

**COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

	)	RE: DARTMOUTH—BWP/Solid Waste
In the Matter of:	)	Closure/Capping of the
	)	Cecil Smith Landfill
Mary Robinson	)	452 Old Fall River Road
383 Hixville Road	)	ADMINISTRATIVE CONSENT ORDER
North Dartmouth, Massachusetts	)	#ACO-SE-14-4001
	)	
&	)	
	)	
Boston Environmental Corporation	)	
338 Howard Street	)	
Brockton, Massachusetts 02302	)	
	)	

**ADMINISTRATIVE CONSENT ORDER**

I. THE PARTIES

1. The Massachusetts Department of Environmental Protection (the “MassDEP” or the “Department”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, Massachusetts, 02347.
  
2. Mary Robinson (the “Owner”) is an Individual who resides at 383 Hixville Road, North Dartmouth, Massachusetts. The Owner’s mailing address for purposes of this Consent Order is 383 Hixville Road, North Dartmouth, Massachusetts.
  
3. Boston Environmental Corporation (“BEC” and/or the “Operator”) is a Massachusetts corporation and maintains its principal offices at 338 Howard Street, Brockton, Massachusetts 02302.

4. Hereinafter, Mary Robinson and BEC shall be referred to and collectively known as the “Respondents”.
5. Hereinafter, MassDEP and the Respondents will be referred to and collectively known as the “Parties”.

## II. STATEMENT OF FACTS AND LAW

6. The Department is responsible for the implementation and enforcement of M.G.L. c. 111, §§ 150A and 150A1/2, the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00, the Solid Waste Management Regulations at 310 CMR 19.000, and the Massachusetts Contingency Plan (“MCP”) at 310 CMR 40.0000. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
7. Mary Robinson owns an inactive, unlined, uncapped landfill (the “Landfill”) located at 452 Old Fall River Road in North Dartmouth, Massachusetts. The Landfill is approximately 25-acres in size and is situated on a 60-acre parcel of site-assigned land (the “Site”).
8. MassDEP records indicate that construction and demolition (“C&D”) waste was disposed of in the Landfill from approximately 1954 until 1974. Sometime around 1982, and subsequent to accepting waste, the Landfill was capped according to plans approved by the Department.
9. Between 2002 and 2005, the United States Environmental Protection Agency (“USEPA”) conducted site assessment investigation activities at the Site. The USEPA determined that although the Landfill had caused adverse impacts to the environment, as a result of measured elevated levels of contaminants in the ground water and sediments and soil, the impact was relatively low, and as such the Landfill was classified to be a low priority for further assessment, and that no further action by USEPA was planned.

10. On July 17, 2009, in response to a complaint alleging that there was unpermitted landfill disruption activity occurring at the Landfill, MassDEP conducted an inspection and observed that the Landfill had been disrupted as it displayed signs of excavation and presence of exposed solid waste. In some areas of the Landfill there were accumulations of recyclable metal that appeared to have been excavated from the Landfill and that the residual materials had been placed back into the excavation area. MassDEP also observed evidence of ash and partially burned solid waste materials that had been excavated from the Landfill.
  
11. On August, 7, 2009, MassDEP issued a Unilateral Administrative Order (“#UAO-SE-09-4001”) to the Owner, citing the following violations as observed on July 17, 2009:
  - 310 CMR 19.142(5)(a), “Post-Closure Requirements”, for not taking corrective actions to remediate or mitigate conditions that compromised the integrity of the final cover system, including but not limited to the removal of the final cover system.
  
  - 310 CMR 19.130(32)(a), “Disruption of Landfilled Areas”, for causing and/or allowing the excavation, disruption and/or removal of previously buried solid waste material without prior written approval.
  
  - 310 CMR 7.07(5), “Open Burning”, for causing and/or allowing open burning to be conducted at the Site.

The UAO required:

- Immediate cessation of all unapproved post-closure use activities at the Landfill (especially that of landfill excavation/mining) and to promptly cover all exposed waste materials with six (6) inches of clean soil.
  
- Immediate implementation of a Health & Site Safety Plan (“HASp”) in order to ensure the protection of public health and safety on the Landfill/Site, especially

regarding potential exposure to chemical and physical dangers associated with the buried waste materials.

- Within thirty (30) days, submittal of a Remedial Action Plan that would be prepared by a registered professional engineer in order to conduct an assessment of the Landfill/Site, and submit for review and approval a plan and schedule to: clean up, re-cap and otherwise remediate the Landfill.

12. MassDEP records indicate that the Owner did not appeal the UAO.

13. On August 28, 2009, MassDEP granted the Owner a thirty (30) day extension to comply with the UAO.

14. MassDEP did not receive the Remedial Action Plan from the Owner within the specified extended timeframe of the UAO.

15. On June 22, 2011, MassDEP conducted an Enforcement Conference with the Owner regarding noncompliance at the Landfill. During the conference, the Owner proposed to achieve compliance by excavating and removing all solid waste from the Site.

16. On August 23, 2011, MassDEP sent an Administrative Consent Order with Penalty to the Owner for her signature. The ACOP set forth a compliance plan and schedule for the Landfill/Site as discussed and agreed to during the enforcement conference conducted on June 22, 2011.

17. The Owner did not sign the ACOP and the compliance plan was not implemented.

18. On or about July 2, 2012, MassDEP met with BEC, who stated that they had Powers of Attorney for the Owner for purposes of achieving compliance with 310 CMR 19.000 and the outstanding UAO dated August 7, 2009. BEC proposed utilization of the Department's "Revised Guidelines for Determining Closure Activities at Inactive Unlined Landfill Sites" ("Inactive Landfill Closure Guidelines") dated July 6, 2001, as revised on February 16,

2007, to close and cap the Landfill through the use of approved grading/shaping materials: including mildly contaminated soils pursuant to MassDEP Policy #COMM-97-001; and processed construction and demolition materials), in order to accrue sufficient funds to pay for the closure/capping of the Landfill, as well as to fund the Landfill's post-closure monitoring and maintenance during the post-closure period of thirty (30) years.

19. On or about December 17, 2012, MassDEP received a conceptual landfill closure proposal (the "Conceptual Closure Proposal") from BEC pursuant to the Department's "Inactive Landfill Closure Guidelines". As proposed, the existing footprint of the Landfill (i.e. 25-acres) would be excavated/consolidated to a final size of 23-acres, and an estimated one-million cubic-yards of approved grading shaping materials would be used to achieve final landfill closure grades/configuration.
20. In mid-January 2013, MassDEP instructed BEC that pursuant to the outlined procedures in the Department's "Inactive Landfill Closure Guidelines", BEC should conduct a public informational session within the community of Dartmouth regarding the "Conceptual Closure Proposal". The purpose of the public informational sessions was to solicit input from the Town of Dartmouth officials and the community at large regarding the proposed landfill closure project.
21. On March 12, 2013, BEC submitted a Notice of Intent ("NOI") to the Town of Dartmouth for the excavation/removal of solid waste from wetland resource areas surrounding the Landfill. The wetlands project was assigned Wetlands File Number #SE 15-2186.
22. On March 20, 2013, BEC submitted a BRPWW10-Water Quality Certification application to MassDEP under Transmittal Number #X255424, for proposed work within wetland resource areas surrounding the Landfill.
23. On March 23, 2013, the first public informational session on BEC's "Conceptual Closure Proposal" was conducted. As a result of public interest, two (2) additional public informational meetings were conducted on June 27, 2013 and on July 11, 2013.

24. On May 6, 2013, MassDEP met with BEC and Town officials regarding the installation of additional ground water monitoring wells at the Site.
25. On May 13, 2013, BEC submitted a BWPSW45-Alternative Review permit application (Transmittal Number #X255925) regarding the installation of the additional monitoring wells.
26. On May 17, 2013, MassDEP issued a conditional approval of the BWPSW45-Alternative Review permit application regarding the installation of the additional monitoring wells.
27. On or about, May 21, 2013, BEC installed six (6) new/additional monitoring wells at/around the Site.
28. On May 22, 2013, MassDEP, as part of its review of BEC's "Conceptual Closure Proposal", conducted an inspection of the Landfill/Site. During the inspection, MassDEP observed that many of the previously observed violations of 310 CMR 19.000, as described in the UAO, had not been corrected. MassDEP also observed additional violations including: numerous agricultural, farming and commercial activities being conducted on top of and/or immediately adjacent to the unlined/uncapped Landfill. Additionally, MassDEP observed a residential house had been constructed within the footprint of the Landfill and appeared to be occupied.
29. On or about, May 29, 2013, BEC sampled the six (6) new/additional monitoring wells, and the seven (7) existing monitoring wells.
30. On May 30, 2013, BEC filed an Environmental Notification Form ("ENF"), with the Massachusetts Environmental Policy Act ("MEPA") unit regarding the "Conceptual Closure Proposal". MEPA designated the project as EOEEA #15058.
31. On June 4, 2013, MassDEP issued a Notice of Enforcement Conference ("NOEC") to the Owner regarding MassDEP's observed violations of May 22, 2013.

32. On June 10, 2013, MassDEP held the Enforcement Conference. The Owner did not attend the Enforcement Conference, but was represented by BEC who acted in the Owner's capacity as her Power of Attorney for purposes of achieving compliance. BEC proposed that the implementation of their "Conceptual Closure Proposal" would serve as the means to achieve compliance with the regulatory violations as observed on May 22, 2013, as well as the outstanding UAO dated August 7, 2009.
33. On or about June 14, 2013, BEC, in response to the public's comments (as generated during the public informational meetings), as well as discussions with MassDEP, submitted a revised "Conceptual Closure Proposal" to MassDEP for the landfill closure project. .
34. Between June 14, 2013, and March 12, 2014, MassDEP evaluated revisions to BEC's revised "Conceptual Closure Proposal" that was submitted on June 14, 2013.
35. In an effort to assist in its evaluation of BEC's revised "Conceptual Closure Proposal" of June 2013, MassDEP hired an independent third-party engineering firm [Parsons] to evaluate the proposed closure of the Landfill.
36. On or about June 18, 2013, BEC submitted analytical results of the ground water monitoring/sampling activities in accordance with the BWPSW45-Alternative Review permit for the additional ground water monitoring wells. The analytical results indicated, and MassDEP agreed, that there was no immediate risk to human health or the environment, and that the measured environmental impacts were consistent with that of a historic C&D waste landfill.
37. On or about July 3, 2013, BEC submitted their draft "Response to Public Comments" concerning issues that were raised during the three public informational sessions conducted on: March 23, 2013; June 27, 2013; and on July 11, 2013.
38. On July 12, 2013, the Secretary of Energy and Environmental Affairs issued a determination that the ENF (EOEEA #15058) would not require further MEPA review.
39. On August 20, 2013, the Dartmouth Conservation Commission issued a denial of the NOI.

40. On August 27, 2013, BEC filed a request with MassDEP for a Superseding Order of Conditions (“SOC”) regarding the Town of Dartmouth’s denial of the NOI.
41. October 18, 2013, MassDEP released Parsons’s evaluation of all costs to close, cap and monitor and maintain the Landfill as well as the revenue necessary to be generated to cover those costs.
42. On December 2, 2013, MassDEP issued a Superseding Order of Conditions (“SOC”) regarding the NOI.
43. On December 4, 2013, MassDEP issued an approval of the BRPWW10-Water Quality Certification application (Transmittal Number #X255424).
44. On December 16, 2013, the Town of Dartmouth filed an appeal of MassDEP’s SOC.
45. On March 27, 2014, BEC submitted its final/revised “Conceptual Closure Proposal” in accordance with the Department’s Inactive Landfill Guidelines. As proposed in BEC’s revised/final “Conceptual Closure Proposal”, the project will include the following:
  - A. The existing foot-print of the Landfill will be reduced from approximately 25-acres to approximately 23-acres through the excavation of waste from surrounding wetland resource areas that abut the Landfill.
  - B. A four (4) year landfill closure timeframe will be established, whereby approved landfill closure grading/shaping materials will be placed during the first three (3) years, in order to achieve proper Landfill closure grades/configuration, and during the fourth and final year, the Landfill’s final capping system will be installed.
  - C. The total amount of approved landfill closure grading/shaping materials that would be used to close the Landfill would be approximately 926,000 cubic-yards (“yds<sup>3</sup>”).

1. Of the total amount of approved landfill closure grading/shaping materials, up to 100% (by in-place volume) may consist of mildly contaminated soils that would comply with the Department's Policy #COMM-97-001 entitled "Reuse and Disposal of Contaminated Soil at Massachusetts Landfills" dated August 15, 1997.
2. Of the total amount of approved landfill closure grading/shaping material, up to 11% (by in-place volume) may consist of C&D "fines" that would be generated from MassDEP approved/permitted C&D processors.

D. When completed, through the use of the following approved grading and shaping materials, the final maximum peak elevation of the capped Landfill will be approximately 135-feet above mean sea level (i.e. approximately 57-feet above the average existing grade level which is approximately 78-feet above mean sea level).

46. On March 27, 2014, MassDEP determined that BEC's final/revised "Conceptual Closure Proposal", as submitted on March 27, 2014, met the requirements of the "Inactive Landfill Closure Guidelines", and notified the Respondents that they could proceed with the preparation and submittal of requisite permit applications pursuant to the applicable requirements set forth at 310 CMR 19.000, and as required by this Consent Order regarding the assessment and closure of the Landfill.

### III. DISPOSITION and ORDER

For the reasons set forth above, the Department hereby issues, and the Respondents hereby consent to the following:

47. The Parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth

above. Respondents enter into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondents agree not to contest such facts and allegations for the limited purposes of the issuance or enforcement of this Consent Order.

48. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Section II of this Consent Order.

49. Respondents shall perform the following actions:

50. The Respondents shall ensure that all engineering work performed pursuant to the Consent Order shall be under the general direction and supervision of a qualified Massachusetts Registered Professional Engineer ("PE") experienced in solid waste facility design and solid waste management. All landfill closure grading/shaping materials that will be used in this landfill closure project shall be classified and certified by PE or Licensed Site Professional ("LSP") prior to use at the Landfill. Any contractual relationship between the Respondents and the PE and/or LSP to perform such services shall require the PE and/or LSP, as a condition of the contract, to implement their work consistent with all applicable provisions of this Consent Order.

51. The Respondents shall submit all required permit applications associated with this project in accordance with the provisions of 310 CMR 4.00 "Timely Action Schedule and Fee Provisions" regulations.

#### IMPLEMENTATION OF ENVIRONMENTAL SITE ASSESSMENT

52. **Within sixty (60) days of the Effective Date of this Consent Order**, the Respondents shall submit a BWPSW12 – ISA/CSA-Scope of Work ("ISA/CSA-SOW") permit application to MassDEP. The ISA/CSA-SOW application shall comply with all applicable provisions and requirements outlined at 310 CMR 19.150 and the Department's "Landfill Technical Guidance Manual dated May 1997" (the "Manual").

- A. **Within thirty (30) days of MassDEP’s approval of the ISA/CSA-SOW**, the Respondents shall install all approved additional ground water monitoring equipment and shall collect one round of samples from the entire environmental monitoring network including existing as well as newly installed ground water monitoring equipment.
- B. **Within forty-five (45) days of MassDEP’s approval of the ISA/CSA-SOW**, the Respondents shall submit to MassDEP for review and approval, an “interim” ISA/CSA Report. The interim report shall be consistent with the environmental monitoring requirements specified at 310 CMR 19.132(1)(f), and shall at a minimum include the following information:
- i. Site plans or maps showing: the locations of all monitoring equipment, the ground water flow direction, and the location and distribution of measured contaminants;
  - ii. A summary of all analytical data inclusive of all applicable standards (MCP method GW-1 and 3, and the “*Massachusetts Drinking Water Guidelines*”), with a corresponding comparison to recent, previous and/or past historical data; and,
  - iii. Identification of any particular issues of concern, including but not limited to assessment data that could affect the design of the CAD or implementation of the CSA.

53. Environmental monitoring of the Landfill/Site shall be performed on a routine schedule throughout the duration of the Landfill closure project. The environmental monitoring results shall be submitted to the Department in accordance with 310 CMR 19.132, or in accordance with a schedule established in the approved ISA/CSA-SOW and/or CAD permits, or as otherwise specified by the Department.

CORRECTIVE ACTION DESIGN (“CAD”) PLANS

54. **Within ninety (90) days of the Effective Date of this Consent Order**, the Respondents shall submit a BWPSW25 – CAD permit application to MassDEP for the closure/capping of the Landfill. The CAD application shall comply with all applicable provisions of 310 CMR 4.00, 310 CMR 19.000, the Manual, and all applicable Guidelines and Policies. In addition to the “standard” features of a landfill closure plan, as required under 310 CMR 19.112, the CAD application shall also include the following components:

- A. The CAD application shall describe the types and amounts of the total in-place volume of approved landfill closure grading and shaping materials that will be used to achieve the proposed final grades and configuration of the Landfill. The grading/shaping materials that will be used in the Landfill’s closure include: mildly contaminated soils in accordance with the parameters established under MassDEP’s Policy #COMM-97-001 dated August 15, 1997, and approved C&D fines that are produced by MassDEP approved/permitted C&D processing facilities.
- B. The CAD application shall include a “Materials Management Plan” that at a minimum describes:
  - 1. Methods and procedures for the testing, stockpiling and management of the delivered approved grading/shaping materials;
  - 2. Methods and procedures for the testing of the C&D fines for their sulfate content; and,
  - 3. Methods and procedures for the mixing of the C&D fines with soil inclusive of the relative amounts of each material, as predicated on the sulfate content of the C&D fines.

- C. The CAD application shall include details regarding the areas and amounts of all solid waste that will be excavated/consolidated waste from the Landfill's existing foot-print perimeter in order to consolidate and reduce the size of the Landfill's foot-print.
- D. The CAD application shall include details and construction features of all associated appurtenances, equipment, and structures at the Site that will be associated with the Landfill's closure activities.
- E. The CAD application shall include a "Health and Safety Plan" ("HASP") as it pertains to worker safety and environmental measures that will be employed during the excavation/management of all waste materials as well as the Landfill closure activities in order to protect the workers from any dangers associated thereto. The HASP plan shall address the methods and procedures concerning the handling of any excavated waste materials that could potentially be dangerous and/or would be unsuitable for re-burial in the consolidated Landfill, and a plan as to how unacceptable waste would be disposed of at another appropriately permitted waste disposal facility. The HASP shall also address the materials management practices for the re-burial of the excavated wastes at the Landfill.
- F. The CAD application shall include a "Confirmatory Soil Sampling and Analysis Plan" regarding the procedures and practices for testing of all waste excavation areas of the Landfill/Site in order to ensure that during and after the excavation/consolidation process, the excavated areas have been cleaned of all previously buried waste and that there is no residual contamination from the excavated areas. The confirmatory Soil Sampling and Analysis Plan shall adhere to the applicable Method 1: Soil Category pursuant to 310 CMR 40.0974, and shall, at a minimum, test for the following parameters: EPH, VPH with targets, PCBs, and 8 RCRA metals. MassDEP shall be periodically apprised of the findings of the confirmatory soil sampling activities.
- G. The CAD application shall also include all appropriate design features, details and calculations for storm water controls at the Site for a 24-hour/25-year storm event at the Site during the Landfill closure project and during the post-closure period. The

storm water control plan shall comply with all applicable local, state and federal requirements.

- H. The CAD application shall include plans and provisions for a “phased” or sequencing closure operation. The Landfill closure project shall, at a minimum, provide for a three-phased Landfill closure process.
- I. The CAD application shall include all specific design features and details regarding the installation/construction of the final cover/capping system in accordance with all applicable provisions under 310 CMR 19.000 and the Manual.
- J. The CAD application shall include a “Hydrogen Sulfide and Odorous Landfill Gas Response Plan” in accordance with MassDEP’s Guidance Document entitled “Control of Odorous Gas at Massachusetts Landfills, in Support of 310 CMR 19.000, Solid Waste Management Regulations (September 2007)”.
- K. The CAD application shall include all appropriate design features and specifications for the installation of a passive gas collection/control system that would have the potential to be retro-fitted and operated as an active landfill gas collection/control system. The CAD application design shall also include provisions for the installation of an emergency active gas collection and control system including horizontal collection pipes and header lines, as well as all necessary utilities for the gas collection/control system to be potentially operated as an active gas control system (e.g. flare) should MassDEP determine such controls are necessary as a result of the release of offensive or harmful gases as a result of the Landfill’s closure activities. The active gas collection system would be able to be installed and made operational within ten (10) days of receipt of written Notice from the Department to the Respondents that odors from the Landfill are creating an off-site nuisance condition or posing a risk or threat to the public health, safety welfare or the environment.
- L. The CAD application shall include all appropriate design features and control measures concerning a “Traffic Mitigation Plan” regarding truck-traffic to/from the

Landfill/Site during the Landfill closure project. The Traffic Mitigation Plan shall not be limited to the immediate vicinity of the Landfill/Site, but shall also include all access roads that would be utilized during the Landfill closure project, including all major routes of/in abutting communities.

- M. The CAD application shall include a conceptual “post-closure monitoring and maintenance plan” that will be implemented after the completion of the Landfill closure project. The “post-closure monitoring and maintenance plan” may be revised based on the findings of the Landfill assessment activities.
- N. The CAD application shall not include any component that would constitute a lateral increase of the existing foot-print of the Landfill (after excavation/consolidation), or a vertical increase in the proposed final height of the landfill as indicated in BEC’s revised/final “Conceptual Closure Proposal” of **March 27, 2014**, as referenced above in Paragraphs 45 and 46.
- O. The Respondent shall respond to any deficiency notice or request for additional information concerning MassDEP’s review of the CAD application **within thirty (30) days** of being notified by the Department in writing of same.
- P. At the conclusion of its review of the CAD application and the interim ISA/CSA report as referenced in Paragraph 52B MassDEP will issue a “Provisional Decision” on the CAD application pursuant to the provisions of 310 CMR 19.037(4)(a). The Department will provide the public with twenty-one (21) days to comment on the Provisional Decision. During the 21-day public comment period, the Department and the Respondents shall consider all relevant comments from interested persons regarding the Provisional Decision on the CAD application.
- Q. At the conclusion of the twenty-one (21) day public comment period MassDEP will review any comments, and will issue its “Final Decision” on the CAD application pursuant to the provisions of 310 CMR 19.037(5).

### FINANCIAL ASSURANCE MECHANISM (“FAM”)

55. After MassDEP’s issuance of its review determination on the Interim ISA/CSA Report (as referenced in Paragraph 52B), and after MassDEP’s issuance of its Final Decision on the CAD application (as referenced in Paragraph 54Q) the Respondents shall provide MassDEP with documentation that a Financial Assurance Mechanism (“FAM”), in the amount of approximately five million six hundred thousand (\$5,600,000.00) dollars has been established by the Respondents in accordance with the provisions of 310 CMR 19.051 for the implementation and completion of the Landfill’s closure plan.
56. The FAM shall also include provisions for the establishment of a separate “Post-Closure Monitoring and Maintenance Account, on the behalf of the Owner regarding the monitoring, maintenance and care of the Landfill after the Landfill has been capped and closed. The “Post-Closure Monitoring and Maintenance” account will be funded through a portion of the proceeds from the delivery and use of the approved landfill closure grading and shaping materials during the Landfill closure project. The “Post-Closure Monitoring and Maintenance” account shall be managed by a third party for the performance of all required post-closure monitoring and maintenance activities associated with the Landfill during the “post-closure period” (30-years) after the Landfill has been closed/capped.

### IMPLEMENTATION OF LANDFILL CLOSURE

57. Upon the Respondent’s compliance with the performance and submittal of an interim ISA/CSA Report (as referenced in Paragraph 52B), and upon MassDEP’s issuance of its review determination thereto, and upon MassDEP’s issuance of its Final Decision on the CAD application (as referenced in Paragraph 54Q), and upon the Respondent’s establishment of a FAM for the closure and capping of the Landfill (as referenced in Paragraph 55) , the Respondents may commence the delivery, acceptance, stockpiling, and placement of approved landfill closure grading/shaping materials at the Landfill/Site.

The acceptance/placement of the approved landfill closure grading/shaping materials shall be allowed to continue for a period of time not to exceed three (3) years from the date of initial placement of the approved landfill closure grading/shaping materials, in order to achieve the approved closure grades in the CAD permit, or until such time as MassDEP determines that the closure activities have caused nuisance conditions or an adverse impact to the environment.

- A. The Respondents shall immediately advise MassDEP in writing of the commencement of the delivery/placement of the approved Landfill closure grading/shaping materials.
- B. The Respondents shall maintain a daily records management system documenting all materials delivered to and/or shipped from the Landfill/Site as part of the closure/capping project. Amounts of all such materials shall be recorded in units of weight and volume.
- C. The Site shall be equipped with wheel-washing equipment or other similar equipment in order to prevent dirt and debris from leaving the Site and “soiling” roadways that will be utilized as part of the project. The Site shall also be equipped with street sweeping equipment in order to routinely clean all impacted roadways that will be utilized as part of the project.
- D. All on-site diesel fuel powered construction equipment associated with the project shall be equipped with or suitably retrofitted with oxidation catalysts or particulate traps in order to reduce air pollution emission from the combustion of fossil fuels. NOTE: Equipment which currently meets EPA Tier 2 and EU Stage 2 Off-Highway Emissions Limits does not require after engine controls.
- E. At no time during the landfill closure process should landfill activities be allowed to cause or contribute to a public nuisance condition, as a result of dust, noise, odors, etc., or cause or pose a risk or threat to the public health, safety welfare or the environment.

- F. In the event the interim ISA/CSA report identifies site conditions which are substantially different from those known by the Respondents and MassDEP as of the date of the revised final Conceptual Closure Proposal and said different conditions substantially increase the scope of remedial activities, the Respondent shall submit a revised CAD permit application that reflects the increased remedial activities.

#### COMPLETION OF ENVIRONMENTAL SITE ASSESSMENT

58. **Within three-hundred-sixty-five (365) days of the Effective Date of this Consent Order**, the Respondents shall complete the CSA in accordance with the terms and conditions of the ISA/CSA-SOW approval and/or as may be supplemented pursuant to MassDEP's review determination of the interim ISA/CSA report as described in Paragraph 52B.
59. **Within four-hundred-fifty-five (455) days of the Effective Date of this Consent Order**, the Respondents shall submit a BWPSW23 – CSA report application to MassDEP, describing the findings of the environmental site assessment. The CSA report shall include a recommendation whether a CAAA is necessary.
- A. Should MassDEP determine that a CAAA is not necessary, the Respondents shall proceed with the implementation of MassDEP's final approved CAD permit.
- B. Should MassDEP determine that a CAAA is necessary, and that the Landfill's final capping system will need to be of a different design from that which has been previously described in MassDEP's final approved CAD permit (as referenced in Paragraph 54Q), the Respondents shall, within sixty (60) days of the MassDEP's issuance of written approval of the final CSA Report, submit a BWPSW24 - CAAA application to MassDEP for review and approval.
- C. In addition, should a CAAA be determined necessary, and should MassDEP determine that the Landfill's final capping system will be of a different design from that which had been previously described in MassDEP's final CAD permit, the Respondent's

shall prepare and submit a revised BWPSW25 – CAD application to MassDEP for review and approval. Nothing herein shall prohibit a phased final closure.

#### COMPLETION OF LANDFILL CLOSURE

60. **Within four (4) years of the Effective Date of this Consent Order**, the Respondents shall complete the installation of the final approved CAD cover/capping system. More specifically, and unless extended pursuant to the provisions of Paragraph 57F, the placement of the approved grading/shaping materials will occur during the first three (3) years of operation in order to achieve proper Landfill closure grades/configuration, and the installation of the final capping system shall be completed no later than within (1) year thereafter of achieving the final approved grades as described in the final CAD approval, or **upon stopping the delivery of acceptable landfill closure grading/shaping materials to the Site**, whichever occurs first.

An order of a court, or regulatory authority, of competent jurisdiction that prohibits the Respondents from receiving or placing approved grading and shaping materials shall toll the period Respondents have time to complete the closure of the Landfill for the period of time the order is in force and effect.

#### CERTIFICATION OF LANDFILL CLOSURE

61. **Within ninety (90) days of completing the installation of the final cover/capping system**, the Respondents shall submit a BWPSW43 - Landfill Closure Certification Report to the Department in accordance with the provisions of 310 CMR 19.130(31) and 19.140. The Certification Report shall serve as documentation that the closure/capping activities at the landfill have been completed in accordance with the approved CAD permit, the regulations, the Manual, and all relevant policies, guidelines and requirements.

SUBMITTAL OF INFORMATION

62. Respondent shall pay such permit application fee(s) in accordance with the instructions set forth in the permit application, and shall simultaneously deliver a copy of the payment to:

Mark Dakers, Section Chief  
Solid Waste Management Section  
Department of Environmental Protection  
Southeast Regional Office  
20 Riverside Drive  
Lakeville, MA 02347

63. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Mark Dakers, Section Chief  
Solid Waste Management Section  
Department of Environmental Protection  
Southeast Regional Office  
20 Riverside Drive  
Lakeville, MA 02347

Such notices, submittals and other communications shall be considered delivered by Respondents upon receipt by MassDEP.

64. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondents or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

65. Respondents understand, and hereby waive, their right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review.
66. This Consent Order may be modified only by written agreement of the Parties hereto.
67. The provisions of this Consent order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.
68. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent order in an administrative or judicial proceeding.
69. This Consent Order shall be binding upon Respondents and their heirs, successors and assigns. Respondents shall not violate this Consent Order and shall not allow or suffer Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondents have fully complied with this Consent Order, Respondents shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.
70. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondents shall immediately, but in no event later than ten (10) days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or

potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondents intend to attribute such delay or potential delay to a Force Majeure event, such notice shall also include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.

71. If MassDEP determines that Respondents' failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondents otherwise comply with the notice provisions set forth above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondents' failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondents' failure to perform a requirement of this Consent Order during the extension of time for performance resulting from a Force Majeure event.
72. Delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.
73. Stipulated Penalties, as set forth herein, shall not accrue for any failure to perform provided that they are excused in writing by the Department as a "Force Majeure" event, in accordance with the terms set forth herein.
74. Unanticipated or increased costs or expenses associated with the implementation of the actions required under this Consent Order, failure to generate anticipated revenues, or changed financial circumstances shall not be considered circumstances beyond the control and without the fault of the Respondents for purposes of complying with the Consent Order.

75. In the event the Respondents fail to comply with the actions or deadlines contained in Section III of this Consent Order without the expressed written approval of the Department, Respondents shall pay stipulated civil administrative penalties to the Commonwealth for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondents correct the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondents of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondents a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondents' obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondents' failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondents shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondents reserve whatever rights it may have to contest MassDEP's determination that Respondents failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondents agree to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

For each day, or portion thereof, of each violation, Respondents shall pay stipulated civil administrative penalties in the following amounts:

<u>Violation</u>	<u>Penalty Per Day</u>
1 <sup>st</sup> day through 30 <sup>th</sup> day	\$ 500.00 per day/per violation
31 <sup>st</sup> day thereafter	\$ 1,000.00 per day/per violation

76. Respondents shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check, cashier's check, or money order, Respondents shall clearly print on the face of its payment Respondent's full name, the file number appearing on the first page of this Consent Order, and the Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts  
 Department of Environmental Protection  
 Commonwealth Master Lockbox  
 P.O. Box 3982  
 Boston, Massachusetts 02241-3982

In the event Respondents fail to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

77. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondents shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.
78. Respondents agree to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to 452 Old Fall River Road in Dartmouth (the "Site") for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.
79. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.
80. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.
81. This Consent Order shall become effective on the date that it is executed by MassDEP.
82. This ACO shall not become effective until such time as the Owner enters into #ACOP-SE-14-4002, which in addition to requiring the closure/capping of the Landfill, sets forth the requirement that the Owner cease any and all non-permitted post-closure activities, the requirement for payment of an Administrative Penalty in accordance with G.L. 21A §16, and the requirement that the Owner conduct a Supplemental Environmental Project.

Consented To:

**MARY ROBINSON (the “Owner”)**

By: \_\_\_\_\_  
This final document copy is being provided to you electronically by the  
Department of Environmental Protection. A signed copy of this document  
is on file at the DEP office listed on the letterhead.

Date: 3/28/14

Consented To:

**BOSTON ENVIRONMENTAL CORPORATION (the “Operator”)**

By: \_\_\_\_\_  
This final document copy is being provided to you electronically by the  
Department of Environmental Protection. A signed copy of this document  
is on file at the DEP office listed on the letterhead.

Date: 3/28/14

