

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

In the Matter of the Alleged Violations of Title 23, Article 27
of the Environmental Conservation Law and Article 12 of the
Navigation Law,

ORDER

-by-

DEC Case No.
R7-20100804-58

**MIKE JONES and
COAST TRANSPORTATION AND RECYCLING, LLC,**

Respondents.

Respondents Mike Jones (Jones) and Coast Transportation and Recycling, LLC (Coast), own and operate a vehicle dismantling facility located at 15 Dippold Avenue, Syracuse, New York. Jones is the president of Coast and oversees the daily operations of the facility. This matter involves allegations that respondents violated various sections of the Environmental Conservation Law (ECL) governing automobile dismantling facilities by failing to properly remove, capture and dispose of liquids from cars being crushed at their facility, as well as discharging petroleum in violation of the Navigation Law and the ECL.

Staff of the New York State Department of Environmental Conservation (Department or DEC) commenced this enforcement proceeding against respondents Jones and Coast, by service of a notice of hearing and complaint dated November 30, 2010, by certified mail. The complaint alleged that respondents:

-failed to conduct fluid draining, removal and collection activities over an asphalt, concrete, or similarly protective surface at the facility, in violation of ECL 27-2303(2);

-failed to completely drain, remove, collect and store all fluids from end of life vehicles at the facility, in violation of ECL 27-2303(3);

-failed to drain, remove, deploy, collect or store, in accordance with best management practices, all environmental contaminants prior to crushing vehicles, in violation of ECL 27-2303(5);

-intentionally released fluids onto the ground, in violation of ECL 27-2303(10); and

-discharged petroleum at the facility while draining a vehicle gas tank, in violation of ECL 27-0303(2), 27-2303(3), 27-2303(5), 27-2303(10), and Navigation Law § 173.

Respondents received Department staff's pleadings on December 1, 2010, and served Department staff with their answer on December 20, 2010. By notice of motion dated May 5, 2011, Department staff moved for an order without hearing. Respondents' attorney submitted an affidavit in opposition to Department staff's motion dated May 25, 2011.

When a motion for order without hearing is contested, it will be granted if, upon all the papers and proof filed, the causes of action are established sufficiently to warrant granting summary judgment under the Civil Practice Law and Rules (see 6 NYCRR 622.12[d]; Matter of Linden Latimer Holdings, LLC, Order of the Commissioner, July 15, 2008, at 3-4).

The matter was assigned to Administrative Law Judge (ALJ) Helene G. Goldberger who prepared the attached hearing report. I hereby adopt the hearing report as my decision in this matter, subject to my comments below.

The record demonstrates that Department staff carried its burden of making a prima facie showing of entitlement to summary judgment as a matter of law with respect to each violation alleged in Department staff's complaint. Respondents failed to establish the existence of any material issue of fact that would require a hearing, and failed to produce any affidavit from a person with direct personal knowledge of the facility's operations.

The civil penalty of thirty thousand dollars (\$30,000) that Department staff has requested is authorized and warranted.

The ALJ recommended that respondents be ordered to comply with the September 2008 Plumley Engineering, P.C. plan entitled "Contingency Plan for Auto Scrap for Coast Transportation & Recycling, LLC" (contingency plan), that is annexed to the affidavit of Thomas M. Vigneault, DEC Environmental Engineer 2. The contingency plan describes the activities that should be in place for the handling of junk vehicles that are brought to the facility. These activities include visual inspection of the vehicle for fluid leaks before acceptance and the containment measures to be taken if the vehicle is leaking. The contingency plan also addresses the removal, from vehicles, of fuel and other waste fluids, batteries, air conditioning system refrigerant, and mercury switches, and the manner of handling vehicles during the crushing process.

As part of respondents' compliance obligations, this order also incorporates many of the requirements that were contained in a proposed consent order that Department staff had provided to respondents which respondents did not sign (see Exhibit B to Department staff's memorandum of law in support of the motion for order without hearing dated May 5, 2011). These requirements include:

- labeling, closing and storing on a bermed concrete surface, all waste fluid containers at the facility;

- ensuring that all workers at the facility are aware of the facility's contingency plan and are trained in facility emergency procedures;

- permanently sealing the trench drain in the vehicle maintenance building and submitting to Department staff photographs that document the permanent seal;
- obtaining coverage under the Department's State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity by submitting a completed notice of intent form to the Department and complying with all other requirements of the permit;
- removing and properly managing all fluids, batteries, mercury switches, PCB capacitors, refrigerants and airbags from vehicles being crushed or shredded;
- maintaining records and receipts for all materials removed from the facility;
- recycling or properly disposing of lead-acid batteries; and
- properly storing lead-acid batteries, prior to recycling or disposal.

The ALJ also recommended that respondents be required to retain the services of an environmental engineer to assess the extent of any contamination at the site and, as necessary, to submit a clean-up plan to the Department. I concur with the ALJ's recommendation.

ALJ Goldberger proposed that Department staff be directed to move for a summary abatement order in the event that respondents fail to comply with this order. I am not adopting that recommendation. Rather, in the event that respondents fail to comply with this order, the Department's Office of General Counsel shall evaluate appropriate steps, including, for example, seeking enforcement of the order or considering summary abatement proceedings, based on the circumstances at that time.

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

- I. Pursuant to 6 NYCRR 622.12, Department staff's motion for order without hearing is granted.
- II. Respondents Mike Jones and Coast Transportation and Recycling, LLC, are adjudged to have violated:
 - A. ECL 27-2303(2), by failing to conduct fluid draining, removal and collection activities over an asphalt, concrete, or similarly protective surface at the facility;
 - B. ECL 27-2303(3), by failing to completely drain, remove, collect and store all fluids from end of life vehicles at the facility;

- C. ECL 27-2303(5), by failing to drain, remove, deploy, collect or store, in accordance with best management practices, all environmental contaminants prior to crushing vehicles;
- D. ECL 27-2303(10), by intentionally releasing fluids onto the ground; and
- E. ECL 27-2303(2), 27-2303(3), 27-2303(5), and 27-2303(10) and section 173 of the Navigation Law, by discharging petroleum onto the ground at the facility.

III. Respondents Mike Jones and Coast Transportation and Recycling, LLC, are hereby assessed, jointly and severally, a civil penalty in the amount of thirty thousand dollars (\$30,000). The penalty shall be due and payable within thirty (30) days of service of this order upon respondents. Payment shall be made in the form of a cashier's check, certified check, or money order payable to the order of "New York State Department of Environmental Conservation" and mailed to the Department at the following address:

Margaret A. Sheen, Esq.
Division of Legal Affairs, Region 7
615 Erie Boulevard West, 2d Fl.
Syracuse, New York 13204-2400

IV. Within thirty (30) days from the service of this order upon respondents, respondents shall undertake the following corrective actions:

- A. label, close and store on a bermed concrete surface, all waste fluid containers at the facility;
- B. prepare, implement and submit a plan detailing the actions that will be taken at the facility in the event of a fire or the receipt of unauthorized material;
- C. ensure that all workers at the facility are trained in facility emergency procedures;
- D. permanently seal the trench drain in the vehicle maintenance building and submit to Department staff photographs that document the permanent seal;
- E. obtain coverage under the Department's State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity by submitting a completed notice of intent form to the Department and complying with all other requirements of the permit;
- F. remove and properly manage all fluids, batteries, mercury switches, PCB capacitors, refrigerants and airbags from vehicles being crushed or shredded;
- G. maintain records and receipts for all materials removed from the property; and

H. recycle or properly dispose of lead-acid batteries, and properly store those batteries prior to recycling or disposal.

V. Within thirty (30) days from the date of the service of this order upon respondents, respondents shall implement the 2008 Plumley Engineering, P.C. contingency plan that is attached to the affidavit of Thomas M. Vigneault, DEC Environmental Engineer 2, sworn to as of May 6, 2011. Respondents shall review the contingency plan and make any revisions that may be required. If the contingency plan is revised, respondents shall submit it to Department staff, within fifteen (15) days of the service of this order upon respondents for staff's review and approval.

VI. Within sixty (60) days from the date of the service of this order upon respondents, respondents shall provide Department staff with a report documenting an investigation by a licensed engineer to determine what, if any, contamination exists at the facility and a plan that provides the measures that respondents will undertake to cleanup any contamination (remedial plan). The cleanup must be completed within sixty (60) days of Department staff's approval of the remedial plan.

VII. Any submissions required by paragraphs IV (except IV[E]), V, and VI of this order shall be sent to the Department at the following address:

Division of Solid and Hazardous Materials
NYSDEC – Region 7
615 Erie Boulevard West
Syracuse, New York 13204

With respect to the notice of intent for the Department's State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, as referenced in paragraph IV[E] of this order, respondent shall submit the notice of intent to the following address:

NYSDEC Division of Water
Bureau of Water Permits, 4th Floor
625 Broadway
Albany, New York 12233-3505.

VIII. The provisions, terms and conditions of this order shall bind respondents Mike Jones and Coast Transportation and Recycling, LLC, and their successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Joseph J. Martens
Commissioner

Dated: June 22, 2011
Albany, New York

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

In the Matter

- of -

the Alleged Violations of Article 27, Title 23 of the
Environmental Conservation Law and Article 12 of the
Navigation Law by:

**MIKE JONES and COAST TRANSPORTATION
and RECYCLING, LLC,**

Respondents.

DEC Case No. R7-20100804-58

HEARING REPORT

_____/s/_____
Helene G. Goldberger
Administrative Law Judge

June 13, 2011

Summary of Ruling

The motion of the staff of the New York State Department of Environmental Conservation (DEC or Department) for summary order is granted. I recommend that the relief requested by staff be granted and additional relief be ordered as noted below.

Proceedings

Department staff is represented by Margaret A. Sheen, Esq., Assistant Regional Attorney of the Department's Region 7 office located in Syracuse, New York. The respondents are represented by Gilles R.R. Abitbol, Esq., of Liverpool, New York.

The Department staff commenced this enforcement proceeding against the respondents, Mike Jones and Coast Transportation and Recycling, LLC, by service of a notice of hearing and complaint dated November 30, 2010.¹ Exhibit (Ex.) C to Department staff's memorandum of law in support of motion for order without hearing (mem.) The respondents submitted a general denial dated December 20, 2010. Ex. D to staff's mem. In its complaint, the staff alleges that on November 12, 2010, the respondents failed to comply with the Environmental Conservation Law's (ECL) statutes governing the operation of automobile dismantling facilities by a) failing to conduct the draining of vehicles over a protective surface in violation of ECL § 27-2303(2); 2) failing to drain, collect, and properly store the fluids from vehicles being crushed in violation of ECL § 27-2303(3); 3) failing to drain, remove, deploy, collect and/or store, in accordance with best management practices all environmental contaminants prior to crushing in violation of ECL § 27-2303(5); 4) intentionally releasing fluids from crushed vehicles into the ground in violation of ECL § 27-2303(10); and 5) discharging petroleum while draining the gas tank of a vehicle in violation of ECL §§ 27-2303(2), 27-2303(3), 27-2303(5), 27-2303(10), and Article 12, § 173 of the Navigation Law.

On May 9, 2011, the Department's Office of Hearings and Mediation Services (OHMS) received the staff's motion for order without hearing and supporting documents. On May 31, 2011, the OHMS received the respondents' attorney's affidavit in opposition to the motion. On that date, Chief Administrative Law Judge (ALJ) James T. McClymonds assigned the matter to me.

In support of staff's motion, Ms. Sheen submitted:

- 1) notice of motion for order without hearing dated May 5, 2011;
- 2) affirmation in support of motion for order without hearing dated May 5, 2011;
- 3) motion for order without hearing;
- 4) affidavit of Environmental Engineer 2 Thomas M. Vigneault, P.E. in support of staff's motion with attachments 1 – 8;
- 5) affidavit of Supervising Environmental Conservation Officer (SECO) David J. McShane with attachments 1-2; and

¹ In the various papers submitted on the motion before me, the respondent Coast Transportation and Recycling, LLC is alternatively referred to as LLP, LLC or Inc. Because the Department of State lists the entity as an LLC on its website, that is the identifier I am using in this report.

- 6) Department staff's memorandum of law in support of staff's motion for order without hearing with exhibits:
 - A) notice of violation dated September 15, 2008 with schedule of compliance and inspection report dated September 9, 2008;
 - B) letter dated August 23, 2010 from Assistant Regional Attorney Sheen to Mr. Mike Jones, President, Coast Transportation and Recycling, LLP [sic] with proposed order on consent;
 - C) letter dated November 30, 2010 from Ms. Sheen to Mike Jones and Gilles Abitbol, Esq. with notice of hearing and complaint and affidavits of service; and
 - D) answer to complaint signed by Gilles R.R. Abitbol, Esq. and affidavit of service.

In opposition to staff's motion, the respondents submitted:

- 1) attorney's affidavit in opposition to motion dated May 25, 2011 with one exhibit; entitled "Paddock's & Coast Transportation and Recycling, Inc. DEC Compliance Report" with affirmation of Michael P. Jones dated September 3, 2008; and
- 2) affidavit of service dated May 26, 2011.

FINDINGS OF FACT

Because the respondent has not produced an affidavit or any documentary evidence from an individual with personal knowledge, other than the compliance report, the only facts before this forum (other than the compliance report) are those presented by the Department staff.

1. The respondents own and/or operate a vehicle dismantling facility located at 15 Dippold Avenue, in the City of Syracuse, New York. McShane Affidavit (Aff.), ¶ 4. Michael P. Jones is the President of Coast Transportation and Recycling, LLC and oversees the day to day operations of the facility. Exhibit 1, Abitbol Aff.
2. On February 2, 2009, the respondents entered into an order/stipulation to resolve violations of ECL § 37-0107 (prohibition against storage or release of hazardous substances including petroleum) that occurred in 2008. McShane Aff., ¶ 5. Specifically, between May and September of 2008, Department staff witnessed Coast Transportation employees puncturing vehicle fuel tanks outdoors on unpaved ground and failing to contain the draining fluids. *Id.* And, staff observed vehicles that had been crushed without first draining oil and other fluids. *Id.* The respondents paid a penalty of \$10,000 for these violations and in addition, agreed to complete a corrective action plan. *Id.*; attachment 5 to Vigneault Aff. *See also*, Exhibit A to staff's memorandum.
3. On November 12, 2009, SECO David J. McShane responded to a complaint regarding activities at Coast Transportation's facility. McShane Aff., ¶ 6. While there, SECO McShane observed the following: draining of vehicle fluids on unpaved ground and into pooled water; failing to contain, collect and store fluids from crushed cars; failing to remove fluids from vehicles before crushing; and draining of gasoline onto ground. McShane Aff., ¶ 7. *See also*, Vigneault Aff., ¶ 12 and Attachments 1-4, 6 and 7 to affidavit.

4. The facility's stormwater collection system includes a catch basin located near the area of the improper vehicle draining activities. This catch basin drains stormwater from the site to an offsite earthen swale located adjacent to residential areas. Vigneault Aff., ¶ 11. Moreover, Ley Creek, a tributary of Onondaga Lake is located down gradient of the facility. *Id.*
5. On December 7, 2009, Department staff sent a notice of violation (NOV) to respondents that addressed the violations that SECO McShane observed on his November 12, 2009 inspection. Vigneault Aff., ¶6. The certified letter with the NOV was returned unclaimed and SECO McShane hand delivered the letter to the respondents on December 28, 2009. Attachment 2 to McShane Aff.
6. On August 23, 2010, Assistant Regional Attorney Margaret Sheen sent Mr. Jones a proposed consent order in an attempt to resolve the latest violations. Ex. B to Staff mem. Due to the lack of response by the respondents after a settlement meeting, Department staff commenced this proceeding. Complaint, ¶ 9.

Position of Staff

It is the staff's position that the respondents have illegally operated their vehicle dismantling facility in disregard of the law and procedures set forth in the compliance plan that was devised in response to the 2008 violations. The staff provided information on the respondents' past similar violations and the potential for environmental damage by these actions. The staff explained that the penalties it has requested are well below the maximum statutory fines.

Position of Respondents

The respondents have not provided any direct information other than the September 2008 compliance report attached to their attorney's affidavit. The attorney challenges the facts presented by staff but fails to provide any affidavits or documentation to support his arguments.

DISCUSSION

Title 23 of Article 27 of the ECL regulates vehicle dismantling facilities. This title was added to the ECL by the Legislature in recognition of the serious potential for harmful environmental effects resulting from negligent and poor practices in the crushing and recycling of automobiles due to the many hazardous components in cars. *See attached*, letters of legislative sponsors. All vehicle dismantlers that own or control a facility for the dismantling of "end of life vehicles" are subject to the requirements in ECL § 27-2303. Among these are:

ECL § 27-2303(2) – all fluid draining, removal, and collection activities shall be conducted on asphalt or concrete surface or other surface that allows equivalent protections to surface and groundwater.

ECL § 27-2303(3) – all fluids shall be completely drained, removed, collected, and stored for appropriate use, treatment or disposal.

ECL § 27-2303(5) – prior to vehicle crushing or shredding, the following potential environmental contaminants shall be drained, removed, deployed, collected and/or stored, as appropriate with best management practices:

- (a) fluids including engine oil, transmission fluid, transaxle fluid, front and rear axle fluid, brake fluid, power steering fluid, coolant, and fuel;
- (b) lead acid batteries;
- (c) small PCB capacitors, mercury switches or other mercury containing devices;
- (d) refrigerants used in automobile air conditioning systems; and
- (e) air bags are deployed or removed.

ECL § 27-2303(10) – fluids shall not be intentionally released on the ground or to surface water.

The purpose of the Oil Spill Law is to “ensure a clean environment and healthy economy for the state by preventing the unregulated discharge of petroleum which may result in damage to lands, water or natural resources of the state . . .” Navigation Law, Article 12, § 171. Navigation Law, Article 12, § 173 prohibits the discharge of petroleum. Section 181 of the Navigation Law states that “[a]ny person who has discharged petroleum shall be strictly liable, without regard to fault, for all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained, defined in this section.” The Oil Spill Act provides a mechanism for swift action by the state to effect cleanups and imposes strict liability on landowners who have control over contaminated premises. *State v. Green*, 96 NY2d 403 (2001).

Pursuant to § 622.12(a) of Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR), staff has supported its motion for order without hearing with two factual affidavits in addition to the attorney affirmation, memorandum of law and exhibits that are annexed to those documents including photographs. The respondent has failed to provide any affidavits from individuals with personal knowledge of the facts. The only piece of documentary evidence is the 2008 compliance report annexed to Mr. Gilles’ affidavit. However, all that this document shows is how at variance the activities at the respondents’ facility have been with the various relevant compliance plans. For example under *Procedure of Dismantling* on the third page of the compliance report, it states that “[e]very car . . . will be processed following the procedure hereunder described: - positioning on the dismantling pad; removal of any fluid: engine oil, transmission fluid, trans axle fluid, axle fluid, brake fluid, power steering fluid, coolant, and gasoline; . . .” According to SECO McShane, on the day he observed activities at the facility, the respondents did not even bother to put the vehicles into the building with the concrete floor but instead crushed them above unpaved ground with merely a bucket to capture fluids that spilled onto the ground and created a sheen on the ponded water on the site.

Mr. Gilles, an attorney who establishes no bases for his disputes with the facts set forth by the DEC personnel, maintains that the staff did not give the respondents sufficient time “to cure the violations and to actually clean the grounds of any spills after the alleged violation

occurred.” First, this statement makes it seem like an accidental spill occurred when SECO McShane reported watching the intentional procedures of the facility’s employees that resulted in various automotive fluids ponding on the bare ground. *See*, photograph of respondents’ employee engaged in this activity, Attachment 2 to Vigneault Aff. In addition, the respondents were provided with multiple opportunities by staff to resolve these violations by responding to the NOV or the proposed consent order and chose not to work with staff forcing the commencement of this proceeding. Mr. Gilles further contends that SECO McShane’s statements are “hearsay” because the SECO was not sure if he was viewing 3 or 4 crushed vehicles. Rather, this statement (bolstered by the statements of Thomas Vigneault [Aff., ¶ 12]) reveals an honest portrayal. The other statements by counsel similarly fail to provide any facts or legitimate arguments in defense of the respondents.

Accordingly, there is no doubt that summary judgment is appropriate as the respondents have “failed to establish the existence of any material issue of fact which would require hearing.” *Edgar v. Jorling*, 225 AD2d 770, 771 (2d Dep’t 1996), *lv to appeal denied*, 89 NY2d 802 (1996); 6 NYCRR § 622.12(c). In a motion for summary order, it is essential that a party opposing the motion submit competent evidence rather than speculation in order to defeat the motion. *See*, *Zuckerman v. City of New York*, 49 NY2d 557, 562 (1980).

As noted by staff, prior to May 28, 2010, ECL § 71-4003 provided for a civil penalty for a first violation of ECL Article 27, Title 23 not to exceed five hundred dollars and an additional penalty of not more than five hundred dollars for each day during which said violation continues. Article 12, § 192 of the Navigation Law provides for a maximum penalty of not more than \$25,000 for the first violation of Navigation Law, Article 12 and an additional civil penalty of not more than \$25,000 for each day during which such violation continues.

The staff has established that the respondents violated four laws contained in Title 23 of Article 27 of the ECL in addition to the Navigation Law for each of the 3-4 cars they processed during staff’s observation on November 12, 2009. I calculate a maximum penalty of six thousand dollars pursuant to ECL § 71-4003 and a penalty of \$75,000 pursuant to Navigation Law § 192, totaling \$81,000. While the staff’s requested penalty of \$30,000 is far under the maximum that could be exacted, I cannot increase it because of staff’s limited request in the complaint. *See*, *Matter of 134-15 Rock Management Corp.*, Commissioner’s Order (December 10, 2008).

As staff noted in its motion papers, these respondents have previously been found in violation of the ECL by their improper handling of automotive fluids. While the respondents have paper plans (*see*, compliance report annexed to Gilles’ affidavit and contingency plan annexed to Vigneault affidavit) to comply with the State’s environmental laws as they apply to the automotive dismantling business, they failed to do so in practice thus jeopardizing the environment and public health. Thus, there is no question that the penalty of \$30,000 is warranted, at a minimum.

Beyond the payable penalty however, due to the history of violations at this facility, it is imperative that the staff ensure that the respondents operate in full compliance with the applicable laws. Therefore, the respondents should be compelled to comply with the

contingency plan for auto scrap that appears to have been prepared by Plumley Engineering, P.C. on behalf of the respondents in September 2008 via a schedule of compliance.² Attachment 5, Vigneault Aff. This plan should be updated to reflect any change in conditions at the facility. In addition, the respondents should be required to retain an engineer to assess any property contamination that requires cleanup and to provide a schedule forthwith to address any such conditions. Finally, given the lack of compliance, I would recommend that the Commissioner direct staff to seek a summary abatement order to close this facility in the event that it is found out of compliance with the order.

RECOMMENDATIONS AND CONCLUSIONS OF LAW

I find that the respondents are liable for violations of ECL §§ 27-2303(2), 27-2303(3), 27-2303(5), 27-2303(10), and Navigation Law, Article 12, § 173. I find further that the staff's request for a penalty of \$30,000 is within the applicable statutory amounts. And, I conclude that the respondents should be compelled to investigate and cleanup any petroleum contamination on their property and to amend the 2008 plans as necessary to comply with the applicable laws. In the event that the respondents do not comply with the Commissioner's order, I find that it is appropriate to seek a closure of the facility to prevent further environmental degradation.

I recommend that the staff's motion for summary order be granted with the requested relief as modified above. I recommend that the Commissioner order the respondents to pay a penalty of \$30,000, jointly and severally, and to comply with a schedule of compliance that incorporates the requirements in the 2008 plan annexed as Attachment 5 to the Vigneault Aff. and also addresses any petroleum contamination at the facility. In addition, I recommend that the Commissioner direct staff to seek a summary abatement order to close this facility in the event that the respondents fail to adhere to the requirements of the order.

² In the notice of motion, staff requests that the Commissioner issue an order requiring the respondents to implement the schedule of compliance annexed to the notice of motion as Schedule A. Because the 2008 compliance plan appears to address many of the items included in the schedule, I did not find it necessary for the respondents to recreate a plan. Instead, I determined it appropriate to require the respondents to comply with the 2008 compliance plan, to update it as necessary, and incorporate elements of the consent order that were not addressed in the compliance plan.