UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

VIA EMAIL – JJaen@ecwaste.com
RETURN RECEIPT REQUESTED

El Coqui Landfill Company, LLC
Attn: Mr. Jaime J. Jáen
Vice President
P.O. Box 918 Punta Santiago
Humacao, PR 00741-0918
JJaen@ecwaste.com

Re: Finding of Violation, El Coqui Landfill Company, EPA Docket No. CAA-02-2025-1605

Mr. Jáen:

The United States Environmental Protection Agency ("EPA") Region 2 issues this Finding of Violation ("FOV") pursuant to the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq*., and its implementing regulations to El Coqui Landfill Company. ("Respondent") in connection with the operation of the El Coqui Landfill located at PR-923, Km 2.5, Buena Vista Ward, Humacao, PR 00741. The FOV identifies violations of CAA Section 111, 112 and 502 for failure to comply with the "New Source Performance Standards for Municipal Solid Waste Landfills" regulations at 40 C.F.R. Part 60, Subpart WWW, violations of 40 C.F.R. Part 62, Subpart OOO (40 C.F.R. 62, §§ 62.16710 – 62.16730) and the NESHAP for Municipal Solid Waste Landfills, at 40 C.F.R. Part 63, Subpart AAAA (40 C.F.R. 63, §§ 63.1930 – 62.1990)

If the Respondent would like to schedule a conference to discuss this FOV, please have your legal counsel contact Suzette M. Meléndez-Colón, Assistant Regional Counsel, at Melendez-Colon.Suzette@epa.gov, within ten days of your receipt of this letter and the enclosed FOV. Should you have technical questions please contact either Hannah Patel, Environmental Scientist at patel.hannah@epa.gov.

Sincerely,

ROBERT BUETTNER
Digitally signed by ROBERT BUETTNER
Date: 2025.01.08 15:38:00 -05'00'

Robert Buettner, Manager
Air Compliance Branch
Enforcement and Compliance Assurance Division

Enclosure: Finding of Violation

cc: Mr. César Rodríguez, Puerto Rico Department of Natural and Environmental Resources (DNER), Acting Air Quality Area (AQA) Manager CesarRodriguez@drna.pr.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF: **El Coquí Landfill Company, LLC** RESPONDENT Proceedings pursuant to the Clean Air Act, 42 U.S.C. §§ 7401 et seq.	**FINDING OF VIOLATION** CAA-02-2025-1605

I. SUMMARY

The United States Environmental Protection Agency ("EPA") Region 2, Director of the Enforcement and Compliance Assurance Division ("Director") issues this Finding of Violation ("FOV") pursuant to the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7401 *et seq.*, to the El Coquí Landfill Company, LLC ("El Coqui" or "Respondent") to notify the Respondent that they are in violation of the CAA and its implementing regulations in operating the El Coquí Landfill Company, LLC Landfill (the "Landfill" or the "Facility") located at PR-923, Km 2.5, Buena Vista Ward, Humacao, PR 00741. The authority to find CAA violations is delegated to the Director from the EPA, Administrator through the Regional Administrator.

As described in detail below, the Respondent has violated Sections 111, 112, and 502 of the CAA by failing to comply with the New Source Performance Standards ("NSPS") for Municipal Solid Waste Landfills, 40 C.F.R. Part 60, Subpart WWW (40 C.F.R. §§ 60.760 – 60.769), the Federal Plan Requirements for Municipal Solid Waste Landfills, 40 C.F.R. Part 62, Subpart

OOO (40 C.F.R. 62, §§ 62.16710 – 62.16730) and the NESHAP for Municipal Solid Waste Landfills, at 40 C.F.R. Part 63, Subpart AAAA (40 C.F.R. 63, §§ 63.1930 – 62.1990). The violations have been ongoing since at least May 1, 2024.

II. STATUTORY AND REGULATORY BACKGROUND

1. CAA Section 302(e) states that whenever the term "person" is used in the Act, the term includes "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof." 42 U.S.C. § 7602(e).

2. CAA Section 101(b)(1) states that one of the purposes of the Act is to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1).

3. CAA Section 111(a)(1) defines "standard of performance" as "a standard for emissions of air pollutants which reflect the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality healthy and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." 42 U.S.C. § 7411(a)(1).

4. Section 111(a)(2) defines a "new source" as "any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source." 42 U.S.C. § 7411(a)(2).

5. CAA Section 111(b) requires the EPA, Administrator to promulgate regulations setting standards of performance for new sources of air pollution. 42 U.S.C. § 7411(b).

6. CAA Section 111(d) requires the EPA, Administrator to promulgate regulations that require states to submit plans that establish and implement standards of performance for existing sources.

7. On November 17, 1975, pursuant to Section 111(d) of the CAA, EPA promulgated 40 C.F.R. Part 60, Subpart B, "Adoption and Submittal of State Plans for Designated Facilities." 40 Fed. Reg. 53,346.

8. 40 C.F.R. Part 60, Subpart B, at 40 C.F.R. § 60.22(a), provides that, concurrent with or after proposing standards of performance for the control of a designated pollutant from affected facilities, EPA will publish a draft guideline document containing information pertinent to control of the designated pollutant from designated facilities. A "designated facility" is any existing facility that emits a designated pollutant and would be subject to a standard of performance for that pollutant if the existing facility were an affected facility. 40 C.F.R. § 60.21(b).

9. 40 C.F.R. § 60.23(a)(1) provides that, within nine months after EPA publishes a notice of availability of a final guideline document under 40 C.F.R. § 60.22(a), each state shall adopt and submit to EPA a plan for the control of the designated pollutant to which the guideline document applies.

10. Under 40 C.F.R. § 60.27(c), if a state fails to timely submit a plan under 40 C.F.R. § 60.23(a)(1), EPA will prepare and publish proposed regulations setting forth a federal plan for the state.

11. Under 40 C.F.R. § 60.27(d), EPA will promulgate the regulations proposed under 40 C.F.R. § 60.27(c) within six months after the date required for submission of a state plan unless, prior to such promulgation, the state submits a plan that EPA determines to be approvable.

12. In accordance with Section 111(d) of the CAA and 40 C.F.R. Part 60, Subpart B, on August 29, 2016, EPA published Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills at 40 C.F.R. Part 60, Subpart Cf. See 81 Fed. Reg. 59,313.

13. CAA Section 111(e) provides that after the effective date of any standard promulgated under Section 111 of the CAA, it shall be unlawful for any owner or operator of a new source to operate that source in violation of the standard. 42 U.S.C. § 7411(e).

14. Pursuant to Section 111 of the CAA, the EPA promulgated the "Standards of Performance for New Stationary Sources," (the "NSPS") at 40 C.F.R. Part 60.

15. Section 112(b) of the CAA establishes a list of hazardous air pollutants ("HAPs") that are subject to regulation under Section 112 of the Act. 42 U.S.C. § 7412(b).

16. Sections 112(c) and (d) of the CAA require the EPA, Administrator to promulgate regulations establishing emission standards for categories and subcategories of sources of the HAPs listed in 42 U.S.C. § 7412(b). 42 U.S.C. §§ 7412(c) and (d).

17. Section 112(h)(1) of the CAA provides that the Administrator may, as appropriate, promulgate design, equipment, work practice or operational standards, or a combination thereof, in lieu of emission standards. 42 U.S.C. § 7412(h)(1).

18. Section 112(i)(3)(A) of the CAA provides that after the effective date of any standard, limitation or regulation promulgated pursuant to Section 112 of the Act and

applicable to a source, no person may operate that source in violation of the standard, limitation, or regulation, except in the case of existing sources. For existing sources, Section 112(i)(3)(A) of the Act directs the EPA, Administrator to establish a compliance deadline that provides for compliance as expeditiously as practicable and in no event later than three years after the effective date of the standard. 42 U.S.C. § 7412(i)(3)(A).

Federal Plan, Subpart OOO

19. On May 21, 2021, under the authority of Section 111(d) of the Act, the EPA promulgated the "Federal Plan Requirements for Municipal Solid Waste Landfills" , 40 C.F.R. Part 62, Subpart OOO, §§ 62.16710 et seq. ("Subpart OOO" or the "Landfills Federal Plan"). *See* 86 FR 27756 (May 21, 2021).

20. Pursuant to 40 C.F.R. § 62.16711(a)(1) and (2), the requirements of Landfills Federal Plan apply to Municipal Solid Waste ("MSW") landfills that commenced construction, modification, or reconstruction on or before July 17, 2014, that (1) have not been modified or reconstructed since July 17, 2014, and (2) have accepted waste at any time since November 8, 1987, or the landfill has additional capacity for future waste deposition.

21. Section 62.16714(a) of the Landfills Federal Plan provides, in pertinent part, that an MSW landfill must collect and control emissions if the landfill has a design capacity greater than or equal to 2.5 million Mg by mass and 2.5 million m3 by volume and has a non-methane organic compounds ("NMOC") emission rate greater than or equal to 34 Mg/yr.

22. Section 62.16714(b) of the Landfills Federal Plan provides, in pertinent part, that a MSW landfill that meets the conditions in 40 C.F.R. § 62.16714(a) must install a gas collection

and control system ("GCCS") meeting the requirements in Paragraphs 62.16714 (b)(1) through (3) and (c).

23. Section 62.16714(b)(1) of the Landfills Federal Plan provides that each owner or operator of an MSW landfill must install and start up a GCCS that captures the gas generated within the landfill within thirty (30) months after: (i) the first annual report in which the NMOC emission rate equals or exceeds 34 Mg per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 Mg per year, as specified in 40 C.F.R. § 62.16724(d)(4); (ii) the first annual report in which the NMOC emission rate equals or exceeds 50 Mg per year submitted under previously applicable regulations in 40 C.F.R. Part 60, Subpart WWW, 40 C.F.R. Part 62, Subpart GGG, or a state plan implementing 40 C.F.R. Part 60, Subpart Cc for a legacy controlled landfill or landfill in the closed landfill subcategory; or (iii) the most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 Mg per year based on Tier 2, if the Tier 4 surface emissions monitoring shows a surface methane emission concentration of 500 parts per million methane or greater as specified in 40 C.F.R. § 62.16724 (d)(4)(iii).

24. Section 62.16714(b)(2) of the Landfills Federal Plan provides that an active collection system must: (i) be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control system equipment; (ii) collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of 5 years or more if active, or 2 years or more if closed or at final grade; (iii) collect gas at a sufficient extraction rate; and (iv) be designed to minimize off-site migration of subsurface gas.

25. Starting June 21, 2021, MSW landfills subject to the Landfills Federal Plan must comply with the Plan. 40 C.F.R. § 62.13(b).

26. 40 C.F.R. § 62.16716(d) provides that each owner or operator of an MSW landfill must operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator must conduct surface testing using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in 40 C.F.R § 62.16720(d). The owner or operator must conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at no more than 30-meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover and all cover penetrations. Thus, the owner or operator must monitor any openings that are within an area of the landfill where waste has been placed and a gas collection system is required. The owner or operator may establish an alternative traversing pattern that ensures equivalent coverage. A surface monitoring design plan must be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30-meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

27. 40 C.F.R. § 62.16720(c) provides in part that the following procedure must be used for compliance with the surface methane operational standard as provided in 40 C.F.R. § 62.16716(d) and specifically states the owner or operator must implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

28. 40 C.F.R. § 62.16728(a) provides in part that each owner or operator seeking to comply with 40 C.F.R. § 62.16714(b) must site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density throughout all gas producing areas using the following procedures unless alternative procedures have been approved by the Administrator. 40 C.F.R. § 62.16728 Specifications for active collection systems.

29. Pursuant to 40 C.F.R. § 60.16730, the following definitions are used in the Federal Plan Subpart OOO:

a. *"Active landfill"* means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

b. *"Design capacity"* means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the state, local, or tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually.

c. *"Controlled landfill*" means any landfill at which collection and control systems are required under this subpart as a result of the NMOC emission rate. The landfill is considered controlled at the time a collection and control system design plan is prepared in compliance with 40 C.F.R. § 62.16714(e)(2). Controlled

landfills also include those landfills that meet the definition of *legacy controlled landfills,* as defined in this subpart.

d. *"Household waste"* means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). Household waste does not include fully segregated yard waste. Segregated yard waste means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities. Household waste does not include construction, renovation, or demolition wastes, even if originating from a household.

e. *"Landfill"* means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under § 257.2 of this title.

f. "*Lateral expansion*" means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification unless it results in an increase in the design capacity of the landfill.

g. "*Modification*" means an increase in the permitted volume design capacity of the landfill by either lateral or vertical expansion based on its permitted design capacity as of July 17, 2014. Modification does not occur until

the owner or operator commences construction on the lateral or vertical expansion.

h. *"Municipal solid waste landfill* or *MSW landfill"* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA, Subtitle D wastes (§ 257.2 of this title) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

i. *"Municipal solid waste landfill emissions* or *MSW landfill emissions"* means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

j. *"NMOC"* means nonmethane organic compounds, as measured according to the provisions of § 62.16718.

k. *"Solid waste"* means the term solid waste as defined in 40 C.F.R. § 258.2.

CAA National Emissions Standards for Hazardous Air Pollutants

30. Sections 112(c), (d) and (k) of the CAA require EPA to publish a list of categories of "stationary sources" of hazardous air pollutants ("HAPs"), and to promulgate regulations establishing emission standards for major sources and certain area sources within those categories. 42 U.S.C. §§ 7412(c), (d) and (k). These standards are known as the National

Emissions Standards for Hazardous Air Pollutants ("NESHAP") for Source Categories and are codified at 40 C.F.R. Part 63.

31. The term "stationary source" under Section 112 has the same meaning as the term has under Section 111(a)(3) of the CAA. 42 U.S.C. § 7412(a)(3).

32. Section 112 of the CAA defines "major source" as any stationary source, or group of stationary sources, located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, more than ten (10) tons per year of any single HAP or twenty-five (25) tons per year or more of any combination of HAPs. *See* 42 U.S.C. § 7412(a)(1).

NESHAP General Provisions

33. HAPs are defined at 40 C.F.R. § 63.2 to mean pollutants listed in, or pursuant to, Section 112(b) of the CAA.

34. The term "new source" is defined as a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under Section 112 establishing an emission standard applicable to such source. *See* 42 U.S.C. § 7412(a)(4); *see* also 40 C.F.R. § 63.2.

35. The term "existing Source" means any stationary source other than a new source. *See* 42 U.S.C. § 7412(a)(10); *see* also 40 C.F.R. § 63.2.

36. Pursuant to 40 C.F.R. § 63.4(a), no "owner or operator" shall operate any "affected source" in violation of an applicable NESHAP, except under an extension of compliance or exemption from compliance as provided in that section or in CAA Section 112(i)(4), 42 U.S.C. § 7412(i)(4). An "affected source" is defined as a "collection of equipment,

activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the [CAA]". *See* 40 C.F.R. § 63.2.

37. The NESHAP General Provisions that apply to Subpart AAAA are specified in 40 C.F.R. Part 63, Subpart AAAA, Table 1, and include the operation and maintenance requirements in 40 C.F.R. § 63.6(e).

38. Pursuant to 40 C.F.R. § 63.6(e), the NESHAP General Provisions require that, at all times, including periods of startup, shutdown, and malfunction ("SSM"), owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions, which is determined by information that may include monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the facility.

39. 40 C.F.R. § 63.1955(a) of the Landfill NESHAP provides in part that, before September 28, 2021, if alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions have already been approved under 40 C.F.R. Part 60, Subpart WWW; Subpart XXX; a federal plan; or an EPA-approved and effective state or tribal plan, these alternatives can be used to comply with this subpart, except that all affected sources must comply with the SSM requirements in Subpart as specified in Table 1 of this subpart and all affected sources must submit compliance reports every 6 months as specified in § 63.1981(h), including information on all deviations that occurred during the 6-month reporting period.

40. 40 C.F.R. § 63.1955(a) of the Landfill NESHAP provides that, at all times, beginning no later than September 27, 2021, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if the requirements of this subpart have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

41. 40 C.F.R. § 63.1957(a) of the Landfill NESHAP requires in part that owners or operators of an MSW landfill must operate its collection and control device in accordance with the provisions of 40 C.F.R §§ 63.1958, 63.1960, and 63.1961.

42. 40 C.F.R. § 63.1958(d)(1) of the Landfill NESHAP requires each owner or operator of an MSW landfill to operate the collection system so that the methane concentration is less than 500 parts per million (ppm) above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator must conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at no more than 30-meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover. The owner or operator may establish an alternative traversing pattern that ensures equivalent coverage. A surface

monitoring design plan must be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30-meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

43. 40 C.F.R. § 63.1958(d)(2) of the Landfill NESHAP provides in part, that beginning, no later than September 27, 2021, the owner or operator must: (i) conduct surface testing using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in § 63.1960(d); and (ii) conduct surface testing at all cover penetrations. Thus, the owner or operator must monitor any cover penetrations that are within an area of the landfill where waste has been placed and a gas collection system is required.

CAA New Source Performance Standards (NSPS)

44. Pursuant to Section 111 of the CAA, EPA promulgated 40 C.F.R. Part 60 Subpart A, 40 C.F.R. §§ 60.1 – 60.19, known as the "NSPS General Provisions".

NSPS General Provisions

45. Pursuant to 40 C.F.R. § 60.1(a), except as otherwise provided, the NSPS General Provisions apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication of any 40 C.F.R. Part 60 standards (or, if earlier, the date of the publication of any proposed standard) applicable to the facility.

46. Pursuant to 40 C.F.R. § 60.2, the following definitions are used in the NSPS:

a. "*Affected facility*," with reference to a stationary source, means any apparatus to which a standard is applicable.

b. "*Owner or operator*" means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.

c. "*Stationary source*" means any building, structure, facility, or installation which emits or may emit any air pollutant.

47. Pursuant to 40 C.F.R. § 60.11(d), at all times, including periods of startup, shutdown, and malfunction, owners and operators must, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions.

NSPS Subpart WWW

48. Pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, on March 12, 1996, EPA promulgated the NSPS for Municipal Solid Waste ("MSW") Landfills at 40 C.F.R. Part 60, Subpart WWW. See 61 Fed. Reg. 9919. The NSPS for MSW landfills was amended on June 16, 1998 (63 Fed. Reg. 32743), February 24, 1999 (64 Fed. Reg. 9258), April 10, 2000 (65 Fed. Reg. 18906), October 17, 2000 (65 Fed. Reg. 61778), and September 21, 2006 (71 Fed. Reg. 55127).

49. The NSPS for MSW landfills applies to MSW landfills that commence construction, reconstruction, or modification on or after May 30, 1991. *See* 40 C.F.R. § 60.750(a).

50. The NSPS requires new MSW landfills with a design capacity over 2.5 million megagrams by mass or 2.5 million cubic meters by volume to calculate the NMOC emission rate of the landfill. 40 C.F.R. § 60.752(b). If the NMOC emission rate is greater than 50 megagrams per year, the landfill is required to install, operate, and monitor a GCCS in accordance with NSPS

requirements. *See* 40 C.F.R. § 60.752(b)(2)(ii).

51. Pursuant to 40 C.F.R. § 60.751, the following definitions are used in NSPS Subpart WWW:

a. "*Design capacity*" means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the state, local, or tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit.

b. "*Household waste*" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

c. "*Municipal solid waste landfill*" or "*MSW landfill*" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (defined under Section 257.2 of Title 40 of the Code of Federal Regulations), such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

d. *"Municipal solid waste landfill emissions*" or "*MSW landfill emissions*" means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

e. "*NMOC*" means nonmethane organic compounds, as measured according to the provisions of 40 C.F.R. § 60.754.

f. "*Active landfill*" means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

g. "*Landfill*" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under Section 257.2 of Title 40 of the Code of Federal Regulations.

h. "*Controlled landfill*" means any landfill at which collection and control systems are required under this subpart as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan are submitted in compliance with 40 C.F.R. § 60.752(b)(2)(i).

i. "*Solid waste*" means any garbage, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or

dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under 33 U.S.C. § 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).

52. 40 C.F.R. § 60.753 (c) provides in part that the landfill owner or operator shall implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

53. 40 C.F.R. § 60.753 (d) provides that each owner or operator of an MSW landfill must operate the GCCS so that the methane concentration is less than 500 parts per million above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator must conduct surface testing using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in 40 C.F.R. § 60.765(d). The owner or operator must conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at no more than 30-meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover and all cover penetrations. Thus, the owner or operator must monitor any openings that are within an area of the landfill where waste has been placed and a gas collection system is required. The owner or operator may establish an alternative traversing pattern that ensures equivalent coverage. A surface monitoring design plan must be developed that includes a topographical map with the

monitoring route and the rationale for any site-specific deviations from the 30-meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

54. 40 C.F.R. § 60.755(a) states in part the for the purposes of determining sufficient density of gas collectors for compliance with § 60.752(b)(2)(ii)(A)(2), the owner or operator shall design a system of vertical wells, horizontal collectors, or other collection devices, satisfactory to the Administrator, capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards.

55. 40 C.F.R. § 63.1960(c)(4)(iv) states any location that initially showed an exceedance but has a methane concentration less than 500 ppm methane above background at the ten (10)-day re-monitoring specified in paragraph must be re-monitored 1 month from the initial exceedance. If the 1-month re-monitoring shows a concentration less than 500 ppm above background, no further monitoring of that location is required until the next quarterly monitoring period.

III. FINDINGS OF FACT

56. The factual findings set forth below are based on a joint investigation of Landfill conducted by representatives from EPA's Headquarters and Region 2. This investigation involved, among other actions: (i) EPA's inspection of the Landfill on May 1, 2024; and (ii) a review of the Facility's operating permit and data, records, and reports.

57. The Landfill is located at PR-923, Km 2.5, Buena Vista Ward, Humacao, PR 00741.

58. The Landfill is an active MSW landfill owned by the El Coqui Landfill Company, LLC which is also the owner and administrator of the Sanitary Landfill System of Humacao.

59. The Landfill is permitted to operate by the Puerto Rico Department of Natural and Environmental Resources ("PR DNER"), as a non-hazardous, municipal, and commercial solid waste landfill.

60. The Landfill began receiving waste in 1972 and continues accepting waste, including but not limited to household waste.

61. The Landfill has a design capacity of over 2.5 million megagrams of waste-in-place and 2.5 million cubic meters.

62. The Landfill is currently subject to both the Federal Plan, Subpart OOO, and the Landfill NESHAP, Subpart AAAA.

63. Prior to June 21, 2021, the Landfill was subject to both the Landfill NSPS, Subpart WWW, and the Landfill NESHAP, Subpart AAAA.

64. The Facility installed and operated a GCCS to capture and destroy landfill gas ("LFG") generated by the Landfill.

65. On May 1, 2024, EPA conducted a CAA inspection ("May" Inspection) of the Landfill which included surface emission monitoring ("SEM") following the Facility's SEM path. EPA identified fifty-five (55) locations on the Landfill with leaks exceeding 500 ppm. These leaks were detected throughout the Landfill surface and the majority leaks detected were in the 10,000 ppm to 50,000 ppm range. In addition, three (3) of the leaks were in the 50,000 ppm to 100,000 ppm range, three (3) of the leaks exceeded 100,000 ppm and six (6) of leaks were above the lower explosive limit for methane.

66. Leaks were also found in areas of the Landfill with offline wells and at landfill penetrations.

67. According to observations by the EPA inspectors during the May Inspection and a review of El Coqui's semi-annual compliance reports and quarterly SEM reports, there is a significant discrepancy between the number of surface methane exceedances discovered by EPA compared to the number of reported methane exceedances included in El Coqui's historic SEM quarterly reports/records. From the beginning of 2022 through the 1st half of 2024, El Coqui performed ten (10) SEM surveys. In ten (10) surveys, El Coqui discovered fifty-nine (59) exceedances of the 500-ppm standard. See Table 1 below for El Coqui historical SEM exceedances detected.

Table 1: El Coqui Landfill SEM Exceedances (Q1 2022 through Q2 2024)	
Monitoring Event	Total 500 ppm exceedances detected
2022 Q1	17
2022 Q2	5
2022 Q3	0[1]
2022 Q4	0
2023 Q1	5
2023 Q2	0
2023 Q3	0
2023 Q4	0
2024 Q1	0
2024 Q22	32

68. During the May Inspection, the inspectors performed an abbreviated SEM event and discovered fifty-five (55) exceedances above the 500-ppm standard.

1 El Coqui NSPS 2022 second half semi-annual compliance report claims that Hurricane Fiona aftermath affected full access to the SEM monitoring path during their 3rd quarter SEM monitoring, citing roadblocks, fallen trees posing employees safety risk.
2 This quarters reporting took place after EPA's May 1, 2024 Inspection.

69. The significant discrepancy between the number of surface-methane exceedances discovered by the EPA inspectors during the May Inspection, compared to El Coqui historic SEM records demonstrates that, at least from the beginning of 2022 through the 1st half of 2024, El Coqui failed to properly conduct SEM and identify areas with elevated concentrations of landfill gas (LFG) and properly operated the landfill's GCCS to ensure that methane concentrations were kept below the 500-ppm surface-methane standard.

70. During the May Inspection, inspectors identified several GCCS wellheads that were disconnected from the GCCS manifold venting LFG directly to the atmosphere.

71. During the May Inspection, inspectors observed at least one abandoned GCCS wellhead venting LGF directly to the atmosphere from an open-ended hose.

72. During the May Inspection, inspectors documented cover integrity issues in many of the Landfill's dirt cover areas, including leachate breakouts, erosion gulleys with exposed waste and impenetrable vegetation full of trees with woody roots.

73. During the May Inspection, inspectors observed extensive exposed waste throughout the Landfill including in areas where it was clear this exposed waste was not caused by recent rain events.

74. During the May Inspection, inspectors observed at least one wellhead that was venting LFG directly to the atmosphere from the wellhead's sample port.

75. During the May Inspection, inspectors documented LFG emissions from rusted GCCS infrastructure due to poorly sealed leachate risers and poor maintenance of gas leachate infrastructure.

76. After the May Inspection, inspectors disclosed the number of leaks including leak locations to Facility representatives. Inspectors informed them that these leaks had to be repaired per the timeframe required in the rule.

77. On August 23, 2024, El Coquí submitted a response to the May Inspection report.

78. Upon review of the response the Facility exceeded the ten (10)-day first repair attempt deadline and did not conduct a full re-monitoring sequence nor took corrective action as required by the rule. In addition, all the leaks identified were not resolved.

III. CONCLUSIONS OF LAW

Based on the findings of fact set forth above, the EPA reaches the following conclusions of law:

79. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

80. The Landfill is a "stationary source" within the meaning of 40 C.F.R. § 60.2.

81. The Landfill is an "affected facility" and an "affected source" as those terms are defined in 40 C.F.R. §§ 60.2 and 63.2, respectively, and, because it is a stationary source that was constructed or modified after the date of publication of a standard in Part 60, Subpart A, namely the March 12, 1996, publication of Subpart WWW. See 40 C.F.R. § 60.1(a).

82. The Landfill is an "MSW landfill" within the meaning of 40 C.F.R. §§ 60.751 and 60.761.

83. El Coqui is the "owner" as that term is defined in 40 C.F.R. Part 60, Subpart WWW, 40 C.F.R. Part 62, Subpart OOO and 40 C.F.R. Part 63, Subpart AAAA.

84. The Facility has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, within the meaning of 40 C.F.R. Part 60, Subpart WWW, 40 C.F.R. Part 62, Subpart OOO and 40 C.F.R. Part 63, Subpart AAAA.

85. Pursuant to 40 C.F.R. §§ 60.11(d) and 63.6(e)(1), each owner or operator of an MSW landfill is required to comply with general operation and maintenance requirements including during periods of startup and shutdown and malfunction and is required to maintain and operate an affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. As described in the above section, the Respondent's failures to maintain and operate an affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions, constitutes violations of 40 C.F.R. §§ 60.11(d) and 63.6(e)(1).

86. Pursuant to 40 C.F.R. §63.1955(c), each owner or operator of an MSW landfill is required, to the extent practicable, to maintain and operate the Landfill in a manner consistent with good air pollution control practices for minimizing emissions. As described in the above section, the Respondent's failure to maintain and operate the Landfill in a manner consistent with good air pollution control practices for minimizing emission, as described in the above sections, constitutes a violation of 40 C.F.R. § 63.1955(c).

87. Pursuant to 40 C.F.R. §§§ 60.755(c)(5), 62.16720(c)(5) and 63.1960(c)(5), each owner or operator of an MSW landfill is required to implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis. Cover integrity is necessary to minimize surface emissions of landfill gas and to ensure efficient extraction of gas

through a landfill's GCCS LFG contains methane, carbon dioxide, and more than 100 different NMOC, which can have adverse effects on both public health and welfare at certain levels. 61 Fed. Reg. 9,905, 9,906 (March 12, 1996). As described in the above section, the Respondent's failure to implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis constitutes violations of 40 C.F.R. §§§ 60.755(c)(5), 62.16720(c)(5) and 63.1960(c)(5).

88. Pursuant to 40 C.F.R. §§§ 60.753(b), 62.16716(b), and 63.1958(b), each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of §§§ 60.752(b)(2)(ii), 62.16714(b) and (c), and 63.1957, must operate the collection system with negative pressure at each wellhead. The Respondent's failure to operate the collection system with negative pressure at each wellhead constitutes violations of 40 C.F.R. §§§ 63.1958(b), 60.753(b), and 62.16716(b).

89. Each owner or operator of an MSW landfill must route all collected gas to a control system that complies with requirements of to 40 C.F.R. § 63.1959(b)(2)(iii). As described in the above section, the Respondent's failure to route all collected gas to a control system constitutes a violation of 40 C.F.R. § 63.1959(b)(2)(iii).

90. Pursuant to 40 C.F.R. §§§ 60.756(f), 62.16722(f) and 63.1961(f), each owner or operator of an MSW landfill must properly conduct quarterly surface emission monitoring around the perimeter of the Landfill's gas collection area and along a pattern that traverses the Landfill at no more than thirty (30)-meter intervals using an organic vapor analyzer, flame ionization detector, or other portable monitor, and also failed to ensure that the Landfill's GCCS was operating with a methane concentration of less than 500 ppm above background. As

described in the above section, the Respondent failure to properly conduct quarterly surface emission monitoring around the perimeter of the Landfill's gas collection area and along a pattern that traverses the Landfill at no more than thirty (30)-meter intervals using an organic vapor analyzer, flame ionization detector, or other portable monitor, to ensure that the Landfill's GCCS was operating with a methane concentration of less than 500 ppm above background constitutes violations of 40 C.F.R. §§§ 60.756(f), 62.16722(f) and 63.1961(f).

91. Pursuant to 40 C.F.R. § 63.1960(c)(4)(iv), 40 C.F.R. § 62.16720(c)(4)(iv) and 40 C.F.R. § 60.755(c)(4)(iv) the Respondent failed to conduct the required corrective actions, monitoring, and re-monitoring activities to timely correct the SEM exceedances and required monitoring. The Respondent exceeded the ten (10)-day first repair attempt deadline and did not conduct a full re-monitoring sequence nor pursued corrective action as required by 40 C.F.R. § 63.1960(c)(4)(iv), 40 C.F.R. § 62.16720(c)(4)(iv) and 40 C.F.R. § 60.755(c)(4)(iv).

IV. ENFORCEMENT

Section 113 of the CAA authorizes the EPA to take any of the following actions in response to a respondent's violation(s) of the CAA and regulations promulgated thereunder:

- Issue an order requiring compliance with the requirements or prohibitions of the Act;
- Issue an administrative penalty order in accordance with CAA Section 113(d); or
- Bring a civil action in accordance with CAA Section 113(b) for civil penalties and/or injunctive relief.

Furthermore, for any person who knowingly violates any requirement or prohibition of the Act for more than thirty (30) days after the date of the issuance of an FOV, Section 113(c) of

the Act provides for criminal penalties or imprisonment, or both. In addition, under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be utilized in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility, or other facilities owned or operated by the Respondents, being declared ineligible for participation in any federal contract, grant, or loan program.

The issuance of this FOV does not preclude the EPA from electing to pursue any other remedies or sanctions authorized by law to address the violations described herein.

V. PENALTY AUTHORITY

Section 113(e)(1) of the Act provides that if a penalty is assessed pursuant to Section 113 of the Act, the EPA or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good-faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows the EPA or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, the EPA will consider a violation to continue from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was

an intermittent day of compliance or that the violation was not continuous in nature, the EPA will reduce the penalty accordingly.

VI. OPPORTUNITY FOR CONFERENCE

Respondent may request a conference with the EPA concerning the violations alleged in this FOV. This conference will enable the Respondent to present evidence bearing on the findings of violation, on the nature of the violation, and on any efforts the Respondent may have taken or may propose to take to achieve compliance. Respondent may arrange to be represented by legal counsel.

The Respondent's request for a conference must be confirmed in writing within ten calendar days of receipt of this FOV. The request for a conference, or other inquiries concerning this FOV, should be made by email to Melendez-Colon.Suzette@epa.gov:

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U.S. Environmental Protection Agency - Region 2
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Phone Number: 787-977-5822

Notwithstanding the effective date of this FOV and opportunity for a conference discussed above, the Respondent must comply with all applicable requirements of the Act.

Issued: 1/7/25

KATHLEEN ANDERSON Digitally signed by KATHLEEN ANDERSON Date: 2025.01.07 16:06:15 -05'00'

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2

To: Jaime J. Jáen, Vice President
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cc: Mr. César Rodríguez, Puerto Rico Department of Natural and Environmental Resources (DNER), Acting Air Quality Area (AQA) Manager CesarRodriguez@drna.pr.gov

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