

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of General Counsel, Region 4  
1130 North Westcott Road, Schenectady, NY 12306-2014  
P: (518) 357-2048 | F: (518) 357-2087  
www.dec.ny.gov

January 22, 2019

George D. McHugh  
General Counsel  
Carver Companies  
494 Western Ave.  
Albany, NY 12009

Re: Order on Consent  
R4-2018-1217-213

Dear Mr. McHugh:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$10,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Stephen Repsher  
Assistant Regional Attorney  
Region 4

Enclosure

ec: V. Schmitt  
N. Baker  
J. Whitcomb  
B. Maglienti  
K. Kornak



Department of  
Environmental  
Conservation

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

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

**ORDER ON CONSENT**  
R4-2018-1217-213

-by-

Coeymans Recycling Center, LLC  
494 Western Turnpike  
Altamont, NY 12009

Coeymans Recycling Center II, LLC  
494 Western Turnpike  
Altamont, NY 12009

Respondents.

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**WHEREAS:**

**JURISDICTION**

1. The New York State Department of Environmental Conservation ("Department") is and has been a Department of the State of New York empowered to regulate the disposal of solid waste and permit the operation of landfills pursuant to Article 27, Title 7 of the ECL, and regulations at 6 NYCRR Parts 360 *et seq.*
2. Respondent, Coeymans Recycling Center, LLC, ("CRC") is a domestic limited liability company which owns the Coeymans Industrial Park located at 40 Riverview Drive in the Town of Coeymans, County of Albany, State of New York.
3. Respondent, Coeymans Recycling Center II, LLC, ("CRC-II") is a foreign limited liability company, authorized in the State of New York, which owns the facility known as the Ravena Industrial Park, located in the Town of Coeymans, County of Albany, State of New York.
4. Respondents CRC and CRC-II are persons as defined at 6 NYCRR § 360.2(b)(198).

**BACKGROUND**

5. L W Land Development III, LLC ("L W Land Development") is a domestic limited liability company which owns a permitted construction and demolition ("C&D") processing facility located at 2170 State Route 144, in the Town of Coeymans, County of Albany, State of New York.
6. L W Land Development was issued Permit #4-0124-00012/00017, ("Permit"), with

an effective date of March 15, 2014, and expiration date of March 14, 2019, to accept C&D material at the facility known as the Port of Coeymans.

7. Prior to November 4, 2017, the Permit authorized Port of Coeymans to accept fill processed C&D, limited to uncontaminated concrete, asphalt pavement, brick, soil and rock, for the manufacture of recycled aggregate as provided for under a pre-determined Beneficial Use Determination (“BUD”) pursuant to Solid Waste regulations then in effect at 6 NYCRR § 360-1.15(b)(11).

8. Revisions to Solid Waste regulations at Part 360, effective November 4, 2017, eliminated the Part 360-1.15(b)(11) pre-determined BUD, and established new regulatory requirements for recycled soil material, and identified new categories of fill material including “restricted-use” and “limited-use” fill, which rendered acceptance of this processed C&D material at the facility unauthorized under the Permit.

9. On September 28, 2018, Department staff issued a letter to the facility stating the C&D material at issue would henceforth be classified under 6 NYCRR § 360.13 as “restricted-use fill,” and that acceptance of this material was no longer an authorized activity under the existing Permit, and that a permit modification was needed to authorize the receipt of the material at the Port of Coeymans.

10. On December 6, 2018, Waste Tracking Documents requested by Department staff were received which demonstrated that twenty-seven (27) barges of restricted-use fill, totaling 54,000 cubic yards, were received at the Port of Coeymans facility after the issuance of the September 28, 2018 letter and continuing through the date of the Department’s receipt of the documents.

11. Upon information and belief, restricted-use fill has been received at Coeymans Industrial Park, owned by Respondent CRC, and Ravena Industrial Park, owned by Respondent CRC-II, which are the locations of fill material placement.

### **VIOLATIONS**

12. Regulations at 6 NYCRR § 360.13(g)(3) (“Notification of fill material placement”) require that “[f]or restricted-use fill and limited-use fill material, the department must be notified at least 5 days before delivery of greater than 10 cubic yards of fill material. Notification must be made on forms or in a manner acceptable to the department and must include any analytical data required by this section. The department reserves the right to inspect any site receiving fill material.”

13. By receiving twenty-seven (27) barges of restricted-use fill between September 28, 2018 and December 6, 2018 without notifying the Department at least five (5) days prior to delivery, Respondents CRC and CRC-II violated 6 NYCRR § 360.13(g)(3).

### **WAIVER OF HEARING**

14. Respondents have affirmatively waived their right to notice and hearing as provided by law, and have consented to the issuing of this Order, and have agreed to be bound by the provisions, terms and the conditions of this Order.

## CIVIL PENALTY

19. ECL § 71-2703 provides that any person who violates any provision of, or who fails to perform any duty imposed by Title 7 of Article 27, or any rule or regulations promulgated pursuant thereto, or any term or condition of any certification or permit issued pursuant thereto, shall be liable for a civil penalty not to exceed seven thousand five hundred dollars for each violation and an additional penalty of not more than one thousand five hundred dollars for each day during which such violations continues, and may also be subject to injunctive relief.

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

I. **Civil Penalty.** With respect to the Order's violations, the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) is assessed, jointly and severally, against the Respondents. TEN THOUSAND DOLLARS (\$10,000) of the civil penalty shall be paid to the Department by company or bank check(s) made payable to "NYS Department of Environmental Conservation" at the time this Order is signed, notarized, and returned to the Department. Payment of this portion of the civil penalty shall not in any way alter Respondents' respective obligations to complete performance under the terms of the Order.

The balance of the penalty, FIFTEEN THOUSAND DOLLARS (\$15,000), is suspended and shall not be payable, *provided that* Respondents fully comply with the requirements of this Order and its Schedule of Compliance in a timely fashion. If Respondents fail to comply with any such requirements, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondents, in addition to appropriate penalties for any further violations of this Order.

II. **Schedule of Compliance.** Respondents shall comply with the terms and conditions of this Order, including all applicable items in the attached Schedule of Compliance that apply to any respective Respondent. Any records submitted to the Department shall include the appropriate owner's name, facility name and address, contact name, and phone number.

III. **Settlement.** This Order settles all solid waste violations involving the facts and circumstances described and identified herein, including the specific violations cited as of the effective date of the Order.

IV. **Binding Effect.** This Order is binding upon the Respondents, their agents, employees, successors, assigns and to all persons and firms and corporations acting under or controlled by them.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **Indemnification.** Respondents shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees, for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondents, their directors, officers, employees, agents, successors or assigns.

VII. **Modification.** No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee, such change to be made only upon written agreement of all parties.

VIII. **Access.** Each Respondent shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary for the Department to inspect and determine the status of that Respondent's compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department. The Department will provide Respondents with a fully executed copy of this Order as soon as practicable thereafter.

X. **Scope.** Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against Respondents for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than the Respondents for any other violations of the ECL, rules or regulations promulgated thereunder;

C. The Department's right to enforce this Order against Respondents, their officers, directors, and employees, should any Respondent fail to fulfill any of the Order's terms or provisions;

D. Respondents' rights to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department; provided however, that Respondents waive all legal or equitable rights, claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that each may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondents.

XI. **Review of Submitted Documentation.**

1. All documents which Respondents must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each submittal pursuant to this Order to determine whether it was prepared, and whether the work performed to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify the respective Respondent in writing of its approval or disapproval of the submittal.

3(a). If the Department disapproves a submittal, it shall notify the respective Respondent in writing and shall cite the regulatory basis and/or statutory provisions requiring its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and/or resolves all the Department's stated reasons for disapproving the initial submittal.

3(b). After receipt of a revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submittal will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department reasonably determines, as a result of reviewing data generated by an activity required under this Order, or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

**XII. Communications.** Communications shall be sent to:

For Department:

New York State Department of Environmental Conservation  
Region 4  
1130 North Westcott Road  
Schenectady, NY 12306  
Attn: Regional Engineer

For Respondents:

Coeymans Recycling Center, LLC  
Attn: George McHugh, Esq.  
494 Western Turnpike  
Altamont, NY 12009

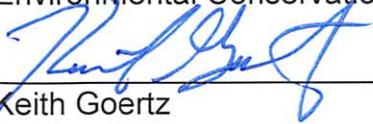
Coeymans Recycling Center II, LLC  
Attn: George McHugh, Esq.  
494 Western Turnpike  
Altamont, NY 12009

**XIII. Termination.** The Order shall terminate upon all Respondents' full compliance, as determined by the Department, with the terms, provisions and conditions of this Order including its Schedule of Compliance.

DATED: January 22, 2019  
Rotterdam, New York

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
\_\_\_\_\_  
Keith Goertz  
Regional Director

**CONSENT BY RESPONDENT**

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Coeymans Recycling Center, LLC  
Authorized Representative

SIGNED: 

TITLE: MANAGING MEMBER

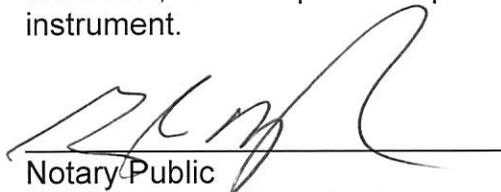
PRINTED: CARVER LARAWAY

DATE: 1/18/2019

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF SCHENECTADY )

On the 18 day of JANUARY in the year 2019, before me, the undersigned, personally appeared CARVER LARAWAY, personally known (Full name)

to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public  
Qualified in the County of:  
My Commission Expires:

GEORGE D. McHUGH  
Notary Public, State of New York  
Qualified in Albany County  
Reg. No. 02MC6003748  
Commission Expires March 9, 2022

**CONSENT BY RESPONDENT**

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Coeymans Recycling Center II, LLC  
Authorized Representative

SIGNED: 

TITLE: MANAGING MEMBER

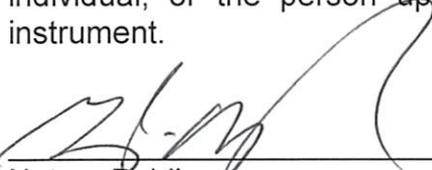
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to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on said instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

Qualified in the County of:  
My Commission Expires:

GEORGE D. McHUGH  
Notary Public, State of New York  
Qualified in Albany County  
Reg. No. 02MC6003748  
Commission Expires March 9 2022

## SCHEDULE OF COMPLIANCE

1. **Within thirty (30) days of the effective date of this Order**, Respondents shall submit for Department approval a fill progression plan, which shall:
  - a. clearly delineate the specific location, final grades, and elevations where Respondent proposes to place the material;
  - b. describe in detail the final proposed use of all fill areas, and clearly depict the location of all buildings and paved areas;
  - c. provide a project schedule for the placement of fill material and completion of the project described under Schedule Items # **1.a.** and **1.b.** above.
  
2. **Scope of Authorization for Use of Fill Material under this Order.** Respondent shall cease all fill activities at the CRC and CRC II entity properties upon completion of the project described in Schedule Item #1 above and will thereafter comply with any conditions arising from the Department's determination as to the pending case-specific Beneficial Use Determination request.

**NOTE:** Compliance with the terms and conditions of this Schedule of Compliance shall not be a defense to violations unrelated to this Order.