STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations of Article 27 of the Environmental Conservation Law of the State of New York and Parts 360 and 364 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York,

RULING

DEC File No. R1-20111206-200

-by-

TRINITY TRANSPORTATION CORPORATION,

Respondent.

SUMMARY

This ruling addresses a contested motion for order without hearing brought by the staff of the New York State Department of Environmental Conservation (DEC Staff). The motion requested a Commissioner's order finding the respondent, Trinity Transportation Corporation, liable for eight causes of action related to two truckloads of solid waste that were delivered to the Brookhaven Landfill on September 7, 2010. DEC Staff has shown in its motion papers that it is entitled to summary judgment as a matter of law regarding the respondent's liability for the eight causes of action. However, material questions of fact exist regarding DEC Staff's requested payable civil penalty of $57,500. The parties will be contacted shortly to schedule a hearing regarding the appropriate civil penalty to be assessed in this case.

PROCEEDINGS

By papers dated August 14, 2012, DEC Staff moved for an order without hearing pursuant to 6 NYCRR 622.12. DEC Staff's papers consisted of: (1) a cover letter; (2) a notice of motion for order without hearing; (3) a memorandum of law; (4) an affirmation in support by DEC Staff counsel Vernon G. Rail; and (5) an affidavit in support by DEC Staff member Peter Hourigan with six exhibits.

By letter dated August 30, 2012, respondent's counsel advised that the parties had agreed to an extension of time for the respondent to reply.

By papers dated September 7, 2012, respondent's counsel filed its response. These papers included: (1) a cover letter; (2) an affidavit by John Whitton, General Manager of the respondent, with two exhibits attached; and (3) the affirmation of respondent's counsel.

On September 12, 2012, this matter was assigned to me.

By email dated September 12, 2012, DEC Staff requested leave to reply, pursuant to 6 NYCRR 622.6(3). After an email exchange with the parties, I set a schedule to allow for DEC Staff to reply and the respondent to provide a sur-reply.

By papers dated September 21, 2012, DEC Staff submitted its reply. These papers consisted of: (1) a cover letter; (2) a reply affirmation by DEC Staff counsel Rail; (3) a reply affidavit by DEC Staff member Hourigan, with three exhibits; and (4) a reply affidavit by Environmental Conservation Officer Christopher Lagree.

By papers dated September 29, 2012, respondent's counsel filed its sur-reply. These papers included: (1) a cover letter; (2) a sur-reply affidavit of John Whitton; and (3) a sur-reply affirmation of Michael White, with one exhibit.

By letter dated October 2, 2012, DEC Staff asserted that the exhibit to respondent's counsel's sur-reply affirmation was not admissible as evidence because it was correspondence relating to settlement discussions.

By letter dated October 3, 2012, respondent's counsel stated that the exhibit was sent after settlement negotiations had failed.[1]

FINDINGS OF FACT

1. Respondent Trinity Transportation Corporation is an active Domestic Business Corporation (New York State Department of

[1] This exhibit does not address matters of liability and was not considered for this ruling. The parties will be given an opportunity to discuss this exhibit at the hearing regarding the appropriate amount of civil penalty.

State ID# 1765391). The respondent does not possess a valid permit to receive and transport regulated waste pursuant to 6 NYCRR part 364 (Hourigan affidavit, ¶ 21 & Exh. 6).

2. The Town of Brookhaven (Suffolk County) operates a landfill in Yaphank, New York. This landfill has been issued a valid DEC permit, DEC # 1-4722-00030/00004, and is not authorized to accept regulated waste (Hourigan affidavit, Exh. 1).

3. On September 7, 2010, three trucks operated by the respondent, arrived at the landfill and two of them tipped their loads (Hourigan affidavit, ¶ 8). The first truck tipped on the working face of the landfill. The second truck was stopped in the process of tipping and finished tipping in a remote area (Hourigan affidavit, Exh. 3, p. 4).

4. The tipped waste included construction and demolition ("C&D") debris, and a number of drums larger than ten gallons in size[2] containing unknown substances.[3] DEC Staff member Peter Hourigan, an on-site environmental monitor at the landfill, was in a meeting at the time with an employee of the landfill who received a phone call reporting an unusual cloud of dust from the back of a truck that had just tipped its load. The landfill employee and Mr. Hourigan then drove to the tipping site (Hourigan affidavit, ¶ 4 & ¶ 7). Mr. Hourigan observed the truck that had dumped its load and took photos of these drums (Hourigan affidavit, Exh. 2).[4] He then completed an inspection report regarding the incident (Hourigan affidavit, Exh. 3).

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[2] The number of drums tipped at the landfill is not established in the record. In his inspection report, Mr. Hourigan states a minimum of 30 drums were tipped (Hourigan affidavit, Exh. 3, p. 3) and that other drums were probably still buried in the waste (Hourigan affidavit, Exh. 3, p. 4). However, only 24 drums were shipped for disposal (Hourigan affidavit, Exh. 4). The respondent's counsel also claims the photos in the record do not show all the containers (White sur-reply affirmation, ¶ 11c).

[3] The waste in the drums is characterized as mostly liquid (Hourigan reply affidavit, ¶ 6) and some solid material (Hourigan affidavit, ¶ 20).

[4] In his affidavit, Mr. Hourigan states he took all the photos on September 7, 2010 (Hourigan affidavit, ¶ 10), however, photos #1 and #5 have dates of September 20, 2010 (Hourigan affidavit, Exh. 2).

5. John Whitton, general manager of the respondent corporation, upon being notified of the incident, arrived at the landfill (Whitton affidavit, ¶ 8). ECO Lagree also went to the landfill where he observed the tipped drums (Lagree reply affidavit, ¶ 4).

6. After the drums were tipped at the landfill, they were segregated from the other waste and encased in tarps.[5]

7. The drums were subsequently moved into a lined roll-off container for temporary storage at another location at the landfill while sampling and testing were done (Whitton affidavit, ¶ 11). The drums were stored at the landfill until May 3, 2011 (Hourigan affidavit, ¶ 15) when a total of 24 drums were shipped by Eastern Environmental Solutions, Inc. to Chemical Pollution Control, LLC for final disposal[6] (Hourigan affidavit, Exh. 4). The testing of the contents of the drums was inconclusive and Mr. Hourigan advised the respondent to dispose of them as hazardous material (Hourigan affidavit, ¶ 16). The cost of moving, storage, sampling, testing and ultimate transport and disposal of the drums was over $75,000 and done at the respondent's expense (Whitton affidavit, ¶ 20).

8. According to Mr. Hourigan, the drums in question had originated at the Omni Babylon Recycling, Inc. transfer facility[7]

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[5] The parties dispute who moved the drums at the landfill. DEC Staff claims it was landfill personnel (Hourigan affidavit, ¶ 10) and the respondent claims it was its employees (Whitton affidavit, ¶ 9). The parties also dispute the condition of the drums at the landfill. DEC Staff claims some drums were intact, others were broken, crushed and open, and some had spilled their contents (Hourigan affidavit, ¶ 9 & ¶ 10). The respondent contends that some drums were intact, but were mostly crushed, none were leaking (Whitton affidavit, ¶ 7 & ¶ 9), and that no spilling was observed (Whitton sur-reply affidavit, ¶ 9).

[6] The parties do not agree on the amount of waste in the drums, DEC Staff claims each drum weighed 400 lbs. based on the shipping manifest (Hourigan affidavit, Exh. 4). Mr. Whitton who claims to have moved all of the drums personally states that they did not weigh 400 lbs. (Whitton reply affidavit, ¶ 20).

[7] There is no listing on the New York State Department of State's website for a corporation with this name. There is a listing for Omni Recycling of Babylon, Inc. In his inspection report, Mr. Hourigan states that the respondent and Omni

(Hourigan affidavit, ¶ 11). These drums had been brought to the transfer facility in a roll-off container owned and operated by Scott D Haulers/The Demolition Specialist (Whitton affidavit, ¶ 14). The drums had originated at Action Distributors, 55 Engineer's Lane, Farmingdale, New York (Whitton affidavit, ¶ 15). Photos of other drums at this location are also in the record (Whitton affidavit, Exh. A). According to a September 9, 2010 email from DEC Staff member Hourigan, Action Distributors had been in the cosmetics business, had recently gone out of business, and had placed the drums in the roll off container (Whitton affidavit, Exh. B).

DISCUSSION

In its motion for order without hearing, DEC Staff requests that the Commissioner issue an order finding the respondent liable for eight separate causes of action and imposing a payable civil penalty of $57,500. DEC Staff argues that there are no triable issues of material fact, and that it is entitled to judgment as a matter of law. The respondent asserts that there are substantive disputes of fact that require a hearing.

THE STANDARD

Motions for order without hearing pursuant to 6 NYCRR 622.12 are the equivalent of summary judgment, and are governed by the standards and principles applicable to CPLR 3212 (see 6 NYCRR 622.12[d]). A contested motion for order without hearing will be granted if, upon all the papers and proof filed, the cause of action is established sufficiently to warrant granting summary judgment under the CPLR (see id.). The motion must be denied if any party shows the existence of substantive disputes of fact sufficient to require a hearing (see 6 NYCRR 622.12[e]).

On the motion, Department staff bears the initial burden of establishing its entitlement to judgment as a matter of law on the violations charged (see Matter of Locaparra, Final Decision and Order of the Commissioner, June 16, 2003, at 4 [and cases cited therein]). Department staff carries its burden by producing evidence sufficient to demonstrate the absence of any material issue of fact with respect to each element of the causes of action that are the subject of the motion (see id.). Because hearsay is admissible in administrative hearings, staff

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Recycling are owned by the same corporation (Hourigan affidavit, Exh. 3, p. 3), however, there is no proof of this in the record.

may support its motion with hearsay evidence, provided that the evidence is sufficiently relevant, reliable, and probative (see Matter of Tractor Supply Co., Decision and Order of the Commissioner, Aug. 8, 2008, at 2-3).

Once Department staff has carried its initial burden of establishing a prima facie case justifying summary judgment, the burden shifts to respondent to produce evidence sufficient to raise a triable issue of fact warranting a hearing (see Matter of Locaparra, at 4). As with the proponent of summary judgment, a party opposing summary judgment may not merely rely on conclusory statements or denials, but must lay bare its proof (see id. [and cases cited therein]). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient (see Zuckerman v New York City Tr. Auth., 49 NY2d 557, 562-563 [1980]; Drug Guild Distribs. v 3-9 Drugs, Inc., 277 AD2d 197, 198 [2d Dept 2000], lv denied 96 NY2d 710 [2001] [conclusory denial of transactions by company president insufficient to counter facts established by plaintiff's documentary evidence]).

The existence of a triable issue of fact regarding the amount of civil penalties to be imposed does not bar granting a motion for order without hearing (6 NYCRR 622.12[f]). If the amount of penalty is the only triable issue of fact presented, the ALJ must immediately convene a hearing to assess the amount of penalties to be recommended to the Commissioner (id.).

LIABILITY

In its first and second causes of action, DEC Staff alleges that the respondent violated ECL 27-0707 and 6 NYCRR 360-1.5(a)(2) and 364.2(a)(3) by causing or allowing the unauthorized release of twenty-four individual drums of solid waste into the environment at an unauthorized disposal facility from two trucks. DEC Staff counsel argues that the dumping of the drums at the landfill constitutes a violation, regardless of whether or not the drums leaked their contents (Rail Affirmation, ¶4 - ¶6). DEC Staff counsel continues that the fact that the respondent subsequently retrieved the drums may be considered as mitigation, but does not alter the fact the violation occurred (Rail Affirmation, ¶7).

In his reply affirmation, respondent's counsel argues that DEC Staff's motion papers failed to show that the material delivered by the respondent's trucks was anything but non-hazardous material, as part of the C&D debris or other material

that the landfill was permitted to accept (White reply affirmation, ¶ 21). He further argues that DEC Staff has failed to show there was a release of any waste (as that term is defined in ECL 71-2702[13]) and that no evidence, either photographic or in the form of testing, has been provided (reply affirmation, ¶22 - ¶26). He continues that DEC Staff has not shown that any of the material delivered by the respondent was hazardous, regulated or an industrial commercial waste (reply affirmation, ¶ 27).

With respect to liability on these first two causes of action, DEC Staff has met its burden of demonstrating it is entitled to summary judgment as a matter of law. Solid waste is defined at ECL 27-0701(1) and includes the drums in question. The drums are specifically excluded from the definition of construction and demolition debris at 6 NYCRR 360-1.2(b)(38) because they are greater than ten gallons in size. The drums are industrial-commercial waste, as that term is used in 6 NYCRR 364.1(d)(3), because they were generated by an industrial or commercial activity.[8] Further, the drums are also regulated waste, as that term is used in 6 NYCRR 364.1(d)(2). Disposal of industrial/commercial waste, as that term is used in 6 NYCRR 360-2.17(l), is prohibited at a landfill, except pursuant to specific authorization from DEC Staff. Industrial/commercial waste cannot be legally disposed of at the Town of Brookhaven landfill (Hourigan affidavit, ¶ 12 & Exh. 1, p. 2). Section 360-1.5(a)(2) of 6 NYCRR provides that no person shall dispose of solid waste except at a disposal facility authorized to accept such waste. DEC Staff has included in its papers, photos of the solid waste tipped at the Brookhaven landfill by the two trucks in question and both loads contained drums greater than ten gallons in size (Hourigan affidavit, Exh. 2, photos 3 & 4). Based on the above, DEC Staff has proven that the respondent is liable for the first and second causes of action by causing its two trucks to dispose of unauthorized solid waste at the Brookhaven landfill.

The remaining six causes of action all relate to alleged violations of DEC's waste transporter regulations. In its third and fourth causes of action, DEC Staff alleges that the respondent violated 6 NYCRR 364.2(a)(3) by causing or allowing the unauthorized delivery and disposal of twenty four individual drums of regulated waste from two trucks without having a

[8] In addition, one of the drums (#10) tested positive for methyl ethyl ketone and was characterized as hazardous waste (Hourigan reply affidavit, ¶ 11 & Exh. 3).

required Part 364 DEC Waste Transporter Permit. In its fifth and sixth causes of action, DEC Staff alleges that the respondent violated 6 NYCRR 364.2(a)(1) by causing or allowing the unauthorized collection or removal of a regulated waste in two trucks without having a required Part 364 DEC Waste Transporter Permit. In its seventh and eighth causes of action, DEC Staff alleges that the respondent violated 6 NYCRR 364.2(a)(2) by causing or allowing the unauthorized transportation of regulated waste in two trucks without having a required Part 364 DEC Waste Transporter Permit.

In his reply affirmation, respondent's counsel denies the six causes of action and argues that DEC Staff's motion papers failed to show that the material delivered to the landfill was regulated waste (reply affirmation, ¶ 31, ¶ 36 & ¶ 42, respectively). As discussed above, respondent's counsel's assertion is incorrect. The drums in question are regulated waste, as that term is used in 6 NYCRR 364.1(d)(2). The respondent does not contest DEC Staff's assertion that the two trucks collected, transported and dumped the loads of solid waste containing the drums at the Brookhaven landfill.

DEC regulations require that any person who collects, transports or delivers regulated waste possess a valid permit to do so that has been issued pursuant to Part 364 (6 NYCRR 364.2). In this case, the respondent did at one time possess such a permit, but it expired on January 31, 2000 (Hourigan affidavit, Exh. 6). The respondent has not been issued a Part 364 permit since (Hourigan affidavit, ¶ 21). The respondent does not assert that it possesses such a valid permit.

With respect to the third and fourth causes of action, DEC Staff has shown that the two trucks operated by the respondent delivered regulated waste, in the form of drums which were generated as a result of industrial or commercial activity, to the Town of Brookhaven Landfill in violation of 6 NYCRR 364.2(a)(3). Thus, DEC Staff has shown the respondent is liable for these causes of action.

With respect to the fifth and sixth causes of action, DEC Staff has shown that the two trucks operated by the respondent collected and removed regulated waste, in the form of drums generated as a result of industrial or commercial activity, from the Omni Recycling of Babylon, Inc. transfer station in violation of 6 NYCRR 364.2(a)(1). Thus, DEC Staff has shown the respondent is liable for these causes of action.

With respect to the seventh and eighth causes of action, DEC Staff has shown that the two trucks operated by the respondent transported regulated waste, in the form of drums generated as a result of industrial or commercial activity, in violation of 6 NYCRR 364.2(a)(2). Thus, DEC Staff has shown the respondent is liable for these causes of action.

CIVIL PENALTY AND REMEDIATION

In its papers, DEC Staff seeks a payable civil penalty of $57,500. DEC Staff calculates that the maximum penalty that could be assessed for these eight violations is $67,500. This amount is the sum of the following: (1) for the first and second causes of action, DEC Staff argues that because the unauthorized release of twenty-four individual drums in violation of 6 NYCRR 360-1.5(a)(2) was a release to the environment, the maximum penalty for each violation is $11,250 (ECL 71-2703[1][b][i]); and (2) for the remaining six causes of action, DEC Staff argues that the maximum penalty is $7,500 for each violation (ECL 71-2703[1][a).

DEC Staff cites the Department's Civil Penalty Policy (DEE-1, issued June 20, 1990)[9] and argues that there are both mitigating and aggravating factors in this case relevant to the civil penalty calculation. As mitigation, DEC Staff notes that the respondent cooperated with DEC Staff at the time of the incident and hired Eastern Environmental Solutions, Inc. to test and properly dispose of the drums. As aggravating factors, DEC Staff notes that the respondent had full control over all the events that occurred from the point of the waste being received by the respondent at the transfer station to its dumping at the landfill and the violations were the result of the respondent failing to have adequate controls in effect to prevent such violations. DEC Staff also notes that the violations involved substantial potential risk had the trucks been involved in an accident on the way to the landfill, and that emergency personnel responding to such an event could have been put in danger. DEC Staff also cites the exposure of landfill employees to the billowing dust that resulted when the first truck tipped its load. DEC Staff also argues that the respondent's failure to resolve this enforcement action through a "binding resolution", or executing an order on consent, should be considered an aggravating factor. DEC Staff concludes that in recognition of the costs incurred in the testing and disposal of

[9] DEC Staff makes no reference in its papers to DEC's Solid Waste Enforcement Policy (OGC 8, issued November 17, 2010).

the drums, that a payable civil penalty of $57,500 is warranted in this case.

In his reply affirmation, respondent's counsel argues that DEC Staff has not justified its civil penalty request. He argues that the respondent has been cooperative with DEC Staff since the events of September 7, 2010, and that it has made every responsible effort to cooperate and resolve this matter through an order on consent, but that DEC Staff is making an unreasonable penalty demand and ignoring other responsible parties involved in this matter. He further argues that the respondent has borne the entire cost of testing and properly disposing of the drums. He concludes that DEC Staff has not proven any release to the environment, based on the papers in the record.

There are substantial questions of fact regarding the civil penalty amount requested by DEC Staff. Among these questions is whether the drums were leaking or leaked when tipped at the landfill. DEC Staff claims some drums were intact, others were broken, crushed and open, and some had spilled their contents (Hourigan affidavit, ¶ 9 & ¶ 10). The respondent contends that some drums were intact, but were mostly crushed, none were leaking (Whitton affidavit, ¶ 7 & ¶ 9), and that no spilling was observed (Whitton sur-reply affidavit, ¶ 9). Thus, a question of fact exists as to whether leaks or spills to the environment occurred as a result of the violations. The existence of leaks or spills, if proven, could justify a higher civil penalty amount, as authorized by ECL 71-2703.

In addition, the number and quantity of the contents of the drums is in dispute. DEC Staff, relying on the manifest by Eastern Environmental Solutions, Inc. (Hourigan affidavit, Exh. 4), claims that each of the drums weighed 400 lbs., while Mr. Whitton states in his sur-reply affidavit that he, personally, moved each of the drums at the landfill and that they did not weigh 400 lbs. (¶ 20).

The culpability of the respondent is also in question. DEC Staff asserts that the respondent had control over all the events that occurred from the point of the waste being received by the respondent at the transfer station to its dumping at the landfill. However, the transfer station is owned and controlled by a second corporation, Omni Babylon Recycling, Inc., which, according to DEC Staff, is under the same ownership as the respondent. However, no proof of this assertion is offered, nor is it clear that imposing a large penalty on the respondent is

appropriate for actions by the employees of another corporation. The respondent claims that the drivers of the trucks are not in charge of loading trailers at the transfer station and are required, for safety reasons, not to leave the cabs of their trucks during loading (Whitton reply affidavit, ¶ 11).

In addition, DEC Staff's claim that billowing dust occurred when the first truck tipped also leaves questions unanswered. The dust cloud was not witnessed by DEC Staff personnel but was reported by others (Hourigan reply affidavit, ¶ 9). As the respondent notes, this is hearsay (White sur-reply affirmation, ¶ 11 b) and the cloud could have emanated from another source (Whitton sur-reply affidavit, ¶ 18 b).

These factors are all relevant to the culpability of the respondent for the violations, and thus the appropriate civil penalty amount. Therefore, the respondent has demonstrated that material questions of fact requiring an administrative hearing on the appropriate amount of civil penalty pursuant to 6 NYCRR 622.12(f).

RESPONDENT'S CLAIM OF SELECTIVE ENFORCEMENT

In addition to the arguments raised above, the respondent's counsel argues in his affirmation that DEC Staff is selectively enforcing against the respondent by not bringing enforcement actions against the generator of the waste, Action Distributors, and the company that hauled the waste to the transfer station, Scott D. Haulers/The Demolition Specialist. Counsel continues to argue in his reply affirmation that DEC Staff abused its prosecutorial discretion and states that even though the respondent helped to identify the generator and first hauler of the drums, DEC Staff has failed to take action against them.

DEC Staff responds that it is properly exercising its prosecutorial discretion. It claims that because DEC Staff did not witness the activities at the transfer station or the actions of the hauler who brought the waste to the transfer station, it determined that it could make the most effective case concerning this incident against the respondent. DEC Staff also notes that the generator of the waste is no longer in business.

Departmental precedent has consistently held that the defense of selective enforcement is not a defense to the underlying prosecution (see, e.g., Matter of McCulley, Chief ALJ Ruling on Motion for Order Without Hearing, Sept. 7, 2007, at 8

[citing Matter of 303 West 42nd St. Corp. v Klein, 46 NY2d 686, 693 & n 5 (1979)]; Matter of Berger, ALJ Ruling, Feb. 17, 2009, at 9). Therefore, the respondent's counsel's argument regarding selective enforcement is rejected.

CONCLUSIONS OF LAW

1. On September 7, 2010, two trucks operated by the respondent, Trinity Transportation Corporation, tipped loads of solid waste, that included regulated waste in the form of containers in excess of ten gallons in size, at the Brookhaven Landfill, which was not authorized to accept such waste, in violation of 6 NYCRR 360-1.5(a). Each truckload of regulated waste constitutes a separate and distinct violation.

2. On September 7, 2010, two trucks operated by the respondent, Trinity Transportation Corporation, delivered loads of solid waste, that included regulated waste in the form of containers in excess of ten gallons in size, to the Brookhaven Landfill without possessing the necessary permit in violation of 6 NYCRR 364.2(a)(3). Each truckload of regulated waste constitutes a separate and distinct violation.

3. On September 7, 2010, two trucks operated by the respondent, Trinity Transportation Corporation, collected and removed loads of solid waste, that included regulated waste in the form of containers in excess of ten gallons in size, from the Omni Babylon Recycling, Inc. transfer facility without possessing the necessary permit in violation of 6 NYCRR 364.2(a)(1). Each truckload of regulated waste constitutes a separate and distinct violation.

4. On September 7, 2010, two trucks operated by the respondent, Trinity Transportation Corporation, transported loads of solid waste, that included regulated waste in the form of containers in excess of ten gallons in size, without possessing the necessary permit in violation of 6 NYCRR 364.2(a)(2). Each truckload of regulated waste constitutes a separate and distinct violation.

RULING

Because no material questions of fact exist regarding the respondent's liability for the eight causes of action alleged in DEC Staff's motion for order without hearing, DEC staff's motion for order without hearing is granted in part on the issue of the respondent's liability. However, the respondent has raised

triable issues regarding the appropriate amount of civil penalty to be imposed. Thus, DEC staff's motion should otherwise be denied and a hearing on the issue of penalty must be convened. The parties will be contacted shortly to schedule the hearing on civil penalty amount.

_____/s/_____
P. Nicholas Garlick
Administrative Law Judge

Albany, New York
February 12, 2013

EXHIBIT LIST

Attached to the affidavit of DEC Staff member Peter Hourigan:

Exhibit 1 – a copy of a solid waste management facility permit issued to the Town of Brookhaven on July 29, 2010;
Exhibit 2 – a series of seven color photographs;
Exhibit 3 -- a copy of a September 7, 2010 landfill inspection report;
Exhibit 4 – a copy of a manifest dated May 3, 2011;
Exhibit 5 – a copy of an email dated May 25, 2011; and
Exhibit 6 – a copy of a waste transporter permit issued to the respondent effective February 25, 1999.

Attached to the affidavit by John Whitton:

Exhibit A – a series of eight color photographs; and
Exhibit B – a copy of an email dated September 17, 2010.

Attached to the reply affidavit by DEC Staff member Hourigan:

Exhibit 1 – a copy of an email dated January 1, 2011;
Exhibit 2 – a copy of a USEPA TCLP; and
Exhibit 3 – a copy of laboratory results dated September 30, 2010.

Attached to the sur-reply affirmation of Michael E. White:

Exhibit A – a copy of a letter dated April 3, 2012.