

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violations of Article 27 of the Environmental Conservation Law (ECL), Part 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), and Department Order on Consent No. R1-20080514-150,

ORDER

DEC Case No.
CO 1-2104-0507-159

- by -

**ECOLOGY SANITATION CORP., ECOLOGY
TRANSPORTATION CORP., and ERNEST
DEMATTEO, individually and as owner or operator
of ECOLOGY SANITATION CORP. and ECOLOGY
TRANSPORTATION CORP.,**

Respondents.

This administrative enforcement proceeding addresses allegations of staff of the New York State Department of Environmental Conservation (Department or DEC) that:

- (i) Ecology Sanitation Corp. (Energy Sanitation), Ecology Transportation Corp. (Ecology Transportation), and Ernest DeMatteo (DeMatteo), individually and as owner or operator of Ecology Sanitation and Ecology Transportation (collectively, respondents), operated a solid waste management facility located at 1225 Church Street, Bohemia, New York (Bohemia facility), without the required 6 NYCRR part 360 (Part 360) permit, in violation of 6 NYCRR former 360-1.5(a)(2), 360-1.7 and 360-16.1(c);¹ and
- (ii) respondents DeMatteo and Ecology Sanitation violated consent order R1-20080514-150 entered into with the Department in 2008 (2008 Consent Order or Consent Order), by failing since April 2014 to make payments for the environmental monitoring of respondents' solid waste operations as required by the 2008 Consent Order's schedule of compliance.

(See generally DEC Staff Complaint ¶¶ 28-65.)

Department staff seeks a civil penalty in the amount of eighty-five thousand dollars (\$85,000) for respondents' operation of a construction and demolition (C&D) debris processing

¹ Effective November 4, 2017, the Part 360 regulations were amended and renumbered. The regulations in effect prior to November 4, 2017, are applicable to the violations alleged in this proceeding. Accordingly, hereafter, this order refers to the former Part 360 in effect at the time of the violations.

facility without a permit, violation of the terms of the 2008 Consent Order, and failure to submit annual environmental monitoring fees. In addition, Department staff is seeking that respondents be directed to pay the overdue annual environmental monitoring fees in the amount of thirteen thousand and one hundred dollars (\$13,100). (See DEC Staff Complaint, Wherefore Clause unnumbered pages 8-9.)

The matter was originally assigned to Administrative Law Judge (ALJ) D. Scott Bassinson of DEC's Office of Hearings and Mediation Services (OHMS). Evidentiary hearings were convened before ALJ Bassinson on November 8 and 9, 2017, and on March 6, 2018. After the hearings concluded, ALJ Bassinson left the Department for employment with another State agency. Accordingly, this matter was reassigned to Chief Administrative Law Judge James T. McClymonds for preparation of the attached hearing report, which I adopt as my decision in this matter, subject to my comments below.

First Cause of Action

As set forth in the hearing report, under the regulations in effect at the time of the alleged violations, section 360-1.7(a) provided that “no person shall . . . construct or operate a solid waste management facility, or any phase of it, except in accordance with a valid permit issued pursuant to this Part.²” Section 360-16.1(c), which applied specifically to C&D debris processing facilities (see 6 NYCRR 360-16.1[a]), provided that “no person shall construct or operate a facility used to receive, treat or process C&D debris without first having obtained” a Departmental approval under Part 360. Pursuant to 6 NYCRR 360-16.1, the operator of a C&D debris processing facility must obtain either a registration pursuant to section 360-16.1(d), or a Part 360 permit (see 6 NYCRR 360-16.1[c]; Hearing Report at 16).

The record reflects that respondents' solid waste management facility was a construction and demolition (C&D) debris processing facility at which respondents processed, among other C&D debris, creosote-treated railroad ties for resale outside of New York State.

Respondents admitted commencing their railroad tie business at the Bohemia facility in or about July 2013 (see Hearing Report at 10 [Findings of Fact Nos. 23 and 24]). That operation involved transporting railroad ties to the Bohemia facility for processing and eventual sale outside of New York State. Useable railroad ties were separated, metal was removed, and the ties were graded, and banded for resale. Railroad ties that were broken and could not be

² A “solid waste management facility” was defined as “any facility employed beyond the initial solid waste collection process and managing solid waste, including but not limited to: . . . C&D debris processing facilities” (6 NYCRR 360-1.2[b][158]; see also Department Staff Complaint, ¶ 17). C&D debris was defined as “uncontaminated solid waste resulting from the construction, remodeling, repair and demolition of utilities, structures, and roads Such waste includes, but is not limited to brick, concrete and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), . . . plumbing fixtures, nonasbestos insulation, . . . and pipe and metals that are incidental to any of the above” (6 NYCRR 360-1.2[b][38]). Finally, “processing facility” meant “a combination of structures, machinery or devices, other than collection and transfer vehicles, utilized to reduce or alter the volume or the chemical or physical characteristics of solid waste through processes such as, but not limited to, separating [or] baling” (6 NYCRR 360-1.2[b][120]). (See Hearing Report at 16-17.)

salvaged were placed in roll-off containers for disposal at a landfill. Dirt and wood debris that had fallen off whole or broken railroad ties during processing were placed into roll-off containers and taken to a landfill. Sales receipts showed that Ecology Sanitation also sold railroad ties from the Bohemia facility. Other forms of C&D debris, including lumber and other wood material, broken concrete and stone, plumbing fixtures, and insulation material, were also separated into separate roll-off containers. (See Hearing Report at 10-11 [Findings of Fact Nos. 24-25], 17.)

Based on the preponderance of the record evidence and the logical inferences that flow from that evidence, the Chief ALJ concluded that from July 2013 and continuing through at least December 15, 2015, respondents Ecology Sanitation, Ecology Transportation, and DeMatteo, individually, operated a C&D debris processing facility at the Bohemia facility without a permit from the Department in violation of 6 NYCRR former 360-1.7 and 6 NYCRR former 360-16.1(c). I agree.

Although the C&D debris processing facility was required to have a Part 360 permit or registration, respondents stipulated that no permit application was submitted to the Department for the operation at the Bohemia facility (see Hearing Report at 11 [Finding of Fact No. 26]). In addition, although respondents were given the opportunity to apply for a registration for the facility, the record establishes that a registration was never applied for or obtained for the facility (see Hearing Report, at 17; see also Hearing Transcript, November 8, 2017, at 46).

The record demonstrates that respondents are jointly and severally liable for the operation of the unpermitted C&D debris processing facility at the Bohemia facility. The hearing report details the evidence and legal theories supporting the liability of respondents Ecology Transportation and Ecology Sanitation, as well as DeMatteo's individual liability as an operator of the facility and under the responsible corporate doctrine (see Hearing Report at 17-19).³

In concluding that respondents were liable for the above violations, the Chief ALJ held that respondents failed to carry their burden of proving their affirmative defense that their railroad tie operation did not require a Part 360 permit or registration. Respondents based their defense on a 2010 opinion letter written by an attorney in the Department's Central Office in which the attorney explained how a facility accepting only whole, marketable railroad ties for resale outside of New York State could obtain a discretionary determination from Regional staff authorizing such a facility to operate without a Part 360 permit or registration (see Hearing Exhibit DEC 4 [Opinion Letter]). The Chief ALJ rejected respondents' argument that the Opinion Letter was self-executing, and concluded that respondents failed to obtain the necessary determination from Region 1 staff or otherwise failed to establish that their operation fully complied with the parameters outlined in the Opinion Letter (see Hearing Report at 20-23). For

³ In the first cause of action, Department staff also charged respondents with a violation of 6 NYCRR former 360-1.5(a)(2). The Chief ALJ concluded that staff failed, however, to establish all the elements of a section 360-1.5(a)(2) violation, and that the portion of the first cause of action that charged a violation of section 360-1.5(a)(2) should be dismissed (see Hearing Report at 19). Based on my review of the record, I affirm and adopt the Chief ALJ's conclusion.

the reasons stated in the hearing report, I conclude that respondents' affirmative defense is meritless.

Second Cause of Action

In the second cause of action, Department staff charged respondents Ecology Sanitation and DeMatteo with violating the 2008 Consent Order by failing to fund the environmental monitoring account in accordance with the Consent Order's schedule of compliance (see 2008 Consent Order, at 8-9 [Schedule A – Compliance Schedule]).⁴ The 2008 Consent Order was executed by both Ecology Sanitation and DeMatteo (in his individual capacity and as owner and operator of Ecology Sanitation) (see Hearing Report at 19; Hearing Exhibit DEC 6 [2008 Consent Order, at 6-7]).

As set forth in the hearing report, respondents Ecology Sanitation and DeMatteo, individually and as owner and operator of Ecology Sanitation, violated the 2008 Consent Order by failing to pay the \$6,100 annual environmental monitoring fee for fiscal year 2014-2015, and the \$7,000 annual environmental monitoring fee for fiscal year 2015-2016 (see Hearing Report at 14-15 [Findings of Fact Nos. 36, 41], 19-20).

Civil Penalty

As noted, Department staff is seeking a civil penalty in the amount of eighty-five thousand dollars (\$85,000) for respondents' operation of a C&D debris processing facility without a permit and for violating the 2008 Consent Order. ECL 71-2703(1) provides in part that any person who violates any of the provisions of, or who fails to perform any duty imposed by, title 7 of article 27 (which addresses solid waste management facilities and other activities), the implementing regulations (which includes 6 NYCRR former part 360), or a consent order issued pursuant thereto, shall be liable for a civil penalty of up to \$7,500 for each violation and an additional penalty of not more than \$1,500 for each day when such violation continues. The penalty requested by Department staff is substantially less than the maximum penalty that could be imposed in this proceeding (see Hearing Report at 23-24)

The Chief ALJ concludes that the civil penalty of eighty-five thousand dollars (\$85,000) is authorized, consistent with Department guidance, and justified by the circumstances of this case.

Recommendations

Based upon this record, the Chief ALJ recommended that I issue an order:

1. Holding that respondents Ecology Sanitation, Ecology Transportation, and DeMatteo, individually, violated former 6 NYCRR 360-1.7 and former 6 NYCRR 360-16.1(c)

⁴ The 2008 Consent Order became effective on July 21, 2008.

by operating a C&D debris processing facility at the Bohemia facility without a permit from the Department from July 2013 and continuing through at least December 15, 2015;

2. Holding that respondents Ecology Sanitation and DeMatteo, individually, violated the 2008 Consent Order by failing to pay the \$6,100 annual environmental monitoring fee for fiscal year 2014-2015, and the \$7,000 annual environmental monitoring fee for fiscal year 2015-2016;

3. Dismissing that portion of the first cause of action as charged a violation of 6 NYCRR former 360-1.5(a)(2);

4. Imposing a civil penalty of \$85,000 on respondents, jointly and severally, for the above violations;

5. Directing respondents Ecology Sanitation and DeMatteo, individually, to submit to the Department the overdue annual environmental monitoring fees in the amount of \$13,100; and

6. Directing such other and further relief as I may deem just and appropriate.

Upon my consideration of this record, I adopt the hearing report's findings of fact. I also agree with and adopt the hearing report's conclusions with respect to respondents' liability for the violations established by Department staff. Finally, I agree that the penalty sought by Department staff is authorized and justified by the facts and circumstances of this proceeding.

I hereby impose a civil penalty in the amount of eighty-five thousand dollars (\$85,000) on respondents, jointly and severally, for the above violations, to be paid within thirty (30) days of service of this order upon respondents Ecology Sanitation Corp., Ecology Transportation Corp., and Ernest DeMatteo.

I also hold that respondents Ecology Sanitation Corp. and Ernest DeMatteo are liable for the payment of the overdue annual environmental monitoring fees in the amount of thirteen thousand one hundred dollars (\$13,100). Such payment is to be made within thirty (30) days of service of this order upon respondents Ecology Sanitation Corp. and Ernest DeMatteo and shall be made by a certified check, cashier's check or money order separate from the certified check, cashier's check or money order that respondents remit to pay the civil penalty of eighty-five thousand dollars (\$85,000).

NOW, THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

- I. Based on the entire record of this proceeding, respondents Ecology Sanitation Corp., Ecology Transportation Corp., and Ernest DeMatteo, individually, violated 6 NYCRR former 360-1.7 and 6 NYCRR former 360-16.1(c) by operating a C&D debris processing facility at the Bohemia facility without a permit from the Department from July 2013 and continuing through at least December 15, 2015.
- II. Based on the entire record of this proceeding, respondents Ecology Sanitation Corp. and Ernest DeMatteo, individually and as owner and operator of Ecology Sanitation Corp., violated the 2008 Consent Order by failing to pay the \$6,100 annual environmental monitoring fee for fiscal year 2014-2015, and the \$7,000 annual environmental monitoring fee for fiscal year 2015-2016.
- III. The portion of the first cause of action charging a violation of 6 NYCRR former 360-1.5(a)(2) is dismissed.
- IV. A civil penalty in the amount of eighty-five thousand dollars (\$85,000) is hereby imposed on respondents, jointly and severally, for the above violations, to be paid within thirty (30) days of service of this order upon respondents Ecology Sanitation Corp., Ecology Transportation Corp., and Ernest DeMatteo, individually.
- V. Respondents Ecology Sanitation Corp. and Ernest DeMatteo, individually and as owner and operator of Ecology Sanitation Corp., are hereby directed to submit to the Department the overdue annual environmental monitoring fees in the amount of thirteen thousand one hundred dollars (\$13,100), such payment to be made within thirty (30) days of service of this order upon respondents Ecology Sanitation Corp. and Ernest DeMatteo.
- VI. Payment of the civil penalty and payment of the overdue annual environmental monitoring fees shall be paid by separate certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation. Both the civil penalty payment and the payment of the overdue annual environmental monitoring fees shall be sent to the following address:

Office of General Counsel
NYS Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1500
Attn: Jennifer Andalaro, Esq.
- VII. Any questions or other correspondence regarding this order shall also be addressed to Jennifer Andalaro, Esq. at the address referenced in paragraph VI of this order.

- VIII. The provisions, terms and conditions of this order shall bind respondents Ecology Sanitation Corp., Ecology Transportation Corp., and Ernest DeMatteo, individually and as owner or operator of Ecology Sanitation Corp. and Ecology Transportation Corp., and their agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: /s/
Basil Seggos
Commissioner

Dated: November 21, 2019
Albany, New York

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violations of Article 27 of the Environmental Conservation Law (“ECL”), Part 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”), and Department Order on Consent No. R1-20080514-150,

HEARING REPORT

DEC Case No.
CO 1-2104-0507-159

- by -

August 29, 2019

**ECOLOGY SANITATION CORP., ECOLOGY
TRANSPORTATION CORP., and ERNEST
DEMATTEO, individually and as owner or operator
of ECOLOGY SANITATION CORP. and ECOLOGY
TRANSPORTATION CORP.,**

Respondents.

Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Jennifer Andaloro, Lisa Covert, and Dena Putnick of counsel), for staff of the Department of Environmental Conservation.
- Leslie R. Bennett LLC (Leslie R. Bennett of counsel) for respondents.

I. PROCEEDINGS

Staff of the New York State Department of Environmental Conservation (Department or DEC) commenced this administrative enforcement proceeding against respondents Ecology Sanitation Corp., Ecology Transportation Corp., and Ernest DeMatteo, individually and as owner or operator of Ecology Sanitation and Ecology Transportation (collectively respondents), by service of a notice of hearing and complaint, both dated October 26, 2015. The complaint asserts two causes of action alleging that (i) respondents operated a solid waste management facility located at 1225 Church Street, Bohemia, New York, without the required 6 NYCRR part 360 (Part 360) permit, in violation of 6 NYCRR former 360-1.5(a)(2), 360-1.7 and 360-16.1(c)¹; and (ii) respondents DeMatteo and Ecology Sanitation violated a consent order entered into with the Department in 2008, by failing since April 2014 to make

¹ Effective November 4, 2017, the Part 360 regulations were amended and renumbered. The regulations in effect prior to November 4, 2017, are applicable to the violations alleged in this proceeding. Accordingly, hereafter, this hearing report refers to the former Part 360 in effect at the time of the violations.

payments for environmental monitoring of respondents' solid waste operations as required by the schedule of compliance in that consent order (see generally Complaint ¶¶ 28-65).

Department staff seeks an order of the Commissioner: (i) holding that respondents violated the 2008 consent order and the cited statutes and regulations; (ii) directing respondents to submit the overdue annual environmental monitor fees in the amount of \$13,100; (iii) holding that respondents own or operate a construction and demolition (C&D) debris processing facility; (iv) enjoining respondents from continued operation of a C&D debris processing facility without a permit; (v) assessing a civil penalty in the amount of \$85,000 for violating the 2008 consent order, for operating a C&D debris processing facility without a permit, and for failing to submit the annual environmental monitor fees; and (vi) granting such other relief as the Commissioner may deem just and proper (see Complaint at eighth and ninth unnumbered pages, Wherefore Clause ¶¶ I-VI).

In their answer, respondents asserted six "affirmative defenses," each comprised of one paragraph, summarized below:

- First Affirmative Defense: Failure to state a claim for which relief may be granted.
- Second Affirmative Defense: Staff's claims are barred in whole or in part due to the actions of the Department, "which arbitrarily and without any substantive basis demanded that a Part 360 Permit was or is required for the handling of railroad ties by Respondents Ecology Sanitation and/or Ecology Transportation."
- Third Affirmative Defense: Staff's claims are moot because Part 360 does not apply to respondents' handling of railroad ties, "as explained to Respondents" in an April 6, 2010 "guidance letter" from the Department's Office of General Counsel.
- Fourth Affirmative Defense: Staff's claims are moot because Part 360 does not apply to respondents' handling of railroad ties, "as 'clarified' by a memorandum" dated May 27, 2015 from the Department's Office of General Counsel.
- Fifth Affirmative Defense: Staff's claims are barred by equitable estoppel and the Department's "wrongful and arbitrary conduct in requiring a Part 360 permit for the handling of railroad ties by Respondents Ecology Sanitation and/or Ecology Transportation where DEC did not require that any other entity was required to obtain a Part 360 permit for like activities."
- Sixth Affirmative Defense: Staff's claims are barred in whole or in part by the doctrine of unclean hands.

(Answer dated December 21, 2015, at ¶¶ 66-71.)

Department staff subsequently moved to clarify or dismiss the defenses and to

strike discussion of settlement negotiations from respondents' papers served in opposition to staff's motion. By ruling dated March 21, 2017, Administrative Law Judge (ALJ) D. Scott Bassinson (1) denied staff's motion to clarify or dismiss defenses, insofar as it sought dismissal of the second affirmative defense, and otherwise granted the motion to dismiss respondents' third through sixth defenses; and (2) denied staff's motion to strike discussion of settlement negotiations (see Matter of Ecology Sanitation Corp., Ruling on Staff Motion to Clarify or Dismiss Defenses and Motion to Strike, March 21, 2017, at 8). The ALJ noted that as to the first defense, staff had withdrawn its motion to dismiss on the ground that the "failure to state a claim" defense is not properly pleaded as a defense, but is a basis for a motion to dismiss the complaint that can be ignored until such a motion is made (see id. at 3-4).²

Evidentiary hearings were convened before ALJ Bassinson on November 8 and 9, 2017, and on March 6, 2018. Department staff was represented by Jennifer Andaloro, Lisa Covert, and Dena Putnick, Esqs., of the Department's Office of General Counsel. Respondents were represented by Leslie R. Bennett, Esq., of Leslie R. Bennett LLC.

A set of stipulated facts were offered and agreed to by the parties (see November 9, 2017 hearing transcript [11/9/17 tr], at 5; see also NYSDEC Staff's Revised Exhibit List and Stipulated Facts [Stipulated Facts]). Department staff called two witnesses: James Wade, a professional engineer 1, and Lija Jacobs, an assistant engineer (environmental), both with the Department's Region 1 office.³ Respondents also called two witnesses: James P. Rigano, Esq., and respondent Ernest DeMatteo. A total of 125 exhibits were admitted into evidence. Closing briefs were authorized. Department staff filed a closing statement and brief dated May 24, 2018.⁴ Respondents filed a post-hearing memorandum also dated May 24, 2018. With the receipt of the closing briefs, the hearing record closed.

After the hearings concluded, ALJ Bassinson resigned his position as ALJ and left the Department for employment with another State agency. Accordingly, this matter was reassigned to the undersigned Chief Administrative Law Judge for preparation of a hearing report.

² Respondents did not administratively appeal from the ruling dismissing their third through sixth affirmative defenses either by seeking leave from the Commissioner to file an interlocutory appeal (see 6 NYCRR 622.10[d][2][ii]) or by appealing from the ALJ's ruling in their closing brief (see 6 NYCRR 622.10[d][1]).

³ The Department's Region 1 includes Nassau and Suffolk Counties.

⁴ In its closing brief, Department staff moves pursuant to 6 NYCRR 622.5(b) and CPLR 3025(c) to amend its pleadings to conform to the proof submitted at hearing. There being no objection or prejudice to respondents, the motion is granted.

II. FINDINGS OF FACT

The following facts are found based upon the preponderance of the record evidence and the logical inferences that flow therefrom (see 6 NYCRR 622.11[c]; Matter of White, d/b/a Leora White Scrap Iron and Metal, Order of the Commissioner, Aug. 13, 2008, at 6):

1. Respondent Ecology Sanitation Corp. (Ecology Sanitation) is a domestic corporation with an office located at 153 Poet Avenue, North Babylon, New York, 11703.⁵ It was formed in 1971. Respondent Ernest DeMatteo (DeMatteo) began employment with Ecology Sanitation in 1990. During the period from 2013-2015, DeMatteo was the sole owner, president, and secretary of Ecology Sanitation.⁶ DeMatteo was also the chief executive officer of Ecology Sanitation since 2000.⁷
2. Respondent Ecology Transportation Corp. (Ecology Transportation) is a domestic corporation with an office located at 153 Poet Avenue, North Babylon, New York, 11703.⁸ Ecology Transportation is solely owned by DeMatteo's wife, Denise Matteo, and was formed in 2008 to be a woman-owned business enterprise (WBE). During the period from 2013 to 2015, Ernest DeMatteo was the vice president of Ecology Transportation.⁹
3. Respondent Ernest DeMatteo resides at 153 Poet Avenue, North Babylon, New York, 11703.¹⁰ During all relevant time periods, DeMatteo and his attorneys were the points of contact for both Ecology Sanitation and Ecology Transportation (corporate respondents), and DeMatteo was copied on correspondence from respondents' attorney on matters concerning the corporate respondents.¹¹
4. Since 2007, DeMatteo was involved in day-to-day decision-making regarding Ecology Sanitation's removal and disposal of railroad ties for the Long Island Railroad (LIRR).¹²

⁵ Stipulated Facts ¶ 2.

⁶ DeMatteo testimony, March 6, 2018 hearing transcript (3/6/18 tr) at 136-137, 253-254.

⁷ Stipulated Facts ¶ 4; DeMatteo testimony, 3/6/18 tr at 253-254.

⁸ Stipulated Facts ¶ 3.

⁹ DeMatteo testimony, 3/6/18 tr at 137-138.

¹⁰ Stipulated Facts ¶ 4; The stipulated facts indicate that respondent DeMatteo's zip code is 11702. This is an error. The correct zip code is 11703.

¹¹ See e.g. Exhibit (Exh) R 43; DeMatteo testimony, 3/6/18 tr at 254-255.

¹² See DeMatteo testimony, 3/6/18 tr at 253-254.

DeMatteo was also directly involved in determining whether to obtain authorization from the Department for facilities operated by Ecology Sanitation, and attended meetings with the Department on behalf of Ecology Sanitation to discuss treatment of railroad ties under the Department's regulations.¹³

5. DeMatteo was also involved in the day-to-day operation of Ecology Transportation, including in determining whether to obtain Departmental approval for Ecology Transportation's operations.¹⁴ DeMatteo also executed a lease agreement for a facility located in Bohemia, New York, as vice president of Ecology Transportation.¹⁵ Denise DeMatteo was not a point of contact for Ecology Transportation, and was not involved in determining whether to obtain Departmental approval for its operations.¹⁶
6. On November 7, 2000, respondent DeMatteo, individually and as the owner of Ecology Sanitation, and respondent Ecology Sanitation entered into an order on consent no. R1-20000719-68 (2000 Consent Order) with the Department.¹⁷ The 2000 Consent Order resolved Department staff's claims that DeMatteo and Ecology Sanitation operated an unpermitted C&D debris processing facility located at 150 Townline Road, Kings Park, New York (Kings Park facility).¹⁸ At the Kings Park facility, respondents operated a truck and roll-off container service handling commercial solid waste from delicatessens, shoe stores, and school districts.¹⁹ Respondents also processed cardboard and other recyclables, and railroad dirt and gravel.²⁰
7. In April 2001, Ecology Sanitation obtained a Part 360 permit to operate a recycling and C&D debris processing facility.²¹ The permit was valid for one year.²² Ecology Sanitation subsequently received multiple extensions of time from the Department to obtain a Part 360 permit as required by the 2000 Consent Order.²³ However, because the

¹³ DeMatteo testimony, 3/6/18 tr at 254.

¹⁴ See DeMatteo testimony, 3/6/18 tr at 256-257.

¹⁵ DeMatteo testimony, 3/6/18 tr at 255; see also Lease, Exh R 35.

¹⁶ DeMatteo testimony, 3/6/18 tr at 255-256.

¹⁷ Stipulated Facts ¶ 9; Order on Consent, Exh DEC 5.

¹⁸ See Exh DEC 5.

¹⁹ See DeMatteo testimony, 3/6/18 tr at 139.

²⁰ Exhs R 8, R 9.

²¹ Exh R 57.

²² Exh R 57.

²³ See Exhs R 58-R 60.

Town of Smithtown never completed its review of respondents' facility under the State Environmental Quality Review Act (ECL article 8 [SEQRA]), Ecology Sanitation was unable to complete its permit application to the Department.²⁴

8. In March 2007, DeMatteo and Ecology Sanitation moved operations to a solid waste management facility located at 442 Tate Street, Holbrook, New York (Holbrook facility) that was owned by Get Rid of It by Recycling, Inc.²⁵ Get Rid of It had a C&D debris processing facility permit (permit no. 1-4728-00943/0004) from the Department.²⁶
9. At the Holbrook facility, respondents handled and processed C&D debris including railroad ties.²⁷ With respect to railroad ties, Ecology Sanitation had entered into a contract with the LIRR Division of the Metropolitan Transportation Authority (MTA) in 2007 to perform right of way maintenance involving the removal of gravel and railroad ties from track areas.²⁸ The railroad ties removed from the MTA facility were taken to the Holbrook facility where they were sorted, bundled, banded with steel bands, and stacked for resale to customers out of New York State.²⁹ The contract with the LIRR was renewed in June 2010.³⁰
10. Effective July 3, 2007, the Legislature amended the ECL to phase out the manufacture, sale, and use of creosote and creosote-treated wood or other products in New York.³¹
11. Respondents Ecology Sanitation and DeMatteo, individually and as owner of Ecology Sanitation, entered into a second order on consent with the Department for DEC Case No. R1-20080514-150, dated July 27, 2008 (2008 Consent Order).³² The 2008 Consent Order resolved Department staff's claims regarding violations of the 2000 Consent Order as well as claims regarding violations of Part 360 at the Holbrook facility, including respondents' unpermitted operation of a solid waste management facility at that location and respondents' failure to make payments since April 2008 to the onsite environmental

²⁴ See Exh R 71; DeMatteo testimony, 3/6/18 tr at 142.

²⁵ Stipulated Facts ¶ 10; DeMatteo testimony, 3/6/18 tr at 143. The Holbrook facility also has a street address of 435 St. James Street, Holbrook, New York (see DeMatteo testimony, 3/6/18 tr at 143).

²⁶ Stipulated Facts ¶ 11.

²⁷ See DeMatteo testimony, 3/6/18 tr at 147-148.

²⁸ See DeMatteo testimony, 3/6/18 tr at 184; Exh R 3.

²⁹ See DeMatteo testimony, 3/6/18 tr at 156-157, 160; Exh R 3.

³⁰ See DeMatteo testimony, 3/6/18 tr at 184, 207; Exhs R 13, R 26.

³¹ See ECL 27-2503, as added by L 2007, ch 172.

³² Stipulated Facts ¶ 12; see also Order on Consent, Exh DEC 6.

monitor (OEM) account established pursuant to the 2000 Consent Order for respondents' operations.³³ Among other requirements, the 2008 Consent Order required the continued funding of an OEM to monitor "solid waste management facility operations directly related to Respondents. These monitoring services will include, but not be limited to, the following:

"1. Monitoring of solid waste operations directly related to the Respondent, and ensure operations are in compliance with appropriate regulations [and]

"2. Provide inspections and compliance monitoring to the Respondent's facility(ies), including construction inspections."³⁴

The OEM program applied to any facility or facilities at which respondents might operate, not just the Holbrook facility.³⁵ Respondents were included in the OEM program due to compliance issues related to operating unauthorized facilities.³⁶

12. In late 2008, during discussions with Region 1 staff concerning Ecology Sanitation's handling of creosote-treated railroad ties in light of the newly-enacted provisions at ECL 27-2503, respondents' attorney raised concerns that Ecology Sanitation's principal competitor, Ray's Transportation, which is located in Orange County in the Department's Region 3,³⁷ was not being held to the same permitting, monitoring, disclosure, and permit fee requirements as respondents.³⁸ The Department's Region 1 legal staff had informed respondents, however, that ground water considerations in Region 1 were different than in other regions.³⁹
13. In February 2009, the Department issued a modified Part 360 permit listing Get Rid of It, Ecology Sanitation, and All Mine Carting Corp. as permittees.⁴⁰ The 2009 modified permit authorized permittees to operate a recyclables handling, recyclables recovery, and transfer station handling up to 370 tons per day (to be increased to 680 tons per day when a newly constructed process building received Town approval) of source separated

³³ See Exh DEC 6 at 2.

³⁴ Exh DEC 6 at 8.

³⁵ See Wade testimony, 11/8/17 tr at 68.

³⁶ See Wade testimony, 11/8/17 tr at 68.

³⁷ The Department's Region 3 includes the seven lower Hudson Valley counties.

³⁸ See Exh R 63 at 2.

³⁹ See id.

⁴⁰ See Exhs R 10, R 11 (2009 modified permit).

recyclables, commercial solid waste, and C&D debris.⁴¹ The modified permit also contained special conditions governing the handling and disposal of railroad ties.⁴²

14. In December 2009 and January 2010, after the LIRR issued a request for bid for the 2010 contract, DeMatteo made inquiries to the Department concerning the need for a Part 360 permit for his railroad tie processing operation.⁴³ In responses to the inquiries by DeMatteo, Region 1 staff informed DeMatteo that creosote treated railroad ties are C&D debris under the Department's regulations and that he needed a Part 360 permit for a facility that handles C&D debris in the form of railroad ties.⁴⁴ In or about March 2010, Region 1 staff met with DeMatteo in person and again informed him he was required to obtain a Part 360 permit for his railroad tie processing operation.⁴⁵
15. In 2010, DeMatteo made an inquiry to the Department's Central Office regarding the Part 360 permit requirements to operate a solid waste management facility that only accepted used railroad ties. In response to DeMatteo's inquiry, Michael S. Caruso, then Senior Attorney in the Office of General Counsel in the Department's Central Office in Albany, issued a letter to DeMatteo dated April 6, 2010 (Caruso Letter).⁴⁶ In the letter, Attorney Caruso outlined the factors the Department's Region 1 staff would consider in making a determination whether a solid waste management facility that only accepted used railroad ties would be subject to either a Departmental registration or permit, or could be operated without a permit.⁴⁷
16. In or about April 2010, DeMatteo discussed the Caruso Letter with Region 1 staff. Notwithstanding the Caruso Letter, Region 1 informed him that because railroad ties are adulterated wood, a Part 360 permit is required to process them.⁴⁸
17. In December 2010, attorneys for Ecology Sanitation sent a letter to the Department's Region 1 Director requesting that the 2009 modified permit, which was due for renewal in February 2011, be modified upon renewal to remove any special conditions relating to the handling and disposal of railroad ties.⁴⁹ The basis for the request was the Caruso

⁴¹ See id.

⁴² See DeMatteo testimony, 3/6/18 tr at 260-261; Exh R 10 at 4.

⁴³ See Exhs R 12, R 15.

⁴⁴ See Exhs R 12, R 15; Wade testimony, 11/8/17 tr at 133-136.

⁴⁵ See Wade testimony, 11/8/17 tr at 136-138; DeMatteo testimony, 3/6/18 tr at 197.

⁴⁶ See Letter, Exh DEC 4 (Caruso Letter).

⁴⁷ See id.

⁴⁸ See DeMatteo testimony, 3/6/18 tr at 206-207.

Letter.⁵⁰ In response, the Department informed respondents that “[a]ctivities at permitted sites may be memorialized as conditions of such permits to clarify requirements and provide oversight to ensure that the facility can operate in a compliant manner. Accordingly, special conditions relating to the handling of railroad ties at this permitted facility will be included in the renewal permit.”⁵¹ The Department further informed respondents that an exemption, cited by counsel, from the statute governing the phase out of creosote-treated wood applicable to railroads did not apply to “the management of creosote containing railroad ties removed from the railroad property [which] is regulated by the Department.”⁵²

18. In July 2011, DeMatteo met with Region 1 staff to discuss compliance issues at the Holbrook facility and respondents’ plans to move to a new facility. During the meeting, the Region 1 attorney again noted that notwithstanding the Caruso Letter, railroad ties removed from railroad property is C&D debris, and that a Part 360 permit is required to handle that material.⁵³
19. Shortly after the July 2011 meeting, DeMatteo and Ecology Sanitation moved their railroad tie business to a Brussels-Leir, Ltd. facility located at 45 Garfield Avenue, Bay Shore, New York (Garfield Avenue facility).⁵⁴ The railroad tie business operated in the same manner as it did at the Holbrook facility, but without a Part 360 permit.⁵⁵
20. At some point, DeMatteo determined that because, in his view, respondents were operating in compliance with the Caruso Letter, he did not need any form of Departmental approval to operate the railroad tie business.⁵⁶ Consistent with this view, in August 2012, DeMatteo sent a letter to Region 1 staff stating that because his operation complied with the Caruso Letter, a Part 360 permit was not required.⁵⁷

⁴⁹ See Exh R 27.

⁵⁰ See id.

⁵¹ Exh R 28.

⁵² Exh R 28 (citing ECL 27-2513[2]) (emphasis in the original).

⁵³ See DeMatteo testimony, 3/6/18 tr at 170-171; Exh R 31.

⁵⁴ Stipulated Facts ¶ 14; DeMatteo testimony, 3/6/18 tr at 172-174; Exh R 32.

⁵⁵ See Wade testimony, 11/8/16 tr at 66.

⁵⁶ See DeMatteo testimony, 3/6/18 tr at 179, 256-258.

⁵⁷ See Exh R 33.

21. In April 2013, the Department received payment from DeMatteo and Ecology Sanitation for the OEM as provided for in the 2008 Consent Order for the fiscal period commencing April 1, 2013, and through the fiscal period ending March 31, 2014.⁵⁸
22. In spring 2013, DeMatteo informed Department staff that he was moving Ecology Sanitation to a facility located at 1225 Church Street, Bohemia, New York, 11716 (Bohemia facility).⁵⁹
23. In July 2013, respondent Ecology Transportation leased space at the Bohemia facility from RND @ Church St., LLC.⁶⁰ Ecology Transportation began operating a railroad tie business at the Bohemia facility in or about July 2013.⁶¹
24. In or about July 2013, Ecology Sanitation also moved its railroad tie business and equipment, including trucks and roll-off containers, to the Bohemia facility.⁶² Ecology Sanitation's operation consisted of bringing railroad ties to the facility, including the railroad ties received pursuant to the LIRR contract.⁶³ Railroad ties that were reusable were separated, metal removed, graded, and banded for resale.⁶⁴ Banded railroad ties were stored both inside and outside the facility's building.⁶⁵ Railroad ties that were broken and could not be salvaged were placed in roll-off containers for disposal at a landfill.⁶⁶ Dirt and wood debris that had fallen off whole or broken railroad ties during processing were also placed into roll-off containers and taken to a landfill.⁶⁷ Sales receipts show that Ecology Sanitation sold railroad ties from the Bohemia facility.⁶⁸

⁵⁸ Stipulated Facts ¶ 13; see also Exhs DEC 7 and DEC 8.

⁵⁹ DeMatteo testimony, 3/6/18 tr at 178-179.

⁶⁰ DeMatteo testimony, 3/6/18 tr at 183, 255; Stipulated Facts ¶ 5; see also Lease, Exh R 35.

⁶¹ See Stipulated Facts ¶ 15; see also, e.g. Exh R 43 at EC 0632, 0634, 0636, 0638 (correspondence from respondents' attorney stating that Ecology Transportation is the operator of the Bohemia facility).

⁶² See Wade testimony, 11/8/17 tr at 36; DeMatteo testimony, 3/6/18 tr at 179-180; Exhs DEC 14j, DEC 14x, DEC 14bb.

⁶³ See e.g. Wade testimony, 11/8/17 tr at 36; DeMatteo testimony, 3/6/18 tr at 274.

⁶⁴ See DeMatteo testimony, 3/6/18 tr at 211, 274-275.

⁶⁵ See e.g. Jacob testimony, 11/9/17 tr at 39-40; Exh DEC 14x.

⁶⁶ See DeMatteo testimony, 3/6/18 tr at 274-276.

⁶⁷ See DeMatteo testimony, 3/6/18 tr at 276.

⁶⁸ See Exh R 5.

25. In addition to roll-off containers marked with “Ecology Sanitation & Recycling, Inc.,” roll-off containers marked only with “Ecology” were also located at the Bohemia facility.⁶⁹ Similarly, landfill receipts for demolition debris sent for disposal identified only “Ecology” as the customer.⁷⁰
26. No permit application was submitted to the Department for the operation of the Bohemia facility.⁷¹ In addition, no documents, including end user receipts and landfill disposal receipts indicating the amount of solid waste that went from the Bohemia facility to a landfill, demonstrating compliance with the factors outlined in the Caruso Letter were submitted to the Department for review prior to the commencement of this administrative enforcement proceeding.⁷²
27. A landfill disposal receipt provided to the Department after commencement of this administrative enforcement proceeding reveals that on August 30, 2013, “Ecology” sent 9.9 tons of C&D debris to a C&D debris landfill operated by 110 Sand Company.⁷³ The receipt does not indicate whether the C&D debris originated from the Bohemia facility or some other location.⁷⁴
28. Sales receipts provided to the Department after commencement of this administrative enforcement proceeding show that during the period from December 19, 2013, through December 29, 2014, Ecology Sanitation either sold or gave away without charge bundles of used railroad ties to customers out of New York State.⁷⁵ The sales receipts, however, do not indicate whether the used railroad ties were used as a substitute for new railroad or landscaping ties.⁷⁶ Railroad ties remaining at the Bohemia facility after December 2014 were either sold or landfilled.⁷⁷
29. The Department inspected or attempted to inspect the Bohemia facility on the following 34 dates: December 23, 2013; January 9, 2014; January 14, 2014; February 10, 2014;

⁶⁹ See Jacob testimony, 11/9/17 tr at 31, 35-36, 40; Exhs DEC 14j, DEC 14x, DEC 14bb.

⁷⁰ See Exh R 4.

⁷¹ Stipulated Facts ¶ 16.

⁷² See Wade testimony, 11/8/17 tr at 46, 181, 197-198; Rigano testimony, 11/9/17 tr at 126; DeMatteo testimony, 3/6/18 tr at 258, 290.

⁷³ See Exh R 4.

⁷⁴ See *id.*; Wade testimony, 11/8/17 tr at 174; DeMatteo testimony, 3/6/18 tr at 296-297.

⁷⁵ See Exh R 5; DeMatteo testimony, 3/6/18 tr at 290-293.

⁷⁶ See *id.*

⁷⁷ See DeMatteo testimony, 3/6/18 tr at 293-294.

February 20, 2014; February 26, 2014; February 28, 2014; April 2, 2014; April 9, 2014; April 23, 2014; June 10, 2014; June 16, 2014; July 16, 2014; July 19, 2014; July 22, 2014; September 22, 2014; October 6, 2014; October 17, 2014; October 28, 2014; November 12, 2014; November 28, 2014; December 12, 2014; January 20, 2015; February 9, 2015; March 25, 2015; March 30, 2015; April 1, 2015; June 22, 2015; July 17, 2015; July 29, 2015; July 30, 2015; August 12, 2015; September 25, 2015; and December 15, 2015.⁷⁸ Inspection reports were prepared for each of the above dates.⁷⁹ All but three inspection reports expressed noted that railroad ties were observed outside the building at the facility.⁸⁰ All but nine inspection reports expressly stated that the facility was operating without any authorization from the Department.⁸¹ The remaining reports have a check marked for a violation of the facility authorization requirement.⁸²

30. Only two inspections were conducted inside the Bohemia facility when respondents provided Department staff access.⁸³ The remaining inspections were conducted from outside the facility because the facility gate was locked.⁸⁴
31. Inspections revealed broken railroad ties received at the Bohemia facility.⁸⁵ Inspections also revealed large roll-off containers marked only “Ecology” completely filled with railroad tie shavings, broken railroad ties, and floor sweepings.⁸⁶ They also revealed roll-off containers marked “Ecology Sanitation & Recycling” filled with C&D debris, lumber, wood pieces, broken concrete and stone, and broken railroad ties.⁸⁷ During other inspections, a roll-off container marked “Ecology” containing scrap plumbing fixtures was documented, and roll-off containers containing insulation material were observed.⁸⁸

⁷⁸ Stipulated Facts ¶ 17. The first page of the December 15, 2015, inspection report (Exh DEC14hh) is incorrectly dated September 25, 2015. The correct date of the inspection report is December 15, 2015 (see Jacob testimony, 11/9/17 tr at 32).

⁷⁹ See Inspection Reports, Exhs DEC 14a to DEC 14hh.

⁸⁰ See e.g. Exh DEC 14hh (railroad ties observed during December 15, 2015, inspection).

⁸¹ See e.g. Exh DEC 14a.

⁸² See e.g. Exh DEC 14b.

⁸³ See Jacob testimony, 11/9/17 tr at 15, 38; Exh DEC 14x.

⁸⁴ See Jacob testimony, 11/9/17 tr at 15, 29, 36-37.

⁸⁵ See Jacob testimony, 11/9/17 tr at 31; Exhs DEC 1b, 1c.

⁸⁶ See Jacob testimony, 11/9/17 tr at 18-19, 30-31; Exh DEC 14j.

⁸⁷ See Jacob testimony, 11/9/17 tr at 19, 41; Exhs DEC 14j, 14x, 14bb.

⁸⁸ See Jacob testimony, 11/9/17 tr at 40; Exhs DEC 14x, DEC 14bb.

32. DeMatteo received copies of the inspection reports dated December 23, 2013, July 16, July 22, October 17, and October 28, 2014, and February 9, 2015.⁸⁹ Each of those reports noted that the Bohemia facility was operating without any authorization from the Department.⁹⁰
33. In December 2013, Department staff sent DeMatteo application materials and instructions on how to apply for a Part 360 registration for the Bohemia facility.⁹¹ In the instructions, Department staff indicated that “a single type of source separated C&D debris may qualify for a Part 360-12 registration in certain circumstances.”⁹² Staff was aware that DeMatteo did not want to go through the full permitting process for a site he did not own and, accordingly, staff was seeking a way to provide some form of Departmental authorization for the operations at the Bohemia facility.⁹³ DeMatteo never submitted a completed Part 360-12 registration for the Bohemia facility.⁹⁴
34. Also in December 2013, in telephone conversations with respondents’ attorney, Region 1 staff requested documents to determine whether respondents met the parameters of the Caruso Letter as claimed. The documents requested included business records related to railroad ties handled at the Bohemia facility, the amount of railroad ties received, where the railroad ties were sent, what the railroad ties were used for after being sold out of State, and whether the discarded railroad ties were sent to a landfill or for incineration.⁹⁵ Respondents did not provide any of the requested documents prior to the commencement of this enforcement proceeding.⁹⁶
35. In January and March 2014, in correspondence in response to staff’s request for document demonstrating satisfaction of the parameters of the Caruso Letter, among other things, respondents’ attorney took the position that no Part 360 permit or registration was required for the operation at the Bohemia facility.⁹⁷ Respondents’ attorney stated that Ecology Transportation, and not Ecology Sanitation, was the operator of the Bohemia

⁸⁹ See Exhs R 38, R 39; Jacob testimony, 11/9/15 tr at 80-81; DeMatteo testimony, 3/6/18 tr at 283-287.

⁹⁰ See Exhs DEC 14a, DEC 14m, DEC 14o, DEC 14r, DEC 14s, DEC 14x.

⁹¹ See Exh DEC 2.

⁹² Id.

⁹³ See Wade testimony, 11/8/17 tr at 45-46, 174-178.

⁹⁴ See Wade testimony, 11/8/17 tr at 46.

⁹⁵ See Wade testimony, 11/8/17 tr at 46, 180-181, 197-198.

⁹⁶ See Wade testimony, 11/8/17 tr at 198; Rigano testimony, 11/9/17 tr at 126.

⁹⁷ See Exhs R 38, R 39, R 41.

facility. However, because it only handled railroad ties and railroad ties were an unregulated commodity under the Caruso Letter in respondents' view, respondents' attorney asserted that a Part 360 permit or registration was not required.⁹⁸

36. On February 24, 2014, the Department sent respondents DeMatteo and Ecology Sanitation an invoice in the amount of \$6,100 for the annual environmental monitoring fees for fiscal year 2014-2015.⁹⁹
37. The Department issued respondents DeMatteo and Ecology Sanitation a notice of violation (NOV), dated April 8, 2014, for non-payment of the annual environmental monitor fees due for fiscal year 2014-2015.¹⁰⁰
38. In April 2014, respondents' attorney began settlement discussions with Department staff attorneys in Central Office in an attempt to resolve the issue whether respondents' operation required a Part 360 permit or not. Settlement discussions broke off in August or September 2014 without a resolution.¹⁰¹
39. In or about April 2014, during conversations between representatives of the LIRR and the Department, the LIRR informed the Department that the bid for railroad tie removal included a requirement that the contractor obtain a Part 360 permit if it stored used ties at its facility.¹⁰² In response, Department staff informed the LIRR that although Ecology Sanitation had a Part 360 permit for its operation at the Holbrook facility and that the Garfield Avenue facility had a Part 360 permit Ecology had sought to be added to, neither Ecology Sanitation nor the Bohemia facility had a Part 360 permit for respondents' current operations.¹⁰³ Consistent with DeMatteo's position regarding the need for Departmental authorization for the Bohemia facility, in correspondence with a representative of the LIRR, respondents' attorney again took the position that no Part 360 permit was required for the operation at the Bohemia facility.¹⁰⁴ With respect to Ecology Sanitation, respondents' attorney stated that it was only a transporter and, therefore, did not need a Part 360 permit. Respondents' attorney further stated that although Ecology Transportation was the operator of the Bohemia facility, because it only handled railroad ties, a Part 360 permit was not required as per the Caruso Letter.¹⁰⁵

⁹⁸ See id.

⁹⁹ Stipulated Facts ¶ 18; see also Invoice, Exh DEC 9.

¹⁰⁰ Stipulated Facts ¶ 20; see also Notice of Violation, Exh DEC 10.

¹⁰¹ See Rigano testimony, 11/9/17 tr at 108.

¹⁰² See Exh R 42.

¹⁰³ See id.

¹⁰⁴ See Exh R 43 at EC 0632.

40. In November 2014, LIRR issued a notice of default and stop work order to DeMatteo on its contract with Ecology Sanitation.¹⁰⁶ Among the grounds for the stop work order were Ecology Sanitation's failure to obtain a Part 360 permit for the Bohemia facility as required by the contract, and its failure to perform work under the contract, including sorting, processing, or storing railroad ties and other materials on LIRR property in violation of the contract.¹⁰⁷ Based upon respondent's failure to cure its default, LIRR terminated the contract in April 2015.¹⁰⁸
41. On February 20, 2015, the Department sent respondents DeMatteo and Ecology Sanitation an invoice in the amount of \$7,000 for the annual environmental monitoring fees for the fiscal year 2015-2016.¹⁰⁹
42. By letter dated June 5, 2015, Department staff notified respondents' attorney that in light of its review of the compliance history of respondents Ecology Sanitation and DeMatteo, both corporate respondents' continued operation without approval from the Department pursuant to Part 360, and the corporate respondents' failure to pay two years' worth of environmental monitoring fees, the Department required the corporate respondents to obtain a Part 360 permit, rather than a registration, to continue its operation. The letter further instructed respondents that the corporate respondents must cease all solid waste management activities at the Bohemia facility until it obtained a permit, and that the failure to do so would result in an enforcement proceeding by the Department.¹¹⁰
43. On July 6, 2015, the Department issued an NOV to all respondents for operating a solid waste management facility in violation of 6 NYCRR 360-1.7(a)(1) and 360-16; storing solid waste at the facility for a period of more than 90 days in violation of 6 NYCRR 360-16.4(f)(2); and failure to pay the annual environmental monitoring fee due for fiscal years 2014-2015 and 2015-2016 in violation of the 2008 Consent Order and 6 NYCRR 360-1.11(a)(iv).¹¹¹

¹⁰⁵ See id.

¹⁰⁶ See Exh R 44.

¹⁰⁷ See Exh R 44.

¹⁰⁸ see Exh R 47.

¹⁰⁹ Stipulated Facts ¶ 19; see also Invoice, Exh DEC 11.

¹¹⁰ See Exh R 48.

¹¹¹ See Notice of Violation, Exh DEC 3; see also Stipulated Facts ¶ 21 (stipulating only that the NOV alleged the failure to pay the environmental monitoring fee for fiscal year 2015-2016). The 2015 notice of violation incorrectly alleges failure to pay the annual environmental monitoring fee for fiscal years 2013-2014 and 2014-2015 (see Exh DEC 3). The notice of violation was for the failure to pay the fiscal years 2014-2015 and 2015-2016 monitoring fees (see Wade testimony, 11/8/17 tr at 78). Respondents stipulated that the 2015 notice of

III. DISCUSSION

A. Standards of Review

Pursuant to the Department Uniform Enforcement Hearing Procedures (6 NYCRR part 622 [Part 622]), at the hearing, Department staff bears the burden of proof on all charges and matters affirmatively asserted in the complaint (see 6 NYCRR 622.11[b][1]). Respondents bear the burden of proof regarding all affirmative defenses (see 6 NYCRR 622.11[b][2]). Whenever factual matters are involved, the party bearing the burden of proof must sustain that burden by a preponderance of the record evidence (see 6 NYCRR 622.11[c]).

B. Liability

1. First Cause of Action

In its first cause of action, Department staff alleges that respondents operated a solid waste management facility located at the Bohemia facility without the required Part 360 permit, in violation of 6 NYCRR former 360-1.5(a)(2), 360-1.7 and 360-16.1(c). Under the regulations in effect at the time of the alleged violations, section 360-1.7(a)(1) provided that “no person shall . . . construct or operate a solid waste management facility, or any phase of it, except in accordance with a valid permit issued pursuant to this Part.” Section 360-16.1(c), which applied specifically to C&D debris processing facilities (see 6 NYCRR 360-16.1[a]), provided that “no person shall construct or operate a facility used to receive, treat or process C&D debris without first having obtained” a Departmental approval pursuant to Part 360. Under 6 NYCRR 360-16.1, the operator of a C&D debris processing facility must obtain either a registration pursuant to section 360-16.1(d), or a Part 360 permit (see 6 NYCRR 360-16.1[c]).

A “solid waste management facility” was defined as “any facility employed beyond the initial solid waste collection process and managing solid waste, including but not limited to: . . . C&D debris processing facilities” (6 NYCRR 360-1.2[b][158]). C&D debris was defined as “uncontaminated solid waste resulting from the construction, remodeling, repair and demolition of utilities, structures, and roads Such waste includes, but is not limited to brick, concrete and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), . . . plumbing fixtures, nonasbestos insulation, . . . and pipe and metals that are incidental to any of the above” (6 NYCRR 360-1.2[b][38]). Finally, “processing facility” meant “a combination of structures, machinery or devices, other than collection and transfer vehicles, utilized to reduce or alter the volume or the chemical or physical characteristics

violation alleged a failure to pay the annual environmental monitoring fee for fiscal year 2015-2016 (see Stipulated Facts ¶ 21).

of solid waste through processes such as, but not limited to, separating [or] baling” (6 NYCRR 1.2[b][120]).

Department staff carried its burden by a preponderance of the record evidence that a C&D debris processing facility was being operated at the Bohemia facility from July 2013 through at least December 15, 2015. Respondents admitted moving their railroad tie processing operation to the Bohemia facility in July 2013. That operation involved transporting railroad ties discarded by the LIRR to the Bohemia facility for processing and eventual sale outside of New York State. Creosote-treated railroad ties are treated and coated wood and wood products and, therefore, C&D debris (see 6 NYCRR 360-1.2[b][38]; see also ECL 27-3505 and ECL 27-2507 [prohibiting the disposal or combustion of creosote-treated wood in New York, except at landfills or combustion facilities permitted and approved under the solid waste management facility statutes and regulations]). At the Bohemia facility, useable railroad ties were separated, metal was removed, and the ties were graded, stacked into large bales and banded for sale outside of the State. Broken railroad ties were placed in roll-off containers for disposal at a landfill. Dirt and wood debris that had fallen off whole or broken railroad ties during processing were also placed into roll-off containers and taken to a landfill. Other forms of C&D debris, including lumber and other wood material, broken concrete and stone, plumbing fixtures, and insulation material, were also separated into separate roll-off containers.

Thus, the operation at the Bohemia facility was a C&D debris processing facility at which treated and coated wood and other C&D debris were separated, baled, and otherwise processed for sale outside the State or disposed of at a landfill (see 6 NYCRR 360-1.2[b][38], [120], [158]). Accordingly, the C&D debris processing facility was required to have a Part 360 permit or registration. Respondents stipulated, however, that no permit application was submitted to the Department for the operation at the Bohemia facility. In addition, although respondents were given the opportunity to apply for a registration for the facility, the record establishes that a registration was never applied for or obtained for the facility. Accordingly, operations at the Bohemia facility consisted of an unpermitted C&D debris processing facility.

Each of respondents are jointly and severally liable for the operation of the unpermitted C&D debris processing facility at the Bohemia facility. As noted above, the regulations provided that “no person” shall operation a C&D debris processing facility without a Part 360 permit (see 6 NYCRR 360-1.7[a][1]; 6 NYCRR 360-16.1[c]). A “person” was defined as “any individual, [or] public or private corporation” (6 NYCRR 360-1.2[b][117]). “Operator” was defined as “the person responsible for the overall operation of a solid waste management facility or a part of a facility with the authority and knowledge to make and implement decisions, or whose actions or failure to act may result in noncompliance with the requirements of” Part 360 (6 NYCRR 360-1.2[b][113]).

Here, respondents and their witness, Rigano, repeatedly admitted that Ecology Transportation was an operator of the Bohemia facility. This admission is supported by record evidence, including Ecology Transportation’s lease for the Bohemia facility. Accordingly,

Ecology Transportation is liable for the unpermitted operation of a C&D debris processing facility at the Bohemia facility.

Ecology Sanitation is also liable as an operator of the Bohemia facility.

Respondents assert that Ecology Sanitation was only a waste transporter and not an operator of the facility. This assertion lacks credibility and is belied by a preponderance of the record evidence. Ecology Sanitation admittedly moved its entire railroad tie operation to the Bohemia facility in July 2013. Ecology Sanitation had the contract with the LIRR for the removal of the LIRR's discarded railroad ties. Record evidence demonstrates that roll-off containers marked with Ecology Sanitation's name were used for C&D debris at the Bohemia facility, and sales receipts demonstrate that Ecology Sanitation sold railroad ties from that facility. No record evidence was adduced suggesting any formal separation of the operations of the two corporate entities at the facility. To the contrary, the record supports that conclusion that Ecology Sanitation and Ecology Transportation were operated as a single, undifferentiated entity, as evidenced by roll-off containers and landfill receipts marked only with the name "Ecology." In any event, Department staff carried its burden of establishing that Ecology Sanitation was an operator of the Bohemia facility, and not just a waste transporter as alleged by respondents.

Department staff also carried its burden of establishing DeMatteo's individual liability for the unpermitted C&D debris facility at the Bohemia facility. As noted above, under the regulations, an operator is "the person responsible for the overall operation of a solid waste management facility or a part of a facility with the authority and knowledge to make and implement decisions, or whose actions or failure to act may result in noncompliance with the requirements of" Part 360 (6 NYCRR 360-1.2[b][113]). A preponderance of the record evidence establishes that DeMatteo was the person responsible for the overall day-to-day operation of the Bohemia facility with the authority and knowledge to make and implement decisions, and whose actions or failure to act resulted in the violations at the facility. DeMatteo was the sole person responsible for making day-to-day decisions with respect to the facilities' operations, including the decision not to seek a Part 360 permit or registration for the facility. DeMatteo controlled and otherwise supervised all aspects of the operation at the facility, and signed documents such as the lease and consent orders on behalf of the corporate respondents. DeMatteo held himself out as the sole decision maker and point of contact for the Bohemia facility, and respondents' attorney reported back to DeMatteo on discussions with the Department regarding compliance issues at the facility. Accordingly, DeMatteo was an operator of the C&D debris processing facility at the Bohemia facility under the regulations and is therefore individually liable for the violations at that facility.

DeMatteo is also individually liable for the facility's violations under the responsible corporate officer doctrine. Under that doctrine, a corporate officer may be held personally liable for violations of the corporate entity that threaten the public health, safety, or welfare (see Matter of Supreme Energy Corp., Decision and Order of the Commissioner, April 11, 2014, at 25 [citing Matter of Galfunt, Order of the Commissioner, May 5, 1993, at 2; United States v Park, 421 US 658 (1975); United States v Dotterweich, 320 US 277 (1943); and United States v Hodges X-Ray, Inc., 759 F2d 557 (6th Cir 1985)], confirmed on other grounds on

judicial review sub nom Matter of Supreme Energy, LLC v Martens, 145 AD3d 1147 [3rd Dept 2016],). A corporate officer need only have responsibility over the activities of the business that caused the violations (see id.). It is unnecessary to determine if the corporate officer made any specific decisions concerning the conduct alleged in the violations, only that the officer had direct responsibility for operations and was in a position to prevent the violations (see id. at 25-26).

Here, DeMatteo was the sole owner, president, secretary, and chief executive officer of Ecology Sanitation. He was also the vice president of Ecology Transportation. As determined above, DeMatteo was the corporate officer with responsibility for the activities of both corporations that caused the violations, and made the specific and unilateral decision to not apply for or obtain a Part 360 permit or registration for the operations at the Bohemia facility. The failure to obtain a permit or registration for the C&D debris processing facility resulted in the violation of the State's statute governing solid waste management facilities (ECL article 27) and its implementing regulations (Part 360), which are statutes and regulations protecting public health and safety (see ECL 27-0101[1]). Accordingly, DeMatteo is personally liable under the responsible corporate office doctrine for the corporate respondents' failure to obtain a Part 360 permit or registration in violation of the regulations.

In its first cause of action, Department staff also charged respondents with a violation of 6 NYCRR former 360-1.5(a)(2). Staff failed, however, to establish all the elements of a section 360-1.5(a)(2) violation. Section 360-1.5(a)(2) provided that "no person shall dispose of solid waste in this State except at . . . a disposal facility authorized to accept such waste for disposal pursuant to this Part or to a department-issued or court-issued order." A "disposal facility" was defined as "a solid waste management facility or part of one in or on which solid waste is intentionally placed, including any land or water, and at which solid waste will remain after closure" (6 NYCRR 360-1.2[b][52]). Department staff offered no evidence that the Bohemia facility was a facility at which solid waste was to remain after closure. To the contrary, the record reveals that any railroad ties remaining at the Bohemia facility after December 2014 were eventually removed. The record contains no evidence of any other solid waste remaining at the facility after that date. Moreover, Department staff adduced no evidence that respondents disposed of solid waste in State at a disposal facility not authorized to accept that waste. Accordingly, that portion of the first cause of action that charged a violation of section 360-1.5(a)(2) should be dismissed.

2. Second Cause of Action

In its second cause of action, Department staff charges Ecology Sanitation and DeMatteo with violating the 2008 Consent Order by failing to fund the environmental monitoring account in accordance with the Order's schedule of compliance. The 2008 Consent Order was executed by both Ecology Sanitation, and by DeMatteo in his individual capacity as well as owner and operator of Ecology Sanitation (see 2008 Consent Order, Exh DEC 6, at 6-7). In the Order's schedule of compliance, Ecology Sanitation and DeMatteo agreed, among other things, to continue to fund an OEM to monitor and inspect any facility where they might operate

(see id. at 8). Although the Order was executed while respondents were conducting operations at the Holbrook facility, the Order was not limited to the Holbrook facility and, thus, applied to respondents' operations at the Bohemia facility.

Department staff established that respondents operated a solid waste management facility at the Bohemia facility during fiscal years 2014-2015 and 2015-2016. Staff also established that respondents failed to pay the \$6,100 annual environmental monitoring fee for fiscal year 2014-2015, and the \$7,000 annual monitoring fee for fiscal year 2015-2016. Accordingly, respondents Ecology Sanitation, and DeMatteo, individually, are liable for violating the 2008 Consent Order. Respondents are also liable for the unpaid fees for fiscal years 2014-2015 and 2015-2016.

C. Affirmative Defense – Part 360 Permit Not Required

In his March 21, 2017, ruling on Department staff's motion to clarify or dismiss defenses and motion to strike, Judge Bassinson held that the second defense pleaded in respondents' answer raised the defense that a Part 360 permit was not required for operations at the Bohemia facility (see Ruling at 4-5). A defense based upon the claimed inapplicability of a permit requirement to an activity is an affirmative defense under the Department's Uniform Enforcement Hearing Procedures (see 6 NYCRR 622.4[c]). As an affirmative defense, respondents bear the burden of proof on the defense, and to the extent factual matters are involved, respondents must carry their burden by a preponderance of the record evidence (see 6 NYCRR 622.11[b][2], [3]). However, respondents failed to carry their burden of proof on their sole remaining affirmative defense.

Respondents' defense is premised on DeMatteo's interpretation of the Caruso Letter and DeMatteo's unilateral determination that the railroad tie operation conducted at the Bohemia facility was in compliance with the parameters outlined in that letter. Respondents' interpretation of the Caruso Letter is incorrect, and their reliance on the Letter as a defense to the Part 360 permitting requirements for the Bohemia facility is misplaced. As an initial matter, the Caruso Letter is an attorney letter intended to provide guidance on how the Department implements a program under its jurisdiction. The Letter does not constitute a final agency determination regarding respondents' operations, or otherwise authorize or permit those operations. Indeed, the Letter expressly states that issues raised by respondents to Attorney Caruso "are beyond the scope of my analysis as I am not familiar with the facilities you mention, their operations, or compliance history" (Caruso Letter at 2). Thus, the Caruso Letter cannot reasonably be interpreted as any form of approval of respondents' operations.

Second, the Caruso Letter expressly states that creosote-treated railroad ties are presumed to be part of the solid waste stream and must be disposed of in compliance with the State's solid waste management facility laws and regulations, or the laws of the state of disposal (see Caruso Letter at 1 [citing ECL 27-2503]). The Letter goes on to expressly provide that a facility processing railroad ties may operate without a Part 360 permit or registration based only on a discretionary determination by Regional staff. The Letter explains that a facility seeking

such a determination would have the burden of demonstrating to the Department's satisfaction that the facility operated in compliance with seven enumerated parameters. The Letter further explains that in making its discretionary determination, Regional staff would consider whether a facility failed to properly manage railroad ties as a commodity, or whether a facility has a record of compliance. If so, the Letter explains that the Department "reserves the right to require additional conditions on a facility operator where there is a history of noncompliance. These conditions may include the requirement of a registration, permit with operating conditions, including participation in the funding of an environmental monitor" (*id.* at 2).

Here, respondents claim that because they operated in compliance with the parameters outlined in the Caruso Letter, a permit was not required for the Bohemia facility. However, nothing in the Caruso Letter, nor in the law and regulations, authorized respondents to make that unilateral determination. Moreover, the Letter's express instruction that the determination to allow a railroad tie operation to operate without a permit or registration fell within the discretion of Regional staff based upon a demonstration by a facility belies any claim that the Letter was "self-executing."

With respect to the Departmental determination referenced in the Caruso Letter, it is undisputed that although the applicability of the Caruso Letter to respondents' operation was discussed with Department staff on several occasions, respondents never made a demonstration to or otherwise sought a determination from the Department authorizing them to operate their railroad tie operation without a permit or registration. To the contrary, although Department requested documents from respondents' attorney in December 2013 to determine whether respondents' operation complied with the parameters of the Caruso Letter, respondents declined to provide that documentation insisting, instead, that no Part 360 permit or registration was required for the Bohemia facility. Thus, respondents failed to establish that they obtained a discretionary determination from the Department that they could operate the Bohemia facility without a Part 360 permit or registration.

In addition, respondents failed to carry their burden of establishing that the Bohemia facility was in full compliance with the parameters of the Caruso Letter. The first parameter requires a facility to demonstrate that "[w]hole railroad ties with a useful life and intended for resale only are accepted at the facility" (Caruso Letter at 1). Respondents failed to demonstrate that only whole railroad ties were accepted at the facility. To the contrary, the record reveals that large roll-off containers filled with broken and shredded railroad ties and other wood debris, broken stone and concrete, scrap plumbing fixtures, and insulation materials were located at the facility. In addition, a large amount of C&D debris was sent to a C&D debris landfill by respondents. Thus, the record supports the conclusion that whole railroad ties were not the only C&D debris accepted at the facility.

The fifth parameter requires that a facility demonstrate that "[r]ailroad ties that are deemed unacceptable for remarketing, such as broken or splintered ties, are properly stored at the site and disposed in accordance with the laws of the state of disposal" (Caruso Letter at 1). Although respondents provided one receipt documenting the disposal of C&D debris at a C&D

debris landfill, respondents otherwise failed to establish the quantity and fate of unmarketable railroad ties processed at the facility. With respect to the sixth and seventh parameters – requiring a demonstration that “railroad ties to be remarketed are sold to end users outside of New York State” and that those ties “are sold and used outside of New York State as a substitute for new railroad (or landscape) ties” (Caruso Letter at 1) – the invoices supplied by respondents after commencement of this enforcement proceeding revealed that some railroad ties were not sold, but given away without charge to users outside New York State (see Exh R 5). In addition, the invoices failed to reveal the ultimate use of the railroad ties shipped out of State (see id.). Thus, respondents failed to demonstrate that all railroad ties were sold to out of State users, or that the railroad ties shipped out of State were used as a substitute for new railroad or landscape ties.

Finally, Ecology Sanitation and DeMatteo, individually, were subject to two consent orders with the Department, both arising from respondents’ unpermitted operation of C&D debris processing facilities at the Kings Park and Holbrook facilities, respectively. The 2008 Consent Order arose specifically from respondents’ unpermitted railroad tie operation at the Holbrook facility. Thus, Ecology Sanitation and DeMatteo had a record of noncompliance, which the Caruso Letter notes provides a basis for the Department to exercise its discretion to require a Part 360 permit or registration for a railroad tie operation (see Caruso Letter at 2). Accordingly, respondents failed to carry their burden of demonstrating that notwithstanding the lack of a determination from the Department that they could operate without a Part 360 permit or registration, they were otherwise in compliance with all parameters of the Caruso Letter.

Respondents complain that the Department never informed them that they were not in compliance with Caruso Letter, that the Department never considered whether the parameters in the Caruso Letter were satisfied at the Bohemia facility, and that respondents’ record of noncompliance was a basis for requiring a Part 360 permit for the facility. However, the record reveals that Region 1 staff consistently informed respondents, in direct communications and through inspection reports, that a Part 360 permit or registration was required for the railroad tie operation at the Bohemia facility, including in response to inquiries from respondents concerning the applicability of the Caruso Letter to the operation. The record also reveals that respondents failed to satisfy their burden under the Caruso Letter and make a formal demonstration to Regional staff with respect to compliance with the Letter’s parameters. Indeed, when Regional staff requested documents to make a determination under the Caruso Letter, respondents failed to respond. Finally, although the Department did not initially inform respondents that their record of compliance was a basis, among others, for requiring a Part 360 permit, the Department did so notify respondents in June 2015. Moreover, respondents’ witness conceded that the Caruso Letter itself provided notice that a history of noncompliance was a factor relevant to the Department’s determination pursuant to the Letter (see Rigano testimony, 11/9/17 tr at 125-126).

Respondents also complain that Region 1 staff acted arbitrarily in requiring them to obtain a Part 360 permit for their railroad tie operation while Region 3 did not require a permit for Ray’s Transportation. As noted in the Caruso Letter, the Department’s discretionary

determination whether to require a permit or not is based on facts and circumstances unique to each facility under consideration. The record lacks any evidence that Ray's Transportation operated its railroad tie operation in ways that were substantially similar to respondents' operation, or that Ray's had a record of noncompliance similar to respondents. In any event, as DeMatteo was aware, in 2014, the Department required Ray's Transportation to obtain a Part 360 permit for its operation (see DeMatteo testimony, 3/6/18 tr at 297).¹¹² Thus, any claim of disparate treatment is academic.

In sum, respondents have failed to carry their burden of demonstrating that the Part 360 permit requirements were inapplicable to their railroad tie operation at the Bohemia facility. Accordingly, respondents have failed to establish a valid defense to the Department's charges in this proceeding. Thus, respondents are liable for operating an unpermitted C&D debris processing facility at the Bohemia facility from July 2013 through at least December 15, 2015, and respondents Ecology Sanitation and DeMatteo, individually, are liable for violating the 2008 Consent Order by failing to pay the annual environmental monitoring fees for fiscal years 2014-2015 and 2015-2016.

D. Penalty and Other Relief

Department staff seeks a penalty in the amount of \$85,000 for respondents' violation of the 2008 Consent Order and for operating a C&D debris processing facility without a permit. In support of the requested penalty, Department staff references DEC Program Policy OGC 8: Solid Waste Enforcement Policy (revised Dec. 9, 2015) (OGC 8) (see Exh DEC 12). Staff notes that under OGC 8, the operation of a C&D debris processing without a permit and without any operational controls is a Class I violation (see id. at 6). Staff also notes, however, that the actual damage caused by respondents' unpermitted operation was minor. Accordingly, OGC 8 authorizes staff to deviate 25% to 40% from the maximum penalty authorized by law (see id. at 8-9). Because respondents have a record of noncompliance, OGC 8 indicates that the penalty range should be doubled to between 50% and 80% of the maximum (see id. at 9). Staff states that the \$85,000 penalty it seeks is far below the maximum penalty and the range of deviation referenced in OGC 8, and is fair and reasonable in light of mitigating circumstances. Staff further states that it has significantly reduced the penalty because respondents are no longer operating the Bohemia facility and, thus, the likelihood that respondents will repeat violations is small.

In response, respondents argue that no penalty should be imposed based upon the length of time between when the violations were discovered by staff and the issuance of the NOVs, and staff's alleged "inappropriate inquiry" made to the LIRR regarding respondents'

¹¹² A search of the Department's public online Department Application Review Tracking (DART) system reveals that Ray's Transportation Inc. was issued a Part 360 solid waste management permit for its railroad C&D debris processing facility effective April 15, 2015 (DEC Permit Application ID No. 3-3348-00264/00001) (see DEC Permit Application Detail, <https://www.dec.ny.gov/cfm/xtapps/envapps/index.cfm?view=detail&applid=945352> [last accessed May 14, 2019]). To the extent necessary, I take official notice of the information contained in the DART entry for Ray's Transportation (see 6 NYCRR 622.11[a][5]).

compliance with the Part 360 permit requirement for their railroad tie operations, among other things.

ECL 71-2703(1) provides for a civil penalty of up to \$7,500 for each violation of the solid waste management facility statutes (ECL art 27, tit 7), their implementing regulations (6 NYCRR former part 360), or a consent order issued pursuant to those statutes and regulation, and an additional penalty of up to \$1,500 for each day that the violation continues. With respect to respondents' unpermitted operation of a C&D debris processing facility beginning in July 2013 and continuing through at least December 15, 2015, the maximum authorized penalty would be over \$1,300,000 for that violation alone. The OGC 8 authorized deviations of between 25% and 40% amount to between \$325,000 to \$520,000. This does not take into Ecology Sanitation and DeMatteo continuing violations of the 2008 Consent Order, which further support the penalty sought as against those respondents. Accordingly, the \$85,000 penalty sought by Department staff is authorized, is consistent with OGC 8, and is justified by the circumstances of this case.

Respondents' arguments against imposing any penalty in this proceeding are unpersuasive. To the extent there was any delay in issuance of the NOV regarding respondents' failure to obtain a Part 360 permit for its C&D debris processing facility, the record reveals that respondents were informed well before their move to the Bohemia facility of the need to obtain a Part 360 permit for their railroad tie operation. In addition, during a significant period of time before the issuance of the NOV, the parties were engaged in efforts to resolve the issue without litigation. Moreover, the record reveals no delay in the issuance of the NOVs for respondents' failure to pay the annual environmental monitoring fees. Thus, the claimed delay in issuance of NOVs in this proceeding provides no justification for declining to assess the requested penalty.

Respondents' argument that the Department's communication with the LIRR regarding respondents' permit status warrants the imposition of no penalty in this proceeding is similarly unpersuasive. The record reveals nothing improper about Department staff fulfilling its governmental responsibilities under the ECL and its implementing regulation, and answering an inquiring regarding the status of a facility subject to its jurisdiction. Even assuming that staff's actions were somehow improper, which they were not, those actions do not relieve respondents of liability for their own violations of the law and regulations. Again, respondents' arguments do not justify the award of no penalty in this case.

In the complaint, Department staff also requests that respondents be directed to submit to the Department the overdue annual environmental monitoring fees in the amount of \$13,100. Inasmuch respondents Ecology Sanitation and DeMatteo, individually, were the parties to the 2008 Consent Order, they are responsible for paying the overdue fees.

Finally, in its complaint, Department staff requests that respondents be enjoined from continued operation of a C&D debris processing facility at the Holbrook facility without a permit from the Department. However, respondents have ceased operations at the Holbrook facility. Accordingly, the relief sought is rendered academic.

IV. CONCLUSIONS OF LAW

1. From July 2013 and continuing through at least December 15, 2015, respondents Ecology Sanitation, Ecology Transportation, and DeMatteo, individually, operated C&D debris processing facility at the Bohemia facility without a permit from the Department in violation of 6 NYCRR former 360-1.7 and 6 NYCRR former 360-16.1(c).

2. Department staff failed to carry its burden of proving that respondents violated 6 NYCRR 360-1.5(a)(2).

3. Respondents Ecology Sanitation and DeMatteo, individually, violated the 2008 Consent Order by failing to pay the \$6,100 annual environmental monitoring fee for fiscal year 2014-2015, and the \$7,000 annual monitoring fee for fiscal year 2015-2016.

4. Respondents Ecology Sanitation and DeMatteo, individually, are responsible for paying the overdue annual environmental monitoring fees in the total amount of \$13,100.

V. RECOMMENDATIONS

Based on the foregoing, I recommend that the Commissioner issue an order:

1. Holding that, based on the entire record of this proceeding, respondents Ecology Sanitation, Ecology Transportation, and DeMatteo, individually, violated 6 NYCRR former 360-1.7 and 6 NYCRR former 360-16.1(c) by operating a C&D debris processing facility at the Bohemia facility without a permit from the Department from July 2013 and continuing through at least December 15, 2015;

2. Holding that, based on the entire record of this proceeding, respondents Ecology Sanitation and DeMatteo, individually, violated the 2008 Consent Order by failing to pay the \$6,100 annual environmental monitoring fee for fiscal year 2014-2015, and the \$7,000 annual monitoring fee for fiscal year 2015-2016;

3. Dismissing that portion of the first cause of action as charged a violation of 6 NYCRR former 360-1.5(a)(2);

4. Imposing a civil penalty of \$85,000 on respondents, jointly and severally, for the above violations;

5. Directing respondents Ecology Sanitation and DeMatteo, individually, to submit to the Department the overdue annual environmental monitoring fees in the amount of \$13,100; and

6. Directing such other and further relief as he may deem just and appropriate.

James T. McClymonds
Chief Administrative Law Judge

Dated: August 29, 2019
Albany, New York

APPENDIX A

Matter of Ecology Sanitation Corp., Ecology Transportation Corp., and Ernest DeMatteo

DEC Case No. CO 1-2014-0507-159

November 8, 2017, November 9, 2017 and March 6, 2018 – Adjudicatory Hearing

EXHIBITS IN EVIDENCE

Exhibit	Description
DEC 1a	Photograph dated November 13, 2013
DEC 1b	Photograph dated November 13, 2013
DEC 1c	Photograph dated November 13, 2013
DEC 1d	Photograph dated November 13, 2013
DEC 1e	Photograph dated November 13, 2013
DEC 1f	Photograph dated November 13, 2013
DEC 1g	Photograph dated November 13, 2013
DEC 1h	Photograph dated November 13, 2013
DEC 2	Email from J. Wade to E. DeMatteo dated December 11, 2013, with attachments
DEC 3	Letter from S. Rahman to E. DeMatteo dated July 6, 2015
DEC 4	Letter from M. Caruso to E. DeMatteo dated April 6, 2010
DEC 5	Order on Consent, Case No. R1-20000719-68, effective November 7, 2000
DEC 6	Order on Consent, Case No. R1-20080514-150, effective July 21, 2008
DEC 7	Letter/Invoice to E. DeMatteo/Ecology Sanitation Corp. dated February 25, 2013
DEC 8	Check to NYSDEC dated April 18, 2013
DEC 9	Letter to from N. Lussier to E. DeMatteo dated February 24, 2014, attaching invoice and work plan
DEC 10	Letter from S. Crisafulli to E. DeMatteo dated April 8, 2014
DEC 11	Letter to from N. Lussier to E. DeMatteo dated February 20, 2015, attaching invoice and work plan
DEC 12	OGC 8: Solid Waste Enforcement Policy
DEC 13	Aerial Photograph
DEC 14a	DEC DMM Inspection Report – inspection date December 23, 2013
DEC 14b	DEC DMM Inspection Report – inspection date January 9, 2013
DEC 14c	DEC DMM Inspection Report – inspection date January 14, 2014
DEC 14d	DEC DMM Inspection Report – inspection date February 10, 2014
DEC 14e	DEC DMM Inspection Report – inspection date February 20, 2014
DEC 14f	DEC DMM Inspection Report – inspection date February 26, 2014
DEC 14g	DEC DMM Inspection Report – inspection date February 28, 2014
DEC 14h	DEC DMM Inspection Report – inspection date April 2, 2014
DEC 14i	DEC DMM Inspection Report – inspection date April 9, 2014

DEC 14j	DEC DMM Inspection Report – inspection date April 23, 2014, attaching four photographs
DEC 14k	DEC DMM Inspection Report – inspection date June 10, 2014
DEC 14l	DEC DMM Inspection Report – inspection date June 16, 2014
DEC 14 m	DEC DMM Inspection Report – inspection date July 16, 2014
DEC 14n	DEC DMM Inspection Report – inspection date July 19, 2014
DEC 14o	DEC DMM Inspection Report – inspection date July 22, 2014
DEC 14p	DEC DMM Inspection Report – inspection date September 22, 2014
DEC 14q	DEC DMM Inspection Report – inspection date October 6, 2014
DEC 14r	DEC DMM Inspection Report – inspection date October 17, 2014
DEC 14s	DEC DMM Inspection Report – inspection date October 28, 2014
DEC 14t	DEC DMM Inspection Report – inspection date November 12, 2014
DEC 14u	DEC DMM Inspection Report – inspection date November 28, 2014
DEC 14v	DEC DMM Inspection Report – inspection date December 12, 2014
DEC 14w	DEC DMM Inspection Report – inspection date January 20, 2015
DEC 14x	DEC DMM Inspection Report – inspection date February 9, 2015, attaching six photographs
DEC 14y	DEC DMM Inspection Report – inspection date March 25, 2015
DEC 14z	DEC DMM Inspection Report – inspection date March 30, 2015
DEC 14aa	DEC DMM Inspection Report – inspection date April 1, 2015
DEC 14bb	DEC DMM Inspection Report – inspection date June 22, 2015, attaching three photographs
DEC 14cc	DEC DMM Inspection Report – inspection date July 17, 2015
DEC 14dd	DEC DMM Inspection Report – inspection date July 29, 2015, attaching three photographs
DEC 14ee	DEC DMM Inspection Report – inspection date July 30, 2015
DEC 14ff	DEC DMM Inspection Report – inspection date August 12, 2015
DEC 14gg	DEC DMM Inspection Report – inspection date September 25, 2015
DEC 14hh	DEC DMM Inspection Report – inspection date December 15, 2015 ¹
R 3	Affidavit of E. DeMatteo, sworn to December 2008
R 4	Invoice from 110 Sand Company dated August 30, 2013
R 5	Invoices from Ecology Sanitation Corp.
R 6a	Undated photograph, EC 561
R 6b	Undated photograph, EC 562
R 6c	Undated photograph, EC 563
R 6d	Undated photograph, EC 564
R 6e	Undated photograph, EC 565
R 6f	Undated photograph, EC 566
R 6g	Undated photograph, EC 567
R 6h	Undated photograph, EC 568
R 7a	Undated photograph, EC 577
R 7b	Undated photograph, EC 576

¹ The first page of exhibit DEC 14hh is incorrectly dated September 25, 2015. The correct date of the document is December 15, 2015 (see Jacob testimony, 11/9/17 tr at 32).

R 7c	Undated photograph, EC 578
R 7d	Undated photograph, EC 573
R 7e	Undated photograph, EC 574
R 7f	Undated photograph, EC 575
R 8	Solid Waste Management Facility Inspection Report dated February 1, 2007
R 9	Solid Waste Management Facility Inspection Report dated February 7, 2007
R 10	Solid Waste Management Permit effective February 3, 2009
R 11	Solid Waste Management Permit effective February 3, 2009 (incomplete)
R 12	Email chain between E. DeMatteo and J. Wade dated December 8, 2009
R 13	Metro-North Railroad Request for Quotation dated January 20, 2010
R 15	Email chain between E. DeMatteo and others, dated January 25, 2010
R 16	Email from E. DeMatteo to J. Wade and other, dated March 1, 2010
R 17	Email from E. DeMatteo to J. Wade and others, dated March 5, 2010
R 21	Email from E. DeMatteo to J. Wade and other, dated March 15, 2010
R 22	Email from E. DeMatteo to J. Wade and other, dated March 17, 2010
R 23	Email chain between E. DeMatteo and others dated March 26, 2010
R 25	Email chain between E. DeMatteo and others dated May 20, 2010
R 26	Letter from Long Island Rail Road to Ecology Sanitation Corporation dated June 24, 2010
R 27	Letter from J. Skubik to P. Scully dated December 15, 2010
R 28	Letter from C. Elgut to J. Skubik dated March 31, 2011
R 29	Email from E. DeMatteo to J. Wade and others dated May 5, 2011
R 30	Letter from R. Fogel to S. Rahman dated May 17, 2011
R 31	Letter from R. Fogel to G. Russo dated July 5, 2011
R 32	Letter from R. Fogel to S. Rahman dated August 8, 2011
R 33	Letter from E. DeMatteo to J. Wade dated August 30, 2012
R 34	Letter from E. DeMatteo dated April 18, 2013, attaching invoice and check
R 35	Lease for period July 1, 2013 to June 30, 2016 between RND @ Church ST. LLC and Ecology Transportation Corp.
R 36	Email chain among D. DeMatteo, J. Rigano and L. Jacob, August 2013
R 38	Letter from J. Rigano to J. Wade dated January 7, 2014
R 39	Letter from J. Rigano to J. Wade dated January 24, 2014
R 40	Letter from J. Rigano to S. Schindler dated February 12, 2014
R 41	Letter from J. Rigano to S. Schindler dated March 19, 2014
R 42	Email from J. Conover to G. Russo dated April 21, 2014
R 43	Email from J. Rigano to E. DeMatteo dated November 12, 2014, forwarding April 24, 2014 email, with attachments.
R 44	Email from I. Cassidy to E. DeMatteo and others dated November 21, 2014, attaching letter dated November 21, 2014.
R 45	Letter from J. Rigano to K. Luckey-Witsell dated December 30, 2014
R 47	Email from I. Cassidy to E. DeMatteo and others dated April 14, 2015, attaching letter dated April 6, 2015

R 48	Letter from J. Andaloro to J. Rigano dated June 5, 2015
R 49	Text message dated February 6, 2015
R 53	Letter from A. Gallo to C. Elgut dated April 7, 2008
R 56	Letter from P. Lazecky to E. DeMatteo dated February 8, 2002
R 57	Notification of Availability for Review dated April 4, 2001
R 58	Letter from R. Cowen to E. Kempsey dated January 30, 2002
R 59	Letter from R. Cowen to E. Kempsey dated November 5, 2002
R 60	Letter from P. Scully to E. Kempsey dated October 15, 2003
R 62	Undated document bates stamped DEC00510
R 63	Letter from A. Gallo to DEC Region 1 dated December 29, 2008
R 64	Fax Cover Sheet from E. DeMatteo to J. Wade dated July 5, 2011, with attachments
R 65	Letter from C. Werner to M. Nuzzi dated December 6, 2011
R 69	Undated photograph
R 70	Undated photograph
R 71	Letter from E. Kempey to L. DeCandia dated October 31, 2005
R 72	Email chain among E. DeMatteo and others March and April 2013
R 73	Solid Waste Management Facility Inspection Report dated September 19, 2008
R 74	Solid Waste Management Facility Inspection Report dated July 8, 2009
R 75	Solid Waste Management Facility Inspection Report dated February 17, 2010
R 76	Solid Waste Management Facility Inspection Report dated July 13, 2011
No Number	Affirmation of Richard A. Fogel dated February 27, 2018

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violations of Article 27 of the Environmental Conservation Law ("ECL"), Part 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), and Department Order on Consent No. R1-20080514-150,

**RULING OF THE
ADMINISTRATIVE LAW
JUDGE CORRECTING
THE TRANSCRIPT**

DEC Case No.
CO 1-2104-0507-159

- by -

June 19, 2019

**ECOLOGY SANITATION CORP., ECOLOGY
TRANSPORTATION CORP., and ERNEST
DEMATTEO, individually and as owner or
operator of ECOLOGY SANITATION CORP. and
ECOLOGY TRANSPORTATION CORP.,**

Respondents.

Appearances of Counsel:

-- Thomas S. Berkman, Deputy Commissioner and General Counsel (Jennifer Andaloro, Lisa Covert, and Dena Putnick of counsel), for staff of the Department of Environmental Conservation.

-- Leslie R. Bennett LLC (Leslie R. Bennett of counsel) for respondents.

Based upon the errata submitted by the parties, it is ORDERED that the transcript of the adjudicatory hearing conducted on November 8, 2017, in the above referenced matter is corrected as follows:

1. On page 19, line 19, change "raised transportation" to "Ray's Transportation."
2. On page 23, line 2, change "in" to "an."
3. On page 23, line 16, change "flittered" to "flitted."
4. On page 24, line 12, change "There" to "It."

5. On page 24, lines 12 and 24, change "arbitrary capricious" to "arbitrary and capricious."
6. On page 24, line 25, change "as" to "and."
7. On page 25, line 3, change "justice" to "just determination."
8. On page 27, line 11, change "landfill" to "landfills."
9. On page 28, line 18, change "Unadulterated" to "Adulterated."
10. On page 29, line 2, change "cover" to "recover."
11. On page 29, lines 14 and 15, change "railroad ties -- for -- by the railroads by the utilities and the utility poles" to "railroad ties by the railroads and utilities as utility poles."
12. On page 30, line 3, change "adulterated" to "unadulterated."
13. On page 30, line 13, add a period after "nuisances."
14. On page 30, line 14, change "that" to "They."
15. On page 30, line 19, change "That is generation" to "That is to minimize the generation."
16. On page 31, line 10, change "of" to "and."
17. On page 31, line 23, change "operation maintenance" to "operation and maintenance manual and engineering."
18. On page 32, line 13, change "17 years. As the Department" to "17 years as a Department. I"
19. On page 32, line 14, delete "might."
20. On page 34, line 7, change "concectors" to "consent orders."
21. On page 37, line 15, change "talk" to "talked."

22. On page 37, line 20, change "observed photographs" to "observed site conditions and took photographs."
23. On page 43, line 22, change "--" to "and."
24. On page 45, line 8, change "for" to "per."
25. On page 45, line 24, change "didn't" to "did."
26. On page 45, line 25, change "committee" to "permitting."
27. On page 46, line 2, change "cite" to "site."
28. On page 46, line 2, change "know" to "own."
29. On page 49, line 19, change "referred" to "referring."
30. On page 49, line 20, change "office in our" to "office of."
31. On page 50, line 13, change "permits" to "permit."
32. On page 50, line 14, change "requires" to "requirements for."
33. On page 50, line 16, change "2015" to "2010."
34. On page 53, line 4, change "the clause" to "in accordance."
35. On page 54, line 4, change "appearing of" to "of hearing and."
36. On page 55, line 7, change "throughout" to "for."
37. On page 57, line 14, change "form" to "order."
38. On page 58, line 14, change "accordance -- which" to "accordance with conditions which."
39. On page 58, line 20, change "he" to "we."
40. On page 58, line 20, change "at" to "of."

41. On page 59, line 6, change "secret" to "SEQRA."
42. On page 61, line 2, change "compression" to "combustion."
43. On page 64, line 16, change "and" to "regarding."
44. On page 65, line 5, change "applied" to "offered."
45. On page 78, line 4, change "in a" to "and."
46. On page 80, line 17, change "need" to "needed."
47. On page 80, line 17, change "determine" to "deter."
48. On page 80, line 17, change "have a" to "have ability."
49. On page 80, line 18, delete "responsibility."
50. On page 83, line 12, change "Smit" to "Anit."
51. On page 83, line 14, change "S-M-I-T," to "A-N-I-T,"
52. On page 83, line 20, change "Farcus" to "Farkas."
53. On page 83, lines 22 and 23, change "Cavo" to "Cava."
54. On page 84, line 19, change "Skully" to "Scully."
55. On page 85, lines 11 and 12, change "Farcus" to "Farkas."
56. On page 85, line 12, change "Cavo" to "Cava."
57. On page 86, line 5, change "Farcus" to "Farkas."
58. On page 86, line 15, change "Skully" to "Scully."
59. On page 86, line 22, change "administrator" to "administrative."
60. On page 88, line 10, change "accurate" to "inaccurate."

61. On page 91, line 6, change "these" to "lease."
62. On page 92, line 19, change "last" to "least."
63. On page 92, line 23, change "on" to "for."
64. On page 100, line 18, change "Did you ever ask" to "You never asked."
65. On page 100, line 19, change "lighting" to "muddy."
66. On page 100, line 24, change "that" to "the."
67. On page 101, line 14, change "is" to "as."
68. On page 104, line 13, change "we" to "you."
69. On page 104, line 23, change "attending" to "attended."
70. On page 104, line 24, delete "with."
71. On page 105, line 10, change "relocated" to "relocate."
72. On page 107, line 14, change "never" to "very."
73. On page 107, line 15, change "recycling" to "Recycling."
74. On page 107, line 15, change "your" to "their."
75. On page 108, line 6, change "you're" to "you are."
76. On page 108, line 12, change "Mr. DeMatteo has" to "We have."
77. On page 108, line 17, change "for raised transportation" to "to Ray's Transportation."
78. On page 110, line 5, change "created" to "treated."
79. On page 110, line 15, change "coincide" to "consider."

80. On page 111, line 11, change "incompliance" to "in compliance."
81. On page 112, line 17, change "updates" to "updated."
82. On page 113, line 16, change "you're" to "you are."
83. On page 114, lines 10 and 11, change "there some issue the name permitting" to "there was some issue with the name on the permit."
84. On page 115, line 2, change "permitted" to "permit."
85. On page 115, line 15, change "lease with the vision of materials management was" to "lease the Division of Materials Management has."
86. On page 115, line 17, change "corporation inactive" to "corporation is now inactive."
87. On page 115, line 17, change "indicating" to "indicated in."
88. On page 116, line 13, change "Are we -- yes" to "Yes."
89. On page 119, line 9, change "he" to "we."
90. On page 119, line 25, change "Armar" to "All Mine."
91. On page 120, line 2, change "Armar" to "All Mine."
92. On page 120, line 5, change "owned" to "owner."
93. On page 120, line 5, delete "by."
94. On page 121, line 11, change "have" to "had."
95. On page 121, line 12, change "facilities" to "facility."
96. On page 123, line 6, delete "of."
97. On page 125, line 17, change "resident" to "railroad."
98. On page 126, line 13, change "Skully" to "Scully."

99. On page 128, line 10, change "been on" to "been used on."
100. On page 129, line 4, change "houses" to "purposes."
101. On page 130, line 21, change "Lazeky" to "Lazecky."
102. On page 132, lines 10 and 20, change "secret" to "SEQRA."
103. On page 132, line 20, delete "the."
104. On page 138, line 20, change "inquires" to "inquiries."
105. On page 144, line 3, change "Lubbock" to "Laibach."
106. On page 144, line 4, change "Pollack" to "Pollock."
107. On page 147, line 19, change "Schmidt" to "Schmitt."
108. On page 148, line 2, change "Lubbock" to "Laibach."
109. On page 155, line 19, change "360" to "364."
110. On page 156, line 24, change "360 for" to "364."
111. On page 157, line 3, change "a part" to "authority."
112. On page 158, line 13, change "DEC is object" to "DEC's objective 2."
113. On page 158, line 14, change "for a" to "by."
114. On page 158, line 14, change "entity" to "entities."
115. On page 167, line 9, change "revaluate" to "re-evaluate."
116. On page 169, line 4, change "we" to "when he."
117. On page 169, line 5, change "received" to "did not receive."
118. On page 170, line 18, delete "wrong."

119. On page 176, line 5, change "was directed" to "was not directed."
120. On page 176, line 13, change "unadulterated" to "adulterated."
121. On page 178, line 4, change "adulterated" to "unadulterated."
122. On page 183, line 3, change "document," to "document, [R42]."
123. On page 188, line 14, change "disposition" to "this position."
124. On page 189, line 3, change "continues" to "continued."
125. On page 189, line 14, change "Do" to "Did."
126. On page 192, line 20, change "unsuccessful," to "unsuccessfully,"
127. On page 193, line 8, change "determination" to "the termination."
128. On page 193, line 18, change "Dano" to "Rigano."

It is FURTHER ORDERED that the transcript of the adjudicatory hearing conducted on November 9, 2017, in the above referenced matter is corrected as follows:

129. On page 6, line 3, change "and" to "in."
130. On page 7, line 6, change "drum" to "ground."
131. On page 10, line 11, change "ran inside" to "was granted permission."
132. On page 38, line 4, delete "after."
133. On page 38, line 8, change "didn't" to "did."
134. On page 47, line 3, change "when" to "did."

135. On page 47, line 3, change "attempted" to "attempt."
136. On page 50, line 19, change "the" to "a."
137. On page 55, lines 7 and 8, change "is half or half" to "is no half."
138. On page 77, line 12, change "for" to "from."
139. On page 78, line 22, change "if" to "of."
140. On page 79, line 16, change "leach" to "leachate."
141. On page 81, line 20, change "Bohemia" to "Bay Shore."
142. On page 88, line 13, change "currently" to "I am currently."
143. On page 88, line 19, change "1969" to "1979."
144. On page 89, line 9, change "1980" to "1984."
145. On page 89, lines 12 and 13, change "McMillan and Rather" to "McMillan, Rather."
146. On page 94, line 12, change "to contact" to "that she would contact."
147. On page 95, line 25, change "region attorney" to "Regional Attorney."
148. On page 97, line 24, change "at" to "from."
149. On page 97, line 25, change "spoke to" to "emailed with."
150. On page 101, lines 8 and 9, change "I have no standard -- an e-mail from the DEC provided Ecology" to "I understand that you are in receipt of an e-mail from DEC which provides that Ecology."
151. On page 101, line 10, change "DEC" to "DEC's."
152. On page 101, line 11, change "that" to "at."

153. On page 105, line 13, change "the Long Island Rail Road" to "me that LIRR."
154. On page 105, line 14, change "removal contractor" to "removal; the contractor."
155. On page 105, line 16, change "ties, that it would" to "ties that would."
156. On page 105, line 23, change "in" to "at."
157. On page 106, line 10, change "I've" to "I have."
158. On page 112, line 14, change "do" to "did."
159. On page 113, line 3, change "retain" to "obtain."
160. On page 114, line 25, change "that's" to "as."
161. On page 118, line 23, change "foil" to "FOIL."
162. On page 118, line 23, change "requested" to "requests."
163. On page 120, line 9, change "science" to "scientist."
164. On page 122, line 2, change "ask" to "not ask."
165. On page 127, line 10, change "where" to "or."
166. On page 127, line 11, change "states disposals" to "state of disposal."
167. On page 127, lines 14 and 15, change "a user" to "an end-user."
168. On page 128, line 9, change "deposed" to "disposed."
169. On page 129, line 18, change "that" to "they."

It is FURTHER ORDERED that the transcript of the adjudicatory hearing conducted on March 6, 2018, in the above referenced matter is corrected as follows:

170. On page 136, line 14, change "that" to "from."

171. On page 136, line 23, change "ordinary reasons" to "owners."
172. On page 142, line 14, change "determine" to "determination."
173. On page 143, line 23, change "advanced" to "advance."
174. On page 146, line 11, change "MR. BENNETT" to "MS. ANDALORO."
175. On page 147, line 15, change "Would the dirt inside the building" to "Would the building with the dirt inside."
176. On page 149, line 10, change "is" to "was."
177. On page 149, line 13, change "been" to "made."
178. On page 150, line 7, change "refresh" to "refreshes."
179. On page 150, line 19, change "picture, are" to "picture, what are."
180. On page 151, line 12, change "Are these pictures representing" to "Do these pictures represent."
181. On page 163, line 21, change "feudal" to "futile."
182. On page 164, line 4, change "feudal" to "futile."
183. On page 166, line 15, change "moved" to "as."
184. On page 168, line 25, change "constitute" to "refers to."
185. On page 169, line 8, change "course, Mr. Fogel's" to "course, it would be an unnecessary use of Mr. Fogel's."
186. On page 169, line 10, change "custodial functions" to "a custodial function."
187. On page 170, line 24, change "of" to "have."

188. On page 174, line 2, change "Ask" to "Asked."
189. On page 174, line 22, change "and asked" to "and DEC asked."
190. On page 178, line 8, change "regularity" to "about regulatory."
191. On page 178, line 24, change "feudal" to "futile."
192. On page 183, line 18, change "loaner" to "owner."
193. On page 188, line 22, change "requirements" to "respondents."
194. On page 188, line 23, change "disposable" to "disposal."
195. On page 188, line 24, change "EC242" to "EC 14-242."
196. On page 189, line 3, change "in" to "from the."
197. On page 189, line 4, 6 and 9, change "compliment" to "complement."
198. On page 189, line 5, change "represented" to "representative."
199. On page 189, line 9, change "represented as" to "representative of."
200. On page 191, line 10, change "contract" to "contractor."
201. On page 198, line 12, change "Tymko" to "Timko."
202. On page 201, line 13, change "total" to "totally."
203. On page 205, line 7, change "the" to "that."
204. On page 207, line 2, change "Peter Scully" to "Craig Elgut."
205. On page 208, line 14, change "24" to "4."

206. On page 208, line 24, change "They" to "The."
207. On page 210, line 14, change "remain" to "maintain."
208. On page 215, line 3, delete "two."
209. On page 215, line 24, change "25" to "1225."
210. On page 225, line 16, change "shaving" to "shavings."
211. On page 226, lines 8, 12, 15, and 18, change "graupel" to "grapple."
212. On page 231, line 24, change "tenant's" to "tenanted."
213. On page 237, line 16, change "container" to "compactor."
214. On page 238, line 13, change "present" to "prevent."
215. On page 244, line 7, change "maintain" to "cover."
216. On page 245, line 22, change "our" to "a."
217. On page 264, line 4, change "before in" to "before us in."
218. On page 264, line 8, change "regulations to find out to examine" to "regulations, not to find out or to examine."
219. On page 264, line 9, change "Caruso" to "DeMatteo."
220. On page 264, line 11, change "contract has" to "contract. That has."
221. On page 265, line 3, change "is you" to "as."
222. On page 268, line 6, change "in" to "within."
223. On page 268, line 8, change "referred activities" to "referred to activities."
224. On page 270, line 12, change "graupel" to "grapple."

- 225. On page 273, lines 20 and 22, change "graupel" to "grapple."
- 226. On page 285, line 18, change "to" to "by."
- 227. On page 291, line 9, delete "were."
- 228. On page 291, line 20, change "lost" to "loss."
- 229. On page 292, lines 9, 12, 15, and 19, change "Lumbar" to "Lumber."
- 230. On page 299, line 11, change "posed" to "proposed."
- 231. On page 299, line 12, delete "sold."
- 232. On page 299, line 13, change "as" to "in."
- 233. On page 299, line 16, change "disposable" to "disposal."
- 234. On page 299, line 18, change "them, disposal" to "them, the disposal."
- 235. On page 299, line 19, change "ticket" to "tickets."

James T. McClymonds
Chief Administrative Law Judge

Dated: June 19, 2019
Albany, New York