

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

In the Matter of the Alleged Violations of Article 27 of the Environmental Conservation Law (ECL) of the State of New York and Section 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

**INTERIM DECISION AND ORDER**

DEC Case No.  
R1-20170720-198

by

**WASTE AWAY CARTING NY, INC., WASTE AWAY CARTING INC., and BEN PICCOLO individually and as operator of Waste Away Carting NY, Inc. and/or Waste Away Carting Inc.,**

Respondents.

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This administrative enforcement proceeding concerns alleged violations of ECL 27-0707 and former 6 NYCRR part 360 by the receipt, storage and disposal of solid waste material without a permit at a facility rented and operated by respondent Waste Away Carting NY, Inc. and operated by respondent Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc. The facility is located at 899 Long Island Avenue, Deer Park, Town of Babylon, Suffolk County, New York (site).

Staff of the New York State Department of Environmental Conservation (Department) commenced this proceeding by service of a notice of hearing and complaint dated August 3, 2017. Service was made on respondents Waste Away Carting NY, Inc. and Ben Piccolo by certified mail, which was received by respondents on or before August 9, 2017. In its papers, Department staff set forth the following two causes of action, alleging that respondents:

1. disposed of solid waste material at the site without a permit in violation of former 6 NYCRR 360-1.5(a) (first cause of action); and
2. received and stored solid waste material, specifically, construction and demolition (C&D) debris, at the site in violation of ECL 27-0707 and former 6 NYCRR 360-1.7(a)(1)(i) (second cause of action).

Based upon these alleged violations, Department staff requests that I: (a) hold respondents in violation of the law and regulations as set forth in the two causes of action; (b) assess a civil penalty to the fullest extent allowed by statute; and (c) enjoin respondents from any further actions causing said violations to continue.

Respondents Waste Away Carting NY, Inc. and Ben Piccolo answered the complaint by answer dated June 11, 2018. The matter was assigned to Administrative Law Judge (ALJ) Michael S. Caruso. By notice of motion dated September 16, 2018, respondents Waste Away

Carting NY, Inc. and Piccolo (respondents) moved to dismiss the proceeding, compel discovery and other relief. ALJ Caruso issued a ruling dated November 28, 2018, denying respondents' motion.

On February 13, 2019, Department staff served a notice of motion for order without hearing and supporting papers on respondents' attorney. On February 25, 2019, respondents' attorney attempted to withdraw as counsel for respondents. ALJ Caruso denied the request at that time and directed counsel to submit a motion on notice for such relief pursuant to 6 NYCRR 622.6(c). On May 1, 2019, respondents' counsel filed a notice of motion and supporting papers to withdraw as counsel for respondents Waste Away Carting NY, Inc., Waste Away Carting Inc., and Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc. The motion was served on respondents and Department staff. No responses to the motion were received.

By ruling dated June 26, 2019, ALJ Caruso granted counsel's request to withdraw and provided respondents Waste Away Carting NY, Inc., Waste Away Carting Inc., and Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc. with thirty (30) days from the date of the ruling to obtain new counsel and notify the ALJ of the new counsel's name and contact information. The ruling also advised respondents that if respondents failed to retain new counsel within thirty (30) days of the date of the ruling, Department staff's motion for order without hearing would be considered as an unopposed motion and ruled upon accordingly. (*See Matter of Waste Away Carting NY, Inc.*, Ruling on Motion to Withdraw, at 3-4.) ALJ Caruso has not received any notice from respondents that they have retained new counsel, and respondents have not responded to staff's motion papers.

ALJ Caruso prepared the attached summary report which I adopt, in part, as my decision in this matter, subject to my comments in this order. As discussed below, although I am finding respondents liable for the violations alleged, I am remanding this matter for a further development of the record with respect to the civil penalty.

### **Liability**

I concur with the ALJ's determination that Department staff is entitled to a finding of liability against respondents Waste Away Carting NY, Inc. and Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc., on the first and second causes of action.<sup>1</sup> I also concur that liability cannot be found against respondent Waste Away Carting Inc. because no proof of service on that respondent was provided (*see* Summary Report at 5 nn 2, 3).

### **Penalty**

Department staff has requested a civil penalty to the fullest extent allowed by statute. Pursuant to ECL 71-2703(1)(a), "[a]ny person who violates any of the provisions of, or who fails

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<sup>1</sup> With respect to the regulatory violations, Department staff pleaded violations solely under the former part 360 of 6 NYCRR, which was in effect only to November 4, 2017. The violations established by Department staff constitute violations under the current part 360 as well (*see e.g.* 6 NYCRR 360.9[a][1], [b][3]).

to perform any duty imposed by title 3 or 7 of article 27 of this chapter or any rule or regulation promulgated pursuant thereto . . . shall be liable for a civil penalty not to exceed seven thousand five hundred dollars for each such violation and an additional penalty of not more than one thousand five hundred dollars for each day during which such violation continues.”

The ALJ has noted the lack of information with respect to the penalty request in this record. Staff’s papers do not set forth the specific penalty amount, nor do they provide any calculations based on an evaluation of applicable Department guidance (*e.g.*, Department’s Civil Penalty Policy dated June 20, 1990 [DEE-1] and OGC 8 Solid Waste Enforcement Policy dated December 9, 2015 [OGC 8]).

The presence of solid waste at the site was documented during the Department’s onsite inspection on May 31, 2017 (*see* Summary Report at 3, Findings of Fact Nos. 5, 6 and 7; *see also* Exhibit B [Affidavit of Matthew Merrill sworn to February 7, 2019] [Merrill Affidavit] to the Affirmation of David S. Rubinton dated February 7, 2019 [Rubinton Affirmation], ¶¶ 7, 9, 13-17 [with attached photographs of waste at the site]; Exhibit A [Affidavit of Christopher Spies sworn to February 12, 2019] to the Rubinton Affirmation, ¶¶ 6, 14 [stockpiling of waste onsite]). Department staff’s complaint and motion for order without hearing, however, do not address the duration of the violations (*see* Summary Report at 5).

Considering the amount of waste that respondents received, stored and disposed at the site, the ALJ concluded that a total penalty of fifteen thousand dollars (\$15,000) would be supported and appropriate (*see* Summary Report at 5-6).

Staff references the order on consent between Mica Realty and Construction Corp., the owner of the facility property at 899 Long Island Avenue, and the New York State Department of Environmental Conservation (Consent Order).<sup>2</sup> Although staff did not offer the consent order as an exhibit in this proceeding, I am taking official notice of it pursuant to 6 NYCRR 622.11(a)(5).

The Consent Order, which became effective on January 26, 2018, referenced the solid waste material at the site, and that solid waste material from the site was tested and found to be contaminated (*see* Consent Order, at 2, ¶¶ 9-10).<sup>3</sup> Pursuant to the consent order, Mica Realty and Construction Corp. was directed to remove the solid waste from the site. The record before me does not reflect the extent to which any solid waste has been removed following the signing of the consent order or the economic benefit that this respondent may have obtained by the illegal disposal of waste at the site.

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<sup>2</sup> The Consent Order is referenced in the Rubinton Affirmation, at 2, ¶ 6 (noting that Mica Realty and Construction Corp. settled its liability with the Department by agreeing to remove the contaminated fill at the site).

<sup>3</sup> The Consent Order states that “the sampled materials failed Residential Soil Cleanup Objective (“SCO”) for Dieldrin as defined in 6 NYCRR Part 375 and failed protection of groundwater SCOs for three (3) semi-volatile organic compounds” (*see* Consent Order ¶ 10). Staff has not provided any information in its papers regarding the extent or severity of the site contamination.

To derive an appropriate civil penalty, the guidelines in DEE-1 should be followed. In an adjudicatory hearing, Department staff should request a specific penalty amount, and should provide an explanation of how that amount was determined, with reference to:

- the potential statutory maximum;
- the DEE-1 guidance;
- any program specific guidance document(s). In this instance, OGC 8 Solid Waste Enforcement Policy should be considered;
- other similar cases; and
- as relevant, any aggravating and mitigating circumstances relevant to the matter.

*See* DEE-1, § IV A. The analysis does not stop there however. A number of factors, including: (1) the economic benefit of noncompliance; (2) the gravity of the violations (including the actual or potential environmental harm); and (3) the culpability of respondent's conduct must also be evaluated.

I hereby remand the matter to the Office of Hearings and Mediation Services with respect to civil penalty in consideration of the above-referenced criteria and factors. In addition, the record on penalty should be developed with respect to the duration of the violations, the time period during which the illegally disposed material was removed from the site and the extent to which any such material still remains on the site, the economic benefit to respondent of the illegal disposal, and the significance of the contamination found at the site.

I note that the further development of the record may be by the submission of papers if so determined by the ALJ.

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

- I. Department staff's motion for order without hearing against respondents Waste Away Carting NY, Inc. and Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc., on staff's first and second causes of action, pursuant to 6 NYCRR 622.12, is granted.
- II. Based on record evidence, respondents Waste Away Carting NY, Inc. and Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc., are adjudged to have jointly and severally violated the following:
  - a. Former 6 NYCRR 360-1.5(a) for disposing of solid waste at the site without a permit; and
  - b. ECL 27-0707 and former 6 NYCRR 360-1.7(a)(1)(i) for receiving and storing solid waste, in the form of C&D debris, at the site without a permit.
- III. This matter is remanded to the Office of Hearings and Mediation Services to further develop the record with respect to civil penalty.

- IV. The provisions, terms and conditions of this Order shall bind respondents Waste Away Carting NY, Inc. and Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc., and their agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

By: /s/  
Basil Seggos  
Commissioner

Dated: Albany, New York  
February 12, 2020

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Alleged Violations of Article 27 of the Environmental Conservation Law (ECL) of the State of New York and Section 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

by

**WASTE AWAY CARTING NY, INC., WASTE AWAY CARTING INC., and BEN PICCOLO individually and as operator of Waste Away Carting NY, Inc. and/or Waste Away Carting Inc.,**

**SUMMARY  
REPORT**

DEC Case No.  
R1-20170720-198

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Respondents.

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Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (David S. Rubinton of counsel), for staff of the Department of Environmental Conservation
  
- Waste Away Carting NY, Inc. and Ben Piccolo, respondents pro se

In this administrative enforcement proceeding, New York State Department of Environmental Conservation (DEC or Department) staff charges respondents Waste Away Carting NY, Inc. (Waste Away NY), Waste Away Carting Inc. (Waste Away), Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc. (Piccolo) (collectively, respondents) with: (i) disposing of solid waste material without a permit in violation of former 6 NYCRR 360-1.5(a); and (ii) receiving and storing solid waste material, specifically, construction and demolition (C&D) debris in violation of ECL 27-0707 and former 6 NYCRR 360-1.7(a)(1)(i), at a facility operated by respondents Waste Away NY, Waste Away and Piccolo located at 899 Long Island Avenue, Deer Park, New York (facility or site).<sup>1</sup>

By notice of motion dated September 16, 2018, respondents Waste Away NY and Piccolo (respondents) moved to dismiss the proceeding, compel discovery and other relief. By ruling dated November 28, 2018, I denied respondents' motion except I reserved on respondents' motion to dismiss based on personal jurisdiction, pending receipt of affidavits of service of the notice of hearing and complaint on respondents Waste Away NY and Piccolo (*see Matter of Waste Away Carting NY, Inc.*, Ruling, November 28, 2018). On November 29, 2018, Department staff filed the requested affidavits of service. Staff previously indicated that staff did

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<sup>1</sup> The solid waste management facility regulations, 6 NYCRR part 360, were repealed and replaced by 6 NYCRR parts 360 – 366 and 369, effective November 4, 2017. The violations stated in the complaint allegedly occurred on May 31, 2017. Accordingly, the former 6 NYCRR part 360 and its subparts are applicable to this matter.

not complete service on respondent Waste Away, and, to date, staff has not provided proof of service on respondent Waste Away or withdrawn the allegations against that respondent.

On February 13, 2019, Department staff served a notice of motion for order without hearing and supporting papers on respondents' attorney (*see* Affidavit of Service of Carol Gajewski, sworn to February 26, 2019). On February 25, 2019, respondents' attorney attempted to withdraw as counsel for respondents. By letter dated February 25, 2019, I denied the request and directed respondents' counsel to submit a motion on notice pursuant to 6 NYCRR 622.6(c).

After receiving several extensions to respond to staff's motion, respondents' counsel filed a notice of motion and supporting papers on May 1, 2019, to withdraw as counsel for respondents. By ruling, dated June 26, 2019, I granted counsel's request to withdraw and directed respondents to obtain new counsel and provide me with the new counsel's name and contact information within thirty (30) days from the date of the ruling. The ruling advised respondents that if respondents failed to retain new counsel within thirty (30) days of the date of the ruling, Department staff's motion for order without hearing will be considered as an unopposed motion and ruled upon accordingly (*see Matter of Waste Away Carting NY, Inc., Ruling on Motion to Withdraw*, June 26, 2019). The Office of Hearings and Mediation Services served the ruling on respondents by first class mail on June 26, 2019, and their former attorney served the ruling on respondents by first class mail on June 27, 2019.

To date, I have not received any notice from respondents that they have retained new counsel. Respondents have not responded to staff's motion papers, although a response was due by July 31, 2019.

In support of staff's notice of motion, staff submitted a memorandum of law in support of the motion, dated February 7, 2019; the affirmation of David S. Rubinton, Esq. (Rubinton Affirmation), dated February 7, 2019; the affidavit of Christopher Spies (Spies Affidavit), sworn to February 12, 2019; the affidavit of Matthew Merrill (Merrill Affidavit), sworn to February 7, 2019, attaching four photographs; the affirmation of Judith Donnenfeld (Donnenfeld Affirmation), dated February 5, 2019, attaching two exhibits; and proof of service of the notice of hearing and complaint on respondents Waste Away NY and Piccolo. *See* Appendix A attached hereto.

Staff's motion requests that the Commissioner issue an order: (i) finding respondents in violation of ECL article 27 and 6 NYCRR part 360; (ii) enjoining respondents from any further actions causing said violations to continue; (iii) directing respondents to pay a monetary penalty for the violations alleged herein, as authorized by law pursuant to ECL 71-2703; and (iv) ordering such other and further relief as may be just and proper (*see* Notice of Motion for an Order Without Hearing, dated February 7, 2019).

## **FINDINGS OF FACT**

1. Respondent Waste Away Carting NY, Inc. is a domestic business corporation, which rented and operated the facility located at 899 Long Island Avenue, Deer Park, New York. (See Complaint ¶ 2; Donnenfeld Affirmation ¶¶ 4, 5b.)
2. Respondent Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc., operated the facility located at 899 Long Island Avenue, Deer Park, New York. (See Complaint ¶ 5; Spies Affidavit ¶¶ 10-11; Merrill Affidavit ¶ 8; Donnenfeld Affirmation ¶¶ 4-5, Exhibit B.)
3. Christopher Spies is the Regional Enforcement Coordinator for the Region 1 Office of the Department. (See Spies Affidavit ¶ 1.)
4. Matthew Merrill is an environmental engineering technician for the Region 1 Office of the Department, who has conducted over 200 inspections of solid waste disposal sites. (See Merrill Affidavit ¶¶ 1 and 6.)
5. On May 31, 2017, Mr. Spies and Mr. Merrill inspected the facility, in the presence of respondent Piccolo and observed stockpiles of construction and demolition (C&D) debris at the facility. (See Spies Affidavit ¶¶ 5-14; Merrill Affidavit ¶¶ 8-9, Photographs 1-4.)
6. One stockpile of C&D debris contained approximately 250 cubic yards of material including processed fragments of concrete, asphalt pavement, brick and plaster. (See Merrill Affidavit ¶¶ 9, 15, and 16, Photographs 2 and 3 [describing and depicting the stockpile located at the northeastern portion of the facility].)
7. A second stockpile of C&D debris contained approximately 750 cubic yards of materials including wood, brick, asphalt pavement, concrete, other masonry materials, glass and metal. (See Merrill Affidavit ¶¶ 9, 14, and 17, Photographs 1 and 4 [describing and depicting the stockpile located at the northwestern portion of the facility].)
8. Respondents Waste Away NY and Piccolo did not have a valid permit to dispose of solid waste or to operate a solid waste management facility. (See Spies Affidavit ¶ 15; Merrill Affidavit ¶ 18.)

## **DISCUSSION**

Section 622.12 of 6 NYCRR provides for an order without hearing when upon all the papers and proof filed, the cause of action or defense is established sufficiently to warrant granting summary judgment under the CPLR in favor of any party. “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.” Once the moving party has put forward a prima facie case, the burden shifts to the non-movant to produce sufficient evidence to establish a triable issue. (*Matter of Locaparra*, Commissioner’s Decision and Order, June 16, 2003.)

Respondents have not submitted any response to the Department staff’s motion and therefore have failed to provide any material fact that would require a hearing. On an unopposed motion for order without hearing, 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 n2.)

Pursuant to 6 NYCRR 622.12(a), staff has supported its motion for an order without hearing with the affidavit of the regional enforcement coordinator and an affidavit of an environmental engineering technician who inspected respondents’ facility.

Based on review of the affirmations, affidavits and the exhibits attached thereto, I conclude that Department staff’s proof presents a prima facie showing, as discussed below.

#### First Cause of Action

Department staff’s complaint alleges that respondents violated former 6 NYCRR 360-1.5(a) by disposing solid waste material at the site without a permit. The affidavits of Mr. Spies and Mr. Merrill state that respondents disposed of solid waste at the site. Staff has demonstrated that the C&D debris deposited at the site was solid waste including wood, brick, asphalt, concrete, other masonry materials, glass, metal, and plaster.

Former 6 NYCRR 360-1.5(a) provides, in relevant part, that no person shall dispose of solid waste in the State except at a disposal facility exempt from part 360 or at an authorized disposal facility. “A material is disposed of if it is discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into groundwater or surface water.” (former 6 NYCRR 360-1.2[a][3].)

Staff has demonstrated that respondents Waste Away NY and Piccolo deposited, dumped or placed C&D debris, a solid waste, at the site so that the C&D debris may enter the environment without a permit. Such a demonstration constitutes a prima facie showing that respondents disposed of solid waste at the site without a permit in violation of former 6 NYCRR

360-1.5(a). Accordingly, Department staff's motion for an order without hearing on the first cause of action against respondents Waste Away NY and Piccolo is granted.<sup>2</sup>

### Second Cause of Action

Department staff's complaint alleges that respondents Waste Away NY and Piccolo violated ECL 27-0707 and former 6 NYCRR 360-1.7(a)(1)(i) by receiving and storing solid waste without a permit. C&D debris, by definition, is solid waste (*see* former 6 NYCRR 360-1.2[b][38]).

Staff has made a prima facie showing that respondents received and stored solid waste, in the form of C&D debris, at the facility without a permit in violation of ECL 27-0707 and former 6 NYCRR 360-1.7(a)(1)(i). Accordingly, Department staff's motion for order without hearing on the second cause of action against respondents Waste Away NY and Piccolo, is granted.<sup>3</sup>

### Penalty

Department staff's complaint and motion for order without hearing do not specify the amount of penalty staff is requesting. The complaint requests a penalty to the fullest extent allowed by statute and the motion requests a penalty as authorized by ECL 71-2703.

Staff's memorandum of law recites ECL 71-2703(1)(a), which provides, "[a]ny 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 . . . shall be liable for a civil penalty not to exceed seven thousand five hundred dollars for each such violation and an additional penalty of not more than one thousand five hundred dollars for each day during which such violation continues."

Staff's papers do not provide an analysis of the duration of the violations or what amount of penalty is supported and appropriate through the application of the statutory maximum penalty, DEE-1: Civil Penalty Policy (June 20, 1990) (DEE-1) and OGC-8: Solid Waste Enforcement Policy (November 17, 2010) (OGC-8). Staff does not request remedial relief from respondents because staff previously settled the matter with the landlord of the facility by order on consent that required the landlord to remediate the site (*see* Rubinton Affirmation ¶ 6; *see also* *Matter of Waste Away Carting NY, Inc.*, Ruling, November 28, 2018, at 6).

The maximum penalty allowed by ECL 71-2103(1)(a) for the two violation proven in this matter is fifteen thousand dollars (\$15,000) for a single day of violation. Without further

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<sup>2</sup> As discussed above, staff has not provided proof of service on respondent Waste Away Carting Inc. and has not withdrawn the matter against that respondent. Accordingly, liability is only found against respondents Waste Away NY and Piccolo.

<sup>3</sup> *Id.*

development of the record on penalty by Department staff or respondents, I decline to analyze the violations through the applicable policies - DEE-1 and OGC-8. I conclude, based on the approximate 1,000 cubic yards of C&D debris received, stored and disposed at the facility, that a penalty of fifteen thousand dollars (\$15,000) is supported and appropriate.

Department staff also requests that respondents be enjoined “from any further actions causing said violations to continue” (Complaint, Wherefore clause, ¶ II; Notice of Motion, ¶ II). Because the C&D debris has been removed from the facility, I do not recommend the injunctive relief requested to the Commissioner. Respondents are already required to comply with the ECL and the applicable regulations, and language to that effect is not needed.

### **CONCLUSIONS OF LAW**

By disposing of solid waste at the site without a permit, respondents Waste Away Carting NY, Inc. and Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc., violated former 6 NYCRR 360-1.5(a). By receiving and storing solid waste, in the form of C&D debris, at the facility without a permit, respondents Waste Away Carting NY, Inc. and Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc., violated ECL 27-0707 and former 6 NYCRR 360-1.7(a)(1)(i).

### **RECOMMENDATIONS**

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

1. Granting Department staff’s motion for order without hearing on staff’s first and second causes of action against respondents Waste Away Carting NY, Inc. and Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc.;
2. Holding that respondents Waste Away Carting NY, Inc. and Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc., jointly and severally, violated the following:
  - a. Former 6 NYCRR 360-1.5(a) for disposing of solid waste at the site without a permit; and
  - b. ECL 27-0707 and former 6 NYCRR 360-1.7(a)(1)(i) for receiving and storing solid waste, in the form of C&D debris, at the facility without a permit;
3. Directing respondents Waste Away Carting NY, Inc. and Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc., to pay a civil penalty in the amount of fifteen thousand dollars (\$15,000) within thirty (30) days of service of the Commissioner’s order on respondents;

4. Directing such other further relief as the Commissioner may deem just, proper, and appropriate.

/s/  
Michael S. Caruso  
Administrative Law Judge

Dated: August 19, 2019  
Albany, New York

## APPENDIX A

*Matter of Waste Away Carting NY, Inc., Waste Away Carting Inc., Ben Piccolo, individually and as operator of Waste Away Carting NY, Inc. or Waste Away Carting Inc.*

DEC File No. R1-20170720-198  
Motion for Order Without Hearing

1. Cover letter from David S. Rubinton, Assistant Regional Attorney, dated February 27, 2019 to Chief Administrative Law Judge James McClymonds, filing staff's Motion for Order Without Hearing and supporting papers
2. Notice of Motion for Order Without Hearing, dated February 7, 2019
3. Memorandum of Law in Support of Motion for Order Without Hearing, dated February 7, 2019
4. Affirmation of David S. Rubinton, dated February 7, 2019, attaching the following exhibits:
  - A. Affidavit of Christopher Spies, sworn to February 12, 2019
  - B. Affidavit of Matthew Merrill, sworn to February 7, 2019, attaching photographs numbered 1-4
  - C. Affirmation of Judith Donnenfeld, dated February 5, 2019, attaching the following exhibits:
    - A. Affidavit of Service of Appearance Ticket on Benjamin Piccolo
    - B. Checks from Waste Away Carting NY, Inc. to Mica Realty
    - D. USPS Certified Mail signed receipts for Waste Away Carting NY, Inc. and Ben Piccolo
5. Affidavit of Service of Carole Gajewski, sworn to February 26, 2019 (service of motion papers on respondents' attorney)

Other papers not submitted with the Motion for Order Without Hearing

1. Notice of Hearing and Complaint, dated August 3, 2017
2. Affidavit of Service of Carole Gajewski, sworn to August 4, 2017 (service of Notice of Hearing and Complaint) with USPS Certified Mail signed receipts attached
3. Affirmation of Service of Robert LoPresti, dated June 27, 2019 (service of June 26, 2019 Ruling on Motion to Withdraw on respondents)