

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

In the Matter of:

Albert Dumont and
Attleboro Landfill, Inc.
1 Rathbun Willard Drive
Attleboro, Massachusetts 02703

&

Enviro-Cycle, LLC
50 Homers Wharf
New Bedford, MA 02740

Enforcement Document Number: 00002501
Issuing Bureau: BAW
Issuing Region/Office: SERO
Issuing Program: SW
Primary Program Cited: SW
FMF/Program ID # 132263

ADMINISTRATIVE CONSENT ORDER

I. THE PARTIES

1. The 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. Attleboro Landfill, Inc. is a Massachusetts corporation with its principal office located at One Rathbun Willard Drive, Attleboro, Massachusetts 02703. Attleboro Landfill, Inc.’s mailing address for the purpose of this Consent Order is One Rathbun Willard Drive, Attleboro, Massachusetts 02703. Albert Dumont (“Dumont”) is the sole officer and director of Attleboro Landfill, Inc. For purposes of this Consent Order Attleboro Landfill, Inc. and Albert Dumont are referred to collectively as ALI.
3. Enviro-Cycle, LLC (“Enviro-Cycle” and/or the “Operator”) is a Massachusetts Limited Liability Company which maintains its principal offices at 50 Homers Wharf, New Bedford, Massachusetts 02740. Enviro-Cycle’s mailing address for the purpose of this Consent Order is 50 Homers Wharf, New Bedford, Massachusetts 02740.
4. Hereinafter, ALI and Enviro-Cycle 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. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 111, §§ 150A and 150A1/2, the Solid Waste Management Regulations at 310 CMR 19.000, the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00, 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. Attleboro Landfill, Inc. is the owner/operator of a solid waste disposal facility (the "Landfill") located off Peckham Street, Attleboro, Massachusetts.

8. Enviro-Cycle is a Massachusetts Limited Liability Company established to market a recycled material known as "Re-Crete™" for various construction applications. Re-Crete™ is a mixture of construction and demolition ("C&D") material fines produced at C&D material processing facilities and concrete.

9. The following facts and allegations have led MassDEP to issue this Consent Order:

A. MassDEP records indicate that the Landfill consists of approximately 55 acres of land that have been divided into two areas Phase A and Phase B. Phase A of the Landfill consists of approximately 32 acres and Phase B of the Landfill consists of approximately 23 acres. Solid waste has been disposed of in both Phase A and in approximately 9.9 acres of Phase B. Phase A is unlined and capped. The disposal area of Phase B is unlined and uncapped. The Landfill has been granted a solid waste site assignment in accordance with M.G.L. c. 111, §§ 150A and 150A1/2, by the City of Attleboro as a solid waste disposal facility.

B. The Landfill operated as an open dump from approximately 1942 to 1975. In 1975, the solid waste disposal operation at the Landfill (i.e., Phase A) was converted to a solid waste sanitary landfill under the terms and conditions of a plan approval issued by MassDEP. ALI operated Phase A from 1975 to 1994.

C. On December 30, 1992, MassDEP issued a partial approval for the closure and capping of Phase A. The partial approval was based on proposed plans to develop and operate the Phase B area as a lateral expansion of the solid waste Landfill. According to the regulations at the time of permit issuance, the Phase B area was required to be constructed with a liner and leachate collection system. As proposed, the liner of Phase B would serve as the cap for the rear side-slope of Phase A.

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- D. On or about December 24, 1993, ALI advised MassDEP that ALI was not going to pursue plans for the development of Phase B.
- E. On or about June 30, 1994, ALI ceased accepting solid waste in Phase A.
- F. On or about May 5, 1995, ALI submitted final closure plans for Phase A.
- G. On June 16, 1995, MassDEP issued a provisional permit to ALI to complete the capping of Phase A.
- H. Subsequent to June 16, 1995, and after numerous inspections, meetings and discussions, and the failure of ALI to successfully close/cap Phase A, MassDEP and ALI entered into an Administrative Consent Order (#ACO-SE-01-4004) (2001 Consent Order) on September 7, 2001. The 2001 Consent Order established specific compliance timeframes, deadlines and requirements for: the capping and continued maintenance of Phase A, the capping of Phase B, the establishment of a Financial Assurance Mechanism ("FAM"), the remediation of impacted wetland resource areas, the continued routine performance of quarterly environmental monitoring, and the continued routine performance of monthly landfill gas characterization for the facility's landfill gas to energy plant. The 2001 Consent Order also required that ALI achieve and maintain overall compliance with all applicable solid waste regulations and requirements applicable to the Landfill.
- I. On February 1, 2002, MassDEP amended the 2001 Consent Order ("2002 Amendment") by extending the deadline for the submittal of a BWPSW25 closure plan for Phase B until March 7, 2002.
- J. On August 23, 2002, ALI submitted a Closure Certification Report pursuant to 310 CMR 19.140 certifying the final closure of Phase A.
- K. In November of 2003 representatives of ALI and representatives of MassDEP met to discuss compliance issues associated with the 2001 Consent Order and 2002 Amendment and ALI's conceptual proposal for closure of Phase B in accordance with the "Revised Guidelines for Determining Closure Activities at Inactive Unlined Landfill Sites" dated July 6, 2001 ("Closure Guidelines"). Representatives of ALI submitted Phase B closure proposals and held numerous discussions with MassDEP in 2004 concerning the Phase B closure. In the Fall of 2004 MassDEP informed ALI that MassDEP would not approve the Phase B closure proposal then being discussed, and ALI withdrew it in October 2004.

L. On February 11, 2005, MassDEP issued a Unilateral Administrative Order (UAO – SE-05-4003) (“UAO”) and a Penalty Assessment Notice (PAN-SE-05-4001) (“PAN”) to ALI as a result of non-compliance with the 2002 Amendment. ALI subsequently appealed these actions to the Division of Administrative Law Appeals (“DALA”), which later transferred the case to MassDEP’s Office of Appeals and Dispute Resolution (“OADR”). Based on ALI’s financial situation, the Parties requested that the appeal be stayed while the Parties attempted to resolve the issues; primarily, the proper capping and closure of Phase B and the funding mechanism for post-closure maintenance and monitoring of the Landfill. ALI has represented that it has limited financial resources to complete the Phase B closure and associated Landfill monitoring and maintenance required under 310 CMR 19.000, the Solid Waste Management Regulations. The DALA Administrative Magistrate and the OADR Presiding Officer directed the Parties to submit periodic status reports concerning their settlement efforts (DEP Docket Nos. 2005-051 and 2005-072).

M. On May 8, 2006, ALI, through its environmental consultant, submitted an application for a minor modification of the Landfill permit seeking to reduce the groundwater monitoring program at the Landfill. ALI asserted that it was unable financially to perform the full scope of environmental monitoring.

N. On January 3, 2007, MassDEP issued a Provisional Approval of a Temporary Post-Closure Ground Water Monitoring Program for the Landfill. The Provisional Approval contained conditions, including reiterating ALI’s obligation to continue its efforts to fund and perform the closure/capping of Phase B and to establish a Financial Assurance Mechanism (“FAM”) for all closure/post-closure monitoring and maintenance costs for the Landfill.

O. From 2002 to 2012 ALI and its consultants submitted several conceptual proposals/plans to MassDEP under MassDEP’s Closure Guidelines. The purpose of these conceptual proposals/plans was to provide a means to generate revenue for Phase B closure and Landfill monitoring and maintenance through the use of grading and shaping materials to reshape Phase B to meet the regulatory requirements for a proper landfill cap. The conceptual proposals/plans were submitted in an effort to resolve the noncompliance and settle the appeals of the UAO and PAN.

P. In 2013 ALI retained Enviro-Cycle, LLC, to develop a new closure plan for Phase B of the Landfill (hereinafter, the “Site”) on behalf of ALI.

Q. In November 2013, Enviro-Cycle submitted to MassDEP a conceptual closure proposal, on behalf of ALI, to grade and shape Phase B with "Re-Crete™" which is a mixture of C&D material fines produced at C&D material processing facilities and concrete. The use of C&D fines was intended to provide the necessary funding to cover expenses associated with the Phase B grading and shaping activities, Phase B final cover system

construction, and post closure monitoring and maintenance of the Landfill. Representatives of ALI, Enviro-Cycle, and MassDEP discussed the technical specifications of the project at various times in 2014.

R. On May 14, 2014, MassDEP conducted an inspection of the Landfill and reviewed the Landfill files. MassDEP determined that many of the previously observed violations of 310 CMR 19.000, as described in UAO–SE-05-4003, had not been corrected. The issues of noncompliance included:

- i. **310 CMR 19.051 – Financial Assurance Mechanism (“FAM”)** – A FAM for the Landfill final cover system and post-closure monitoring and maintenance has not been secured and maintained.
- ii. **310 CMR 19.112 – Landfill Final Cover Systems** - A final cover system on the Phase B area of the Landfill has not been installed.
- iii. **310 CMR 19.132(1)&(4) – Environmental Monitoring Requirements** - Environmental monitoring data/reports for ground water, surface water, and landfill gas have not been submitted.
- iv. **310 CMR 19.140 – Landfill Closure Requirements** – A final closure/capping plan has not been submitted and Phase B has not been capped.
- v. **310 CMR 19.142 – Landfill Post-Closure Requirements** – The Landfill has not been maintained in accordance with applicable post-closure requirements.

S. Enviro-Cycle prepared and submitted to MassDEP a “Conceptual Closure Proposal” for Phase B, dated December 2, 2014, in accordance with MassDEP’s Closure Guidelines. As proposed in the Conceptual Closure Proposal, the project would include the on-Site production of “Re-Crete™” for landfill grading and shaping material and the following:

- i. A closure timeframe of approximately three (3) years would be established, whereby approved Site closure grading/shaping materials would be delivered and placed during approximately the first two (2) years for six days a week, in order to achieve a proper minimum 5 percent closure grades/configuration, and during the third year, the Site’s final capping system would be constructed;
- ii. The total amount of Re-Crete™ would be approximately 201,000 cubic-yards (“yds³”);

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- iii. All C&D fines would be delivered to the Site and the mixing of the C&D fines, concrete and water would take place at the Landfill to produce Re-Crete™;
- iv. The final maximum peak elevation of the capped Site (Phase B) will be approximately 140-feet above mean sea level, approximately 30 feet above existing grade and which is approximately 70 feet below the peak elevation of 210 feet of the completed Phase A;
- v. Over the first two years approximately 9,136 trucks will deliver Re-Crete™ to the Site; and
- vi. All truck traffic to and from the Landfill was proposed through the Town of Norton.

T. On March 10, 2015, pursuant to the Closure Guidelines, ALI and Enviro-Cycle sponsored a public information session to describe the Phase B Conceptual Closure Proposal. On March 10, 2015, MassDEP also established a twenty-one (21) day Public Comment Period that ended on April 11, 2015. MassDEP provided the comments received during the public comment period to Enviro-Cycle for review.

U. Enviro-Cycle developed a traffic control plan and met with City of Attleboro and Town of Norton officials on July 26, 2016 to review the Draft Traffic Control Plan.

V. ALI, Enviro-Cycle and MassDEP prepared responses to the comments received on the Conceptual Closure Proposal and held several meetings to discuss the proposal with state and local officials.

W. On February 16, 2017, Enviro-Cycle prepared and submitted to MassDEP a document entitled “Attleboro Landfill Inc. Response to Public Comments on the Attleboro Conceptual Closure Project” (“Response to Comments”) and a separate Traffic Control Plan with revised haul routes.

X. As proposed in the February 16, 2017, Response to Comments, the project was modified to include the following:

- i. A closure timeframe of approximately three (3) years would be established, whereby existing Phase B waste would be consolidated and approved. Grading/shaping materials would be delivered and placed during approximately the first two (2) years, five days a week, in order to achieve proper Site closure grades/configuration, and during the third year, the Site’s final capping system would be constructed;

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- ii. The total amount of Re-Crete™ would be approximately 231,000 cubic-yards (“yds³”). The increase in volume is to allow sufficient funds to pay for additional mitigation funds for the city of Attleboro and Town of Norton to cover road construction work;
- iii. All Re-Crete™ used would be pre-mixed at the site of C&D fines generation and delivered to the Site ready to be placed;
- iv. The final maximum peak elevation of the capped Site (Phase B) will be approximately 150-feet above mean sea level, which is approximately 60 feet below the peak elevation of 210 feet of Phase A;
- v. During the first two years approximately 6,571 trucks will deliver Re-Crete™ to the Site; and
- vi. A separate Traffic Control Plan with revised routes with incoming Re-Crete™ loaded vehicles traveling through the City of Attleboro and empty, outgoing vehicles travelling through the Town of Norton.

Y. As directed by the DALA Administrative Magistrate and OADR Presiding Officer, the parties have submitted periodic status reports concerning their settlement efforts (DEP Docket Nos. 2005-051 and 2005-072). On March 27, 2018, the parties participated in a Status Conference with the Presiding Officer to discuss their settlement efforts.

Z. MassDEP has determined that Enviro-Cycle’s revised Conceptual Closure Proposal as described in Paragraph 9.X., above, meets the requirements of the Solid Waste Regulations and the Closure Guidelines, and notified the Respondents that they may 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 Corrective Action for Phase B of the Landfill.

III. DISPOSITION and ORDER

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

10. 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.

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

12. Respondents shall perform the following actions:

A. The Respondents shall submit all required permit applications associated with this project (including responses to any MassDEP comments) in accordance with the provisions of 310 CMR 4.00 "Timely Action Schedule and Fee Provisions" regulations. MassDEP shall conduct its review of the Respondents' permit applications in accordance with the timelines and requirements of 310 CMR 4.00 and shall not unreasonably withhold its approval of such permit applications.

IMPLEMENTATION OF ENVIRONMENTAL SITE ASSESSMENT

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

C. Within one-hundred and twenty (120) days of MassDEP's approval of the ISA/CSA-SOW permit application, the Respondents shall complete installation of any additional monitoring locations (i.e., groundwater monitoring wells, soil gas monitoring wells, etc.) in accordance with the terms and conditions of the ISA/CSA-SOW permit decision.

D. Within three-hundred-sixty-five (365) days of the Effective Date of this Consent Order, the Respondents shall complete the Comprehensive Site Assessment ("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 12.B.

E. Within four-hundred and fifty-five (455) days of the Effective Date of this Consent Order, the Respondents shall submit a CSA Report that discusses the findings of the environmental site assessment of the Landfill. The CSA Report shall include a recommendation as to whether additional corrective actions beyond the MassDEP's final approved CAD permit (as referenced in Paragraph 12.I) for the Site in the form of a Corrective Action Alternatives Analysis ("CAAA") is necessary.

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- i. If MassDEP determines that a CAAA is not necessary, the Respondents shall proceed with the implementation of MassDEP's final approved CAD permit.
- ii. If MassDEP determines that a CAAA is necessary, and that the Site'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 12.I, the Respondents shall, within sixty (60) days of MassDEP's issuance of written approval of the final CSA Report, submit a BWPSW24 - CAAA application to MassDEP for review and approval.
- iii. In addition, if MassDEP determines that a CAAA is necessary, and if MassDEP determines that the Site's final capping system will be of a different design from that which had been previously described in MassDEP's final approved CAD permit, the Respondents shall prepare and submit a revised BWPSW25 – CAD application to MassDEP for review and approval. Nothing herein shall prohibit a phased final closure.

F. Environmental monitoring of the Landfill shall be performed on a routine schedule throughout the duration of the Site closure project pursuant to MassDEP's approval of the ISA/CSA-SOW. The environmental monitoring results shall be submitted to MassDEP in accordance with 310 CMR 19.132, *Environmental Monitoring Requirements*, or in accordance with a schedule established in the approved ISA/CSA-SOW and/or CAD permits, or as otherwise specified by MassDEP. Until the ISA/CSA-SOW is approved the Respondents shall perform environmental monitoring in accordance with the Provisional Approval, Temporary Post-Closure Ground Water Monitoring Program dated January 3, 2007.

CORRECTIVE ACTION DESIGN ("CAD") PLANS

G. Within ninety (90) days of the Effective Date of this Consent Order, the Respondents shall submit to MassDEP a BWPSW25 – CAD permit application for the closure/capping of the Site. 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:

- i. a description of the types and amounts of the total in-place volume of approved landfill closure grading and shaping materials (Re-Crete™) that will be used to achieve the proposed final grades and configuration of the Site;
- ii. a "Materials Management Plan" that at a minimum describes:

1. Methods and procedures for the testing and management of the C&D Fines used to manufacture the Re-Crete; and
 2. Methods and procedures for the placement and management of the materials in various weather conditions;
- iii. details regarding the areas and amounts of any solid waste to be excavated/consolidated from the Site's existing foot-print perimeter in order to consolidate and reduce the size of the Site's footprint;
 - iv. details and construction features of all associated appurtenances, equipment, and structures at the Landfill that will be associated with the Site's closure activities;
 - v. 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 Site 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, 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 in the Site;
 - vi. a "Confirmatory Soil Sampling and Analysis Plan" regarding the procedures and practices for testing of all waste excavation areas of the 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 40.0975, and shall, at a minimum, test for the following parameters: EPH with target PAHs, VPH, PCBs, and eight RCRA metals. MassDEP shall be provided with confirmatory sampling results within 45 days of sample collection;
 - vii. 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 Site closure project and during the post-closure period. The storm water control plan shall comply with all applicable local, state and federal requirements;
 - viii. all specific design features and details regarding the installation/construction of the final cover/capping system in accordance with all applicable provisions of 310 CMR 19.000 and the Manual;

- ix. 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)”;
- x. all appropriate design features and specifications for the installation of a passive gas collection/control system that can 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 Site’s closure activities. The active gas collection system must be able to be installed and made operational within ten (10) days of receipt of written Notice from MassDEP to the Respondents that odors from the Site are creating an off-site nuisance condition or posing a risk or threat to the public health, safety welfare or the environment;
- xi. all appropriate design features and control measures concerning a “Traffic Control Plan” regarding truck-traffic to/from the Landfill during the Site closure project. The Traffic Control Plan shall not be limited to the immediate vicinity of the Landfill, but shall also include all access roads that would be utilized during the Site closure project, including all major routes in abutting communities; and
- xii. a conceptual “post-closure monitoring and maintenance plan” that will be implemented after the completion of the Site closure project. The “post-closure monitoring and maintenance plan” may be revised based on the findings of the Landfill assessment activities.

The CAD application shall not include any component that would constitute a lateral increase of the existing footprint of the Site, or a vertical increase in the proposed final height of the Site as indicated in Enviro-Cycle’s Conceptual Closure Proposal dated December 2, 2014, as referenced in Paragraph 9.S, above, as amended on February 16, 2017, as referenced in Paragraph 9.X, above.

H. At the conclusion of its review of the CAD application MassDEP will issue a “Provisional Decision” on the CAD application pursuant to the provisions of 310 CMR 19.033(4)(a). MassDEP will provide the public with twenty-one (21) days to comment on the Provisional

Decision. MassDEP and the Respondents shall consider all relevant comments from interested persons regarding the Provisional Decision on the CAD application.

I. Within seven (7) days of the conclusion of the twenty-one (21) day public comment period, MassDEP will provide the Respondents copies of all public comments received.

J. Within twenty (20) days of receipt of public comments, the Respondents shall submit a written response to public comments for MassDEP review and comment.

K. MassDEP may request a revised response to public comments document within twenty (20) days of MassDEP's receipt of the Respondents' initial response to public comments, and any subsequent revised response(s) to public comments. MassDEP will issue a final CAD permit decision within sixty (60) days of the Respondents' response to public comments or, if no public comments are submitted, MassDEP will issue a final CAD permit decision within sixty (60) days of the end of the public comment period.

FINANCIAL ASSURANCE MECHANISM ("FAM")

L. After MassDEP's issuance of its final CAD permit decision (as referenced in Paragraph 12.K, above), and prior to the acceptance of grading and shaping material, the Respondents shall provide MassDEP with documentation that a FAM in the amount of approximately One Million Nine Hundred Eighty Thousand Dollars (\$1,980,000.00) has been established by the Respondents that will be managed in accordance with the provisions of 310 CMR 19.051 for the implementation and completion of the Site closure plan. The amount of the FAM will be established after approval of the CAD.

M. The FAM shall also include provisions for the establishment of a separate "Post-Closure Monitoring and Maintenance Account", in the amount of approximately Five Hundred Thousand (\$500,000.00) dollars, in accordance with the provisions of 310 CMR 19.051, for the monitoring, maintenance and care of the Landfill after the Site has been capped and closed. Prior to the acceptance of grading and shaping material, twenty-five percent (25%) of the "Post Closure Monitoring and Maintenance Account" shall be funded. The remaining seventy-five percent (75%) of the "Post-Closure Monitoring and Maintenance" account shall be funded through a portion of the proceeds from the delivery and use of the approved Site closure grading and shaping materials (Re-Crete™) during the Site closure project within one year of Respondents' commencement of acceptance of grading and shaping material at the Site. 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 Site has been closed/capped. The FAM amounts referenced in Paragraphs 12.L and 12.M may be altered by agreement of the parties.

IMPLEMENTATION OF LANDFILL CLOSURE

N. Upon the effectiveness of MassDEP's final CAD permit decision (as referenced in Paragraph 12.K) and establishment of a FAM (as referenced in Paragraphs 12.L and 12.M), the Respondents may commence the delivery, acceptance, stockpiling, and placement of approved Site closure grading/shaping materials (ReCrete™) at the Site.

O. The acceptance/placement of the approved landfill closure grading/shaping materials (ReCrete™) shall be allowed to continue for a period of time not to exceed two (2) 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, unless MassDEP has determined after consultation with the Respondents that the closure activities have caused nuisance conditions or an adverse impact to the environment, in which case placement of materials will be suspended until the nuisance conditions are addressed and all necessary measures are taken to prevent reoccurrence of nuisance conditions from the identified cause.

P. The Respondents shall notify MassDEP in writing immediately upon the commencement of the delivery/placement of the approved Site closure grading/shaping materials.

Q. The Respondents shall maintain a daily records management system documenting all materials delivered to and/or shipped from the Site as part of the closure/capping project. Amounts of all such materials shall be recorded in units of weight and volume.

R. 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.

S. 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.

T. Enviro-Cycle shall be excused from performance of the obligations in Paragraph 12 of this Consent Order if MassDEP determines that the Respondents have submitted a complete and proper CAD application and the Respondents have adequately responded to all public comments and MassDEP does not issue a final decision approving the CAD pursuant to Paragraph 12.K.

- U. ALI shall be excused from performance of the obligations in Paragraphs 12.G through 12.Z of this Consent Order if MassDEP determines that the Respondents have submitted a complete and proper CAD application and the Respondents have adequately responded to all public comments and MassDEP does not issue a final decision approving the CAD pursuant to Paragraph 12.K.
- V. Paragraph 12.U does not relieve ALI from obligations to comply with MassDEP's solid waste management regulations, including submittal of a new BWPSW25 – CAD permit application for the closure/capping of the Site that does not incorporate the use of Re-Crete™. Such 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, including but not limited to the “standard” features of a landfill closure plan, as required under 310 CMR 19.112.

ANNUAL COMPLIANCE FEES

W. Within 365 days of Respondents' written notification to MassDEP that acceptance of approved grading/shaping material has commenced, as required by Paragraph 12.P., Respondents shall pay the past due annual compliance fee of \$1,400.00 on invoice INTACF1710279X132263 for fiscal year 2017 and \$1,400.00 on invoice INTACF1810278X132263 for fiscal year 2018 for the total amount of Two Thousand Eight Hundred Dollars (\$2,800.00). In addition, the Respondents shall pay the annual compliance fee for fiscal year 2019 within sixty (60) days of the date of the invoice or within 365 days of Respondents' written notification to MassDEP that acceptance of approved grading/shaping material has commenced, whichever is later. Consistent with the language of Paragraph 37, below, the Respondents shall be responsible for the timely payment of future annual compliance fees invoiced for the period covered by this Consent Order; that is, until a Landfill Closure Certification Report is submitted to MassDEP pursuant to Paragraph 12.Y., below. All payments shall be made in accordance with the provisions of Paragraph 36.

COMPLETION OF SITE (PHASE B) CLOSURE

X. Within three (3) 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 27, the placement of the approved grading/shaping materials will occur during the first two (2) years of operation in order to achieve proper Site 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

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the delivery of acceptable landfill closure grading/shaping materials to the Site, whichever occurs first.

CERTIFICATION OF SITE (PHASE B) CLOSURE

Y. Within one hundred and twenty (120) days of completing the installation of the final cover/capping system, the Respondents shall submit to MassDEP a BWPSW43 - Landfill Closure Certification Report 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 Site have been completed in accordance with the approved CAD permit, the regulations, the Manual, and all relevant policies, guidelines and requirements.

Z. MassDEP will review the BWPSW43-Landfill Closure Certification Report in accordance with the provisions of 310 CMR 4.00, *Timely Action Schedule and Fee Provisions*, which establish application review timelines.

13. Respondents shall not conduct any activity, or suffer or allow any other party to conduct any activity, that causes or contributes to a public nuisance condition, as a result of dust, noise, odors, etc., or causes or poses a risk or threat to the public health, safety, welfare or the environment.

14. 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 management and design. The manufacture of all Re-Crete™ to be used as grading/shaping materials shall be overseen by a PE, prior to use at the Site. Any contractual relationship between the Respondents and the engineer for work required hereunder shall require the engineer, as a condition of the contract, to implement work consistent with the provisions of this Consent Order.

15. Respondents 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

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

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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.

If to Respondents:

Robert Cummings, P.E.
Enviro-Cycle, LLC
50 Homers Wharf
New Bedford, MA 02740

With a copy to:

Michelle N. O'Brien, Esq.
Pierce Atwood LLP
100 Summer Street, 22nd Floor
Boston, MA 02110

17. 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.

18. 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. This waiver does not extend to any other order issued by the MassDEP.

19. This Consent Order may be modified only by written agreement of the Parties hereto.

20. MassDEP hereby determines, and Respondents hereby agree, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondents to take the actions described.

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21. Each Respondent is a Permittee, as that term is defined in 310 CMR 4.02, for the purpose of assessing and collecting annual compliance assurance fees.

22. 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.

23. 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.

24. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondents with respect to any subject matter not covered by this Consent Order.

25. This Consent Order shall be binding upon Respondents and their successors and assigns. Respondents shall not violate this Consent Order and shall not allow or suffer Respondents' directors, officers, members, managers, 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.

26. If the Respondents violate any provision of this Consent Order the Respondents shall pay stipulated civil administrative penalties to the Commonwealth in the amount of five hundred dollars (\$500.00) per day 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 complete 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 they 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.

27. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondents and Respondents' employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondents or Respondents' employees, agents, consultants, and contractors.

28. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.

29. 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 five (5) 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 the rationale for attributing such delay or potential delay to a Force Majeure event and shall 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 Respondents' right to request an extension based on the event.

30. 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 in paragraph 29, 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 the time for performance resulting from a Force Majeure event.

31. A 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.

32. 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.

33. To the extent authorized by the current owner, Respondents agree to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to 179 Peckham Street, Attleboro, Massachusetts 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.

34. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

35. This Consent Order does not relieve Respondents of the obligation to ensure payment of annual compliance fees pursuant to 310 CMR 4.00, et seq. during the performance of closure activities at the Site, until a Landfill Closure Certification Report for the Site is submitted.

36. Respondents shall pay annual compliance fees by certified check or cashier's check made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check or cashier's check, Respondents shall clearly print on the face of the payment Respondents' (or payor's) full name and Federal Employer Identification Number, and the invoice number or the enforcement document number appearing on the first page of this Consent Order (00002501), and shall mail it along with the invoice remit slip or a copy of the invoice to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982

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Boston, Massachusetts 02241-3982

37. This Consent Order does not relieve ALI's obligation to pay annual compliance fees pursuant to 310 CMR 4.00, et seq. during the Landfill post-closure period, subject to ALI's rights to assert financial hardship.

38. All applicable transmittal fees shall accompany any submissions(s) required by this Consent Order.

39. This Consent Order does not relieve ALI of the obligation to maintain and monitor the Landfill as required by 310 CMR 19.142 (Landfill Post-Closure Requirements) and does not limit MassDEP's authority to require additional assessment and/or actions pursuant to 310 CMR 19.150 (Landfill Assessment Requirements) or 310 CMR 19.151 (Corrective Action Requirements).

40. 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.

41. This Consent Order shall become effective on the date it is executed by MassDEP.

42. This Consent Order shall terminate upon the Respondents' submission of a complete Landfill Closure Certification Report for the Site (including responses to any MassDEP comments), as referenced in Paragraph 12.Y., Respondents' submission of proof of filing a Notice of Landfill Operation pursuant to 310 CMR 19.141, and MassDEP's written determination that closure of the Site has been completed. MassDEP shall provide the Respondents with written acknowledgement of the termination of this Consent Order.

Consented To:

**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.**

By:

Albert Dumont

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**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.**

By: _____

Printed Name: Albert Dumont

Title: President

Attleboro Landfill, Inc. (the “Owner”)

1 Rathbun Willard Drive

Attleboro, Massachusetts 02703

Federal Employee Identification No. : 04-2563326

Date: June 15, 2018

Consented To:

**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.**

By:

Printed Name: Robert S. Cummings

Title: Manager

Enviro-Cycle, LLC (the “Operator”)

50 Homers Wharf

New Bedford, MA 02740

Federal Employee Identification No. :81-3377297

Date: June 13, 2018

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IMPORTANT INSTRUCTIONS

- 1) Sign TWO (2) copies of the ACO and send the TWO (2) signed copies to the address below.

(MassDEP will return to you a signed duplicate original for your records.)

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

- 2) DO NOT INCLUDE ANY PAYMENT with the two (2) signed copies of this Administrative Consent Order (ACO).

Issued By:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

**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.**

By:

Millie Garcia-Serrano
Regional Director
MassDEP Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

Date: June 21, 2018