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**HAZARDOUS MATERIALS**

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**COLORADO DEPARTMENT OF PUBLIC HEALTH AND  
ENVIRONMENT**

**HAZARDOUS MATERIALS AND WASTE MANAGEMENT  
DIVISION**

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**COMPLIANCE ORDER ON CONSENT**

**Number: 08-08-15-01**

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**IN THE MATTER OF TWIN LANDFILL CORPORATION OF FREMONT COUNTY  
d/b/a TWIN ENVIRO SERVICES**

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The Colorado Department of Public Health and Environment ("CDPHE"), through the Hazardous Materials and Waste Management Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under section 30-20-113, C.R.S. of the Colorado Solid Wastes Disposal Sites and Facilities Act ("the Act") sections 30-20-100.5 to 122, C.R.S., and its implementing regulations, 6 CCR 1007-2 ("the Regulations"), with the express consent of Twin Landfill Corporation of Fremont County d/b/a Twin Enviro Services ("Twin Enviro Services"). The Division and Twin Enviro Services may be referred to collectively as "the Parties."

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are:
  - a. To establish compliance requirements and criteria for the continued operation of Twin Enviro Services' Phantom Landfill, a municipal solid waste disposal site and facility located approximately ten miles east of Canon City, Colorado at 2500 Fremont County Road 67, Penrose, CO in Fremont County, Colorado (the "Facility"); and
  - b. To resolve the violations of the Act and the Regulations cited herein, and in a Compliance Advisory issued to Twin Enviro Services by the Division on February 6, 2007, and any other violations known to the Division as of the date of execution of this Consent Order.

**DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS**

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with section 30-20-113, C.R.S., the Division has

made the following determinations regarding violations of the Act and the Regulations associated with Twin Enviro Services or the Facility.

3. Ownership and operation of the Facility was transferred to Twin Landfill Corporation of Fremont County from Twin Landfill Corporation on or about January 11, 1999. Twin Landfill Corporation of Fremont County has continuously owned and operated the Facility since that date.
4. At all times relevant to the violations cited herein, Twin Landfill Corporation of Fremont County, d/b/a Twin Enviro Services, was a Colorado corporation in good standing and registered to conduct business in the State of Colorado. Records from the Colorado Secretary of State identify September 30, 1998 as the formation date for the corporation, and February 27, 2003 as the formation date for the trade name Twin Enviro Services.
5. Twin Enviro Services operates the collection, storage, treatment and disposal of solid and liquid solid waste at the Facility. The Facility serves Fremont County, Colorado Springs, Pueblo and Southern Colorado.
6. The Board of County Commissioners for Fremont County, Colorado (the "Board") is the governing body having jurisdiction over the Facility.
7. On March 11, 1997, the Board adopted Resolution No. 97-12, reaffirming its previous approval of special use permit (Permit Number SRU 96-6) and the application of Twin Landfill Corporation for a certificate of designation ("CD") for the ownership and operation of a solid wastes disposal site and facility at the Facility. As indicated in the resolution, the Board's approval became effective as of February 11, 1997. The Facility is located in the northeast quarter of Section 21, Township 18 South, Range 69 West of the Sixth Principal Meridian in Fremont County, Colorado. The CD was issued for the 60-acre Facility while the active portion of the Facility encompasses approximately 31 acres.
8. On February 18, 2000, the Division received an application (dated December 6, 1999, and revised February 16, 2000) to amend the certificate of designation for the Facility. The application, prepared by KRW Consulting, Inc. for Twin Landfill Corporation of Fremont County, proposed to add a nonhazardous liquid waste solidification process to the Facility's approved design and operations plan.
9. On April 20, 2000, the Division issued a letter to the Fremont County Department of Planning & Zoning recommending that Fremont County approve the amendment to the certificate of designation for the Facility.
10. On June 27, 2000, the Board adopted Resolution No. 23, Series of 2000, which amended the certificate of designation for the Facility and allowing the Facility to accept non-

hazardous liquid waste for solidification and disposal. The effective date of Resolution No. 23 is listed as June 8, 2000, the date of verbal approval by the Board.

11. On August 18, 2006 and September 21, 2006, the Division conducted inspections, pursuant to the Division's authority under section 30-20-113(6), C.R.S., at the Facility for the purpose of determining compliance with the Act and the Regulations.
12. On October 11, 2006, the Division sent Twin Enviro Services an information request letter with follow-up questions to the August 18, 2006 inspection at the Facility, and requested additional information regarding operation of the Facility's solidification basin and its associated solid waste storage tanks and half-drums.
13. On or about October 18, 2006, Twin Enviro Services submitted their response to the Division's October 11, 2006 information request letter. A meeting with Twin Enviro Services representatives was also held at the Department on November 6, 2006 to discuss these issues regarding operation of the Facility's solidification basin and solid waste storage tank operations in further detail.
14. On February 6, 2007, the Division issued a Compliance Advisory to Twin Enviro Services for deficiencies identified during the August 18, 2006 and September 21, 2006 inspections of the Facility. The cited deficiencies and potential deficiencies included:
  - a. Failure to evacuate or solidify liquid received in the Facility's solidification basin within 24 hours of receipt;
  - b. Failure to contain the release of liquids outside of the lined area of the solidification basin;
  - c. Commingling of incompatible wastes in the solidification basin;
  - d. Failure to measure the level of liquid in the solidification basin riser pipe;
  - e. Storage of a 30-yard rolloff container of friable asbestos waste in an area southeast of the liquid solidification basin staging areas at the Facility;
  - f. Failure to distribute solid waste fly ash in the smallest area practicable, and failure to provide adequate cover to prevent wind erosion;
  - g. Failure to conduct routine inspections of the condition of the Facility's leachate holding pond;
  - h. Failure to maintain adequate runoff controls for the Facility's solidification basin;
  - i. Failure to cover fly ash stockpiles at the solidification basin with tarps or soil during windy conditions to prevent dust emissions;
  - j. Failure to maintain the ash stockpile at a height below that of the surrounding earthen berm; and
  - k. Failure to manage the Facility in a manner to prevent nuisance conditions (i.e., fly ash dust emissions) at or beyond the site boundary of the Facility.

15. At the time of the August 18, 2006 inspection, Twin Enviro Services had failed to evacuate or solidify liquid received in the Facility's solidification basin within 24 hours of receipt as required by the Facility's Division-approved LWSBDOP, in violation of 6 CCR 1007-2, Section 1.3.9, and Section 4.2 (*Waste Solidification*) of the LWSBDOP.
16. At the time of the August 18, 2006 inspection, Twin Enviro Services was storing a 30-yard rolloff container of friable asbestos located southeast of the liquid solidification basin staging area at the Facility without the express authorization of the Division and in violation of the approved design and operations plan, in violation of 6 CCR 1007-2, Section 5.3.1.
17. At the time of the August 18, 2006 inspection, Twin Enviro Services had failed to distribute solid waste fly ash in the smallest area practicable, and was not providing adequate cover or other dust-suppression methods to the exposed fly ash disposal area to prevent wind erosion, in violation of the Facility's Ash Disposal Plan established pursuant to 6 CCR 1007-2, Section 2.1.10.
18. At the time of the September 21, 2006 inspection, dust emissions were observed from the fly ash stockpiles at the solidification basin at the Facility. Twin Enviro Services had failed to cover the fly ash stockpiles at the Facility with tarps or soil to prevent the dust emissions from the stockpiles, as required by the Facility's Division-approved LWSBDOP, in violation of 6 CCR 1007-2, Sections 1.3.9 and 2.1.3, and Section 4.1 (*Waste Flow*) of the LWSBDOP.
19. At the time of the September 21, 2006 inspection, fly ash was observed on the north haul road at the Facility, and heavy equipment traffic on the road was causing a nuisance condition from dust emissions at the property boundary. Twin Enviro Services had failed to manage the Facility in a manner to prevent nuisance conditions (i.e, fly ash dust emissions) at or beyond the site boundary of the Facility, in violation of 6 CCR 1007-2, Section 2.1.3.
20. On April 2, 2007, the Division received Twin Enviro Services' March 29, 2007 response to the February 6, 2007 Compliance Advisory. In its response, Twin Enviro Services described its revisions and amendments to the LWSBDOP. Twin Enviro Services is currently writing to address the items cited in the February 6, 2007 Compliance Advisory. In that correspondence, Twin Enviro Services also asserted the below enumerated claims. The Division did not accept these assertions as relevant or accurate.
  - a. Up to, and following, the August 18, 2006 inspection, Twin Enviro Services solidified liquid waste daily. On November 6, 2006, it developed a log to track its solidification operations, and has been utilizing that log to document that liquid wastes are solidified within 24 hours after receipt at the facility.

- b. Due to a significant storm event, the solidification basin received a large volume of run-on, but it did not overflow, as alleged in the February 6, 2007 Compliance Advisory. Areas outside of the solidification basin have been re-graded to direct stormwater away from the basin.
- c. The facility has never commingled incompatible wastes in the solidification basin. The facility previously tested fly ash to determine the acceptable pH range to prevent incompatible wastes from being commingled. All wastes received are tested to ensure they are within an acceptable pH range before being placed into the basin.
- d. The LWSBDOP requires the riser pipe to be checked monthly. Twin Enviro Services went above and beyond that requirement by pumping liquid from the riser pipe on a monthly basis. It has amended the D&O Plan to account for this practice.
- e. Twin Enviro Services is authorized to temporarily store transshipments of friable asbestos. Thus, the presence of the 30-yard rolloff container was not a violation of any regulation or requirement of the Facility.
- f. Twin Enviro Services denies that the active fly ash disposal area was excessively large. However, following the inspection, the Facility reduced the area by one-third of its prior size through the application of a soil cover.
- g. Up to, and following, the August 18, 2006 and September 21, 2006 inspections, the Facility has been conducting periodic inspections of the leachate holding pond as part of its semi-annual stormwater inspection. Twin Enviro Services has amended the D&O Plan to also provide that the leachate pond also be inspected semi-annually, as part of its stormwater inspection, to ensure that the PVC liner is adequately covered.
- h. The storm event in question was extremely rare and exceeded the Facility's run-on design criteria. Nevertheless, Twin Enviro Services has upgraded its run-on controls in response to the Division's February 6, 2006 Compliance Advisory.
- i. The fly ash stockpiles are protected from the wind by the surrounding earthen berm. Twin Enviro Services also minimizes wind erosion of the stockpiles by periodically wetting them. The D&O Plan has been amended to reflect this practice at the Facility.
- j. Twin Enviro Services has always maintained the ash stockpile in the solidification basin at or below the level of the berm. In response to the Division's February 6, 2006 Compliance Advisory, the Facility has maintained the ash stockpile in the

solidification basin below the level of the berm, and also wets fly ash awaiting use within the solidification basin.

- k. The LWSBDOP was amended to provide that ash that collects on the haul road is removed daily, and the road is wetted, as needed, to reduce the generation of dust. These activities are documented in a log that is maintained at the facility.

### **ORDER and AGREEMENT**

21. Based on the foregoing factual and legal determinations, pursuant to its authority under section 30-20-113, C.R.S., and in satisfaction of the violations cited herein, those specified in the February 6, 2007 Compliance Advisory, and those known to the Division as of the effective date of this Consent Order, the Division orders and Twin Enviro Services agrees to comply with all provisions of this Consent Order, including all requirements set forth below.
22. Twin Enviro Services agrees to the terms and conditions of this Consent Order. Twin Enviro Services agrees that this Consent Order constitutes an order issued pursuant to section 30-20-113, C.R.S., and is an enforceable requirement of Part 1 of the Act. Twin Enviro Services also agrees not to challenge in any action to enforce this Consent Order:
  - a. the issuance of this Consent Order;
  - b. the factual and legal determinations made by the Division herein; and
  - c. the Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
23. Notwithstanding the above, Twin Enviro Services does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Twin Enviro Services pursuant to this Consent Order shall not constitute an admission of liability by Twin Enviro Services with respect to the conditions of the Facility.

### **Compliance Requirements**

24. Immediately upon the effective date of this Consent Order, Twin Enviro Services shall operate the Facility in compliance with provisions of the Act and the Regulations for solid waste disposal sites and facilities pursuant to 6 CCR 1007-2, Sections 2 and 3, that directly govern the allegations set forth herein, and the terms and conditions of the approved plans submitted pursuant to these governing provisions of the Act and Regulations.
25. Within seven (7) days of the effective date of this Consent Order, Twin Enviro Services shall ensure that liquid received in the solidification basin's two sub-basins will be

evacuated or solidified alternatively one side and then the other, each within 24 hours of receipt, or that the entire contents of the solidification basin will be evacuated or solidified within 48 hours, until an amended Liquid Waste Solidification Basin Design and Operation Plan ("LWSBDOP") is approved by the Division, at which time Twin Enviro Services shall comply with that plan.

26. Immediately upon the effective date of this Consent Order, Twin Enviro Services shall ensure that the level of liquid in the Facility's solidification basin riser pipe is either pumped or monitored and as necessary pumped continuously, and that the liquid is pumped from the sump drainage layer whenever a six-inch depth of liquid is reached. Twin Enviro Services shall cooperate with the Department to modify the D&O Plan for the Facility and submit to the Department a modified D&O Plan to address these operational changes within thirty (30) calendar days of the effective date of this Consent Order.
27. Immediately upon the effective date of this Consent Order, Twin Enviro Services shall cease receiving friable asbestos waste at the Facility, and ensure that no further friable asbestos waste is accepted at the Facility without prior approval from the Division through:
  - a. An approved design and operations plan in accordance with 6 CCR 1007-2, Sections 1.3.9 and 5.3.1; or
  - b. Division approval on a case-by-case basis in accordance with Section 1.5 of the Regulation, in compliance with 6 CCR 1007-2, Section 5.3.1.
28. Immediately upon the effective date of this Consent Order, Twin Enviro Services shall distribute solid waste fly ash in the smallest area practicable, and shall either wet and, as necessary, shall provide adequate cover to prevent wind erosion, in compliance with the Facility's Division-approved Ash Disposal Plan, or it shall employ other reasonable measures to prevent wind erosion as set forth in an amended, Division-approved design and operation plan governing this activity.
29. Immediately upon the effective date of this Consent Order, Twin Enviro Services shall wet and, as necessary, shall cover the fly ash stockpiles at the Facility with tarps and/or soil, to prevent the dust emissions from fly ash stockpiles at the Facility, in compliance with 6 CCR 1007-2, Sections 1.3.9 and 2.1.3, and the Facility's Division-approved LWSBDOP, or it shall employ other reasonable measures to prevent dust emissions from fly ash stockpiles as set forth in an amended, Division-approved design and operation plan governing this activity. Twin Enviro Services shall maintain the stockpiles at an elevation below the top of the earthen berm surrounding the basin at all times, and any fly ash that is not needed for solidification purposes shall be disposed of in a working face.



30. Immediately upon the effective date of this Consent Order, Twin Enviro Services shall manage the Facility in a manner to prevent nuisance conditions, including fly ash dust emissions, at or beyond the site boundary of the Facility, in compliance with 6 CCR 1007-2, Section 2.1.3. Twin Enviro Services shall implement the dust control procedures specified in the Facility's Division-approved Ash Disposal Plan LWSBDOP, which include wetting the haul roads to minimize dust emissions at the Facility, or it shall employ other reasonable measures to prevent nuisance conditions at or beyond the site boundary of the Facility as set forth in an amended, Division-approved design and operation plan governing this activity.
31. Within thirty (30) calendar days of the effective date of this Consent Order, Twin Enviro Services shall create a solidification operations and inspection matrix or chart. The matrix must be incorporated into the Division-approved D&O Plan, or associated operating plans, and must be used to document the required activities, inspection, and corrective actions. The matrix or chart must be maintained for three years following completion of each page, and must be made available for inspection by Department or local governing body representatives.
32. Within sixty (60) calendar days of the effective date of this Consent Order, Twin Enviro Services shall submit for Division approval a monitoring plan in conformance with Section 2.2.1 of the Regulations specific to the liquid solidification basin. This plan's purpose will be detecting potential releases into the underlying vadose zone and/or groundwater from the solidification basin and will include, at a minimum: 1) proposed monitoring well location(s) and design details; 2) semi/annual sampling frequency and analytical parameter list consisting of Appendix 1A and 1B constituents; and 3) a Contingency Plan to be implemented in the event that a release from the basin is discovered.
33. Within one hundred and twenty (120) calendar days of the Division's approval of the solidification basin monitoring plan, Twin Enviro Services shall complete construction of the monitoring system and provide as-built details to the Division within thirty (30) calendar days of the construction completion. If more than thirty (30) calendar days remain in the current calendar quarter in which the monitoring system construction is completed, then sampling in accordance with the approved plan shall commence during that calendar quarter. If fewer than thirty (30) days remain in the calendar quarter at the time of completion, then sampling in accordance with the approved plan shall commence in the following calendar quarter.

#### **SCOPE AND EFFECT OF CONSENT ORDER**

34. The Parties agree and acknowledge that this Consent Order constitutes a full and final resolution of the matters addressed herein, the compliance advisory cited in paragraph 1.b., and any known to the Division as of the date of execution of this Consent Order, and

further agree not to challenge the terms and conditions of this Consent Order in any proceeding before any administrative body or any judicial forum, whether by way of direct judicial review or collateral challenge.

35. This Consent Order constitutes a final agency order or action upon execution by Twin Enviro Services and the Division. Any violation of the provisions of this Consent Order by Twin Enviro Services shall be a violation of a final order or action of the Division for the purposes of section 30-20-113, C.R.S., and may result in the assessment of penalties of up to two thousand dollars per day for each day of such violation.
36. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.
37. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of any requirement under the Act, or any implementing regulations under the Act, or any subsequent violation of any requirement of this Consent Order, the Act, or the Regulations.
38. Notwithstanding paragraph 23 above, the violations described in this Consent Order will constitute part of Twin Enviro Services' compliance history for purposes where such history is relevant. This includes considering the violations described above in seeking a penalty for any subsequent violations against Twin Enviro Services, in accordance with the provisions of section 30-20-113, C.R.S. Twin Enviro Services agrees not to challenge the use of the cited violations for any such purpose.
39. Twin Enviro Services shall comply with all applicable Federal, State, and/or local laws and regulations and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order and perform its obligations required hereunder. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws or regulations other than those specifically referred to herein.
40. Nothing herein shall be construed as prohibiting, altering, or in any way limiting the ability of the Division to seek any other remedies or sanctions available by virtue of Twin Enviro Services' violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Twin Enviro Services' violation of any applicable provision of law.

**LIMITATIONS, RELEASES AND RESERVATION OF  
RIGHTS AND LIABILITY**

41. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein, the compliance advisory cited in paragraph 1.b., and any known to the Division as of the date of execution of this Consent Order. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties due under this Consent Order, or collection thereof, and/or injunctive relief.
42. This Consent Order does not grant any release of liability for any violations not specifically cited herein, the compliance advisory cited in paragraph 1 .b., and any known to the Division as of the date of execution of this Consent Order.
43. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment pursuant to the terms of this Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
44. Twin Enviro Services reserves its rights and defenses regarding liability in any proceedings regarding the Facility other than proceedings to enforce this Consent Order.
45. Upon the effective date of this Consent Order, Twin Enviro Services releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act or the Regulations specifically addressed herein.
46. Twin Enviro Services shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of Twin Enviro Services, or those acting for or on behalf of Twin Enviro Services, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Twin Enviro Services shall not hold out the State of Colorado as (a) a party to any contract entered into by Twin Enviro Services in carrying out activities pursuant to this Consent Order; or (b) an owner or operator of the Facility. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

### **IMPLEMENTATION OF WORK TO BE PERFORMED**

47. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required. No plan submitted for Division approval under this Consent Order may be implemented unless and until written approval is received from the Division. Any approval by the Division of a plan submitted under this Consent Order is effective upon receipt by Twin Enviro Services. All approved plans, including all procedures and schedules contained in the plans, are hereby incorporated into this Consent Order, and shall constitute enforceable requirements under the Act.

### **SITE ACCESS AND SAMPLING**

48. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the Facility property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining Twin Enviro Services' compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, manifests, shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and interview Twin Enviro Services personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Facility.
49. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by Twin Enviro Services. Twin Enviro Services shall notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to the sampling being conducted, and shall provide split samples to the Division upon request.
50. Twin Enviro Services shall notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. Twin Enviro Services shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

### **FORCE MAJEURE**

51. Twin Enviro Services shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Twin Enviro Services, and which cannot be overcome by due diligence.
52. Within seventy-two (72) hours of the time that Twin Enviro Services knows or has reason to know of the occurrence of any event which Twin Enviro Services has reason to believe may prevent Twin Enviro Services from timely compliance with any requirement under this Consent Order, Twin Enviro Services shall provide verbal notification to the Division. Within seven (7) calendar days of the time that Twin Enviro Services knows or has reason to know of the occurrence of such event, Twin Enviro Services shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.
53. The burden of proving that any delay was caused by a force majeure shall at all times rest with Twin Enviro Services. If the Division agrees that a force majeure has occurred, the Division will so notify Twin Enviro Services. The Division will also approve or disapprove of Twin Enviro Services' proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of Twin Enviro Services' proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Twin Enviro Services. Pursuant to the Dispute Resolution section, within fifteen (15) calendar days of receipt of the explanation, Twin Enviro Services may file an objection.
54. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, Twin Enviro Services shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

### **DISPUTE RESOLUTION**

55. If the Division determines that additional requirements are necessary pursuant to paragraph 43; that a violation of this Consent Order has occurred, that a force majeure has not occurred; that the actions taken by Twin Enviro Services to mitigate the delay caused by a force majeure are inadequate; or that Twin Enviro Services' Notice of Completion should be rejected pursuant to paragraph 63, the Division shall provide a written

explanation of its determination to Twin Enviro Services. Within fifteen (15) calendar days of receipt of the Division's determination, Twin Enviro Services shall:

- a. Submit a notice of acceptance of the determination; or
- b. Submit a notice of dispute of the determination.

If Twin Enviro Services fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

56. If the Division disapproves or approves with modifications any original or revised plan submitted by Twin Enviro Services pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within fifteen (15) calendar days of receipt of the Division's approval with modifications or disapproval of the plan, Twin Enviro Services shall:

- a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;
- b. In the case of a disapproval only, submit a revised plan for Division review and approval (Twin Enviro Services may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by Twin Enviro Services); or
- c. Submit a notice of dispute of the disapproval or approval with modifications.

If Twin Enviro Services fails to do any of the above within the specified time, Twin Enviro Services shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action and may seek penalties.

57. If Twin Enviro Services submits a revised plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify Twin Enviro Services in writing of its approval, approval with modifications, or disapproval of the revised plan. If the Division disapproves the revised plan, it may include in its disapproval a plan for implementation by Twin Enviro Services. Such disapproval and plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, sections 24-4-101 through 108, C.R.S. (the "APA"), unless Twin Enviro Services submits a notice of dispute, pursuant to paragraph 55 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division's plan shall not become effective pending resolution of the dispute.

58. If Twin Enviro Services files any notice of dispute pursuant to paragraph 55, 56 or 57, the notice shall specify the particular matters in the Division's determination that Twin Enviro Services seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Twin Enviro Services. The Division and Twin Enviro Services shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the APA.

### **NOTICES**

59. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division: Jerry Henderson, Environmental Protection Specialist  
Solid Waste Unit  
Colorado Department of Public Health and Environment  
Mail Code: HMWMD-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

For Twin Enviro Services:  
  
Mr. Les A. Liman  
Twin Landfill Corporation of Fremont County  
P.O. Box 774362  
Steamboat Springs, CO 80477

With a copy to: Lynn M. Kornfeld  
Faegre & Benson LLP  
3200 Wells Fargo Center  
1700 Lincoln Street  
Denver, CO 80203-4532

### **OBLIGATIONS UNAFFECTED BY BANKRUPTCY**

60. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Twin Enviro Services of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Twin Enviro Services agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Twin Enviro Services and the Facility to achieve and maintain compliance with State law.

### **REIMBURSEMENT OF COSTS**

61. Pursuant to section 30-20-109(2)(b), C.R.S, Twin Enviro Services shall reimburse the Division for all costs incurred by the Division pursuant to this Consent Order, including, but not limited to document review and activity fees. Payment is due thirty (30) calendar days after billing by the Division.

### **MODIFICATIONS**

62. This Consent Order may be modified only upon mutual written agreement of the Parties. The Division may extend in writing any deadlines set forth herein, and upon acceptance of such extension by Twin Enviro Services, any such extension shall constitute a modification to this Consent Order.

### **COMPLETION OF REQUIRED ACTIONS**

63. Twin Enviro Services shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject Twin Enviro Services' Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects Twin Enviro Services' Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. Twin Enviro Services shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:

- a. Submit a notice of acceptance of the determination; or
- b. Submit a notice of dispute.

If Twin Enviro Services fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination. This Consent Order shall terminate upon the Division's acceptance of Twin Enviro Services' Notice of Completion in accordance with the terms of this Paragraph 63.

### **NOTICE OF EFFECTIVE DATE**

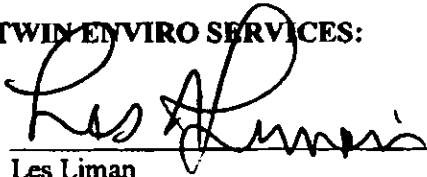
64. This Consent Order shall be effective on the date signed by the last party.



**BINDING EFFECT AND AUTHORIZATION TO SIGN**


65. This Consent Order is binding upon Twin Enviro Services and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. Twin Enviro Services agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

**FOR TWIN ENVIRO SERVICES:**

  
\_\_\_\_\_  
Les Liman  
President

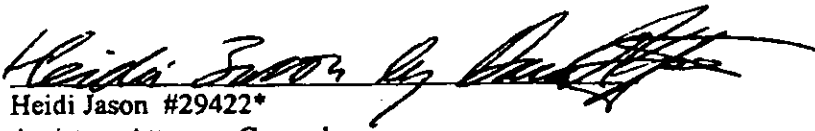
8/15/08  
Date

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:**

  
\_\_\_\_\_  
Charles Johnson  
Solid Waste and Material Management Unit Leader  
Hazardous Materials and Waste  
Management Division

8/15/08  
Date

**Approved as to form:**

  
\_\_\_\_\_  
Heidi Jason #29422\*  
Assistant Attorney General  
Natural Resources and Environment Section  
Attorneys for the Department

14/09/08  
Date

1525 Sherman Street, 5th Floor  
Denver, Colorado 80203  
Telephone: (303) 866-5921

\*Counsel of Record



SW/1.6./2827

SW/1.6./1097-02

Order on Consent - Number 08-08-15-01  
Solid Waste - Correspondence - Enforcement - Compliance

8/15/2008

FRM