

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

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

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**ORDER**  
DEC Case No.  
R1-20190122-17

**TWIN COUNTY RESOURCE RECOVERY INC.**

Respondent.

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This administrative enforcement proceeding addresses allegations by staff of the New York State Department of Environmental Conservation (Department or DEC) that respondent Twin County Resource Recovery Inc. violated provisions of articles 27 and 71 of the Environmental Conservation Law (ECL) and part 360 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR). Respondent is owner of property located at 449 West John Street, Hicksville, Town of Oyster Bay, New York (site). At the site is a State-registered solid waste management facility where the violations allegedly occurred (facility).

Department staff commenced this proceeding against respondent by motion for order without hearing in lieu of complaint dated May 28, 2021 (motion).<sup>1</sup> Department staff requested that respondent:

- be held responsible for any activity at a site that it owns;
- be held in violation of ECL articles 27 and 71 and 6 NYCRR part 360;
- be assessed a civil penalty of “no less than”<sup>2</sup> eighty-seven thousand dollars (\$87,000);
- be ordered, together with any tenants of the property, to cease and desist from any and all future violations of the ECL, and the rules and regulations promulgated thereto; and
- be ordered to undertake such other and further relief as may be just and proper (*see* motion at 1-2).

Appendix A to the motion sets forth a schedule of compliance organized under the headings: (i) cease accepting solid waste; (ii) submittal and implementation of a material reduction plan; and (iii) submittals.

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<sup>1</sup> The notice of motion and motion for order without hearing in lieu of complaint were combined into one document.

<sup>2</sup> The potential complications of using the phrasing “no less than” with respect to a proposed penalty in a complaint has been previously addressed in *Matter of Merrick Trucking Corp.*, Order of the Commissioner, January 31, 2022, at 2. The same considerations would also apply to motions for order without hearing.

The matter was assigned to Administrative Law Judge (ALJ) Daniel P. O'Connell of the DEC's Office of Hearings and Mediation Services. Respondent Twin County Resource Recovery Inc. did not respond to Department staff's motion and is in default. ALJ O'Connell prepared the attached summary report and ruling on the motion (summary report). I adopt the summary report and ruling as my decision in this matter, subject to my comments below.

## **Background**

On April 16, 2003, Department staff issued solid waste management facility (SWMF) registration No. 30W17R to Twin County Resource Recovery Inc. for the site (*see* Affidavit of DEC environmental engineer Jignesh Shah sworn to May 20, 2021 [Shah Affidavit] ¶ 7 [issuance of registration dated April 16, 2003] and Exhibit 2 [DEC issuing letter dated April 16, 2003]). The registration authorized respondent to annually process recognizable, uncontaminated concrete, asphalt pavement, brick, soil or rock at the SWMF from March to December (*see* Summary Report at 2 [Findings of Fact No. 4]). The registration limited the design capacity of the SWMF to 700,000 cubic yards, and the onsite storage capacity to 680,000 cubic yards (*see id.*).

Department staff visited the site on April 27, 2017, July 9, 2018, August 2, 2018, and October 25, 2018 in which staff identified a number of violations (*see* Summary Report at 2-4 [Findings of Fact Nos. 5, 6, 9, 10, 12, 13, and 14]; *see also* Shah Affidavit, ¶¶ 12-14, 20-22, 24-26). These inspections resulted in the issuance of two notices of violation dated August 8, 2018 and December 16, 2020, respectively (*see* Summary Report at 4 [Findings of Fact Nos. 11 and 16]; Shah Affidavit, ¶¶ 23 and 29, together with Exhibits 7 and 11). Attempts to settle the violations proved unsuccessful.

## **Liability**

Department staff's memorandum of law in support of the motion for order without hearing identified the following alleged regulatory violations at the facility:

- 6 NYCRR 360-16.1 (for accepting unauthorized waste at the facility);
- 6 NYCRR 360-16.4(f)(1) (for the presence of unauthorized waste at the facility and failure to remove such waste within twenty-four hours);
- 6 NYCRR 360-1.5(a) (for unauthorized disposal at the facility);
- 6 NYCRR 360-16.4(f)(1) and (3) (for inadequate storage space for incoming waste and failure to maintain separation between piles and property boundaries);
- 6 NYCRR 360-1.14(k) (for failure to control dust generated at the facility); and
- 6 NYCRR 360-1.14(d) (for failure to control access where grade adjustment and storage activities spilled onto an adjacent unregistered site).

*See* Department Staff Memorandum of Law dated May 7, 2021 (Staff Memorandum), at 5-6. In a detailed analysis of these violations, the ALJ concluded that the facility violated these regulatory provisions (*see* Summary Report, at 7-10).

Staff contends that respondent's violations have been continuing. The specific regulatory sections that staff cites however were only effective until November 4, 2017 when new regulations that were part of a comprehensive Part 360 rulemaking became effective. These new regulations are not referenced. Even though staff appears to rely on the prior regulations based on the continuing nature of these violations, it would have been appropriate for staff to have cited the new regulations in its papers. In the future, where violations occur under prior regulations but continue under subsequently adopted regulations, both the old and new regulations should be referenced and the liability under both sets of regulations should be established as appropriate.

In the matter before me, the language of the old regulations has been carried over into the new regulations, albeit under different regulatory numbering. In reviewing the background documents for the Part 360 rulemaking that became effective on November 4, 2017, the Summary of Revised Regulatory Impact Statement (Impact Statement) states that "[t]he overarching purpose of this rulemaking [revising the prior Part 360 regulations] is to reorganize and subdivide the solid waste management facility regulations into groups that are similar in nature" (*see* DEC website at [https://www.dec.ny.gov/docs/materials\\_minerals\\_pdf/part360summaryris.pdf](https://www.dec.ny.gov/docs/materials_minerals_pdf/part360summaryris.pdf) at 1).

This intent, as reflected in the Impact Statement, applies here. For example, with respect to dust control, current 6 NYCRR 360.19(g) provides that "[t]he owner or operator of a facility must ensure that dust is effectively controlled so that it does not constitute a nuisance as determined by the department; and must undertake any and all measures as required by the department to maintain and control dust at and emanating from the facility." This tracks the language of former 6 NYCRR 360-1.14(k) which staff cites. Similarly, with respect to storage control, current 6 NYCRR 360.19(d)(4) provides that "[a]ll equipment, storage containers, and storage areas [must be] sufficient for the quantity and type of waste managed at the facility. Adequate numbers, types, and sizes of properly maintained equipment are available during all hours of operation" which relates to 6 NYCRR 360-16.4(f)(1) which staff cites. The other cited violations under the regulations effective through November 3, 2017 have counterparts in the regulations that became effective on November 4, 2017 (*compare e.g.* former 6 NYCRR 360-16.1 [unauthorized waste] *with* current 6 NYCRR 360.9 [a] and [b][1]; former 6 NYCRR 360-16.4[f][1] [presence of unauthorized waste] *with* current 6 NYCRR 360-19[c][4]; former 6 NYCRR 360-1.5(a) [unauthorized disposal] *with* current 6 NYCRR 360.9[a] and [b]; and former 6 NYCRR 360-1.14[d] *with* current 6 NYCRR 360-1.9[a], 360-1.9[b], and 360-19[d]).

Even though the current regulations would also support the identified violations, as these are not referenced by staff for purposes of liability in the motion, I am only holding respondent liable for the violations of the former Part 360 regulations that staff has identified, together with the violations of respondent under the April 16, 2003 registration (*see* Summary Report at 13 [Recommendation 1]). With respect to the violations that staff cites, three of these (relating to accepting unauthorized waste, the presence of unauthorized waste, and unauthorized disposal) constitute violations of respondent's April 16, 2003 registration (*see* Shah Affidavit, Exhibit 2 [Registration Form (item 6 "Solid Waste Handled")]; Summary Report at 7, 8).

With respect to ECL article 27, staff references ECL 27-0707 (Permits for new solid waste management facilities) but does not specify which subsection is at issue (*see* Staff Memorandum, at 4). Department staff cites a violation of ECL article 71, although the only section in article 71 identified is ECL 71-2703(1)(a) which sets forth the applicable civil penalty. This penalty provision itself would not serve as a basis of a violation in this matter.

### **Civil Penalty**

Staff has requested a total civil penalty of eighty-seven thousand dollars (\$87,000). ECL 71-2703(1)(a) provides, in relevant part:

“any person who violates any of the provisions of, or who fails to perform any duty imposed by title 3 or 7 of article 27 . . . or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto . . . shall be liable for a civil penalty not to exceed seven thousand five hundred dollars [\$7,500] for each such violation and an additional penalty of not more than one thousand five hundred dollars [\$1,500] for each day which such violation continues.

Department staff, in its papers, sets forth a civil penalty calculation for the penalties that it seeks for each of the alleged violations (*see* Shah Affidavit, Exhibit 9 [Penalty Calculation]). Even though staff only cites the pre-November 4, 2017 regulations, the number and duration of the violations that staff has cited, together with respondent’s violations under the April 16, 2003 registration, fully support a civil penalty in the amount requested by staff. Based on the record before me, the penalty that staff requests, and the ALJ recommends, is authorized and appropriate.

I note that the Commissioner has previously set forth the process by which staff, in enforcement matters, should calculate its civil penalty recommendation. The penalty calculation, in addition to considering the statutory authorization, should also be derived, using, in part, applicable Department guidance (*see Matter of Waste Away Carting NY, Inc* [Waste Away], Interim Decision and Order of the Commissioner, February 12, 2020, at 4). Staff should follow the process set forth in *Waste Away* in developing its penalty recommendations and provide a description of that process in its papers.

### **Remedial Relief**

Department staff attached, as Appendix A to the motion, a Schedule of Compliance<sup>3</sup> that incorporated various remedial measures to address the cited violations, grouped under three headings. Under the heading “Cease Accepting Solid Waste,” respondent Twin County Resource Recovery Inc., effective immediately, is to cease accepting new waste at the site during the implementation of a Material Reduction Plan. Under the second heading, “Submittal and Implementation of Material Reduction Plan,” a series of milestone dates are set forth for respondent’s preparation and implementation of the Material Reduction Plan. The Material

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<sup>3</sup> The Schedule of Compliance references two respondents – Twin County Recycling Corp. and Twin County Resource Recovery Inc. Twin County Resource Recovery Inc. is the only respondent that is the subject of this proceeding.

Reduction Plan that respondent is to submit to Department staff is to be prepared by a professional engineer who is licensed in the State of New York and is to be in approvable form.<sup>4</sup> A third heading (“Submittals”) lists the addresses for respondent’s submittals.

The ALJ recommends that the terms and conditions of the requested relief be incorporated into my order to ensure that the facility is remediated in a timely and complete manner (*see* Summary Report at 11), and I agree. The remedial relief requested, including but not limited to a cessation of the acceptance of waste for a specified period of time and the various components of the Material Reduction Plan, is authorized and appropriate. I am however modifying the initial date of submission of the Material Reduction Plan from fifteen (15) to thirty (30) days to ensure the full preparation of an approvable Material Reduction Plan, as well as a minor modification to the date by which the waste is to be removed.

Respondent may, upon good cause shown, request an extension of the remediation plan submission date or the milestone dates contained in the Material Reduction Plan. Any such request must be in writing, setting forth the reasons for the request, and submitted to the assistant DEC regional attorney. The granting of any such extension shall be solely within the discretion of Department staff.

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

- I. Based on the record of this proceeding, respondent Twin County Resource Recovery Inc. violated:
  - A. the terms and conditions of its Solid Waste Management Facility Registration (30W17R) issued April 16, 2003; and
  - B. for the period April 27, 2017 through November 3, 2017, former 6 NYCRR 360-1.5(a), 360-1.14(d), 360-1.14(k), 360-16.1, 360-16.4(f)(1), and 360-16.4(f)(3).
- II. Respondent Twin County Resource Recovery Inc. is hereby assessed a civil penalty in the amount of eighty-seven thousand dollars (\$87,000). Respondent shall pay the civil penalty by check, cashier’s check or money order made payable to the New York State Department of Environmental Conservation within sixty (60) days of the service of this order upon it. Such payment shall be submitted to:

Susan H. Schindler, Esq.  
Assistant Regional Attorney  
New York State Department of Environmental Conservation  
SUNY Stony Brook  
50 Circle Road  
Stony Brook, New York 11790

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<sup>4</sup> “Approvable,” for purposes of the Material Reduction Plan, shall mean approvable by the Department with only minimal revision.

- III. Immediately upon service of this order on respondent Twin County Resource Recovery Inc., respondent must cease acceptance of new waste at the site (449 West John Street, Hicksville, Town of Oyster Bay, New York). This prohibition on the acceptance of new waste shall continue during the implementation of the Material Reduction Plan set forth in paragraph IV of this order.
- IV. Within thirty (30) days of the date of the service of this order upon respondent, respondent Twin County Resource Recovery Inc. must submit to Department staff an approvable Material Reduction Plan, prepared by a professional engineer licensed in the State of New York. The Material Reduction Plan must identify the location of the solid waste material at the site and provide an estimate of the volume of the solid waste material by waste/material type, together with an implementation schedule. Upon Department approval of the Material Reduction Plan, respondent must immediately commence removal of waste at a rate of no less than two thousand (2,000) cubic yards per week.

Respondent Twin County Resource Recovery Inc. shall provide to the Department a list of authorized solid waste management facilities to which respondent shall be sending the onsite waste. Respondent shall provide to the Department a summary of all loads removed from the site, for each calendar week that waste is removed (Sunday through Saturday). The summary is to include the following information for each destination receiving the waste – quantity, type of material, name of destination, and address of destination. Department staff, at its discretion, may add other categories of information to be provided with respect to the removal of waste.

During the period in which waste is being disposed, respondent, on the first business day of each month, must submit to the Department disposal tickets and tracking documents for all solid waste material disposed during the previous calendar month.

Within one year from the service of this order upon respondent, respondent shall have all waste material removed from the site and sent to facilities properly authorized to accept the waste, and be in full compliance with its solid waste management facility registration and the applicable statutory and regulatory requirements, including but not limited to Environmental Conservation Law article 27 and 6 NYCRR part 360.

- V. Respondent Twin County Resource Recovery Inc. shall submit the Material Reduction Plan to Susan H. Schindler, Esq., at the address set forth in paragraph II of this order and, in addition, a copy is to be sent to:

Division of Materials Management  
Region 1  
New York State Department of Environmental Conservation  
SUNY at Stony Brook  
50 Circle Road  
Stony Brook, New York 11790-3409  
Attn: Regional Materials Management Engineer.

- VI. Respondent Twin County Resource Recovery Inc. may request, upon good cause shown, an extension of the date by which the Material Reduction Plan is to be submitted to the Department, or the milestone dates contained in the Material Reduction Plan. Respondent must make any such request in writing, setting forth the reasons for the request and submit the request to Susan H. Schindler, Esq., at the address set forth in paragraph II of this order. The granting of any extension shall be solely within the discretion of Department staff.
- VII. Any questions or other correspondence regarding this order shall be addressed to Susan H. Schindler, Esq., at the address referenced in paragraph II of this order.
- VIII. The provisions, terms and conditions of this order shall bind respondent Twin County Resource Recovery Inc. and its agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

/s/

By:

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Louis A. Alexander  
Deputy Commissioner for Hearings  
and Mediation Services<sup>5</sup>

Dated: September 28, 2022  
Albany, New York

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<sup>5</sup> By memorandum dated September 19, 2022, a copy of which is enclosed with this order, Commissioner Basil Seggos delegated the decision-making authority in this matter to Deputy Commissioner Louis A. Alexander.

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of the New York State Environmental Conservation Law Article 27, and Part 360 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York by:

Summary Report and Ruling on Department Staff's May 28, 2021 Motion for Order without Hearing

Twin County Resource Recovery Inc.  
(Respondent)

DEC Case No. R1-20190122-17

August 6, 2021

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### **Proceedings**

This ruling addresses an uncontested motion for order without hearing dated May 28, 2021 (May 2021 motion) served, in lieu of a complaint, by staff of the New York State Department of Environmental Conservation (Department staff). The motion alleges that respondent Twin County Resource Recovery Inc. violated provisions of Environmental Conservation Law of the State of New York (ECL) article 27, as well as provisions of title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (6 NYCRR) part 360 by failing to respond to notices of violation, and to remove unauthorized solid waste from a registered facility located at 449 West John Street, Hicksville, New York 11801, in the Town of Oyster Bay, Nassau County (Tax Map Section 0011/Block 00325-22/Lot 462). The motion requests an order from the Commissioner that holds respondent liable for the violations alleged in the motion, requires remediation of the site, and assesses a total civil penalty of not less than \$87,000.

Department staff's motion papers consist of a notice of motion for order without hearing with attached schedule of compliance, dated May 28, 2021; an attorney affirmation by Susan H. Schindler, Esq., Assistant Regional Attorney, dated May 7, 2021 (Schindler Aff.); a memorandum of law in support of the motion dated May 7, 2021; an affidavit from Jignesh Shah, sworn to May 20, 2021 (Shah Aff.); and eleven exhibits.

Department staff's motion papers also include an affidavit of service by Drew A. Wellette, sworn to July 2, 2021. The affidavit demonstrates that on July 2, 2021, Department staff served process on Twin County Resource Recovery Inc. by delivering two copies of the motion papers and a service of process cover sheet to the New York State Department of State, Division of Corporations.

A list of Department staff's papers is attached to this summary report as Appendix A.

Upon service of a motion for order without hearing, 6 NYCRR 622.12(c) requires a response within 20 days after receiving the motion. The July 2, 2021 affidavit of service shows that respondent received the May 2021 motion and supporting papers on July 2, 2021.

Therefore, respondent's answer was due by July 22, 2021. As of the date of this summary report and ruling, the Office of Hearings and Mediation Services has not received any response to Department staff's May 2021 motion.

### Findings of Fact

The following facts are determinable as a matter of law on Department staff's motion for order without hearing, which is the Department's equivalent of a summary judgment motion pursuant to CPLR 3212.

1. Twin County Resource Recovery Inc. is a domestic business corporation with offices located at 445 West John Street, Hicksville (Town of Oyster Bay, Nassau County), New York 11801. In addition, Twin County Resource Recovery Inc. owns property located at 449 West John Street, Hicksville, New York 11801 which, according to Nassau County land records, is identified as Section 0011/Block 00325-22/Lot 462. (See Schindler Aff. ¶¶ 7, and 9; Shah Aff. ¶ 6; Exhibit 1.)
2. On July 2, 2021, Department staff served process on Twin County Resource Recovery Inc. by delivering two copies of the May 2021 motion papers and a service of process cover sheet to the New York State Department of State, Division of Corporations.
3. On April 14, 2003, Department staff issued solid waste management facility (SWMF) registration No. 30W17R to Twin County Resource Recovery Inc. as the site owner. The registered SWMF is located at 449 West John Street, Hicksville, New York 11801 (site).<sup>1</sup> (See Schindler Aff. ¶ 13; Shah Aff. ¶¶ 7 and 9, Exhibit 2.)
4. The April 14, 2003, registration authorized respondent to annually process recognizable, uncontaminated concrete, asphalt pavement, brick, soil, or rock at the SWMF from March to December. Furthermore, the registration limits the design capacity to 700,000 cubic yards (cy), and limits the onsite storage capacity to 680,000 cy. (See Schindler Aff. ¶ 14; Shah Aff. ¶ 11; Exhibit 2.)
5. Department staff visited the site four times between April 27, 2017, and October 25, 2018 (see Shah Aff. ¶¶ 12-16, 20-22, and 24-26). The purpose of the site visits was to determine compliance with the terms of the registration, as well as the applicable regulatory requirements. (See Schindler Aff. ¶ 16; Exhibit 4.)
6. During the April 27, 2017, site visit, Jignesh Shah observed the following. First, respondent had accumulated processed and unprocessed solid waste at the SWMF in large piles for more than eighteen months. The height of the storage piles were 40 to 50 feet without any separation distance between the piles of solid waste materials. Second,

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<sup>1</sup> By letter dated January 25, 2019, Department staff advised respondent that staff will exercise discretion with respect to the Department's enforcement authority over provisions of 6 NYCRR part 360, part 361, part 364, and part 365 of the new part 360 regulation series, which became effective on November 4, 2017 (see Schindler Aff. 15; Exhibit 3).

respondent had used solid waste materials to fill the adjacent property located at 369 West John Street and, thereby, altered the grade of the property. Finally, respondent did not maintain adequate storage space between the piles for incoming construction and demolition (C&D) debris. With the April 27, 2017, inspection report, staff documented these observations with a set of photographs. (*See* Shah Aff. ¶¶ 12-14; Exhibits 4 and 10.)

7. Mr. Shah met with Frank Lizza and William McEvoy during the April 27, 2017, site inspection. According to the SWMF registration, William McEvoy is the Material Engineer. Mr. Shah advised Messrs. Lizza and McEvoy to reduce the volume of solid waste materials at the site in order to comply with the terms of the registration, and the requirements outlined in 6 NYCRR part 360. (*See* Shah Aff. ¶¶ 15, and 16.)
8. On July 19, 2017, Mr. McEvoy represented respondent during a compliance conference held at the Department's Region 1 office. Mr. McEvoy agreed to submit a material reduction plan (MRP). Subsequently, on November 28, 2017, Eugene Kempey, P.E., of Kempey Engineering (East Northport, New York) filed a MRP for the SWMF (*see* Exhibit 5). However, Department staff determined that the MRP was not acceptable. On January 29, 2018, staff directed Mr. Kempey, on behalf of respondent, not to accept any more solid waste at the SWMF, and to remove all illegally stored materials from the site (*see* Exhibit 6). (*See* Shah Aff. ¶¶ 17, 18, and 19.)
9. Approximately one year after meeting with Mr. McEvoy, Mr. Shah returned to the SWMF on July 9, 2018, to investigate nuisance complaints from neighbors. Staff observed that operations had extended from the SWMF onto an adjacent property. In July 2018, respondent did not have any authorization from the Department to use materials brought to the site as fill on adjacent properties. In addition, Department staff noted in the inspection report for this date, that respondent brought solid waste materials to the site other than those authorized by the registration, such as wood, plastics, pieces of rubber hose, wire, metal scraps, and tires. Staff observed a 40-cubic yard (cy) container filled with a mattress, segments of treated utility poles, plywood, tires, and cardboard. Staff saw that the height of the solid waste piles exceeded 20 feet, with no separation distance between them. Staff documented these observations with a series of photographs. (*See* Shah Aff. ¶¶ 20, and 21; Exhibits 2, and 4.)
10. On August 2, 2018, staff inspected the site, and observed that respondent had continued to accept additional solid waste materials at the SWMF. In addition, respondent continued to fill the adjacent property with solid waste materials to adjust its grade. In the inspection report for this date, Department staff noted that respondent brought solid waste materials to the site other than those authorized by the registration, such as wood, plastics, pieces of rubber hose, wire, metal scraps, and tires. Staff observed a 40-cy container filled with a mattress, segments of treated utility poles, plywood, tires, and cardboard. Staff saw that the height of the solid waste piles exceeded 20 feet, with no separation distance between them. With the August 2, 2018, inspection report, staff documented these observations with a set of photographs. (*See* Shah Aff. ¶ 22; Exhibit 4.)

11. Subsequently, on August 8, 2018, Department staff issued a notice of violation (NOV), which alleged several violations based on the observations made during staff's site visits on April 27, 2017, as well as July 9, and August 2, 2018. The August 8, 2018, NOV directed respondent to stop accepting any new material at the SWMF, as well as either to process authorized waste materials for beneficial use, or to remove materials to duly authorized disposal facilities, among other things. (*See Shah Aff.* ¶ 23; Exhibit 7.)
12. During the fourth site visit, on October 25, 2018, Mr. Shah determined that respondent had stockpiled more than 250,000 cy of comingled concrete, asphalt, rock, brick, and soil at the SWMF. Staff concluded that respondent had stored most of the material at the SWMF for more than 18 months. Further, the Department did not authorize respondent to fill the adjacent property with the materials brought to the site. In the October 25, 2018, inspection report, staff documented these observations with a series of photographs. (*See Shah Aff.* ¶ 24; Exhibit 4.)
13. On October 25, 2018, Department staff also observed that respondent was storing 100 cy of unauthorized solid waste materials, which consisted of wood, plywood, drywall, plastics, rubber, wires, pieces of metal, and tires at the SWMF and on the adjacent property. At the SWMF, respondent had placed a 40-cy container and loaded it with unauthorized solid waste such a mattress, treated utility poles, plywood, pieces of rubber hose, plastics, metal scraps, and cardboard. Staff saw that the height of the solid waste piles exceeded 20 feet, with no separation distance between them. (*See Shah Aff.* ¶¶ 25, and 26; Exhibits 2, and 4.)
14. When Department staff inspected the site on July 9, 2018, August 2, 2018, and October 25, 2018, staff observed that operations had extended from the SWMF onto an adjacent property. Respondent was using solid waste materials brought to the SWMF as fill to change the grade of the adjacent property. During these activities, staff observed dusty conditions that respondent failed to control. (*See Exhibit 4.*)
15. On July 18, 2019, Department staff mailed respondent a draft order on consent to resolve the violations documented in the inspection reports (Exhibit 8). As of the date of this summary report and ruling, respondent did not return the draft order on consent or contact Department staff to discuss the terms and conditions of the draft order. Respondent did not remove any of the unauthorized solid waste from the site. (*See Shah Aff.* ¶¶ 27, and 28.)
16. On December 16, 2020, Department staff issued a second NOV, which alleged several violations based on staff's observations made during the April 27, 2017, July 9, 2018, and August 2, 2018 site visits. The December 16, 2020 NOV directed respondent to stop accepting any new material at the SWMF, as well as either to process authorized waste materials for beneficial use, or to remove materials to duly authorized disposal facilities, among other things. (*See Shah Aff.* ¶ 29; Exhibit 11.)

## Discussion

Pursuant to 6 NYCRR 622.12(a), Department staff may serve a motion for order without hearing either in lieu of a complaint, or subsequent to service of a notice of hearing and a complaint. Department staff makes this motion in lieu of a complaint (*see* Schindler Aff. ¶¶ 6 and 31). The motion must include supporting affidavits reciting all the material facts and other available documentary evidence (*see* 6 NYCRR 622.12[a]). Furthermore, the motion must include the following: (1) a statement that a response to the motion must be filed with the Chief ALJ within 20 days after receiving it, and (2) a statement that the failure to respond constitutes a default (*see* 6 NYCRR 622.12[b]; *see also* 6 NYCRR 622.15[a]).

When, as here, the motion for order without hearing is uncontested, the issue is whether Department staff has established its entitlement to summary judgment on the violations alleged in the motion (*see Matter of Edelstein*, Order of the Commissioner, July 18, 2014, at 2; *see also Matter of Hunt*, Decision and Order of the Commissioner, July 25, 2006, at 7 n 2). An uncontested motion for order without hearing will be granted if, after considering all the papers and proof, the cause of action (or defense) is established such that summary judgment can be granted under the CPLR (*see* 6 NYCRR 622.12[d]). “Summary judgment is appropriate when no genuine, triable issue of material fact exists between the parties and the movant is entitled to judgment as a matter of law” (*Matter of Frank Perotta*, Partial Summary Order of the Commissioner, January 10, 1996, at 1, *adopting* ALJ Summary Report). CPLR 3212(b) provides that a motion for summary judgment shall be granted, “if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.”

### I. Department Staff’s Proof

Drew Wellette’s affidavit of service, sworn to July 2, 2021, demonstrates that Department staff duly served process on Twin County Resource Recovery Inc. with copies of staff’s May 2021 motion for order without hearing pursuant to New York State Business Corporation Law § 306, and consistent with 6 NYCRR 622.3(a)(3). Accordingly, staff duly commenced the captioned administrative enforcement proceeding (*see* 6 NYCRR 622.3[b][1]).

To support the May 2021 motion, Department staff offered an affidavit of Jignesh Shah, sworn to May 20, 2021. Mr. Shah has a Master of Science degree in Chemical Engineering, and is a New York State licensed Professional Engineer. He has over 23 years of work experience with the Department. Currently, he holds the title of Professional Engineer I, and works at the Department’s Region 1 office in the Division of Materials Management (DMM). (*See* Shah Aff. ¶¶ 1 and 2.)

Mr. Shah’s duties and responsibilities include, among other things, maintaining the records in the Department’s Region 1 office related to solid waste management facilities (SWMF), reviewing permit applications, as well as closure and remediation plans for SWMF; inspecting such facilities to determine compliance; overseeing the construction, operation, and closure of such facilities; and investigating facilities. Mr. Shah has performed hundreds of

inspections, and reviewed scores of permit applications and associated engineering reports. (*See* Shah Aff. ¶¶ 3, 4 and 5)

With his affidavit, Mr. Shah offers eleven exhibits. These exhibits include, among other things, copies of the facility registration issued to respondent by the Department on April 14, 2003 (Exhibit 2); inspection reports prepared by Department staff with photographs (Exhibit 4); correspondence from respondent's consulting engineer concerning a material reduction plan (Exhibit 5); email correspondence between the respondent's representatives and Department staff (Exhibit 6); staff's notices of violation dated August 8, 2018, and December 16, 2020 (Exhibits 7 and 11); a draft order on consent and invoice (Exhibit 8); and an aerial photograph of the site (Exhibit 10). These exhibits are the Department's business records maintained by DMM. Exhibit 9 to Mr. Shah's affidavit is Department staff's civil penalty calculation.

## II. Respondent's Response

Respondent did not respond to staff's May 2021 motion for order without hearing filed in lieu of a complaint (*see* 6 NYCRR 622.12[a]). Department staff's May 2021 motion is uncontested. Because respondent did not respond to the motion, Twin County Resource Recovery Inc. is in default pursuant to 6 NYCRR 622.12(b), and has waived its right to a hearing (*see* 6 NYCRR 622.15[a]).

## III. Department Staff's May 2021 Motion

Department staff commenced the captioned enforcement proceeding upon Twin County Resource Recovery Inc. with service of the May 2021 motion for order without hearing in lieu of a complaint. Pursuant to 6 NYCRR part 360, Twin County Resource Recovery Inc. owns property located at 449 West John Street, Hicksville, New York 11801 in the Town of Oyster Bay (Nassau County), which is the site of a registered SWMF.<sup>2</sup> (*See* Schindler Aff. ¶¶ 7, 8, and 9; Exhibits 1 and 2.)

ECL 27-0707 prohibits any person from operating a SWMF without obtaining a permit from the Department. The regulations implementing the registration and permitting requirements are outlined at 6 NYCRR part 360. Pursuant to 6 NYCRR part 360, in effect prior to November 4, 2017, staff issued Registration #30W17R dated April 14, 2003, (*see* Exhibit 2) to respondent. Generally, 6 NYCRR 360-1.5 (a) prohibits any person from disposing solid waste except at a duly authorized facility.

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<sup>2</sup> Staff also asserts that Twin County Recycling Corporation is a tenant of respondent Twin County Resources Recovery, Inc. and operates the SWMF located at 449 West John Street (*see* Schindler Aff. ¶¶ 5 and 10). Staff alleges that Twin County Recycling Corporation violated provisions of ECL article 27, and 6 NYCRR part 360 (*see* Schindler Aff. ¶ 11), but did not commence an administrative enforcement proceeding against this party with service of the May 28, 2021 motion (*see* 6 NYCRR 622.3[b][1]). Consequently, this summary report and ruling makes no conclusions about Twin County Recycling Corporation's liability.

A. Liability

Department staff's memorandum of law in support of the motion (at 5-6) references the August 8, 2018 notice of violation (*see* Exhibit 7).<sup>3</sup> According to the August 8, 2018 notice of violation, respondent allegedly violated the following terms and conditions of the registration, as well as various regulatory requirements outlined in 6 NYCRR part 360.

1. 6 NYCRR 360-16.1 (Accepting Unauthorized Waste)

The April 14, 2003 registration (*see* Exhibit 2) authorizes respondent to annually process recognizable, uncontaminated concrete, asphalt pavement, brick, soil, or rock at the SWMF from March to December (*see also* 6 NYCRR 360-16.1[d][1][i]). However, during the site visits on July 9, August 2, and October 25, 2018, Department staff documented that respondent brought solid waste materials to the SWMF other than those authorized by the registration, such as wood, plastics, pieces of rubber hose, wire, metal scraps, and tires. On each inspection date, staff also observed a 40-cy container filled with a mattress, segments of treated utility poles, plywood, tires, and cardboard. (*See* Shah Aff. ¶¶ 20, 22, 24, and 26; Exhibits 2, and 4.) Therefore, respondent violated the terms of the April 14, 2003, registration and 6 NYCRR 360-16.1, on a continuous basis, when Twin County Resource Recovery Inc., as the site owner, accepted unauthorized materials at the SWMF from April 2017 to October 2018.

2. 6 NYCRR 360-16.4(f)(1) (Presence of Unauthorized Waste)

Section 360-16.4(f)(1) requires storage space at the facility for incoming construction and demolition (C&D) debris. In addition, this regulatory provision requires owners and operators to remove any unauthorized solid waste material brought to the facility within 24 hours.

On April 27, 2017, staff observed that respondent had accumulated processed and unprocessed solid waste at the SWMF for more than eighteen months (*see* Shah Aff. ¶ 12; Exhibits 2, 4, and 10). During the site visits on July 9, August 2, and October 25, 2018, Department staff subsequently documented that respondent brought solid waste materials to the SWMF other than those authorized by the registration, such as wood, plastics, pieces of rubber hose, wire, metal scraps, and tires. On each inspection date, staff also saw a 40-cy container filled with a mattress, segments of treated utility poles, plywood, tires, and cardboard. (*See* Shah Aff. ¶¶ 20, 22, and 26; Exhibits 2, and 4.)

These circumstances demonstrate that respondent violated terms of the April 14, 2003, registration, as well as 6 NYCRR 360-16.4(f)(1), on a continuous basis from April 2017 to October 2018, when Twin County Resource Recovery Inc., as the site owner, did not provide adequate storage at the SWMF for incoming solid waste materials, and when respondent stored unauthorized solid waste materials at the SWMF for longer than 24 hours.

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<sup>3</sup> Department staff's civil penalty calculation (Exhibit 9) also lists the alleged violations (*see* Schindler Aff. ¶ 32; Memorandum of Law at 7). The civil penalty is discussed in following section.

3. 6 NYCRR 360-1.5(a) (Unauthorized Disposal)

Except in limited circumstances, 6 NYCRR 360-1.5(a) prohibits any person from disposing solid waste anywhere other than at a duly authorized facility. When materials are stored at a facility for longer than 18 months, those materials are considered disposed at the facility.<sup>4</sup> The April 14, 2003 registration (*see* Exhibit 2) authorizes respondent to annually process recognizable, uncontaminated concrete, asphalt pavement, brick, soil, or rock at the SWMF from March to December.

However, during the April 27, 2017, site visit, staff observed that respondent had accumulated processed and unprocessed solid waste at the SWMF for more than eighteen months. Staff also saw that respondent had used solid waste materials to fill the adjacent property located at 369 West John Street. (*See* Shah Affidavit ¶¶ 12, and 13; Exhibits 4, and 10). Upon returning to the SWMF on July 9, 2018, Department staff saw that respondent had stockpiled more than 350,000 cy of commingled concrete, asphalt, rock, brick, and soil materials at the site (*see* Shah Aff. ¶ 21; Exhibits 2 and 4). During the August 2, 2018, inspection, staff observed that the conditions documented during the July 9, 2018, site visit generally remained unchanged (*see* Shah Aff. ¶ 22; Exhibit 4). On October 25, 2018, staff determined the unauthorized fill placed at the site had extended onto the adjacent property without authorization from the Department (*see* Shah Aff. ¶ 24; Exhibit 4).

As a result of these activities, respondent violated 6 NYCRR 360-1.5(a) and the terms of the April 14, 2003, registration, on a continuous basis from April 2017 to October 2018, when Twin County Resource Recovery Inc., as the site owner, operated the SWMF as a disposal facility rather than as a processing facility. Respondent further violated 6 NYCRR 360-1.5(a), on a continuous basis, when it disposed of solid waste materials on neighboring properties without any authorization from the Department.

4. 6 NYCRR 360-16.4(f)(3) (Inadequate Storage Space)

As noted above, 6 NYCRR 360-16.4(f)(1) requires storage space at the facility for incoming C&D debris. Additional requirements are outlined in 6 NYCRR 360-16.4(f)(3), and include the following. The storage piles must not exceed a height of 20 feet, and the area at the base of any storage pile must not exceed 5,000 square feet (approximately 70 feet x 70 feet). A minimum separation of 25 feet must be maintained between adjacent storage piles, and a minimum separation of 50 feet must be maintained between storage piles and property boundaries. Furthermore, storage piles may not be located in excavations or be below normal grade without prior written approval from the Department. Finally, all minimum separation distances must be consistent with any more stringent requirement of the New York State Uniform Fire Protection and Building Code, Title 9(B).

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<sup>4</sup> In pertinent part, *storage* means “the containment of any solid waste in a manner which does not constitute disposal under section 360-1.2(a)(3) of this Subpart; provided, however, that any accumulation of solid waste for a period in excess of 18 months shall be deemed to constitute disposal” (6 NYCRR 360-1.2[b][164]).

During Department staff's four site visits, staff observed that the height of the storage piles were 40 to 50 feet without any separation distance between the piles, and that respondent did not maintain adequate storage space between the various piles of solid waste materials at the SWMF. Staff observed that operations had extended from the SWMF onto the adjacent property. (See Shah Aff. ¶¶ 12, 21, 22, and 24; Exhibits 4, and 10). Based on Department staff's observations, respondent violated the requirements outlined at 6 NYCRR 360-16.4(f)(3), on a continuous basis from April 2017 to October 2018, by exceeding the maximum height limit and base dimensions for the storage piles, as well as by failing to maintain the minimum separation distance between piles, and between the piles and the property boundaries.

5. 6 NYCRR 360-1.14(k) (Failure to Control Dust)

Pursuant to 6 NYCRR 360-1.14(k), the facility owner or operator must control dust so that it does not constitute a nuisance or hazard to health, safety, or property. In addition, this regulatory provision requires the owner or operator to undertake all measures to maintain and control dust at, and originating from, the facility.

When Department staff inspected the site on July 9, August 2, and October 25, 2018 (see Shah Aff. ¶¶ 20, 22, and 24), staff observed that operations had extended from the SWMF onto the adjacent property. Respondent was using solid waste materials brought to the SWMF to fill the adjacent property, and change the grade. During these activities, staff observed dusty conditions that respondent failed to control (see Exhibit 4).<sup>5</sup> Therefore, operations at the SWMF created dust that respondent failed to control, which adversely impacted the surrounding areas, as documented by staff, in violation of 6 NYCRR 360-1.14(k). This violation continued over the course of staff's site visits from July 2018 to October 2018.

6. 6 NYCRR 360-1.14(d) (Failure to Control Access)

Pursuant to 6 NYCRR 360-1.14(d), access to, and the use of, a facility must be controlled by various means with fences, gates, signs, natural barriers, and the like. On April 27, 2017, Department staff observed that respondent had used solid waste materials brought to the SWMF to fill the adjacent property located at 369 West John Street (see Shah Aff. ¶ 13; Exhibits 4 and 10). Subsequently, on July 9, 2018, staff saw that operations had continued to extend from the SWMF onto the adjacent property (see Shah Aff. ¶ 21; Exhibits 2, and 4). When Department staff returned to the site on August 2, 2018, staff saw that respondent had continued to fill the adjacent property (see Shah Aff. ¶ 22; Exhibit 4). On October 25, 2018, staff observed that the unauthorized grade adjustment had continued without authorization from the Department (see Shah Aff. ¶ 24; Exhibit 4). Therefore, respondent failed to control access to the SWMF, in violation of 6 NYCRR 360-1.14(d), by disposing solid waste material on an adjacent property, and by using the solid waste materials to fill it. This violation continued over the course of staff's site visits from April 2017 to October 2018.

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<sup>5</sup> Staff's observations about dust are discussed in the inspection reports dated July 9, August 2, and October 25, 2018, and collectively offered as Exhibit 4 with the motion.

## B. Relief

Department staff seeks an order from the Commissioner requesting relief in the form of site remediation, and the assessment of a civil penalty totaling \$87,000 (*see* Schindler Aff. ¶¶ 31, and 32; Exhibits 8 and 9).

### 1. Remediation

In his affidavit, Mr. Shah explains how he met with the SWMF's operators during his April 27, 2017 inspection. At that time, Mr. Shah directed the operators to reduce the volume of material at the site in order to comply with the terms of the registration. (*See* Shah Aff. ¶¶ 15, and 16.)

Subsequently, staff and respondent's representative participated in a compliance conference at the Department's Region 1 office in July 2017, and discussed the need for respondent to develop a material reduction plan (MRP). The MRP would outline how respondent would remove the accumulated solid waste materials from the site. Respondent agreed to develop the MRP, and its consultants provided one for staff's review on November 27, 2017. Upon review, staff advised respondent in an email dated January 29, 2018, that the MRP was not acceptable because it did not include details about the precise volume and nature of the materials at the site, as well as the origin of the materials, among other things. In addition, staff directed respondent to stop accepting any additional solid waste materials at the SWMF. (*See* Shah Aff. ¶¶ 17, 18, and 19; Exhibits 5 and 6.)

The inspection reports documenting staff's site visits on July 9, August 2, and October 25, 2018, show that respondent did not comply with staff's January 29, 2018, directive to stop accepting solid waste materials at the SWMF, and to remove the materials from the site. (*See* Shah Aff. ¶¶ 20, 21, 22, 24, 25, and 26; Exhibit 4.) With an email dated July 19, 2019, Department staff forwarded a copy of a draft order on consent to respondent's counsel at the time (*see* Shah Aff. ¶ 27; Exhibit 8).

Appendix A to Department staff's May 2021 notice of motion is a compliance schedule that outlines the terms and conditions of the remediation.<sup>6</sup> First, the schedule of compliance would require respondent to immediately stop accepting any new solid waste materials at the SWMF. Second, respondent would provide staff with an acceptable MRP for review. Third, after staff approved the MRP, respondent would implement the plan by removing solid waste materials from the site to duly approved solid waste management facilities. Finally, respondent would submit documentation about the amount of material removed from the site, and the location, or locations, where the material was disposed of.

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<sup>6</sup> Department staff initially included the compliance schedule as Appendix A to the draft order on consent (*see* Exhibit 8).

Attached as Appendix B to this summary report and ruling is a copy of the compliance schedule attached to Department staff's May 2021 notice of motion. The Commissioner should incorporate the terms and conditions of the compliance schedule into the order in this matter to ensure that the SWMF is remediated in a timely and complete manner.

## 2. Civil Penalty

Staff requested a total civil penalty of \$87,000. ECL 71-2703(1)(a) provides, in pertinent part, that:

any person who violates any of the provisions of, or who fails to perform any duty imposed by Title 3 or 7 of Article 27 of this chapter or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be liable for a civil penalty not to exceed seven thousand five hundred dollars (\$7,500) for each such violation and an additional penalty of not more than one thousand five hundred dollars (\$1,500) for each day during which such violation continues.

With the motion, Department staff provides a civil penalty calculation that details the penalties that staff seeks for each of the alleged violations. Staff requests the maximum civil penalty of \$7,500 for the violations initially observed during the April 27, 2017, site visit. Staff's subsequent inspections on July 9, August 2, and October 25, 2018, demonstrate the continuous nature of these violations. As a result, staff requests \$1,500 for each violation observed at the site during the three subsequent inspections. (*See Exhibit 9 [Civil Penalty Calculation].*)

For accepting unauthorized waste at the SWMF, respondent violated the terms of the April 14, 2003 registration, and 6 NYCRR 360-16.1 on three occasions as documented by staff's inspections on July 9, August 2, and October 25, 2018. Staff requested a civil penalty of \$7,500 for the initial violation that staff observed on July 9, 2018, and an additional \$3,000 (2 inspection dates x \$1,500) based on the continuous nature of the violation as observed by staff on August 2, and October 25, 2018. The total requested civil penalty for this continuing violation, therefore, is \$10,500.

The presence of unauthorized waste at the SWMF is a violation of 6 NYCRR 360-16.4(f)(1). Respondent violated this regulatory provision when it did not provide adequate storage for the incoming waste. Staff first observed this illegal circumstance during the April 27, 2017, inspection and, subsequently, on three occasions during the July 9, August 2, and October 25, 2018, inspections. Staff requested a civil penalty of \$7,500 for the initial violation that staff observed on April 27, 2017, and requested an additional \$4,500 (3 inspection dates x \$1,500) due to the continuous nature of the violation as observed by staff on July 9, August 2, and October 25, 2018. The total requested civil penalty for this continuous violation, therefore, is \$12,000.

Moreover, respondent violated 6 NYCRR 360-16.4(f)(1) when it failed to remove unauthorized waste from the SWMF within 24 hours of receiving it. Staff first observed this illegal circumstance during the July 9, 2018, inspection and, subsequently, on two occasions on August 2, and October 25, 2018. Staff requested a civil penalty of \$7,500 for the initial violation that staff observed on July 9, 2018, and requested \$3,000 (2 inspection dates x \$1,500) due to the continuous nature of the violation as observed by staff on August 2, and October 25, 2018. The total requested civil penalty for this continuing violation, therefore, is \$10,500.

With respect to the unauthorized disposal of solid waste materials, respondent violated the terms of the April 14, 2003, registration and 6 NYCRR 360-1.5(a) under the following two circumstances. First, the April 14, 2003, registration authorized respondent to process solid waste materials at the SWMF from March to October. However, based on staff's inspections, respondent accumulated solid waste materials at the SWMF for more than 18 months. Staff initially observed this illegal circumstance during the April 27, 2017, inspection and, subsequently, on three occasions during the July 9, August 2, and October 25, 2018, site visits. Staff requested a civil penalty of \$7,500 for the initial violation that staff observed on April 27, 2017, and requested \$4,500 (3 inspection dates x \$1,500) for the continuous nature of the violation as observed by staff on July 9, August 2, and October 25, 2018. The total requested civil penalty for this continuing violation of 6 NYCRR 360-1.5(a), therefore, is \$12,000.

With respect to the second circumstance related to the requirements of 6 NYCRR 360-1.5(a), staff observed during the July 9, August 2, and October 25, 2018, inspections that respondent extended operations from the SWMF onto an adjacent property without written authorization. Staff requested a civil penalty of \$7,500 for the initial violation that staff observed on July 9, 2018, and requested \$3,000 (2 inspection dates x \$1,500) due to the continuous nature of the violation as observed by staff on August 2, and October 25, 2018. The total requested civil penalty for this continuing violation of 6 NYCRR 360-1.5(a), therefore, is \$10,500. This violation is separate and distinct from the violation discussed in the previous paragraph because unauthorized activities occurred at two distinct locations: the SWMF, and on an adjacent property.

Staff documented in the inspection reports that respondent did not provide adequate storage space at the SWMF, in violation of 6 NYCRR 360-16.4(f)(3), during each of the four site visits (April 27, 2017, as well as on July 9, August 2, and October 25, 2018).<sup>7</sup> However, staff's civil penalty calculation is based on three observations rather than four. Staff requested a civil penalty of \$7,500 for the initial time that staff saw the violation on July 9, 2018, and requested \$3,000 (2 inspection dates x \$1,500) due to the continuous nature of the violation as observed by staff on August 2, and October 25, 2018. The total requested civil penalty for this continuing violation, therefore, is \$10,500.

Staff observed that respondent failed to control dust in violation of 6 NYCRR 360-1.14(k) on three occasions as documented by staff's inspections on July 9, August 2, and October 25, 2018. Staff requested a civil penalty of \$7,500 for the initial violation that staff observed on July 9, 2018, and requested \$3,000 (2 inspection dates x \$1,500) due to the continuous nature of

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<sup>7</sup> See Shah Aff. ¶¶ 12, 20, 22, and 24; Exhibits 4 and 10.

the violation as observed by staff on August 2, and October 25, 2018. The total requested civil penalty for this continuing violation, therefore, is \$10,500.

Finally, staff observed that respondent did not control access to the SMWF in violation of 6 NYCRR 360-1.14(d) on three occasions. During the July 9, August 2, and October 25, 2018, inspections, staff saw that respondent extended unauthorized solid waste management activities onto an adjacent property. Staff requested a civil penalty of \$7,500 for the initial violation that staff observed on July 9, 2018, and requested \$3,000 (2 inspection dates x \$1,500) due to the continuous nature of the violation as observed by staff on August 2, and October 25, 2018. The total requested civil penalty for this continuing violation, therefore, is \$10,500.

To support the requested civil penalty, staff showed that respondent did not comply with directives, first, to reduce the amount of solid waste materials at the site and, subsequently, to stop accepting materials at the SWMF (*see* Shah Aff. ¶¶ 15-19; Exhibits 6, 7, and 11.) Furthermore, staff demonstrated the continuous nature of these violations. Staff notes that the requested civil penalty is substantially less than the potential maximum amount authorized by statute. Nevertheless, staff argues that the total requested civil penalty of \$87,000 would ensure future compliance by respondent. (*See* Memorandum of Law at 8.) Accordingly, Department staff's detailed requested civil penalty is authorized by the statute and reasonable given the aggravating factors discussed above.

### **Conclusions**

1. Department staff duly served the May 28, 2021, motion for order without hearing in lieu of complaint upon respondent, Town County Resource Recovery Inc. in a manner consistent with 6 NYCRR 622.3(a)(3) and, thereby, duly commenced the captioned administrative enforcement proceeding pursuant to 6 NYCRR 622.3(b)(1).
2. Twin County Resource Recovery Inc. did not respond to Department staff's May 28, 2021 motion. Therefore, respondent is in default pursuant to 6 NYCRR 622.12(b), and has waived its right to a hearing pursuant to 6 NYCRR 622.15(a).
3. Department staff has established its entitlement to summary judgment on the violations alleged in the motion for order without hearing in lieu of a complaint. After considering all the papers and proof, I conclude that Department staff established the causes of action such that summary judgment can be granted under the CPLR (*see* 6 NYCRR 622.12[d]).

### **Recommendations**

1. Based on the forgoing discussion, the Commissioner should grant Department staff's May 28, 2021, motion for order without hearing, and conclude that respondent violated the terms and conditions of the April 14, 2003, registration, as well as various regulatory requirements outlined at 6 NYCRR part 360, in effect prior to November 4, 2017.

2. In granting the motion, the Commissioner should assess a total civil penalty of \$87,000, and direct respondent to remediate the site consistent with the schedule of compliance attached to this summary report and ruling as Appendix B.

/s/

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Daniel P. O'Connell  
Administrative Law Judge

Dated: August 6, 2021  
Albany, New York

Attachment: Appendix A – List of Motion Papers  
Appendix B – Schedule of Compliance

Appendix A

List of Department Staff's Motion Papers  
DEC Case No. R1-20190122-17

Department Staff		
	<p>Notice of Motion for Order without Hearing with attached Schedule of Compliance (Appendix A) DEC Case No. R1-20190122-17 Dated: May 28, 2021</p>	
	<p>Attorney Affirmation in Support of Motion for Order without Hearing by Susan H. Schindler, Esq. Assistant Regional Attorney Dated: May 7, 2021</p>	
	<p>Memorandum of Law in Support of Motion for Order without Hearing by Susan H. Schindler, Esq. Assistant Regional Attorney Dated: May 7, 2021</p>	
	<p>Affidavit of Jignesh Shah in Support of Motion for Order without Hearing Sworn to May 20, 2021</p>	
		<p>Exhibit 1 – Real Property Records, Town of Oyster Bay, County of Nassau.</p>
		<p>Exhibit 2 – Facility Registration No. 30W17R, dated April 14, 2003.</p>
		<p>Exhibit 3 – Department staff's correspondence dated January 25, 2019, regarding the enforcement of 6 NYCRR parts 360, 361, 364, and 365.</p>

		Exhibit 4 – Inspection Reports for April 27, 2017, July 9, 2018, August 2, 2018, and October 25, 2018, with photographs.
		Exhibit 5 – Material Reduction Plan (MRP), dated November 27, 2017, from Kempey Engineering (East Northport, New York).
		Exhibit 6 – Email correspondence from Department staff dated January 29, 2018.
		Exhibit 7 – Notice of Violation dated August 8, 2018.
		Exhibit 8 – Email correspondence from Department staff dated July 19, 2019, with draft Order on Consent and invoice.
		Exhibit 9 – Civil Penalty Calculation.
		Exhibit 10 – Aerial Photograph.
		Exhibit 11 – Notice of Violation dated December 16, 2020.
	Affidavit of Service by Drew A. Wellette Sworn to July 2, 2021	

Appendix B

Schedule of Compliance

Twin County Resource Recovery Inc.  
File No. RI-20190122-17

Note: “Approvable” as used in this Order shall mean approvable by the DEC with minimal revisions. “Minimal revision” shall mean that Respondent incorporates all revisions required by the DEC and resubmits the plan for approval within fifteen (15) calendar days after receipt of the written comments by the DEC. “Full compliance” shall mean: (1) Respondent has given full and complete responses to DEC's requests, if any, for additional information; and (2) Respondent has not violated any term of this Order or Compliance Schedule.

I. <u>Cease Accepting Solid Waste</u>	
Effective Immediately,	Respondent must cease and desist from any and all future violation of the New York State Environmental Conservation Law and the rules and regulations enacted pursuant thereto, and refrain from operating any solid waste management facility or otherwise undertaking any activity regulated under ECL 27-0707 and 6 NYCRR Part 360 without first having obtained the required authorization as required by ECL 27- 0707 and 6 NYCRR Part 360.  Respondent must cease acceptance of new waste at the site, during the implementation of the Materials Reduction Plan required in Item II below.
II. <u>Submittal and Implementation of Material Reduction Plan</u>	
Within 15 days from the effective date of this Order,	Respondent must submit to the Department an approvable Material Reduction Plan, prepared by a Professional Engineer licensed in New York State, which must identify the location of the solid waste material at the Site, and an estimate of the volume of the solid waste material by waste/material type and an implementation schedule.
Upon Department approval of the Material Reduction Plan,	Respondent must commence removal of waste at a rate of no less than 2,000 cubic yards per week.

<p>Every Wednesday, from the commencement of the implementation of the Material Reduction Plan until all of the required records are submitted to the satisfaction of the Department,</p>	<p>Respondent shall provide an approvable list of authorized solid waste management facilities where the onsite waste will be sent. Respondent shall provide a summary of all loads removed. This must summarize the previous calendar week (Sunday through Saturday) and include the following information for each destination: quantity, type of material, name of destination, address of destination.</p>
<p>The first business day of the month, until all disposal tickets and tracking documents are submitted,</p>	<p>Respondent must submit disposal tickets and tracking documents for all solid waste materials disposed during the previous calendar month.</p>
<p>Within 360 days from the effective date of this Order,</p>	<p>Respondents shall have all waste material removed from the site, and sent to properly authorized facilities to accept such waste and must comply with the validated Part 360 registration and comply with the Part 360 regulation effective November 4, 2017.</p>
<p>III. <u>Submittals</u></p>	
<p>Effective Immediately,</p>	<p>All required submittals to the Department shall be made by Respondent as follows.</p> <p>One copy to: Office of General Counsel, Region 1, New York State Department of Environmental Conservation, SUNY at Stony Brook, 50 Circle Road, Stony Brook, New York 11790-3409 -- Attention: Regional Attorney; and</p> <p>One copy to: Division of Materials Management, Region 1, New York State Department of Environmental Conservation, SUNY at Stony Brook, 50 Circle Road, Stony Brook, New York 11790-3409 -- Attention: Regional Materials Management Engineer.</p>