of information indicating that a financial assurance provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, RSSN and Republic Dumpco, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of RSSN and Republic Dumpco becoming aware of such information, shall notify EPA, and within sixty days shall obtain and present to EPA for approval a proposal for a revised or alternative form of financial assurance listed in Paragraph 18 of this Consent Decree that satisfies all requirements set forth in this Section. In seeking approval for a revised or alternative form of financial assurance, RSSN and Republic Dumpco shall follow the procedures set forth in Paragraph 26.b.(ii) of this Consent Decree. RSSN's and Republic

Dumpco's inability to post financial assurance for completion of the Work shall in no way excuse performance of any other requirement of this Consent Decree, including, without limitation, the obligation of RSSN and Republic Dumpco to complete the Work in accordance with the terms of the Consent Decree.

24. Any and all financial assurance instruments provided pursuant to Paragraphs 18.b., 18.c., 18.d. or 18.e. shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both RSSN and Republic Dumpco and EPA's Sunrise Project Coordinator (identified in Appendix A) at least one hundred and twenty days prior to expiration, cancellation or termination of the instrument of a decision to cancel, terminate or not renew a financial assurance instrument. The one hundred and twenty days will begin to run with the date of receipt of the notice by both the EPA's Sunrise Project Coordinator (identified in Appendix A) and RSSN and Republic Dumpco. Furthermore, if RSSN and Republic Dumpco have failed to provide alternate financial assurance and obtain written approval for such alternate financial assurance within ninety days following receipt of such notice by both RSSN and Republic Dumpco and the EPA's Sunrise Project Coordinator (identified in Appendix A), then the EPA's Sunrise Project Coordinator (identified in Appendix A) will so notify the

financial assurance provider in writing prior to the expiration of the instrument, and the financial assurance provider shall immediately deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this Consent Decree.

25. Performance Failure.

a. In the event that EPA determines that RSSN and Republic Dumpco (i) have ceased implementation of any portion of the Work, (ii) are significantly or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both RSSN and Republic Dumpco and the financial assurance provider of RSSN and Republic Dumpco's failure to perform. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide RSSN and Republic Dumpco with a period of ten days within which to remedy the circumstances giving rise to the issuance of such notice.

b. Failure by RSSN and Republic Dumpco to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the ten-day notice period specified in Paragraph 25.a. shall trigger EPA's right to have immediate access to and

benefit of the financial assurance provided pursuant to Paragraphs 18.a., 18.b., 18.c., or 18.d.

(1) For financial assurance provided pursuant to Paragraphs 18.a., 18.b., 18.c. or 18.d., EPA may at any time thereafter direct the financial assurance provider to immediately establish a trust fund under Paragraph 18.a if one does not already exist. EPA may also at any time thereafter direct the financial assurance provider to immediately (i) deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument, or (ii) arrange for performance of the Work in accordance with this Consent Decree.

(2) For financial assurance provided pursuant to Paragraphs 18.e. and 18.f., EPA may at any time thereafter direct the financial assurance provider to immediately either: (i) establish a trust fund under Paragraph 18.a if one does not already exist, and deposit into the standby trust fund, or the newly created trust fund, 50% of the remaining funds obligated under the financial assurance instrument; or (ii) perform or arrange for performance of the Work in accordance with this Consent Decree. If the financial assurance provider agrees to deposit 50% of the remaining funds into the standby trust fund or a new trust fund, it shall also agree to provide an additional 25% of the remaining funds when the 50% of the funds in the trust

fund have been reduced by half.

c. If EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 25.a. have occurred, and if EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this Consent Decree from the financial assurance provider pursuant to this Consent Decree, then, upon receiving written notice from EPA, RSSN and Republic Dumpco shall within ten days thereafter deposit into the standby trust fund, or a newly created trust fund approved by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed in accordance with this Consent Decree as of such date, as determined by EPA.

d. RSSN and Republic Dumpco may invoke the procedures set forth in Section X (Dispute Resolution), to dispute EPA's determination that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 25.a. have occurred. Invoking the dispute resolution provisions shall not excuse, toll or suspend the obligation of the financial assurance provider, under Paragraph 25.b. of this section, to fund the trust fund as set forth in Paragraph 25.b. or to perform the Work. Furthermore, notwithstanding RSSN and Republic Dumpco's invocation of such

dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion direct the trustee of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this Consent Decree until the earlier of (i) the date that RSSN and Republic Dumpco remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice or (ii) the date that a final decision is rendered in accordance with Section X (Dispute Resolution), that RSSN and Republic Dumpco have not failed to perform the Work in accordance with this Consent Decree.

26. Modification.

a. Reduction of Amount of Financial Assurance. If RSSN and Republic Dumpco believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 18 above, RSSN and Republic Dumpco may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the financial assurance provided pursuant to this Section so that the amount of the financial assurance is equal to the actual estimated cost of the remaining Work to be performed. RSSN and Republic Dumpco shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the

basis upon which such cost was calculated. In seeking approval for a revised or alternative form of financial assurance, Settling Defendants shall follow the procedures set forth in this Section. If EPA decides to accept such a proposal, EPA shall notify RSSN and Republic Dumpco of such decision in writing. After receiving EPA's written acceptance, RSSN and Republic Dumpco may reduce the amount of the financial assurance in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, unless such dispute is settled by the informal negotiations required by Paragraph 49, RSSN and Republic Dumpco may reduce the amount of the financial assurance required hereunder only in accordance with a final judicial decision pursuant to Section X (Dispute Resolution). No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in this Section.

b. Change of Form of Financial Assurance.

(i) If, after entry of this Consent Decree, RSSN and Republic Dumpco desire to change the form or terms of any financial assurance provided pursuant to this Section, RSSN and Republic Dumpco may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the financial assurance provided hereunder. The submission of such

proposed revised or alternative form of financial assurance shall be as provided in this Section.

(ii) RSSN and Republic Dumpco shall submit a written proposal for a revised or alternative form of financial assurance to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of financial assurance, including all proposed instruments or other documents required in order to make the proposed financial assurance legally binding. The proposed revised or alternative form of financial assurance must satisfy all requirements set forth in this Section. RSSN and Republic Dumpco shall submit such proposed revised or alternative form of financial assurance to the EPA Regional Financial Management Officer, in accordance with Section XV ("Notices") of this Consent Decree. EPA shall notify Settling Defendant(s) in writing of its decision to accept or reject a revised or alternative financial assurance submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative financial assurance, RSSN and Republic Dumpco shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such

financial assurance shall thereupon be fully effective. RSSN and Republic Dumpco shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance(s) legally binding to the EPA Regional Financial Management Officer within thirty days of receiving a written decision approving the proposed revised or alternative financial assurance in accordance with Section XV ("Notices") of this Consent Decree and to the United States and EPA as specified in Section XV. In the event of a dispute, unless such dispute is settled by the informal negotiations required by Paragraph 49, RSSN and Republic Dumpco may change the form of financial assurance required hereunder only in accordance with a final judicial decision pursuant to Section X (Dispute Resolution).

c. Release of Financial Assurance. If RSSN and Republic Dumpco receive written notice from EPA that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies RSSN and Republic Dumpco in writing, RSSN and Republic Dumpco may thereafter release, cancel, or discontinue the financial assurance(s) provided pursuant to this Section. RSSN and Republic Dumpco shall not release, cancel, or discontinue any financial assurance provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, unless

such dispute is settled by the informal negotiations required by Paragraph 49, RSSN and Republic Dumpco may release, cancel, or discontinue the financial assurance(s) required hereunder only in accordance with a final judicial decision pursuant to Section X (Dispute Resolution).

VII. REPORTING REQUIREMENTS

27. RSSN and Republic Dumpco shall submit all reports required under Appendix A.

28. If RSSN and Republic Dumpco violate any requirement of this Consent Decree, RSSN and Republic Dumpco shall notify the United States of such violation and its likely duration, in writing, within ten working days of the day RSSN and Republic Dumpco first become aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent the violation or minimize the duration and the environmental effects of such violation. If the cause of a violation cannot be fully explained at the time this report is due, RSSN and Republic Dumpco shall so state in the report, and RSSN and Republic Dumpco shall then investigate the cause of the violation and shall submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day RSSN and Republic Dumpco become aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves RSSN and Republic Dumpco of their obligation

to provide the notice required by Section IX of this Consent Decree (Force Majeure).

29. Whenever any violation of any requirement of this Consent Decree, any other event materially affecting RSSN and Republic Dumpco's performance under this Decree, or the performance of the Landfill, may pose an immediate threat to the public health or welfare or the environment, RSSN and Republic Dumpco shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after RSSN and Republic Dumpco first knew of, or in the exercise of reasonable diligence under the circumstances should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

30. Each report submitted by RSSN and Republic Dumpco under this Section shall be signed by a representative of the submitting Party and include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility

of fines and imprisonment for knowingly and willfully submitting a materially false statement.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical. All reports required by Appendix A shall be submitted to the persons designated in Appendix A.

31. The reporting requirements of this Consent Decree do not relieve RSSN and Republic Dumpco of any reporting obligations required by federal, state, or local law, regulation, permit, or other requirements, including by RCRA or the CWA.

32. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

33. Stipulated Penalties shall be paid in accordance with Section VIII, Paragraph 34, below. All transmittal correspondence shall state that any such payment is for Stipulated Penalties and shall include the identifying information set forth in Paragraph 9, above.

34. RSSN and Republic Dumpco shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform the Work

required by the terms of this Decree, including the submission of any work plan or schedule required under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

35. Compliance Milestones

a. The following Stipulated Penalties shall accrue per violation per day for each violation of the requirements identified in Subparagraph b of this Paragraph. The start date for the period of any alleged noncompliance shall be determined for each of the requirements in Subparagraph b of this Paragraph using the dates specified in Appendix A.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$2,500	31st day and beyond.

b. Requirements.

- i. Health and Safety Plan
- ii. Sampling and Analysis Plan
- iii. Storm Water Monitoring Plan
- iv. Construction Quality Assurance Plan
- v. Overall Project Workplan
- vi. Project Schedule

- vii. Final Cover Corrective Measures Workplan
- viii. Gas Monitoring and Corrective Action Workplan
- ix. Groundwater Monitoring Workplan
- x. Storm Water Control Workplan
- xi. Long-Term Operation and Maintenance Plan
- xii. Implementation of the Work called for in any of the foregoing plans, on the schedule called for in the approved plans
- xiii. Final Overall Project Workplan Implementation Report
- xiv. Maintaining insurance and financial assurance
- xv. Document retention
- xvi. Payment of the civil penalty required under Section IV of this Decree ("Civil Penalty") when due, except that the start date is determined under Section IV, not under Appendix A.

36. Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section VII or of Appendix A of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond.

37. Subject to the provisions of Paragraph 38, 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. RSSN and Republic Dumpco shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand, or shall refer the EPA demand for Stipulated Penalty to the dispute resolution procedure provided in Section X of this Consent Decree.

38. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due it under this Consent Decree.

39. Stipulated Penalties shall continue to accrue as provided in Paragraph 37, above, during any Dispute Resolution, but shall be paid in accordance with the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, RSSN and Republic Dumpco shall pay accrued penalties determined to be owing pursuant to such agreement or decision of EPA that is not appealed to the Court, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, RSSN and Republic Dumpco 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, except as provided in Subparagraph c, below. In the event that RSSN and Republic Dumpco prevail, and there is no appeal, RSSN and Republic Dumpco shall not owe any stipulated penalties associated with such claim.

c. If any Party appeals the District Court's decision, and the United States prevails in whole or in part, RSSN and Republic Dumpco shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision.

40. RSSN and Republic Dumpco shall, as directed by the United States in its demand, pay Stipulated Penalties owing to the United States by EFT in accordance with Paragraph 9, above or by certified or cashier's check in the amount due, payable to the U.S. Department of Justice, referencing DOJ No. 90-7-1-06725/2 and delivered to the office of the United States Attorney, District of Nevada, Financial Litigation Unit.

41. RSSN and Republic Dumpco shall not deduct Stipulated Penalties paid under this Section in calculating their federal income tax.

42. If RSSN and Republic Dumpco fail to pay Stipulated Penalties according to the terms of this Consent Decree, RSSN and Republic Dumpco shall be liable for interest on such penalties,

as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

43. Subject to the provisions of Section XII of this Consent Decree (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 Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CWA, RSSN and Republic Dumpco shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

44. A "Force Majeure" event is, for the purposes of this Consent Decree, any event beyond the control of Settling Defendants, or their officers, employees, agents, and contractors, that delays the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. "Best efforts" include anticipating any potential Force Majeure event and addressing 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 Settling Defendants' financial inability to perform any obligation under this Consent Decree.

45. Settling Defendants shall provide notice orally or by electronic or facsimile transmission as soon as practicable under the circumstances, but not later than 4 days after the time Settling Defendants first knew of, or by the exercise of reasonable diligence under the circumstances, should have known of, a claimed Force Majeure event. Within 15 days thereafter, Settling Defendants shall also provide written notice, as provided in Section XV of this Consent Decree (Notices), which shall state the anticipated duration of any delay; its cause(s); Defendants' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendants' rationale for attributing any delay to a Force Majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Settling Defendants from asserting any claim of Force Majeure, unless the United States agrees otherwise.

46. If the United States agrees that a Force Majeure event has occurred, and the United States and the Settling Defendants agree on the time extension necessary for Settling Defendants to perform the requirements affected by the Force Majeure event, such agreements shall be set forth in a stipulation that includes the length of the extension, if any, for performance of the obligations affected by the Force Majeure event. Settling Defendants shall not be liable for stipulated penalties for any

such period of delay. An extension of time to perform the obligations affected by a Force Majeure event shall not, by itself, extend the time to perform any other obligation. An extension of time shall be treated as a non-material modification to the Consent Decree pursuant to Section XVIII of this Consent Decree (Modification).

47. If the United States does not agree that a Force Majeure event has occurred, or if the United States agrees that a Force Majeure event has occurred but the United States and the Settling Defendants do not agree on the extension of time necessary for Settling Defendants to perform the requirements affected by the Force Majeure event, the United States shall notify the Settling Defendants in writing of its decision and the basis thereof. The United States' position shall be binding, unless Settling Defendants invoke Dispute Resolution under Section X of this Consent Decree. In any such dispute, Settling Defendants bear the burden of proving, by a preponderance of the evidence, that Settling Defendants gave the notice required by Paragraph 45 and that Settling Defendants exercised best efforts to prevent or minimize any delay caused by the event. In any such dispute, EPA's position on whether each claimed Force Majeure event is a Force Majeure event, and whether the Force Majeure event caused the delay, is reviewable only on the administrative record and must be upheld unless arbitrary and

capricious or otherwise not in accordance with law. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree, and Settling Defendants shall not have to pay any stipulated penalties associated with the delay.

X. DISPUTE RESOLUTION

48. 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. Settling Defendants' failure to seek resolution of a dispute under this Section shall preclude Settling Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Settling Defendants arising under this Decree. The County's right to invoke Dispute Resolution is limited solely to those matters for which the County has undertaken an obligation in this Consent Decree, and shall not extend to any matters for which the County is not obligated to undertake any action under this Consent Decree.

49. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of good faith informal negotiations. The dispute shall be considered to have arisen when Settling Defendant or

Defendants send(s) 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 30 days from the date the dispute arises, unless that period is extended by written agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Settling Defendant or Defendants invoke formal dispute resolution procedures as set forth below.

50. Formal Dispute Resolution. Settling Defendant or 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 Settling Defendant's or Defendants' position and any supporting documentation relied upon by Settling Defendant or Defendants.

51. The United States shall serve its Statement of Position within 45 days of receipt of Settling Defendant's or 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 that position and any supporting

documentation relied upon by the United States. The United States' Statement of Position shall be binding on Settling Defendant or Defendants, unless Settling Defendant or Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

52. Settling Defendant or Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV of this Consent Decree (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 Settling Defendant's or 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.

53. The United States shall respond to Settling Defendant's or Defendants' motion within 30 days after receipt of the motion, or any longer time period allowed by the Local Rules of this Court. Settling Defendant or Defendants may file a reply memorandum, to the extent permitted by the local court rules.

54. In any dispute brought under Paragraph 50, Settling Defendant or Defendants shall bear the burden of demonstrating

that their position complies with this Consent Decree and applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law. Settling Defendant or Defendants reserve the right to argue that review should not be limited to the administrative record, and that the United States' litigation position is not entitled to any deference.

55. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Settling Defendant or Defendants under this Consent Decree, unless and until final resolution of the dispute so provides, or unless EPA agrees in writing otherwise. If Settling Defendant or Defendants do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. ACCESS, INFORMATION COLLECTION AND RETENTION

56. Until termination of this Consent Decree, the United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry onto the Landfill, at all reasonable times, upon presentation of credentials, and without causing unreasonable interference with the Work, 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 RSSN and Republic Dumpco or their representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess RSSN and Republic Dumpco's compliance with this Consent Decree.

57. Upon request, RSSN and Republic Dumpco shall provide EPA or its authorized representatives splits of any samples taken by RSSN and Republic Dumpco. Upon request, EPA shall provide RSSN and Republic Dumpco splits of any samples taken by EPA, if the Party requesting the sample (or its employee, agent, or representative) is present to receive the split sample at the time EPA collects it. Upon request, RSSN and Republic Dumpco and EPA shall provide each other by e-mail the interim and final sampling and analysis results of any analyses of split samples provided under this Paragraph, and RSSN and Republic Dumpco and EPA shall also provide a hard copy of the results of sampling and analysis to the other within 30 days from the date RSSN and Republic Dumpco or EPA receive final sampling and analysis results from the laboratory.

58. Until two years after the termination of this Consent Decree, RSSN and Republic Dumpco shall retain, and shall instruct their contractors and agents to preserve, at least one copy of all documents, records, or other information (including documents, records, or other information in electronic form) in their possession or control or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, that relate in any manner to RSSN and Republic Dumpco's performance of their obligations under this Consent Decree. The obligations of this Section shall not apply to drafts of documents, records or other information if the final form of such records, documents, or other information is substantially the same and is otherwise retained by RSSN and Republic Dumpco pursuant to this Section. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, the United States may request copies of any documents, records, or other information required to be maintained under this Paragraph. Nothing in the previous sentence shall affect RSSN and Republic Dumpco's rights to claim any privilege or similar protection with respect to such documents.

59. After the conclusion of the information-retention period provided in the preceding Paragraph, RSSN and Republic

Dumpco 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, RSSN and Republic Dumpco shall deliver any such documents, records, or other information to EPA.

RSSN and Republic Dumpco may assert that certain documents, records, or other information are privileged under the attorney-client privilege, attorney work product doctrine, or any other privilege/doctrine ("privilege") recognized by federal law. If RSSN and Republic Dumpco assert such a privilege, they shall provide the following: (1) the title of each document, record, or information; (2) the date of each 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 each subject of the document, record, or information; and (6) the privilege asserted by RSSN and Republic Dumpco. However, RSSN and Republic Dumpco cannot withhold on grounds of privilege the final versions of documents, records, or other information created or generated pursuant to this Consent Decree.

60. RSSN and Republic Dumpco 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 RSSN and Republic

Dumpco seek to protect as CBI, RSSN and Republic Dumpco shall follow the procedures set forth in 40 C.F.R. Part 2. Documents or information determined to be confidential by EPA shall be afforded the protection specified in 40 C.F.R., Part 2, Subpart B.

61. 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 pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of RSSN and Republic Dumpco to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

62.

a. If access by an authorized governmental agency or its authorized representatives or contractors is required to implement this Consent Decree, RSSN and Republic Dumpco shall not interfere with such access, and shall refrain from using the Landfill in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree.

b. If the County becomes owner of the Landfill, it shall refrain from using the Landfill in any manner that would interfere with or adversely affect the implementation, integrity,

or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. If access by an authorized governmental agency or its authorized representatives or contractors is needed to implement this Consent Decree, the County shall not interfere with such access.

XII. TRANSFER OF LANDFILL

63. BLM and County agree that, after the Effective Date of this Consent Decree, the County and BLM shall undertake efforts to ensure that Sunrise Mountain Landfill shall be transferred from the United States to County in the most cost-effective and expeditious manner. BLM and the County agree to work in good faith to effect the transfer of Sunrise Mountain Landfill to the County by any and all lawful means. Nothing in this Paragraph relieves BLM of any legal requirements applying to such transfer, and the Parties recognize that the application of other laws may require public comment, impose expenses or may prevent the transfer. Each of the Parties agrees and covenants to use its best efforts to assist and facilitate the transfer of Sunrise Mountain Landfill to County. In the event that the land transfer required by this Paragraph is not consummated for any reason whatsoever, all Parties remain bound by this Consent Decree, and all provisions of the Consent Decree shall remain in full force and effect.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

64. On the Effective Date, the following administrative orders shall be deemed withdrawn: *In the matter of: Republic Disposal Urban Maintenance Processing Co., Inc.*, U.S. EPA Docket No. RCRA 7003-09-99-0005, and *In the Matter of: Republic Disposal Urban Maintenance Processing Co., Inc.*, Docket No. CWA-309-99-14 ("the 1999 Orders"). On the Effective Date, the provisions of this Consent Decree, including Appendix A, shall supersede and replace the 1999 Orders.

65. In consideration of the actions that will be performed by the Settling Defendants and the payments that will be made by RSSN and Republic Dumpco under the terms of this Consent Decree, this Consent Decree resolves the civil claims of the United States alleged in the Complaint filed in this action, through the date of lodging of this Consent Decree, other than the first claim for relief.

66. In consideration of the actions that will be performed by the Settling Defendants under the terms of this Consent Decree and subject to the reservations set forth in Paragraphs 67 and 68 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants relating to the Landfill pursuant to Section 7003 of RCRA, Sections 311 and 504 of the CWA, and Sections 106 and 107 of CERCLA. These

covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

67. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants to perform further actions relating to the Landfill if:

a. conditions at the Landfill, previously unknown to EPA or BLM, are discovered, or

b. information, previously unknown to EPA or BLM, is received, in whole or in part, and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Work is not protective of human health or the environment. For purposes of this Paragraph, the information and the conditions known to EPA or BLM shall include only that information and those conditions known to EPA or BLM as of the date of lodging of this Consent Decree.

68. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included in Paragraphs 65

and 66. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of waste material outside of the Landfill;
- c. liability for damages for injury to, destruction of, or loss of natural resources;
- d. criminal liability;
- e. liability for violations of federal or state law which occur during or after implementation of the Work.

69. Settling Defendants covenant not to sue the United States for any and agree not to assert any claims or causes of action against the United States or its contractors or employees, with respect to the Landfill, the Work, and/or this Consent Decree, including any costs incurred by the Defendants pursuant to the requirements of this Consent Decree, including, but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law; any claims against the United States under CERCLA Sections 107 or 113

related to the Landfill, or any claims arising out of response actions or corrective measures at or in connection with the Landfill, including any claim under the United States Constitution, the Nevada Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

70. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Landfill, Settling 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-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; provided, however, that nothing in this Paragraph affects the enforceability of the United States' covenant not to sue set forth in this Section.

71. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. In performing the Work, Settling Defendants are responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations, and permits. 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 CWA, RCRA, or the Nevada General Permit, or with any other provisions of applicable federal, State, or local laws, regulations, or permits.

72. This Consent Decree does not limit or affect the rights of Settling 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 Settling Defendants, except as otherwise provided by law.

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

74. The Consent Decree is not an admission by Settling Defendants of, or adjudication of, any liability of Settling Defendants relating to the claims of the United States. Except as explicitly set forth herein in Section I, this Consent Decree is not an admission by Settling Defendants of, or adjudication of, any issue of fact or law arising out of the transactions or occurrences alleged in the Complaint. There is a pending dispute among Settling Defendants as to which of the Settling Defendants, or other persons or entities not a Party to this Consent Decree, should bear the costs of the work being undertaken pursuant to

this Consent Decree ("the Dispute"). Settling Defendants agree among themselves that the fact that certain Settling Defendants have assumed certain obligations hereunder may not be admitted in evidence in any judicial proceeding that is initiated to resolve the Dispute. Nothing in this Consent Decree shall be deemed to amend, modify or abrogate any agreement between Settling Defendants regarding the Sunrise Mountain Landfill.

75. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and BLM are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. The "matters addressed" in this settlement are the Work and all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Landfill. The "matters addressed" in this judicially-approved settlement do not include those matters as to which the United States has reserved its rights under this Consent Decree.

XIV. COSTS

76. 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 RSSN and Republic Dumpco.

XV. NOTICES

77. Unless otherwise specified herein or in Appendix A, 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. 90-7-1-06725/2

To EPA:

Steve Wall (WST-7)
Project Manager for the Sunrise Landfill Site
U.S. Environmental Protection Agency, Region IX
75 Hawthorne St.
San Francisco, CA 94105

and

Ken Greenberg
Environmental Engineer, CWA Compliance Office
Water Division
EPA Region IX
75 Hawthorne Street (WTR-7)
San Francisco, CA 94105

and

Laurie Williams (ORC-3)(Sunrise Landfill)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne St.
San Francisco, CA 94105

To BLM:

Clementine Berger
Regional Solicitor's Office
U.S. Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, California 9582-1890

To Settling Defendants:

To RSSN and Republic Dumpco:

Alan J. Gaddy
Republic Services of Southern Nevada
770 E. Sahara Avenue
Las Vegas, Nevada 89104

and

David A. Barclay
Senior Vice President, General Counsel
Republic Industries, Inc.
110 S.E. 6th Street, 28th Floor
Ft. Lauderdale, Florida 33301

and

Donald J. Patterson, Jr.
Beveridge & Diamond, P.C.
1350 I Street, N.W., Suite 700
Washington, DC 20005

and

Steven G. Barringer
Holland & Hart, LLP
701 Pennsylvania Avenue, N.W., Suite 250
Washington, DC 20004

To Clark County, Nevada:

Christine Robinson, Director
Department of Air Quality and Environmental Management
P.O. Box 555210
500 S. Grand Central Parkway
Las Vegas, Nevada 89155-5210

and

Catherine Jorgenson
Elizabeth Vibert
Deputy District Attorneys
Office of the District Attorney, Civil Division
P.O. Box 552215
500 S. Grand Central Parkway Las Vegas, Nevada 89155-2215

and

Scott W. Gordon
Law Offices of Scott W. Gordon
1990 North California Blvd.
Suite 940
Walnut Creek, California 94596.

78. Notices submitted pursuant to this Section shall be deemed effective upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing. Notice shall be sent by mail, certified or registered mail, by Federal Express or equivalent overnight service, or by e-mail.

XVI. EFFECTIVE DATE

79. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVII. RETENTION OF JURISDICTION

80. 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 X and XVIII, or effectuating or enforcing compliance with the terms of this Decree.

XVIII. MODIFICATION

81. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. The terms and schedules contained in the Appendices of this Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects the Settling Defendants' ability to meet the requirements or objectives of this Decree.

XIX. TERMINATION

82. Beginning one year after RSSN and Republic Dumpco have completed the Work and all of their obligations under this Consent Decree, and provided that RSSN and Republic Dumpco have resolved any stipulated penalties pursuant to Section VIII, RSSN and Republic Dumpco and/or the County may serve upon the United States a Request for Termination, stating that RSSN and Republic Dumpco have satisfied those requirements, together with all necessary supporting documentation.

83. Following receipt by the United States of Settling Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Settling Defendants have satisfac-

torily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

84. If the United States does not agree that the Decree may be terminated, Settling Defendants may invoke dispute resolution under Section X of this Decree.

XX. PUBLIC PARTICIPATION

85. This Consent Decree shall be lodged with the Court for a period of not less than thirty (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 RCRA Section 7003(d), 42 U.S.C. § 6973(d). Settling Defendants consent to entry of this Consent Decree without further notice, unless the United States notifies Settling Defendants in writing that it no longer supports entry of the Decree.

XXI. SIGNATORIES/SERVICE

86. Each undersigned representative of Settling Defendants 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.

87. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

88. Settling Defendants agree 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.

XXII. INTEGRATION/APPENDICES

89. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and deliverables that are subsequently submitted and approved pursuant to this Decree, 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.

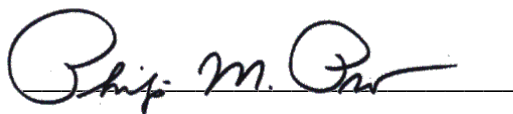
90. The following appendixes are attached to and incorporated into this Consent Decree: Appendix A, "Scope of Work, Sunrise Mountain Landfill;" Appendix B, Guarantee Agreement.

XXIII. FINAL JUDGMENT

91. 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 Settling Defendants. 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.

So Ordered.

Date: SEPTEMBER 26, 2008.

A handwritten signature in black ink, appearing to read "Philip M. Orr", is written over a horizontal line.

UNITED STATES DISTRICT JUDGE
DISTRICT OF NEVADA

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Republic Dumpco, Inc., et al., relating to the Sunrise Mountain Landfill.

FOR PLAINTIFF UNITED STATES OF AMERICA,
Department of Justice

GREGORY A. BROWER
United States Attorney
District of Nevada

Aug 4, 2008
Date

By Robert Edelman (by so)
ROBERT R. EDELMAN
Assistant United States Attorney
District of Nevada
Nevada State Bar No. 8438
333 Las Vegas Boulevard South, Suite 5000
Las Vegas, Nevada 89101
Telephone: (702) 388-6336
Facsimile: (702) 388-6787
E-mail: robert.edelman@usdoj.gov

28 July 2008
Date

Ronald J. Tenpas
RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

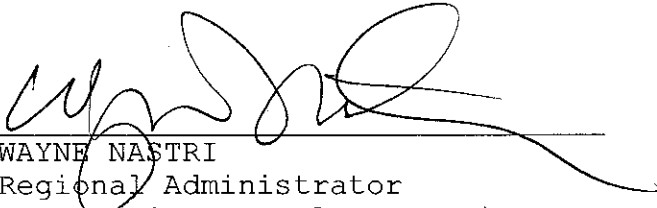
July 29, 2008
Date

Steven O'Rourke
STEVEN O'ROURKE
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-2779
Facsimile: (202) 514-2583
Email: steve.o'rourke@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Republic Dumpco, Inc., et al., relating to the Sunrise Mountain Landfill.

FOR PLAINTIFF UNITED STATES OF AMERICA,
U.S. Environmental Protection Agency, Region IX

23 JULY 2008
Date



WAYNE NASTRI
Regional Administrator
U.S. Environmental Protection Agency Region IX

US EPA ARCHIVE DOCUMENT

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Republic Dumpco, Inc., et al., relating to the Sunrise Mountain Landfill.

FOR DEFENDANTS REPUBLIC DUMPCO, INC. AND REPUBLIC SILVER STATE DISPOSAL, INC., d/b/a/ REPUBLIC SERVICES OF SOUTHERN NEVADA

8/1/08

Date

DAVID A. BARCLAY
VICE PRESIDENT

Republic Services of Southern Nevada
770 E. Sahara Avenue
Las Vegas, NV 89104

8/1/08

Date

DONALD J. PATTERSON, JR.
Beveridge & Diamond, P.C.
1350 I Street, N.W., Suite 700
Washington, DC 20005

8/1/2008

Date

STEVEN G. BARRINGER
Holland & Hart, LLP
~~701 Pennsylvania Avenue, N.W., Suite 250~~
Washington, DC 20004

975 F. Street NW
Suite 900

THE UNDERSIGNED PARTY enters into this Consent Degree in the matter of United States v. Republic Dumpco, Inc., et al., relating to the Sunrise Mountain Landfill.

FOR DEFENDANT CLARK COUNTY, NEVADA

6/4/08

Date

Chip Reid

~~RORY REID~~ *CHIP REID*

vic - Chairman, Clark County Commission
PO Box 551601
500 S. Grand Central Parkway
Las Vegas, Nevada, 89155-1601

6/4/08

Date

Elizabeth A. Vibert

ELIZABETH VIBERT
Deputy District Attorney
Office of the District Attorney
Civil Division
PO Box 552215
500 S. Grand Central Parkway
Las Vegas, Nevada, 89155-2215

5/29/2008

Date

Scott W. Gordon

SCOTT W. GORDON
Law Offices of Scott W. Gordon
1990 North California Blvd., Suite 940
Walnut Creek, California 94596

US EPA ARCHIVE DOCUMENT

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Republic Dumpco, Inc., et al., relating to the Sunrise Mountain Landfill.

FOR PLAINTIFF UNITED STATES OF AMERICA,
U.S. Department of the Interior, Office of the Solicitor

July 1, 2008
Date

Daniel G. Shillito
DANIEL G. SHILLITO
Regional Solicitor
Pacific Southwest Region
U.S. Department of the Interior

FOR PLAINTIFF UNITED STATES OF AMERICA,
Bureau of Land Management

June 18, 2008
Date

Ron Wenker
RON WENKER
State Director, Nevada
Bureau of Land Management
U.S. Department of the Interior