

EXHIBIT 3

FRESH KILLS CONSENT ORDER

MODIFICATION NO. 10

DRAFT UNANNOTATED VERSION

Please note: This unannotated version of the Order on Consent entered in Modification No. 10 to DEC Case No. D2-9001-89-03 has a companion annotated version.

Unannotated version

WHEREAS:

1. The New York State Department of Environmental Conservation (“Department”) is and has been a Department of the State of New York having jurisdiction over the State Pollutant Discharge Elimination System (“SPDES”), pursuant to Article 17, Title 8 of the Environmental Conservation Law (“ECL”), Parts 750-758 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”), and has been authorized by the United States Environmental Protection Agency to ensure compliance with the Clean Water Act (“Act”) (33 USC 1251 et. seq.).

2. The Department is and has been the agency of the State of New York with jurisdiction over the discharge of pollutants into the waters of the State and with authority to maintain the cleanliness and purity of such waters pursuant to the Act, Article 17 of the ECL and Parts 750-758 of 6 NYCRR.

3. The Department is and has been the agency of the State of New York with jurisdiction pursuant to the ECL Section 27-0703, and the Department’s promulgated rules and regulations at 6 NYCRR Part 360 to regulate the design and operation of solid waste management facilities within the State of New York.

4. The Department is and has been the agency of the State of New York with jurisdiction pursuant to ECL Section 25-0302, and the Department’s promulgated rules and regulations at 6 NYCRR Part 661 to regulate the uses of areas designated as tidal wetlands.

5. On April 24, 1990, when this Order on Consent was executed ("the 1990 Order") Respondent owned and operated a solid waste management facility known as the Fresh Kills Landfill ("Landfill") which, for the purpose of this Consent Order only, shall be deemed to include the Fresh Kills Bargefills (Sections 1/9 and 6/7), the Victory Boulevard Truckfills (Section 3/4) (excluding a parcel of approximately 75 acres within Section 3 west of the West Shore Expressway) and Muldoon Avenue Truckfills (Section 2/8) and encompasses an area of approximately 2038 acres in the County of Richmond and City of New York as defined by the map in Appendix C-1.

6. In accordance with requirements of the 1990 Order as modified, Respondent ceased disposing of solid waste at Section 3/4 in November 1992 and completed closure construction in April 1997. Respondent ceased disposing solid waste at Section 2/8 in June 1993 and completed closure construction in December 1996. Respondent ceased disposing solid waste at Section 6/7 by December 31, 2001 and completed closure construction by December 31, 2011. Since those times, Respondent has conducted post-closure monitoring and maintenance operations at Sections 2/8, 3/4 and 6/7 which continue to the present time.

7. Also in accordance with Modification No. 7 of the 1990 Order, Respondent ceased disposal of solid waste at Section 1/9 by December 31, 2001, but, in accordance with Modification No. 8, reopened Section 1/9 to receive material resulting from the September 11, 2001 terrorist attack on the World Trade Center. World Trade Center material continued to be placed at Section 1/9 until July 15, 2002. Since that time, Respondent has commenced closure construction at Section 1/9 which is expected to continue to the end of 2021. This Modification No. 10 of the 1990 Consent Order provides a date by which Respondent agrees to complete closure construction at Section 1/9, barring unforeseen or uncontrollable circumstances.

8. Respondent consented to the issuance of an Order dated October 23, 1980, and an amended Order on December 16, 1985, wherein it agreed, among other things, to apply for a solid waste management facility permit under the provisions of 6 NYCRR Part 360 in existence at that time; apply for a SPDES permit under 6 NYCRR Parts 750-758; apply for a Tidal Wetlands permit under 6 NYCRR Part 661; prepare a draft environmental impact statement under 6 NYCRR Part 617; and comply with a series of remedial measures and submit various plans as listed in the said Order. Subsequently, Respondent entered a new Order dated April 24, 1990, which provided a framework for going forward to either permit or close the Fresh Kills Landfill. On March 15, 1996, Respondent submitted an application for a solid waste management facility permit which the Department found to be administratively complete on May 15, 1996. One of the components of the application was a draft environmental impact statement dated March 15, 1996. As explained in more detail in paragraph I, below, Respondent also satisfactorily completed a series of remedial measures and submitted various reports and plans which the Department found satisfactory.

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11. Since 1948, Fresh Kills has operated as one of New York City's landfills. At the time the Landfill commenced operation, New York State did not regulate landfills. In 1973, the legislature enacted Title 7 of Article 27 of the ECL and the Department acquired regulatory responsibility for solid waste disposal. In 1977, the Department promulgated Part 360 regulations which established a system for regulating and permitting solid waste management

facilities. On December 31, 1988, a new and revised Part 360 came into effect. The revised Part 360 makes the regulatory standards contained in prior regulations significantly more stringent.

12. In 1979, New York City had five active landfills in addition to the Fresh Kills Landfill. Between 1979 and 1990, when this Order on Consent was executed, New York City had ceased accepting waste at four of these landfills. As of 1990, the Edgemere Landfill was the only remaining landfill accepting waste in New York City other than the Fresh Kills Landfill. Edgemere had an average daily disposal capacity of 1,200 tons, and ceased accepting waste in 1991. Fountain Avenue, with a daily disposal capacity of 8,000 tons, ceased accepting waste on December 31, 1985. Brookfield Avenue, with an average daily disposal capacity of 1,200 tons, ceased accepting waste in 1980. Pelham Bay ceased accepting waste in 1979 and averaged 2,600 tons per day. Pennsylvania Avenue, with an average daily disposal capacity of 1,500 tons, ceased accepting waste in 1979.

13. Respondent states that in 1980, the Fresh Kills Landfill received less than half the City's solid waste. In April 1990, as of the execution of the Order on Consent, Fresh Kills was the world's largest landfill. At that time, it received an average of 17,000 tons of residential and commercial waste per day, which was about 30% of the waste generated in New York State daily, and the tonnage received daily at the Landfill was approximately 65% of New York City's solid waste. The City Department of Sanitation was and is responsible for the collection of all the City's residential waste, 90% of which was disposed of at Fresh Kills. Fresh Kills was required to operate six days a week, twenty-four hours a day to dispose of the large amount of solid waste generated in New York City. NYC now exports all of its residential and commercial waste.

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15. As an older landfill, the Fresh Kills Landfill has no liner. As a result, some leachate from the Landfill infiltrates into the groundwater and drains into the surface water. The purpose of the leachate collection and treatment system required by this Order is to collect that leachate to the maximum degree practicable, and in any event, to collect at least 80% of the leachate. The leachate collection and treatment system explicitly contemplated by this Order, which was to reduce at least 80% of the unmitigated leachate flow as of 1993 from Sections 1/9 and 6/7, as well as the leachate collection and treatment systems at Sections 2/8 and 3/4, which capture at least 80% of the leachate from Sections 2/8 and 3/4, were constructed and have operated successfully for years. As a result, leachate has been collected to the maximum extent practicable and over 80% of the leachate from the Landfill has been collected since at least June 1998. In addition, final cover construction, which minimizes the generation of additional leachate, has also been completed at Sections 2/8, 3/4 and 6/7 and is underway at Section 1/9.

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20. The Department promulgated a revised landfill regulation at 6 NYCRR Part 360 effective December 31, 1988. Upon execution of the Order, these revised rules applied to the Landfill except as otherwise provided herein.

21. This Order supersedes and replaces the Consent Order executed October 23, 1980 and modified December 16, 1985. This Order has been modified to reflect new and relevant

information about the Landfill (much of it produced by the Respondent through investigations required under the 1990 Order), on September 21, 1990 (Modification No. 1), April 22, 1992 (Modification No. 2), November 18, 1993 (Modification No. 3), July 15, 1994 (Modification No. 4), July 26, 1995 (Modification No. 5), October 20, 1998 (Modification No. 6), April 27, 2000 (Modification No. 7), January 17, 2002 (Modification No. 8) and December 17, 2009 (Modification No. 9).

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23. Respondent committed to and implemented an extensive remedial program to upgrade the Landfill.

24. Appendices A-3, A-4, A-5, A-6, A-7, A-8 and A-10 to this Order prescribed certain remedial measures to be undertaken by the Respondent at the Landfill. These remedial measures involved the execution of many investigations, studies, reports and designs under the terms of this Order providing for Department review, comment and acceptance. In addition, the scope of the tasks included in Appendices A-3, A-4, A-5, A-6, A-7, A-8 and A-10 is based in part on prior investigations performed by the Respondent and reported to the Department. At this time in 2016, the extensive remedial program upgrades to the Landfill have been completed for Landfill Section 2/8, Section 3/4, and Section 6/7. For Section 1/9, modifications which were approved in the "Final Design Closure Plan with Addendums 1 and 2", will be completed upon conclusion of on-going closure construction.

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26. Appendix A-15 will continue as a necessary component of this Order on Consent.

27. The Post-Closure Monitoring and Maintenance Operations Manual (“PCMMOM”) which is a four-volume set of manuals, was submitted and approved in 2002 pursuant to Milestones 11 and 12 of Appendix A-15 of this Order. The final cover and drainage, leachate and landfill gas systems each has its own manual, each of which is a separate volume of the PCMMOM that provides the procedures and protocols to be followed in maintaining and operating its environmental control system. The PCMMOM requires advance notification of repairs and the submission of quarterly and annual monitoring and operations maintenance reports for the various environmental control systems. The PCMMOM may be revised and/or amended by addenda on an agreed-upon basis going forward, and cross-referenced to earlier source documents. However, after a major change occurs to one of the landfill environmental control systems, the Respondent will rewrite the applicable section subject to the Department’s review and approval. At the end of 2015, the Respondent submitted new volumes for the leachate and landfill gas control systems, which were reviewed and approved by the Department in May 2016.

28. Respondent undertook an Environmental Benefit Plan to benefit the environment. Respondent wrote an Environmental Benefit Plan Report and timely completed the work required by it.

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30. By 1996, the Landfill was the sole in-City facility for the disposal of the City’s residential and institutional waste. On May 28, 1996, Mayor Rudolph P. Giuliani and Governor George E. Pataki announced their agreement to close the landfill to further receipt of solid waste by December 31, 2001.

31. On June 2, 1996, Governor Pataki signed Chapter 107 of the Laws of 1996 barring disposal of waste at the Landfill after January 1, 2002.

32. NYSDEC and the City agreed that the decision to cease solid waste disposal operations at the Landfill after December 31, 2001, subsequently codified in state law as ECL § 27-0706, required that the 1990 Order be modified to establish appropriate measures for the accelerated closure of the Fresh Kills Landfill.

33. Modification No. 7 to the 1990 Order went into effect April 27, 2000. Modification No. 7 included a schedule of activities, Compliance Schedule Appendix A-15, nearly all of which activities the Respondent has since successfully implemented, to advance the closure and post-closure care of the Landfill. In particular, Appendix A-15 required the cessation of disposal of solid waste at the Fresh Kills Landfill by January 1, 2002. A copy of Modification No. 7 is provided as Appendix E of this Order.

34. Modification No. 8 to the 1990 Order was an emergency modification which went into effect on January 17, 2002. It was issued in response to the disaster at the World Trade Center which occurred on September 11, 2001. Modification No. 8 modified certain of the provisions of Modification No. 7 to authorize receipt of material from the World Trade Center disaster after January 1, 2002. A copy of Modification No. 8 is provided as Appendix F of this Order.

35. On December 17, 2009, Modification No. 9 to the 1990 Consent Order went into effect. It amended Appendix A-15 of Modification No. 7 of the Order such that the "closure construction schedule" for the complete placement of final cover at Section 6/7 provided that such work must be accomplished no later than December 31, 2011. DSNY timely completed the

construction of final cover at Section 6/7 by December 31, 2011. Modification No. 9 also amended Appendix A-15 such that the “closure construction schedule” for the complete placement of final cover at Section 1/9 provided that such work must be accomplished no later than December 31, 2018, subject to the contingencies and provisions set forth in paragraph 24 of Modification No. 9. A copy of Modification No. 9 is provided as Appendix G of this Order.

36. In *World Trade Center Families for Proper Burial, Inc., et al. v. The City of New York, et al.* (05 CV 7243) (“WTC Families”)¹ the Second Circuit affirmed the District Court’s decision granting the City’s motion dismissing the amended complaint. The U.S. Supreme Court denied plaintiffs’ petition for a writ of certiorari on October 4, 2010, thus ending the case.

37. Respondent continued to conduct sub-base grading for the construction of final cover at Section 1/9, in order to achieve minimum regulatory grades required for landfills. Ultimately, this required placement of more than 6 million cubic yards of inert fill.

38. In February 4, 2013, the Department approved the Section 1/9 Final Cover Design Report, Addendum 1, which provided for construction of final cover and related closure construction to proceed concurrently with the sub-base grading activities.

39. In January 2014, Respondent again proposed to amend the Section 1/9 Final Cover Design Report. The proposed changes included:

- a. Not conducting excavation or installation of additional landfill gas collection wells in the WTC area;
- b. Minimizing the use of additional fill for grading;
- c. Modifying the landfill gas collection header pipe size and the landfill gas venting system to reflect the decline that had occurred in landfill gas generation as a result of not continuing to operate Section 1/9 to full capacity under a permit;

¹ In August, 2005 an action was commenced in the United States District Court, Southern District of New York, captioned *World Trade Center Families for Proper Burial, Inc., et al. v. The City of New York, et al.* (05 cv 7243) (“WTC Families”)

- d. Reconfiguring the landfill gas collection headers to reflect changes in the final grading plan;
- e. Reconfiguring stormwater drainage and erosion controls;
- f. Developing alternative designs for final cover to address certain unique and site specific conditions; and
- g. Including landfill gas condensate drip legs that were consistent with the closure design that was developed for Section 6/7.

40. From January through June 2014, Respondent provided interim submittals of the design changes for the closure of Section 1/9 to the Department for review and comment, as well as for guidance on necessary permit applications. As a result, Respondent made the following submittals to obtain needed authorizations:

- a. On June 13, 2014, Respondent submitted to the Department the Section 1/9 Final Cover Design Report Addendum 2 incorporating approved changes;
- b. On June 17, 2014, while a renewal request was under review and pending, the Respondent submitted a modification application for the SPDES permit for additional stormwater outfalls;
- c. On June 23, 2014, Respondent submitted to the Department a letter notification of changes to the landfill gas collection and conveyance systems in lieu of a Title V permit modification, which the Department had determined was not needed;
- d. On June 25, 2014, Respondent submitted a Part 360 permit modification application for the Landfill Gas System; and
- e. On July 1, 2014, DSNY submitted a Tidal Wetland Permit Application.

41. Pending the Department's review of Addendum 2 of the Section 1/9 Final Cover Design Report and of the permit applications and submittals described above, the Respondent prepared construction and bid documents to complete the closure construction of Section 1/9.

42. In August 2014 Respondent presented a sequence of construction to the Department for completion of closure construction of Section 1/9 by December 2018. The plan coordinated the grading, placement of final cover, construction of stormwater controls, as well as the construction of landfill gas collection, conveyance and condensate handling systems in four phases, with construction completion averaging about 80 acres of final cover per year.

43. Following comments by NYSDEC and responses by DSNY:

- a. On August 8, 2014, the Department issued a Tidal Wetlands Permit;
- b. On November 11, 2014, the Department approved the Section 1/9 Final Cover Design Report Addendum 2; and
- c. On November 17, 2014, the Department issued a Part 360 permit modification for the changes to the landfill gas collection and conveyance system.

44. As stated in paragraph 40.(b), above, Respondent applied to the Department to modify the SPDES permit for the Landfill on June 17, 2014. (An application to renew the earlier permit was pending at the time.) Respondent received a Draft SPDES permit from the Department on January 16, 2015. Among various new conditions, the Draft SPDES permit for the first time included stormwater effluent discharge standards. Respondent sent comments to DEC on the Draft SPDES permit on February 5, 2015 and, on February 18, Respondent and the Department discussed the ramifications of the new conditions in the Draft permit at a bi-monthly meeting. For more than ten years, Respondent's SPDES permits required the implementation of best management practices ("BMPs"), rather than compliance with effluent discharge standards. BMPs had also been used as the basis for the approved Section 1/9 Final Cover Design Report, Addendum 2. Stormwater discharge standards are performance standards and therefore materially different than BMPs. Compliance with stormwater effluent discharge standards could be expected to be problematic, especially for the new outfalls discharging to the Arthur Kill. Compliance with the stormwater discharge standards would require a re-design of the sequence of closure construction that would limit the area of actual construction and thereby limit the rate of construction. The Respondent also presented and the parties discussed a new preliminary sequence of construction plan.

45. The Respondent received a revised Draft SPDES permit from the Department on February 25, 2015, which had some textual adjustments. The Respondent provided comments

on February 27, 2015. On March 3, 2015, Respondent received the Final Draft Permit, and on March 19, 2015, the Respondent received the Final SPDES Permit which was dated March 13, 2015 and effective April 1, 2015.

46. As described in paragraph 44., above, the terms of the Final SPDES permit, with their inclusion of stormwater discharge standards, required a major change to the sequence of construction for the closure work that had been provided to the Department's Division of Material Management in August 2014, as well as modifications to procedures in construction to address work in and around the WTC materials.

47. In December 2014, Respondent completed Phase 1 (the Muldoon Avenue mound) of final cover construction at Section 1/9 and submitted the Section 1/9, Phase 1 Construction Certification Report to the Department in June 2015. Respondent completed closure construction Section 1/9, Phase 2 in December 2015. The Department approved the Section 1/9, Phase 1 Construction Certification Report in March 2016. Respondent submitted the Section 1/9, Phase 2 Construction Certification Report to the Department in May 2016.

48. As described in paragraph 45., above, the Department issued the final SPDES permit nearly nine (9) months after submittal of the permit application. DEC and DSNY worked closely and cooperatively during that time to get to that point, but the permit process did not meet the timeframes for permit issuance set forth in the agreement to complete closure construction by December 31, 2018 stated in paragraph 24 of Modification No. 9. (See Appendix G.) Moreover, as described in the paragraphs above, the delay was not due to Respondent's failure to meet its obligations under this Order. To the contrary, the Respondent worked diligently to address the changes in circumstances and requirements that arose during the

SPDES permitting process. As a consequence, in accordance with the terms and contingencies enunciated in paragraph 24 of Modification No. 9, the Department shall favorably consider and not unreasonably withhold approval of the Respondent's request for an extension of the date for complete placement of final cover at Section 1/9.

49. The justifiable delay in receiving the SPDES permit, along with the need to re-design the sequence of construction, delayed completion of the bid documents for a construction contract. The new conditions requiring stormwater monitoring and discharge limitations modify the maximum lengths of slopes upon which construction can be conducted, which, in turn, leads to further modification to the sequence of construction, so that construction occurs on multiple, non-adjacent areas of Section 1/9, simultaneously. The resulting overall projected productivity is expected to be completion of final cover at a rate of about 60-65 acres per year starting in March 2017, with completion projected for December 2021, contingent upon the non-occurrence of future extreme rain events and not uncovering WTC materials during construction. Should such events occur, additional time may be needed for complete placement of final cover at Landfill Section 1/9. The Department shall favorably consider and not unreasonably withhold approval of request(s) for extension(s) of the date for complete placement of final cover at Section 1/9; provided that no such extension shall be required to be granted if the delay is due to Respondent's conduct in not meeting its obligations under this Order.

50. On October 31, 1997, the Department and the Respondent entered into an Order on Consent in NYSDEC File No. R2-0208-97-10 (the "October 31, 1997 Order"), a copy of which is attached as a part of Appendix H to the Order. This Order authorized the Respondent to construct and operate an active landfill gas and recovery system, which collects landfill gas from all four sections of the Landfill and sends it to the existing landfill gas processing plant located in

Section 1/9 for purification and sale for reuse. Modification No. 1 to the October 31, 1997 Order (see Appendix H) authorized Respondent to expand the then-existing landfill gas collection system in Section 1/9 to additional areas of Section 1/9 as landfilling proceeded. Respondent completed the collection and recovery system, which was approved by the Department, and continues to operate it at this time. The landfill gas collection system in Section 1/9 will be modified as appropriate as landfill closure construction proceeds. This is regulated by the 6 NYCRR Part 360 permit for the landfill gas treatment plant and by the Clean Air Act Title V air permit for the Fresh Kills Landfill. The October 31, 1997 Order, as modified, imposes no additional requirements on Respondent, beyond the appropriate extension of the landfill gas collection system in Section 1/9.

51. On May 23, 2000, the Department and the Respondent entered into an Order on Consent in NYSDEC File Nos. CO 2-20000229-864, R2-0290-94-10, R2-0117-95-11, R2-0118-95-11, R2-0220-97-11, R2-0024-98-06 and CO 2-20000207-326 (the "May 23, 2000 Order"), a copy of which is attached as Appendix I to the Order. This Order requires the Department of Sanitation to notify the Department in advance of transfers of certain listed properties that are owned by the City of New York and assigned to DSNY, and are either part of the Landfill or adjacent to the Landfill. DSNY was also required to provide notification to the Department pursuant to Paragraph X of the 1990 Order, as then modified, of structural alterations, major construction or similar occurrences on the listed properties if conducted by or on behalf of DSNY, except for construction or other activities conducted by Con Edison pursuant to any easement it may hold. Notification of transfers is required to be in writing and to provide the block and lot of the property with any additional information known to DSNY regarding the expected time of the transfer and the name and address of the transferee. This requirement

continues in effect. In this Modification No. 10 of the 1990 Order, Paragraph X is deleted, and the PCMMOM specifies the requirements for the Respondent to notify the Department of field work in connection with post-closure monitoring and maintenance operations.

52. On July 28, 2014, the Department and the Respondent entered into an Order on Consent in NYSDEC File. No. R2-20071023-843 (the "July 28, 2014 Order"), a copy of which is attached as Appendix J to the Order. At paragraph 31 of the July 28, 2014 Order, the parties agreed that Appendices B-1 and B-2 of the 1990 Order were no longer applicable to Respondent's activities at the Landfill. The July 28, 2014 Order requires Respondent to conduct semi-annual shoreline inspections and cleanup activities, as described in whereas paragraph 30 of the July 28, 2014 Order, in delineated areas from 2014 through 2018. A modification of the July 28, 2014 Order requested contemporaneously with Modification No. 10 of the 1990 Order extends the end date for semi-annual shoreline inspections and cleanup activities through 2021.

The July 28, 2014 Order also requires DSNY to:

- i. Inspect Sections 2/8, 3/4 and 6/7 in accordance with requirements of the PCMMOM;
- ii. Conduct self-inspections of the landfill cover and drainage systems at Section 1/9 weekly, monthly, quarterly or after rainfall events, depending upon the work going on at each area;
- iii. Keep the inspection and maintenance records as part of the Landfill's Operating Record or Post Closure Record, as appropriate. Requirements for the records are given in the Order;
- iv. Areas yet to receive final cover/closure construction will receive Temporary Erosion and Sediment Controls in accordance with the Final Cover Design Report;
- v. Any problems revealed during the inspections require prompt remediation;
- vi. 24-hour notification is required for uncontrolled discharge of soils, sediment, waste and flowing leachate seepage and gully erosion of soils discharging to surface waters or NYS wetlands;

- vii. Self-inspections are required of all repairs and remediation;
- viii. Prompt notification is required when a remediation does not successfully correct a problem;
- ix. Further stabilization measures must be taken and investigations and development of designs to correct the problems must be completed within 10 days; and
- x. Implementation is required within 15 days of NYSDEC's approval of design plans.

53. No new compliance obligations are created under this Modification No. 10, that is, any violations of the enforcement orders noted in paragraphs 50., 51., and 52., above, will not be violations of this Order. Compliance obligations remain as per the individual enforcement orders, and any violations of those obligations will be violations of those orders, the ECL and DEC Regulations, as applicable.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

The following revised provision is hereby incorporated into the April 24, 1990 Consent Order, as previously revised on September 21, 1990, April 22, 1992, November 18, 1993, July 15, 1994, July 26, 1995, October 20, 1998, April 27, 2000 and January 17, 2002:

Appendix A-15 of Modification No. 7 of the Order, as referenced in Modification No. 9 of the Order, is amended such that the "closure construction schedule" for the complete placement of final cover at Section 1/9 provides that such work must be accomplished no later than December 31, 2021, contingent upon the non-occurrence of future extreme rain events and not uncovering WTC materials during construction. Should such events occur, additional time may be needed for complete placement of final cover at Landfill Section 1/9. The Department

shall favorably consider and not unreasonably withhold approval of request(s) for extension(s) of the date for complete placement of final cover at Section 1/9; provided that no such extension shall be required to be granted if the delay is due to Respondent's conduct in not meeting its obligations under this Order.

ARTICLE I

In addition, in regards to Article I (Compliance Schedules and Remedial Actions) of the April 24, 1990 Consent Order, as amended and noted above:

I. The City undertook and completed all of the programs delineated in the Compliance Schedules comprising the Series A-Appendices of the 1990 Consent Order in accordance with the Milestone Dates provided in the Series A-Appendices or with extensions duly granted under the terms of the Series A-Appendices. The work completed under each Series A-Appendix is summarized in the paragraph corresponding to this one in the Annotated version of this Consent Order.

A. The work required by A-Appendices A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-10, A-13, and A-14 has been satisfactorily and timely completed and found to be acceptable by the Department. The requirements and applicability of Appendices A-11 and A-12 never went into effect. Accordingly, Appendices A-1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13 and 14 are of no further effect and the A-Appendices described above are hereby deleted.

B. The City has ceased disposing of waste at the Fresh Kills Landfill in accordance with Compliance Schedule Appendix A-15. Moreover, with the

exceptions of Milestone Subjects 7 and 9, which require ongoing obligations, the City has carried out the measures specified in Appendix A-15, attached to and incorporated as part of this Order, to ensure that closure and post-closure monitoring and maintenance of the Landfill occur in compliance with 6 NYCRR Part 360.

C. The Respondent shall comply with the requirements of Milestones 7 and 9 of Appendix A-15.

ARTICLE II

In addition, in regards to Article II (Completeness Determination/Acceptance of Submissions) of the April 24, 1990 Consent Order, as amended and noted above:

II. Intentionally left blank.

ARTICLE III

In addition, in regards to Article III (Interim Operating Requirements) of the April 24, 1990 Consent Order, as amended and noted above:

III. Intentionally left blank.

ARTICLE IV

In addition, in regards to Article IV (Termination of this Order) of the April 24, 1990 Consent Order, as amended and noted above:

IV. A. Consistent with Part 360 and other landfill closure orders entered into by DEC, the City's obligations under this Order shall terminate when the City has successfully completed all obligations pertaining to closure, post closure monitoring and landfill maintenance, according to the terms of Appendix A-15 and 6 NYCRR Part 360.

B. The text from Modification No. 7, Compliance Schedule Appendix A-15, Landfill Closure and Post Closure, is incorporated into this Order on Consent. The requirements of all Appendix A-15 milestones have been satisfied, but the requirements of Milestone Subjects 7 and 9 are ongoing.

ARTICLE V

In addition, in regards to Article V (Factors Relevant to Variances) of the April 24, 1990 Consent Order, as amended and noted above:

V. Intentionally left blank.

ARTICLE VI

In addition, in regards to Article VI (Solid Waste Management Planning) of the April 24, 1990 Consent Order, as amended and noted above:

VI. Intentionally left blank.

ARTICLE VII

In addition, in regards to Article VII (Departmental Monitoring/Submission Review) of the April 24, 1990 Consent Order, as amended and noted above:

VII. A. Ongoing practice regarding monitoring by the Department and payment practice by the Respondent, which both parties find mutually acceptable and productive and agree to continue according to the terms described herein, provide that the Department will employ one full time monitor at grade 20 or its equivalent, who is dedicated to monitoring and reviewing reports submitted for Fresh Kills Landfill by the Respondent, as well as performing both announced and unannounced inspections of the Landfill. The monitor shall be available, as needed, for discussions with and shall provide prompt feedback to the Respondent regarding the Department's position on any submission, plan or question the Respondent may have pertaining to this Order. The Director of the Landfill shall be provided copies of all field inspection reports for the Landfill (excluding confidential enforcement memoranda). The monitor shall report to the Department's Regional Materials Management Engineer. The monitor shall not be the Department's spokesperson in ordering restrictions and/or modifications to the Landfill, nor shall such monitor be deemed an employee of the City of New York for any reason. The Department will invoice the Respondent for a lump sum payment on or about two months before the beginning of each Departmental Fiscal Year (April 1st through March 31st). The Respondent will pay each invoice within 30 days of receipt. The Monitor's responsibilities are described in a yearly work plan submitted to DSNY on or about February 1.

B. This monitoring and payment practice will terminate six months after the Department approves Respondent's submittal of the last Closure Certification Report as required by Subject 9 of Appendix A-15.

Article VIII

In addition, in regards to Article VIII (Compliance Progress Reports) of the April 24, 1990 Consent Order, as amended and noted above:

VIII. Intentionally left blank.

Article IX

In addition, in regards to Article IX (Monthly Meetings) of the April 24, 1990 Consent Order, as amended and noted above:

IX. A. The Department and the Respondent will hold bimonthly meetings, and, as agreed to by the Department and Respondent, will hold additional meetings.

B. Article IX shall terminate when the monitor requirements contained in Article VII (Departmental Monitoring/Submission Review) end, as per its provisions.

Article X

In addition, in regards to Article X (Notification of Field Work) of the April 24, 1990 Consent Order, as amended and noted above:

X. Intentionally left blank.

Article XI

In addition, in regards to Article XI (Data Acquisition) of the April 24, 1990 Consent Order, as amended and noted above:

XI. Intentionally left blank.

Article XII

In addition, in regards to Article XII (Alterations to the Landfill Procedures, Equipment and Structures) of the April 24, 1990 Consent Order, as amended and noted above:

XII. Intentionally left blank.

Article XIII

In addition, in regards to Article XIII (Stipulated Penalties) of the April 24, 1990 Consent Order, as amended and noted above: see the paragraph corresponding to this one in the Annotated version of this Consent Order.

Article XIV

In addition, in regards to Article XIV (Dispute Resolution) of the April 24, 1990 Consent Order, as amended and noted above: see the paragraph corresponding to this one in the Annotated version of this Consent Order.

Article XV

In addition, in regards to Article XV (Split Samples) of the April 24, 1990 Consent Order, as amended and noted above:

XV. **SPLIT SAMPLES**

The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent and the Department shall also have the right

to take its own samples. Respondent shall have the right to review the handling of samples by the Department to ensure analytic results are consistent with the sampling protocol.

Article XVI

In addition, in regards to Article XVI (Permits and Other Approvals) of the April 24, 1990 Consent Order, as amended and noted above:

XVI. PERMITS AND OTHER APPROVALS

Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary to perform Respondent's obligations under this Order. The Department shall recognize the time constraints placed upon the Respondent and expeditiously discharge its permitting responsibilities with respect to the Landfill. Respondent shall not do anything or allow anything to be done at the Landfill which would require a permit under the ECL without receiving such permit or other approval pursuant to this Order.

Article XVII

In addition, in regards to Article XVII (Access To The Landfill) of the April 24, 1990 Consent Order, as amended and noted above:

XVII. ACCESS TO THE LANDFILL

Respondent shall permit any duly designated employee, consultant, or contractor of the Department to enter upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent for purposes of inspection, sampling and testing and to assure Respondent's compliance with this Order. [The term "Site" is as defined at 6 NYCRR Sec. 360-

1.2(b) (14)]. Unless the Department determines that it would, or would likely, thwart the Department's enforcement, investigatory, or emergency response purposes, the Department shall register its presence at the Respondent's on-site Landfill offices immediately upon arriving at the Landfill. Respondent shall be entitled to have its own duly designated employee accompany the Department's representative while at the Site provided that the Respondent carries out its duty to expeditiously assign personnel to accompany the Department. Nothing herein shall render Respondent liable for the acts or omissions of the Department's representatives, and the Department shall indemnify and hold Respondent harmless to the full extent permitted by law for all claims, suits, actions, damages, and costs of every name and description arising out of such access for personal injury, or property damage.

Article XVIII

In addition, in regards to Article XVIII (Reserve) of the April 24, 1990 Consent Order, as amended and noted above:

XVIII. RESERVE

Nothing in this Order shall prevent the Department from seeking administrative or judicial enforcement of the terms and conditions of this Order unless Respondent is in substantial compliance with this Order. Furthermore, notwithstanding any provision of this Order, the Commissioner may seek judicial or administrative relief for remediation of any condition at the Landfill that presents a significant public health or environmental impact not previously addressed in the Order. Nothing in this Order shall impair the Commissioner's authority pursuant to Article 27, Title 13 of the Environmental Conservation Law.

Article XIX

In addition, in regards to Article XIX (Communications/Payments) of the April 24, 1990 Consent Order, as amended and noted above:

XIX. COMMUNICATIONS/PAYMENTS

- A. All communications and reports, data and information required by this Order, except where otherwise specifically directed, shall be sent by e-mail or by U.S. Mail to: David Vitale in Albany, DMM Division Director, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, Email: david.vitale@dec.ny.gov and Kenneth Brezner in NYC, Regional Materials Management Engineer, NYS Department of Environmental Conservation, 47-40 21st Street, Long Island City, NY 11101, Email: kenneth.brezner@dec.ny.gov.

All payments shall be addressed to:

NYS DEC, Bureau of Revenue Accounting (10th Floor),
625 Broadway, Albany, NY 12233-5012,
Attn: Bureau Chief of Revenue Accounting.

- B. Communications from the Department to Respondent shall be made as follows:

Robert Orlin, General Counsel and Deputy Commissioner for Legal Affairs, NYC
Department of Sanitation, 125 Worth Street, New York, NY 10013, Telephone: 646 885 5006, Email: rorlin@dsny.nyc.gov.

Phillip J. Gleason, DSNY Assistant Commissioner for Waste Management Engineering,
NYC Department of Sanitation, 44 Beaver Street, 12th Floor, New York, NY 10004,
Telephone: 212 437 4420, Email: pgleason@dsny.nyc.gov.

- C. The parties reserve the right to designate other or different addresses on notice to the other.

Article XX

In addition, in regards to Article XX (Force Majeure) of the April 24, 1990 Consent Order, as amended and noted above:

XX. FORCE MAJEURE

- A. Respondent shall not suffer any penalty under this Order, or be subject to any proceeding or action, if it cannot comply with any requirement hereof because of circumstances beyond Respondent's control, an act of God, war, terrorism, insurrection, riot, strikes, hurricanes, floods, fire, judicial injunctions and orders, state or Federal legislation, or contractor default (per the terms of Subparagraph B). Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order.
- B. Contractor default shall only be considered to be a force majeure event where Respondent has issued a formal determination of default. In its application to the Department for relief from stipulated penalty liability on account of delayed milestones, the Respondent shall be required to show with clear and convincing evidence that the Respondent's determination of default was justified, was beyond the control of the

Respondent, and Respondent took all steps reasonably necessary to mitigate the delay (including whether Respondent could have reasonably foreseen the contractor default) in meeting its obligations under this Order on account of contractor default. Should the Department not agree with Respondent that it has met its burden under this paragraph, Respondent may invoke the procedures set forth in paragraph XIV and the ALJ may adjudicate whether the Respondent has met its burden of proof and whether any reduced sum of stipulated penalties should be paid to the Department.

Article XXI

In addition, in regards to Article XXI (Summary Abatement) of the April 24, 1990 Consent Order, as amended and noted above:

XXI. SUMMARY ABATEMENT

This Order shall not be construed to prohibit the Commissioner or the Commissioner's duly authorized representative from exercising any summary abatement powers pursuant to ECL §71-0301 or ECL §71-1719.

Article XXII

In addition, in regards to Article XXII (Indemnification) of the April 24, 1990 Consent Order, as amended and noted above:

XXII. INDEMNIFICATION

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of

this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns, provided that such indemnification does not extend to any claim, suit, action, damages or costs arising from the sole negligence or willful misconduct of the Department.

Article XXIII

In addition, in regards to Article XXIII (Public Notice) of the April 24, 1990 Consent Order, as amended and noted above:

XXIII. Intentionally left blank.

Article XXIV

In addition, in regards to Article XXIV (Modification) of the April 24, 1990 Consent Order, as amended and noted above:

XXIV. MODIFICATION

A. No change in this Order shall be effective except as set forth in a written Order of the Commissioner of Environmental Conservation:

- i. Upon written application by the City and with specific justification for the relief sought, or
- ii. Pursuant to summary abatement procedures of the ECL, or
- iii. As specified in the Dispute Resolution provision, Paragraph XIV, of this Order.

B. Public notice requirements for all modifications of this Order, which were added by Modification No. 1 of this Order, are set forth at subparagraph XXVI. B., below.

Article XXV

In addition, in regards to Article XXV (Judicial Review) of the April 24, 1990 Consent Order, as amended and noted above:

XXV. JUDICIAL REVIEW

Nothing in this paragraph or Order shall be construed to deprive Respondent of its right to bring a proceeding under New York CPLR Article 78 or any other statute or provision to challenge any decision of the Commissioner, including, but not limited to, any denial by the Commissioner of any of the permits for which Respondent has submitted an application under this Order.

Article XXVI

In addition, in regards to Article XXVI (Public Participation) of the April 24, 1990 Consent Order, as amended and noted above:

XXVI. PUBLIC PARTICIPATION

A. Respondent and the Department now have agreed to make the documents listed in a new Appendix D publicly accessible through a City of New York website, as specified in new Appendix D, according to the schedule provided therein.

Appendix D may be revised by mutual agreement between the Department and the Respondent without undergoing a modification of the Consent Order. This shall constitute the Public Access Document Repository.

B. All modifications of this Order pursuant to Paragraph XXIV shall be preceded by public notice, except that emergency modifications and modifications pursuant to adjudicated dispute resolutions under Paragraph XIV shall be accompanied by public notice. Public notice shall be accomplished by publication in the

Environmental Notice Bulletin (ENB) and by direct placement of such notice and the proposed modification(s) in the public access document repository. The notice shall be published at least fifteen (15) days prior to the issuance of any modification or denial of a modification request. Written public comment upon proposed modifications shall be invited. The Department may provide additional public notice at its discretion.

- C.
 - i. Respondent shall provide public access, via placement in the Public Access Document Repository, to the Annual Landfill Closure Progress Reports required by Milestone Subject 7 of Appendix A-15. See new Appendix D, below.
 - ii. Either DSNY or DEC may propose a public meeting in Staten Island regarding the Landfill, upon a reasonable belief that circumstances warrant such a meeting, and the other party shall agree to the meeting, absent a showing of good cause why there should not be a public meeting.
 - iii. The planning for the Freshkills Park Draft Master Plan took place from 2003 to 2006. The Plan was managed by the NYC Department of City Planning. Over the course of those three years, a Citizens Advisory Committee was organized and a series of charrettes (small working meetings) were run involving hundreds of Staten Islanders in various Staten Island neighborhoods. A series of meetings with interested constituencies (design professionals, urban planners) were also held on a citywide basis. In addition, the NYC Department of Parks and Recreation administered a formal Generic Environmental Impact Statement (“GEIS”) process, with public review and comment, including a public scoping meeting and a public hearing on the

Draft GEIS. The public participation process continues as park development moves forward. Both informal community consultations as well as formal presentations to the appropriate Community Board are held for each project.

A-Appendices

Intentionally left blank.

B-Appendices

Intentionally left blank.

C-Appendix

C-1: Map.

D-Appendices

D: Publicly Accessible Document Repository. (See Appendix D.)

Summary and Status of Modifications Nos. 1 through 9

Modification No. 1: September 21, 1990

The text and requirements of Modification No. 1, as modified by Modification No. 7 and by this Modification No. 10, have been incorporated into Article XXVI and new Appendix D of the Order. Accordingly, Modification No. 1 is hereby deleted.

Modification No. 2: April 22, 1992

All requirements of Modification No. 2 have been satisfactorily completed. Accordingly, Modification No. 2 is hereby deleted.

Modification No. 3: November 18, 1993

All requirements of Modification No. 3 have been satisfactorily completed. Accordingly, Modification No. 3 is hereby deleted.

Modification No. 4: July 15, 1994

All requirements of Modification No. 4 have been satisfactorily completed. Accordingly, Modification No. 4 is hereby deleted.

Modification No. 5: July 26, 1995

All requirements of Modification No. 5 have been satisfactorily completed. Accordingly, Modification No. 5 is hereby deleted.

Modification No. 6: October 20, 1998

All requirements of Modification No. 6 have been satisfactorily completed. Accordingly, Modification No. 6 is hereby deleted.

Modification No. 7: April 27, 2000

Modification No. 7, a copy of which is attached as Appendix E, acknowledged the Department's receipt of a complete 6 NYCRR Part 360 permit application by March 15, 1996. Nonetheless, Governor Pataki and Mayor Giuliani agreed on May 28, 1996 and on June 2, 1996 Governor Pataki signed into law state legislation to close Fresh Kills Landfill to further receipt of solid waste by January 1, 2002. As a result, the Consent Order required modification to establish appropriate measures for the accelerated closure of the landfill. Modification No. 7 added Appendix A-15 to the Order for this purpose.

Paragraph A. of Modification No. 7 modified Paragraph I. of the Order to state that the City shall cease disposing of waste at the Fresh Kills Landfill in accordance with Compliance Schedule A-15, and added Landfill Closure and Post Closure provisions. This also formalized the withdrawal of the 6 NYCRR Part 360 permit application.

Paragraph B. of Modification No. 7 provided that the DEC Commissioner had authority to enter into a contract with the City to provide state assistance payments for the closure of the Landfill. This was accomplished.

Paragraph C. of Modification No. 7 modified Paragraph IV. of the Order, to terminate the City's obligations under this Order when the City has successfully completed closure, post closure monitoring and landfill maintenance, according to Appendix A-15 and 6 NYCRR Part 360.

Paragraph D. of Modification No. 7 modified Paragraph VI of the Order, which specified the City's obligation to submit a Solid Waste Management Plan Modification for DEC approval.

Paragraph E. of Modification No. 7 modified Paragraph XXVI. of the Consent Order, which was added by Modification No. 1, to require the City and DEC to jointly retain one document repository until three months after completion of all closure construction activities required by Appendix A-15 and approval of the final end-use plan and required the City to continue to conduct annual public meetings until the February following the completion of all closure construction actions required by Appendix A-15. The requirement to maintain a public access document repository is modified by this Modification No. 10, as described in newly modified Paragraph XXVI. and new Appendix D., above. The requirement to conduct annual public meetings is deleted by this Modification No. 10, also as described in Paragraph XXVI., above.

Paragraph F. of Modification No. 7 provided for the incorporation by reference of the terms and conditions of Modification No. 7 into the 1990 Order. With this Modification No. 10, the terms and conditions of Modification No. 7 are explicitly integrated into the 1990 Consent Order, as modified, insofar as they have continuing effect.

Paragraph G. of Modification No. 7 discontinued the annual updating requirements of Subject 2 in Appendix A-1, for an Operations and Maintenance Plan, and of Subject 3 under Appendix A-2, for the final acceptable contingency plan, in light of the new obligation under new Appendix A-15 to submit the post-closure monitoring and maintenance operations manual. Modification No. 10 deletes Appendices A-1 and A-2 entirely.

Paragraph H. of Modification No. 7 revised Paragraph XX., Force Majeure, to add judicial injunctions and orders, and state or Federal legislation to the list of things that would constitute “force majeure.” Modification No. 10 adds these terms to subparagraph XX.A., above.

Modification No. 7 also revised Appendix A-5 to delete the enclosed unloader provisions because landfilling would cease by or before January 1, 2002. This Modification No. 10 deletes Appendix A-5 entirely.

Modification No. 7 is retained.

Modification No. 8: January 17, 2002

This modification, a copy of which is attached as Appendix F, is the September 11, 2001 modification.

A. 1. Modification No. 8 modified Paragraph G of Modification No. 7 to exclude acceptance and disposal of World Trade Center September 11, 2001 debris from the requirement to cease disposal of waste by January 1, 2002.

2. Modification No. 8 similarly amended Appendix A-15, milestone 8, so that the January 1, 2002 closure date would not apply to acceptance and disposal of debris from the World Trade Center disaster on September 11, 2001. The last of this material was accepted at the Landfill on July 15, 2002.

B. Modification No. 8 provided a mechanism for the Respondent to apply for extensions of milestone dates for milestone subjects 9-14 of Appendix A-15 and for the Departmental Regional Engineer to give extensions up to two months in length with no further formal process.

C. Modification No. 8 is retained.

Modification No. 9: December 17, 2009

This modification, a copy of which is attached as Appendix G, extended the closure construction schedules in Appendix A-15 for completion of final cover at Sections 6/7 and 1/9, neither of which had been previously subject to formal final cover construction completion dates. These extensions did not create “milestones” subject to penalties.

- A. For Section 6/7, additional time was needed for preparation of a Supplemental Environmental Impact Statement supplementing the Final Generic Environmental Impact Statement which was prepared by the New York City Department of Parks and Recreation to analyze the effects of building a road base for two roads into the final cover. The extended date for completion of closure construction at Section 6/7 was December 31, 2011. The work required by Modification No. 9 at Landfill Section 6/7 has been satisfactorily and timely completed and found to be acceptable by the Department.
- B. For Section 1/9, Modification No. 10 gave an extension of time until December 31, 2018 for completion of closure construction, subject to delineated conditions. This Modification No. 10 grants an additional three year extension of the date for completion of closure construction to December 31, 2021.
- C. Modification No. 9 is retained.