

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

the Application To Modify a Solid Waste
Management Facility Permit Pursuant to Part
360 of Title 6 of the Official Compilation of
Codes, Rules and Regulations of the State of
New York for a Facility in the City of
Peekskill, Westchester County,

- by -

KARTA CORPORATION,

Permittee/Applicant.

DEC Project No. 3-5512-0054/00004

DECISION OF THE EXECUTIVE DEPUTY COMMISSIONER

April 20, 2006

DECISION OF THE EXECUTIVE DEPUTY COMMISSIONER¹

Karta Corporation ("Karta") submitted an application to the New York State Department of Environmental Conservation ("Department") seeking to modify its existing solid waste management permit for its solid waste management facility located in the City of Peekskill, Westchester County. The solid waste management facility is a transfer station that processes mixed municipal wastes, commercial wastes, recyclables, construction and demolition debris, and yard wastes.

The facility presently operates pursuant to two Departmental approvals. A portion of the facility located at 1017 Lower South Street operates under a solid waste management facility permit issued pursuant to part 360 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR Part 360") (see DEC Permit No. 3-5512-00054/00004, Exh 11). Another portion of the facility located at 1011 Lower South Street operates as a registered recyclables handling and recovery, construction and demolition debris, and uncontaminated unadulterated wood processing facility (see DEC

¹ By memorandum dated February 18, 2005, then-Acting Commissioner Denise M. Sheehan delegated decision making authority in this matter to then-Deputy Commissioner Lynette M. Stark. The parties to this proceeding were so notified by letter dated February 28, 2005. Deputy Commissioner Stark was named Executive Deputy Commissioner on February 2, 2006.

Registration No. 60W08, Exh 52). In addition, Karta's facility is the subject of two orders on consent executed with the Department (see Order on Consent [6-30-02], DEC Case No. 3-20010329-41, Exh 7; Order on Consent [8-12-03], DEC Case No. 3-5512-00054-00004, Exh 8).

Karta's application seeks to modify its present approvals to allow it to operate the entire facility under a single Part 360 permit. After Karta's application was reviewed by Department staff, the matter was referred to the Department's Office of Hearings and Mediation Services for permit hearing proceedings pursuant to 6 NYCRR Part 624. The matter was assigned to Administrative Law Judge ("ALJ") P. Nicholas Garlick.

A draft permit was subsequently prepared by Department staff. Karta objected to many of its provisions and proposed a number of alternative permit provisions. After hearings were conducted regarding Karta's objections, the ALJ issued a hearing report, which is attached. I adopt the ALJ's hearing report as my decision in this matter, subject to the modifications and comments contained herein.

Discussion

Standard of Review

As noted by the ALJ, the parties dispute the applicable standard of review. Staff claims that "the information contained in the application for a permit, the draft permit, and the

attendant information required by DEC Staff" constitute a "prima facie" case for issuance of the permit as drafted by staff, and that the permit conditions are presumptively rational and supported by the record (DEC Staff's Post-Hearing Memorandum of Law, at 7). Throughout its closing brief, staff also argues that Karta has the burden of establishing "by a preponderance of the evidence" that staff's proposed permit conditions are "arbitrary, capricious, or contrary to law."

Karta, on the other hand, argues that it only has the burden of proving that its proposed permit conditions meet all applicable laws and regulations, and that it has no burden to disprove the reasonableness of permit conditions proposed by staff, at least where such conditions do not directly track the applicable regulations. Due to the potential for judicial review, Karta argues that Department staff carries a burden of establishing a reason, founded either upon the regulations or on significant environmental impacts, for imposing its proposed permit conditions, and that its proposed permit conditions are necessary to effectuate the regulations. Karta also contends that Department staff has the burden of supporting its permit conditions with "substantial evidence."

Neither argument is fully accurate. In an administrative permit hearing proceeding on a permit application, the Department's permit hearing procedures (see 6 NYCRR part 624)

expressly provide that during the evidentiary portion of the proceedings, “[t]he applicant has the burden of proof to demonstrate that its proposal will be in compliance with all applicable laws and regulations administered by the department” (6 NYCRR 624.9[b][1]; see also State Administrative Procedure Act [“SAPA”] § 306[1]). With respect to fact issues, “the party bearing the burden of proof must sustain that burden by a preponderance of the evidence” (6 NYCRR 624.9[c]).

The applicant’s burden of proof encompasses both the burden of producing evidence as well as the ultimate burden of persuasion that its project and the permit conditions it proposes are in compliance with all applicable laws and regulations (see Matter of Peckham Materials Corp., Commissioner’s Second Interim Decision, March 15, 1993, at 4; see also Borchers and Markell, New York State Administrative Procedure and Practice § 3.12, at 54 [West’s NY Prac Series 2d ed 1998]; Prince, Richardson on Evidence §§ 3-201 and 3-202 [Farrell 11th ed]; McCormick on Evidence § 336 [5th ed]). Once an applicant produces evidence sufficient to establish a prima facie case, the burden of production may shift to other parties in the proceeding, including Department staff, to produce evidence either in rebuttal to the applicant’s evidence or in support of contrary factual assertions, or both (see Matter of St. Lawrence Cement Co., LLC, Second Interim Decision of the Commissioner, at 126-

127).

Karta is correct that, in carrying its burden of proving in this proceeding that the permit conditions it proposes are in compliance with all laws and regulations, it is not necessarily required to prove that staff's proposed permit conditions are unreasonable. However, where, as here, Karta's contention is not simply that the proposed alternative permit conditions it offers sufficiently satisfy permit issuance standards, but that Department staff's conditions are themselves unreasonable or unauthorized, Karta carries the ultimate burden of persuasion on that point.

With respect to Department staff's burden of production, staff is correct that a case for permit issuance may be supported by the information contained in the application for a permit as well as other information required by staff during permit application review. However, to the extent staff relies upon the presumption contained in 6 NYCRR 624.4(c)(4), that regulatory presumption is not applicable at this stage of the proceedings. The presumption contained in section 624.4(c)(4) is the presumption applied during the issue conference stage of permit hearing proceedings to evaluate whether a proposed intervenor has raised an adjudicable issue for hearing. That presumption is not applicable to the evidentiary hearing portion of the proceeding and, in any event, would not be applicable

where a dispute exists between applicant and Department staff over a substantial term or condition of the draft permit.

Thus, the ALJ is correct in stating that when evaluating the record and making recommendations to the Commissioner, no presumption is applied, except one regulatory presumption not applicable here (see 6 NYCRR 624.9[b][3]). The ALJ's, and ultimately the Commissioner's, review is essentially de novo, with application of the "preponderance of evidence" standard for resolving factual issues.

Applicable Permit Issuance Standards; Record of Compliance

Karta's solid waste management facility is regulated pursuant to, and is therefore subject to the permitting requirements of, Environmental Conservation Law ("ECL") article 27, title 7, and 6 NYCRR part 360 ("Part 360"). In addition to the specific permitting and operational requirements imposed by Part 360, Part 360 requires that "[t]he provisions of each permit issued pursuant to this Part must assure, to the extent practicable, that the permitted activity will pose no significant adverse impact on public health, safety or welfare, the environment or natural resources, and that the activity will comply with the requirements identified in [subpart 360-1] and the applicable Subpart pertaining to such a facility, and with other applicable laws and regulations" (6 NYCRR 360-1.11[a][1]).

Other requirements identified in subpart 360-1 include the minimization of leachate generation and the effective control of blowing litter and other solid waste, dust, vectors, odors, and noise, among other things (see 6 NYCRR 360-1.14[b][2], [j]-[m], [p]). In reviewing the hearing record in this proceeding, Department staff's draft permit conditions and Karta's challenges thereto are evaluated against these regulatory standards, and permit conditions that are "rationally related" to the prevention of significant adverse environmental impacts may be included in the final permit (see Matter of C.I.D. Landfill, Inc. v New York State Dept. of Env'tl. Conservation, 167 AD2d 827 [2d Dept 1990]).

In addition to the general and specific permit issuance standards applicable to a proposed project, the Department also considers an applicant's history of compliance with environmental laws and regulations, as well as with prior permits and consent orders, if any, issued to or executed with an applicant (see Record of Compliance, DEC Commissioner Policy DEE-16 [revd March 5, 1993] ["Record of Compliance Policy"]). Based upon the applicant's record of environmental compliance, the Department has the authority to deny, suspend, or revoke permits or impose strict permit conditions to protect the environment and increase assurance that an applicant will comply with applicable law (see Matter of Waste Mgmt. of N.Y., LLC., Interim Decision of the Commissioner, May 15, 2000, at 6-7; Matter of Laidlaw Env'tl.

Servs., Inc., Decision of the Commissioner, June 28, 1994, at 1; see also Matter of Flacke v Onondaga Landfill Systems, Inc., 69 NY2d 355, 363-364 [1987]; Matter of Bio-Tech Mills, Inc. v Williams, 65 NY2d 855 [1985], affg for the reasons stated by Main, J., below 105 AD2d 301 [3d Dept]). Allegations of violations of relevant laws may be included and proven in an administrative permit hearing proceeding, including a proceeding on an application to modify an existing permit (see Record of Compliance Policy, at II, IV).

In this matter, the ALJ determined that Department staff established nearly 300 violations of the ECL, its associated regulations, and consent orders at Karta's facility over the past five years. Many of those violations demonstrate Karta's persistent failure to control waste, litter, dust, odors, leachate and vector breeding areas at the facility. These violations also reveal a history of persistent failure to operate the facility within regulatory limits and Departmental approvals. Accordingly, the ALJ correctly concluded that Karta's history of non-compliance provided additional justification for many of the control measures Department staff seeks to impose in the final permit.

In light of Karta's documented non-compliance with applicable environmental standards, its reliance on an ALJ's issues ruling in Matter of Town of Brookhaven (April 26, 1995, at

21-22) is unavailing. In Town of Brookhaven, proposed intervenors, relying solely upon the general provision in 6 NYCRR 360-1.11(a)(1), failed to raise an adjudicable issue concerning the applicant's compliance with more specific requirements of Part 360. Here, in contrast, Karta's history of non-compliance raises serious doubts about its ability to meet both the general standard in section 360-1.11(a)(1), as well as the more specific standards requiring the minimization of leachate generation, the effective control of blowing litter and other solid waste, dust, vectors, odors, and noise, among other impacts, unless more stringent permit conditions are included in the final permit.

Tonnage Limitations; Storage Limitations; Limitations on Hours of Operation

Karta objects to the tonnage limitations (Draft Permit Condition 30), storage limitations (Draft Permit Condition 31), and the limitations on the facility's hours of operation (Draft Permit Condition 44) included in staff's draft permit. As noted by the ALJ, however, the draft permit's tonnage limitations and, consequently, the limitations on hours of operation are supported by a preponderance of the credible evidence, and consistent with permit requirements imposed upon facilities similar to Karta's. The draft permit's storage limitations are also supported by a preponderance of the credible evidence and Department staff's more credible technical analysis. Karta's proposed limits fail to provide adequate assurance of environmental compliance,

particularly given Karta's historical failure to timely remove solid waste from the facility.

Definition of Aggregate; C&D Fines; Authority to Produce Alternative Daily Cover

Karta seeks to expand the narrow definition of "aggregate" Department staff proposes in its draft permit condition 29 to include its use as structural fill, including road base. Because Karta's proposal to use its crusher run in roadbase is consistent with the Department's application of the term "substitute for conventional aggregate" (6 NYCRR 360-1.15[b][11]), I accept Karta's proposed definition in part, subject to the following limitations.

As found by the ALJ, the facility currently accepts recognizable, uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil and rock from both C&D and other sources. This material is then crushed and marketed for several uses, including road base and structural fill. The crushed material, known as "crusher run," meets the specification established by the New York State Department of Transportation for Type 4 subbase course (see NYS DOT Standard Specifications, Section 304 - Subbase Course, at 3-7, Exh 17).

Type 4 crusher run contains a substantial percentage of unrecognizable fine material that can be easily mistaken for uncontaminated natural soil. Because Karta's C&D crusher run fines contain asphalt, however, they contain polycyclic aromatic

hydrocarbons ("PAHs"), some of which are carcinogenic. The health risk posed by the inappropriate use of Karta's Type 4 crusher run, such as for residential fill, requires strict control of its use. This is particularly so in Karta's case, whose screenings have been used in inappropriate places, exposing the public, including children, to elevated levels of these carcinogens.

Consistent with the generic beneficial use determination contained in Part 360 (see 6 NYCRR 360-1.15[b][11]) and the Department-wide application of that BUD, Karta's proposal to expand the permit definition of aggregate to include the use of its Type 4 crusher run as road base is acceptable, so long as that road base is subsequently covered by asphalt or concrete pavement and not combined with soil. However, to avoid the health risks associated with the inappropriate use of Karta's asphalt-containing Type 4 crusher run fines, Karta must apply for a case-specific beneficial use determination if it wishes to market its crusher run for any other use, including as structural fill or substrate under parking lots, for example (see 6 NYCRR 360-1.15[d]).

Accordingly, draft permit condition 29 should be modified to read:

". . . within doors numbered 12, 13, 14, 15, and 22 -- rock, concrete, brick, conventional aggregate, and aggregate substitute (For purposes of this permit, aggregate substitute

as referenced here means substitute for conventional aggregate provided for in 6 NYCRR 360-1.15(b)(11), including Type 4 crusher run, provided that the permittee's aggregate substitute may only be added to cement to make concrete, added to asphalt to make asphalt pavement, or used in roadbase that is constructed consistent with standard engineering principles, covered by asphalt or concrete pavement, and not mixed with soil)"

With respect to the draft permit's limitation on the disposal of fines not meeting the above definition of aggregate substitute (see Draft Permit Condition 27), however, I accept the ALJ's rationale and recommendations. In particular, the record establishes that PAH-containing C&D fines from Karta's facility have inappropriately been placed in a town park, among other locations, thereby justifying the permit restrictions. To be consistent with permit condition 29, staff's draft permit condition 27 should be modified to provide "Fines shall be considered as any portion of the waste stream that does not meet the definition of aggregate substitute in special condition #29 below."

For reasons stated by the ALJ, I also accept permit condition 28 proposed by staff in its brief indicating that Karta is not authorized to produce alternative daily cover ("ADC"), but may submit a permit modification application to become authorized.

Plans for Construction/Operations in the Area Between Buildings 3 and 6

For the reasons stated by the ALJ, I accept staff's proposed permit conditions 21 and 26. Permit condition 21 requires Karta to submit plans to the Department for the construction of a cover over the conveyor system between Buildings 3 and 6 prior to use of the conveyor system. Permit condition 26 prohibits tipping, storage or loading in the area located between Buildings 3 and 6. I also accept the ALJ's recommendation that permit condition 26 be modified to allow Karta to submit for Departmental approval plans for tipping, storage and loading in that area. To allow for comprehensive review of Karta plans, the plans for operations in the area should be submitted contemporaneously with the plans for construction of the cover.

Accordingly, permit condition 26 should be modified to read as follows:

"26. No tipping/storage/loading will be allowed in the area located between buildings #'s 3 and 6. However, contemporaneous with the plan for the construction of a cover system described in paragraph 21 of this permit, the permittee may submit a plan for tipping, storage and/or loading in this area and such activity shall only commence following receipt of written authorization by the department."

Operations with Doors Closed

The ALJ recommends that I not impose Department staff's proposed condition 32, which requires that "[t]he facility shall

operate with the doors closed at all times except when a truck delivering waste is entering or leaving a building. The doors must be closed while dumping is taking place and immediately after the transit movement has been completed" (see Permit [draft 2-17-05], Exh 90, at 7). I accept the ALJ's recommendation in part, for the following reasons.

With respect to Building 6, as noted by the ALJ, the weight of the evidence establishes that it would be unduly difficult to tip garbage trucks inside the building with the doors closed. With respect to Building 3, the only record evidence suggests that tipping garbage trucks with the doors closed is not possible. With respect to Buildings 1 and 2, the record supports the fair inference that that tipping with the doors closed in those buildings would not be possible either. Accordingly, I conclude that based upon this record, it is not practicable to require Karta to conduct tipping operations with the doors closed (see 6 NYCRR 360-1.11[a][1]).

Nevertheless, Karta's significant history of environmental non-compliance, including its repeated failure to control litter and other wastes, dust, vector breeding, and odors at its facility, justifies the practicable mitigation measure of requiring that the doors otherwise remain closed, even though building-specific complaints have not been received by the Department. The circumstance that the present doors might need

to be upgraded to comply with this requirement does not compel a conclusion that the measure is impracticable.

Accordingly, proposed condition 32 should be imposed, modified to allow operations with the doors open not only while vehicles are entering and exiting the building, but also during dumping operations. However, the doors must be closed immediately after the completion of dumping and transit movements. Thus, condition 32 should provide:

"32. The facility shall operate with the doors closed at all times except when vehicles are entering or leaving, or during dumping operations. The doors must be closed immediately after the transit and dumping movements have been completed."

Stormwater Management

Based upon the record evidence, the ALJ recommended imposing the stormwater management measure required by staff's proposed condition 20. I accept the ALJ's assessment and recommendation on this point.

The ALJ rejected staff's condition 33 as proposed in the Department's brief, however, on the ground, among others, that staff failed to identify a regulatory requirement prohibiting stormwater run-on from off-site. I disagree with the conclusion that staff failed to identify an applicable regulatory requirement. As the ALJ noted, Karta is under an obligation under the regulations to minimize the generation of leachate (see

6 NYCRR 360-1.14[b][2])). This obligation is in addition to Karta's obligation to manage stormwater under the SPDES program. As also noted by the ALJ, the weight of credible record evidence establishes that stormwater run-on from off-site contributes to the generation of leachate at the facility. I agree with the ALJ, however, that permit condition 20 is adequate to address the problem. Thus, I accept permit condition 33 as proposed by the ALJ.

Waste Tanks; Safety Training

The ALJ recommends adopting Department staff's proposed permit condition 38 prohibiting the receipt of any waste tanks at the facility other than hot water and water pressure tanks. I agree with the ALJ that this permit condition is supported by a preponderance of the record evidence, including repeated instances of mishandling of propane tanks, and culminating in the death and injury of workers at the facility in a tank-related accident. Because the limitation on the acceptance of tanks is a measure reasonably related to the protection of human safety and the environment, I adopt the ALJ's recommendation.

The ALJ also recommends adopting Department staff's proposal that unacceptable waste recognition training be required for Karta's staff. I agree. The repeated mishandling of tanks by facility workers referred to above more than amply supports the training requirement and is also a measure reasonably related

to the protection of human safety and the environment.

Accordingly, staff's proposed permit condition regarding training should be included in the permit.

Remaining Recommendations and Conclusion

I accept and adopt the remaining recommendations from the ALJ not otherwise expressly addressed above.

Accordingly, Department staff is hereby directed to issue a final permit to Karta containing the special conditions as modified herein and the ALJ's hearing report.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Lynette M. Stark
Executive Deputy Commissioner

Dated: Albany, New York
April 20, 2006

SUMMARY

This matter involves a substantial dispute between Staff of the Department of Environmental Conservation (DEC Staff) and Karta Corp. (Karta), the applicant, regarding material terms of a draft solid waste management permit prepared by DEC Staff in response to an application from Karta to modify its existing solid waste management permit for its facility located at 1011 and 1017 Lower South Street in the City of Peekskill, Westchester County. DEC Staff's original proposed permit contained 67 special conditions or paragraphs, of which Karta objected in part or in whole to 30 (Exh. 3). Each of these objections was identified as an issue and advanced to adjudication in an Issues Ruling dated June 21, 2004. During the hearing process, some of the disputes were resolved as negotiations occurred between DEC Staff and Karta. Karta proposed its version of the draft permit in November 2004 and DEC Staff provided its revised draft permit in February 2005. After a briefing period, which was extended with the consent of the parties, the record closed on September 1, 2005. Newly revised permit conditions were proposed by both Karta and DEC Staff in their briefs. As it now stands, disputes regarding 21 special conditions remain.

SEQRA STATUS

The Planning Commission of the City of Peekskill is lead agency for purposes of the State Environmental Quality Review Act (SEQRA, Environmental Conservation Law, Article 8). The City determined that continuation of operations at the site would not have a significant effect on the environment and issued a negative declaration in April 1998. DEC Staff relies on this negative declaration for this proposed modification because it is a reduction in impacts from those considered in 1998 and DEC Staff states that this modification will not have a significant impact on the environment (Exh. 1, p.11).

ADJUDICATORY HEARING

The adjudicatory hearing in this matter occurred over ten days, August 11 - 13, and 16 - 19 and September 20 - 22, 2004, in the Common Council Chambers at Peekskill City Hall.

Karta appeared through Paul D. Casowitz, Esq., of the law firm Sive, Paget & Riesel, P.C. Karta called three witnesses: Kenneth Cartalemi, an owner of Karta; Kenneth Gelting, a consulting solid waste engineer employed by Earth Tech, Inc.; and Fang Yang, a noise expert employed by Earth Tech, Inc.

DEC Staff appeared through Vincent Altieri, Esq., Regional Attorney, DEC Region 3 and Jonah Triebwasser, Esq., Deputy Regional Attorney. DEC Staff called four witnesses, all of whom are member of DEC Staff: Michael Merriman, Permit Analyst; David Pollock, Solid Waste Engineer; Steven Parisio, Engineering Geologist; and Donald Weiss, Environmental Monitor.

The City of Peekskill appeared through its Acting General Counsel, William J. Florence, Esq. The City called no witnesses.

CLOSING OF THE RECORD

Following the last day of the adjudicatory hearing, several documents were admitted into the record, including Karta's proposed draft permit dated November 1, 2004 (Exh. 87) and DEC Staff's revised draft permit dated February 17, 2005 (Exh. 90). The briefing schedule was suspended pending the execution of a settlement agreement between the City and Karta Corp. and some of its associated companies. The executed settlement was received in late January 2005 (Exh. 85) and a staggered briefing schedule was established.

The briefing schedule was extended several times with consent of all involved. The City did not brief any issues but submitted a letter dated March 23, 2005 stated that it supported approval of Karta's proposal as it was consistent with its settlement agreement with Karta. Karta's initial brief was received on April 22, 2005. DEC staff filed its brief on June 16, 2005. Karta's reply brief was received on July 1, 2005.

Following receipt of the briefs, at the request of the ALJ, DEC Staff made a motion on July 28, 2005 to include additional exhibits in the record. These exhibits related to: (1) an accident that occurred at the facility in October 2004 after the adjudicatory hearing had ended; and (2) the proposed permit special condition 32 requiring that all municipal solid waste (MSW) be tipped inside with the doors closed. The ALJ requested the additional information regarding the accident because while the parties referred to it in their briefs and during conference calls with the ALJ, there was no evidence in the record about the accident. The ALJ requested information related to the proposed permit special condition 32 because DEC Staff in its brief referred to evidence, specifically photographs, not in the record. DEC Staff requested that the following twelve documents be included in evidence:

Exh. #	Description
92	Peekskill Police Complaint Report 10/4/04
93	Journal News Article 10/5/04
94	Occupational Safety and Health Administration press release 4/12/05
95	Journal News Article 10/14/05
96	Journal News Article 6/20/05
97	8 photos of discarded tanks at facility
98	2 US Department of Labor Citation and Notification of Penalty Forms 4/1/05
99	NYSDEC inspection report 8/16/02
100	NYSDEC inspection report 3/24/04
101	NYSDEC inspection report 7/21/04
102	NYSDEC inspection report 10/27/04
103	4 photos of trucks in building 6

Karta objects to the admission of some of these documents, but not all. Karta does not object the admission of Exhibits 92, 94 and 98. Accordingly, these three exhibits are admitted into evidence.

Karta objects to the inclusion of the newspaper articles (Exh. 93, 95 and 96) because they are not reliable and all the relevant information is found in the official reports (Exh. 92, 94 and 98). DEC Staff acknowledges that newspaper articles are not generally admissible but maintains that in this administrative forum these articles are relevant and probative evidence. The purpose of my request for additional information regarding the October 2004 accident was to ensure that the record included the facts such as the date, time, place and cause of the accident. This information is included in Exhibits 92, 94 and 98, as Karta argues, and this information is sufficient to make recommendations. Accordingly, Exhibits 93, 95 and 96 are not admitted into evidence.

Exhibit 97 includes 8 photos of propane tanks. The photographs were reportedly taken between December 2004 and March

2005. Some of the tanks have been cut open and some appear to have valves attached. DEC Staff argues that these photos show mishandling of these tanks at the facility. Karta objects to the admission into evidence of this exhibit because Karta has not had an opportunity to cross-examine the person who took these photos. DEC Staff responds that the photos speak for themselves. Karta does acknowledge that empty tanks are a part of the waste stream it handles. From viewing the photos, it appears that these are indeed waste propane tanks of various sizes, and that some of these tanks have valves on them. According to DEC Staff, it is acceptable for a facility to accept propane tanks with valves as long as the tanks are segregated and the valves properly removed before being considered waste (t. 1892). DEC Staff does not assert nor can it be determined from the photos that these tanks are not set aside to have their valves removed. DEC Staff offers this exhibit in support of its proposed special permit condition #38 which would prohibit Karta from accepting certain waste tanks. DEC Staff argues that these photos are evidence of the mishandling of waste tanks that supports its proposed permit condition, however, since questions exist regarding the circumstances surrounding the tanks in the photos, Exhibit 97 will not be admitted into evidence.

Exhibits 99-102 are inspection reports prepared by DEC Staff documenting conditions at the facility. Karta opposes the admission of these documents because Karta has not had an opportunity to cross-examine the preparer. DEC Staff asserts that these inspection reports buttress its argument regarding its proposed prohibition on the receipt of certain tanks at the facility. It should be noted that Exhibit 102 has already been admitted as Exhibit 89 and Exhibit 101 has already been admitted at Exhibit 10. Exhibit 99 refers to a violation for mishandling propane tanks. Karta admitted to this violation in the 2003 consent order. The remaining report, Exhibit 100, is not necessary for DEC Staff to make its case regarding special condition 38 and Karta's objection on the grounds of lack of cross examination is sustained.

Exhibit 103 includes four black and white photos of trucks operating inside building 6. DEC Staff argues that these photos show that Municipal Solid Waste (MSW) can be tipped inside this building and requests that Exhibit 103 be included in evidence. In its brief, DEC Staff asserted that "DEC Staff have observed and photographed rolloff trucks and compactor trucks dumping inside of building 6 with sufficient room for the doors to be closed" (DEC brief, p. 24). However, while these photographs show trucks inside building 6, they do not show these trucks dumping, as DEC Staff stated in its brief. Karta objects to the

inclusion of these photos into the hearing record because they are misleading and impossible to interpret and do not represent typical operating conditions in building 6. These photos do not depict dumping in building 6 and as such do not clearly demonstrate the fact that dumping can occur in building 6 with the doors closed. As such, the other evidence in the record on this point will have to suffice. Karta's assertion that these photos do not show typical operating conditions are credible and further testimony would be required with respect to these photos. DEC Staff had an opportunity to introduce these photos at the hearing and chose not to do so. Because these photographs have been offered late, and Karta has not had the opportunity to challenge them through cross examination, they will not be admitted into evidence.

FINDINGS OF FACT

KARTA CORP. (Karta) and its affiliated entities

1. Karta is listed as the owner/operator in the instant permit application and is liable for compliance with the permit and all requirements of the Environmental Conservation Law (ECL). (April 10, 2003 letter from Casowitz to Triebwasser).
2. The principals of Karta and their respective ownership interests are as follows: Kenneth J. Cartalemi (35%); his wife Maria E. Cartalemi (35%), their children, Kenneth Jon, Maria V. and Matthew (a minor, as of the writing of this letter) Cartalemi (10% each). (April 10, 2003 letter from Casowitz to Triebwasser).
3. There are several related companies including Karta Container & Recycling, Global Recycling and Collection, Inc., Karta Industries, Inc., and Global Land. Global Recycling & Collection, Inc. owns equipment and vehicles leased to Karta Corp. in connection with the facility or collection activities. The principals of all the companies, with the exception of Karta Industries, Inc. are the same or a sub-set of the principals of Karta Corp. Karta Industries, Inc., is owned 50% by Kenneth James Cartalemi and 50% by his father, Pasquale Cartalemi. (April 10, 2003 letter from Casowitz to Triebwasser).

The Facility

4. For the purposes of this permit application, the facility consists of eight contiguous parcels. Five of the parcels have the following street addresses and tax map numbers: 1011 Lower South Street (32.20-2-5), 1017 Lower South Street (32.20-2-4), 110 Travis Lane (32.20-13-2), 116 Travis Lane (32.20-13-4) and 120 Travis Lane (13.20-13-3). The three remaining parcels are small areas recently purchased from the City adjacent to the facility and are expected to be merged into the 1011 Lower South Street parcel (Exh. 2, p. 4). The facility is approximately ten acres in size (t. 274).
5. The facility is located in an M-2A (General Industrial) Zoning District (Exh. 2, p. 4).
6. The 1017 Lower South Street Parcel (1017 parcel) is owned in fee simple by the Peekskill Industrial Development Agency, (as security for IDA financing) and leased to Karta Industries, Inc. (Exh. 85, p. 1).
7. The 1011 Lower South Street Parcel (1011 Parcel) is owned in fee simple by Global Land (Exh. 85, p.1).
8. Global Collection, Inc. owns the parcels at 110, 116 and 120 Travis Lane (Exh. 85, p.1)
9. Presently, Karta Corp. is the owner/operator of a registered solid waste management facility located at 1011 Lower South Street (registered site #60W08) and is also the owner/operator of a permitted solid waste management permit located at 1017 Lower South Street.

Permitting History

10. Karta Corporation, Inc. filed a registration form for a solid waste management facility on August 24, 1998, (DEC Registration #60W08) for operations on the 1011 Lower South Street parcel. This registration stated the normal hours of operation would be from 6:00 a.m. until 8:00 p.m. on weekdays and from 6:00 a.m. until 6:00 p.m. on Saturdays. The registration does not clearly specify the total quantity of material to be processed on a daily/weekly/monthly basis. The registration allows for the receipt and processing of recognizable, uncontaminated, concrete, soil, brick, asphalt pavement, glass, metals, wood, uncontaminated street sweepings, and land-clearing debris for recovery and re-use consistent with local, state and federal regulations. (Exh. 52).

11. On March 14, 2001, DEC staff renewed the solid waste management permit (#3-5512-00054/00004) for the portion of the facility located at 1017 Lower South Street (Exh. 11).² This permit stated the hours of operation for the facility would be 7:00 a.m. until 5:00 p.m. on Monday through Saturday and prohibited the receipt of waste after 4:00 p.m. (Special Condition 16). The permit limited the acceptance of waste to no more than 500 tons per day of municipal solid waste, commercial waste and construction and demolition debris (Special Condition 8). The permit allows sorting and recovery of recyclable glass and plastic bottles, aluminum and steel cans, paper, and cardboard from municipal solid waste, and the baling and transfer of non-recoverable waste for appropriate disposal. Also allowed on this site, in a separate operational area, is the recovery of metals, rock, soil, concrete, glass, and uncontaminated wood, paper and cardboard from construction and demolition debris; with remaining debris processed for appropriate disposal or allowable use consistent with local, state and federal regulations.

Bankruptcy and Related Litigation

12. In August 2000, a fire occurred at the permitted portion of the facility on the 1017 parcel.
13. On January 9, 2002, Karta Corp., Karta Container & Recycling, Inc., and Global Recycling and Collection, Inc. filed for relief under Chapter 11 of the Bankruptcy Code in Bankruptcy Court for the Southern District of New York. (Exh. 85, p. 1).
14. On January 30, 2002, the City of Peekskill (City) revoked a special permit which authorized recycling activities on the 1011 parcel. (Exh. 85, p. 2).
15. In October 2002, the companies in bankruptcy filed at least two lawsuits against the City of Peekskill, seeking damages and injunctive relief. Apparently an order was issued preventing the revocation of the special permit and allowing operations to continue. (Exh. 85, p. 2).

² The permit itself referenced the 1011 parcel, however, this is an error (see t. 201) because the 1011 parcel is subject to the registration (Exh. 52).

16. In addition to the litigation described above in finding of fact 15, the City also asserted claims against Karta Corp. and several of its affiliated companies under a service contract modified in August 1990. While not entirely clear from this record, the service contract appears to involve the processing of wastes from the City at the facility. (Exh. 85, p. 2).
17. On January 27, 2005, the City, Karta Corp. and its affiliates executed a settlement agreement resolving the litigation described in findings of fact 15 & 16. It is unclear from this administrative record whether or not the settlement agreement has become effective. The terms of the settlement agreement include: (1) providing an option for the City to purchase the 1011 parcel for \$3,125,000; (2) allowing Global Recycling and Collection, Inc. to apply for special use permits from the City to operate the facility; (3) allowing Global Recycling and Collection, Inc. to apply for a special use permit to operate a recycling facility on a parcel located at 1070 Lower South Street (this would also require a permit modification or new permit from DEC); (4) limiting the amount of materials received at the 1017 property to 750 tons per day, based on a seven-day moving average (but not to exceed 800 tons per day); (5) specifying the types of waste to be accepted at the facility; and (6) specifying the hours of operation at the facility.

DEC's Permit Application Process

18. In August 2001, Karta submitted an application to DEC Staff to modify its existing solid waste management permit. This modification contemplates including the operations on both the 1011 and 1017 parcels in the permitted facility.
19. On May 30, 2002, DEC Staff issued a Notice of Incomplete Application (Exh. 19 & 41).
20. On October 4, 2002, DEC Staff issued a Notice of Incomplete Application (Exh. 40).
21. On October 15, 2002, DEC Staff issued a Notice of Incomplete Application (Exh. 18 and 39).
22. Karta submitted revisions to its applications on March 3, 2003, March 11, 2003 and April 14, 2003.
23. On May 1, 2003, DEC Staff informed Karta Corp. that the

processing of its permit modification application had been suspended due to outstanding violations at the facility (Exh. 38).

24. On September 8, 2003, DEC Staff issued a Notice of Complete Application (Exh. 12). The Notice appeared in the Department's electronic *Environmental News Bulletin* on September 17, 2003, the local *Pennysaver* on September 17, 2003 and *The Journal News* on September 13, 2003.
25. Karta submitted additional information to DEC Staff on September 17, 2003 and October 2, 2003.
26. By letter dated September 23, 2003, the City informed DEC Staff that it opposed Karta's request to operate 24 hours a day. The letter also informed DEC Staff that the City's Special Use Permit, which authorized operation of the facility, had been revoked and that the City had been enjoined from enforcing revocation by a bankruptcy court.
27. By letter dated November 7, 2003, DEC Staff notified the Permittee that the permit modification application was being referred for an administrative hearing because there was a reasonable likelihood that application would be denied or could be granted only with major modifications (see 6 NYCRR 621.7(b)).
28. On December 24, 2003, the referral was received in the Office of Hearings and Mediation Services ("OHMS") and Administrative Law Judge ("ALJ") P. Nicholas Garlick was assigned to the matter.
29. By letter dated March 15, 2004, DEC Staff informed the ALJ that it would oppose permit issuance for the pending application and that in this case no draft permit was needed before Notice would be published.
30. On April 7, 2004, the Notice of Legislative Public Hearing and Notice of Issues Conference was published in the *Environmental Notice Bulletin*. The Notice was published in the *Journal News* on April 8, 2004 and in the *Pennysaver* on April 21, 2004, and in the Spanish language *Pennysaver* on the same date.
31. A legislative hearing was held on April 29, 2004, in the Council Chambers, Peekskill City Hall, 840 Main Street, Peekskill, NY. Representatives of Karta, DEC Staff, the City and two members of the public spoke.

32. By letter dated April 30, 2004, the City petitioned for full party status and proposed five issues for adjudication, including: hours of operation; intensity of use of the site; requiring the facility to be enclosed; activities conducted within structures at the facility; and noise, odors and dust.
33. On May 12, 2004, DEC Staff provided a draft permit (Exh. 1).
34. An issues conference was held on May 13, 2004 in the Council Chambers, Peekskill City Hall, 840 Main Street, Peekskill, New York. At the issues conference, both Karta and the City indicated that they were unable to respond to the draft permit because they had only received the permit the day before. The ALJ then ruled that an additional notice was necessary to announce the availability of the draft permit, allowing public comment on the draft permit, and reconvening the issues conference.
35. Immediately following the May 13, 2004 issues conference, a site visit took place. Representatives of DEC Staff, Karta and the City accompanied the ALJ during the site visit.
36. A Notice of Availability of Draft Permit and Notice of Continued Issues Conference, scheduled for June 17, 2004, was published in the *Environmental Notice Bulletin* on May 17, 2004, and in the *Journal News* on May 19, 2004.
37. On June 16, 2004, Karta provided a detailed issues list which included all of Karta's disputes with DEC Staff (Exh. 3). DEC Staff stipulated that all of the issues met the standards for adjudication. The City agreed that Karta's list included those of importance to the City.
38. By letter dated June 16, 2004, the continuation of the issues conference was cancelled, since all issues had been either resolved or previously identified.
39. An Issues Ruling advancing all identified issues to adjudication was issued on June 21, 2004 and no appeals were filed.

Enforcement Actions

40. By Notice of Violation ("NOV") dated October 14, 1997 (Exh. 51), DEC Staff alleged eight violations against Karta. The record does not indicate the disposition of these

allegations.

41. By Notice of violation dated June 7, 1999 (Exh. 49), DEC Staff alleged a single violation against Karta. The record does not indicate the disposition of this allegation.
42. By Notice of Violation dated February 16, 2001, DEC Staff alleged eleven violations against Karta (Exh. 45), six at the permitted portion of the facility, two at the registered portion of the facility and the others at two other facilities not under consideration in this proceeding.
43. On July 27, 2001, David G. Pollock of DEC Staff inspected the both the permitted and registered facilities and completed an inspection report alleging several violations (Exh. 42). These violations as well as those from four other inspections (inspection reports not in the record) were alleged in a Notice of Violation (NOV) dated August 6, 2001 (Exh. 43). The NOV alleges one violation at the permitted portion of the facility and eight violations at the registered portion of the facility.
44. By Notice of Violation dated December 22, 2000 (Exh 46), DEC Staff alleged that Karta had been making changes to its permitted facility without DEC Staff authorization.

The 2002 Consent Order

45. On June 30, 2002, Karta Corp. entered into an Order on Consent (Case #3-20010329-41) with the Department (Exh. 7). One of the purposes of this consent order was to confirm the activities Karta would be allowed to conduct, while its permit modification was being processed. Under the terms of this consent order, Karta paid a \$15,000 civil penalty and represented that it had taken steps to ensure that repeat violations would not be repeated. Karta also agreed to a \$30,000 suspended penalty to be payable if it violated the terms of the order.
46. The specific violations Karta admitted to in the 2002 consent order are listed below.
 - A. Litter was not sufficiently confined or controlled in violation of 6 NYCRR 360-1.14(j), 360-11.4(e), 360-16.3(h)(4) and 360-16.4(b)(5).
 - B. Litter, waste and leachate were not being sufficiently

controlled to prevent vector breeding areas in violation of 6 NYCRR 360-1.14(1), 360-11.4(e), 360-16.3(h)(5) and 360-16.4(b)(5).

- C. A small hydraulic oil spill was observed at the site on January 31, 2001 and Karta failed to notify proper authorities of the spill, in violation of ECL 17-0801.
47. In addition to the violations Karta admitted, DEC Staff also alleged:
- A. Karta had managed solid waste in areas of the facility not allowed by its permit in violation of 6 NYCRR 360-1.7(a) and 360-16.1.
 - B. Leachate in the area of the building damaged by the fire was not properly controlled by Karta in violation of 6 NYCRR 360-1.14(f) and 16.4(a).
 - C. Karta accepted industrial waste at the facility (empty, plastic drums not labeled as cleaned) in violation of 6 NYCRR 360-1.14(e)(1) and special condition #8 of its permit.
 - D. Karta improperly treated crushed gypsum board and stored it outside in violation of 6 NYCRR 360-1.14(r)).
48. In the 2002 consent order, DEC Staff agreed to not seek penalties or other relief for these alleged violations, provided Karta complied with the terms of the order. DEC Staff's alleged violations were documented in 18 inspection reports from the last half of 2000, 28 inspection reports from 2001 and 8 inspection reports from the first half of 2002 (Exhs. 42, 43, 45, 46).
49. The 2002 consent order recognized that following the fire in August 2002, Karta had temporarily relocated certain activities without DEC approval in order to continue operations.

The 2003 Consent Order

50. On August 5, 2003, Karta Corp. entered into an Order on Consent (Case #3-5512-00054-00004) (Exh. 8). In this consent order, Karta agreed to pay a \$30,000 civil penalty and a \$50,000 stipulated penalty upon a future determination

by DEC that Karta violated any provision of this second consent order.

51. In this second consent order, Karta admitted to each of the violations on the dates specified in Exhibits A (NOV dated March 10, 2003), B (eight environmental conservation appearance tickets) and "the various Notices of Violation"³ (Exh. 8, p. 2). Based on information in this administrative record, there is evidence to show Karta admitted to the following 82 violations.

- A. Karta handled solid waste in unauthorized areas of the facility on eighteen different occasions between June 2002 and January 2003, in violation of 6 NYCRR 360-1.7(a), 360-1.8(h)(1)(5) and 360-16(1).
- B. Karta failed to control and minimize leachate once in June 2002 in violation of 6 NYCRR 360-1.14(b)(2), 16.3(f)(2) and 360-16.4(g).
- C. Karta's facility components were maintained and operated without proper authorization on three occasions in violation of 6 NYCRR 360-1.14(f) and 360-16.4(a).
- D. Karta did not sufficiently confine or control solid waste on eight occasions in violation of 6 NYCRR 360-1.14(j), 360-16.3(h)(4), 360-16.4(b)(5) and the first consent order.
- E. Karta failed to maintain and have available self-inspection reports on two occasions in violation of 6 NYCRR 360-1.14(i)(2).
- F. Karta provided inadequate storage for incoming (Construction and Demolition) C&D debris on four occasions in violation of 6 NYCRR 360-16.4(f)(1).

³ It is unclear what is meant by "various Notices of Violation." The 2003 Consent Order contains a reference to a June 26, 2003 NOV which is not in this record. In addition, apart from March 10, 2003 NOV (Exh. A to Exh. 8 in this record) there are no NOVs between the date of the 2002 and 2003 consent orders. Apparently, other NOVs do exist and Karta admitted to the violations they alleged, but they are not included in this record.

- G. Karta allowed piles of C&D to exceed 20 feet in height on fourteen occasions in violation of 6 NYCRR 360-16.4(f)(3). In addition, the base of the pile exceeded 5,000 square feet on one occasion.
- H. Karta failed to maintain adequate facility reports on two occasions in violation of 6 NYCRR 360-1.14(u)(1).
- I. Karta failed to maintain a daily log of solid waste on six occasions in violation of 6 NYCRR 360-11.4(i), 360-1.4(c), 360-1.4(h)(s), 360-1.14(e)(2)(i) and 360-16(b)(2)(i)(l).
- J. Karta failed to adequately control dust on six occasions in violation of 6 NYCRR 360-1.14(k), 360-16(g)(5), 360-16.3(h)(5) and 360-16.4(b)(5).
- K. Karta failed to maintain storage piles of C&D materials at least 50 feet from the property line on four occasions in violation of 6 NYCRR 360-16.4(f)(3).
- L. Karta stored uncovered C&D piles for longer than 30 days on two occasions in violation of 6 NYCRR 360-16.4(f)(2).
- M. Karta failed to properly separate materials and adequately supervise on six occasions in violation of 6 NYCRR 360-16.4(c)(3).
- N. Karta failed to report a petroleum spill on January 23, 2003 in violation of ECL 17-1743.
- O. Karta operated an unregistered petroleum bulk storage facility on January 23, 2003 in violation of 6 NYCRR 612.2(a)(1).
- P. Karta caused or allowed contaminants to enter the atmosphere on January 23, 2003 in violation of ECL 71-2105(1).
- Q. Karta failed to control litter on January 23, 2004 in violation of 6 NYCRR 360-11.4(e).
- R. Karta failed to report a petroleum spill within 2 hours on January 23, 2003 in violation of 6 NYCRR 613.
- S. Karta transported solid waste uncovered on January 23, 2003 in violation of ECL 27-0713.

52. The 2003 consent order also contained a schedule of compliance which included changes to the way both the permitted and registered facilities operated and the assignment of department employees to act as on-site environmental monitors.
53. Authority for Karta to continue operations at the site would have expired 90 days after the execution of the 2003 consent order. However, authority to continue operations under the terms of the consent order was granted by DEC Staff by letter dated December 9, 2003 until such time as a final permit decision was made (Exh. 91).

Enforcement Activity Since the 2003 Consent Order

54. By Notice of Violation dated December 16, 2003 (Exh. 37), DEC Staff alleged the following violations of Karta's permit, registration and the August 2003 consent order. Based on this administrative record, a preponderance of the evidence demonstrates that Karta Corp. committed the following violations on the dates indicated.
 - A. Karta managed solid waste outside of approved areas on November 25, December 3, December 9, and December 10, 2003 at the permitted facility and at the registered facility on December 10, 2003 in violation of 6 NYCRR 360-1.7(a) .
 - B. Karta installed a new conveyor belt without prior DEC approval in violation of 6 NYCRR Part 360-1.14(f)(1) and 360-16.4(a). This violation was noted on December 10, 2003. Karta also failed to notify DEC Staff within five days of the installation in violation of special condition 23 of its operating permit.
 - C. Karta operated a tub grinder in an unauthorized area on December 3 and 9, 2003 in violation of the August 2003 consent order and 6 NYCRR Part 360-1.14(f)(1) and 360-16.4(a).
 - D. Karta failed to sufficiently confine or control solid waste at the facility on November 25, 2003 in violation of 6 NYCRR 360-1.14(j) and 360-16.3(h)(4) .
 - E. Karta accepted a rolloff box full of tires which was observed at the facility on December 10, 2003 in

violation of 6 NYCRR 360-1.14(e)(r), 360-16.1(a), 360-16.3(h)(4), and 360-16.4(b).

- F. Karta allowed piles of C&D debris to exceed 20 feet in height on December 10, 2003 in violation of 6 NYCRR 360-16.4(f)(3).
 - G. Karta stored processed C&D off-site on December 10, 2003 in violation of 6 NYCRR 360-16.4(t)(3).
55. By Notice of Violation dated January 16, 2004 (Exh. 36), DEC Staff alleged a number of violations of Karta's permit, registration and the second consent order. Based on this administrative record, a preponderance of the evidence demonstrates Karta committed the following violations on the dates indicated.
- A. Karta managed solid waste outside of approved areas at the permitted facility on December 18, 2003, December 30, 2003, January 9, 2004 and January 14, 2004 and at the registered facility on December 30, 2003, January 9, 2004 and January 14, 2004 in violation of 6 NYCRR 360-1.7(a).
 - B. Karta failed to operate the facility in accordance with its authorization. Specifically, Karta operated the new conveyor belt without prior DEC approval in violation of 6 NYCRR Part 360-1.14(f)(1) and 360-16.4(a). This violation was noted on December 18, 2003, December 30, 2003, January 9, 2004 and January 14, 2004. Karta also failed to notify DEC Staff within five days of the installation in violation of special condition 23 of its operating permit.
 - C. Karta failed to sufficiently confine and control solid waste on January 9, 2004 in violation of 6 NYCRR 360-1.14(j) and 360-16.3(h)(4).
 - D. Karta allowed leachate to pond inside building 6 on December 18, 2003 in violation of 6 NYCRR 360-1.14(b)(2), 360-16.3(f)(2) and 360-16.4(g).
 - E. Karta stored unauthorized quantities of incoming C&D on December 30, 2003, January 9, 2004 and January 14, 2004 in violation of 6 NYCRR 360-16.4(f)(1) and condition five of the second consent order.
 - F. Karta failed to effectively control dust on the

permitted portion of the site on January 9, and January 14, 2004 in violation of 6 NYCRR 360-1.14(k), 360-16.3(g)(5), 360-16.3(h)(5), and 360-16.4(b)(5).

- G. Karta allowed piles of C&D debris to exceed 20 feet in height on January 9 and January 14, 2004 in violation of 6 NYCRR 360-16.4(f)(3).
 - H. Karta failed to properly separate materials on December 30, 2003 in violation of 6 NYCRR 360-16.4(c)(3); specifically, processed mulch made from chipped wood containing painted wood and plywood, and an air conditioning unit and pressure container for roofing adhesive were found in the scrap metal pile.
 - I. Karta accepted unauthorized waste on the registered site on January 14, 2004 in violation of 6 NYCRR 360-16.1(a) and (d), 360-16.3(h)(4) and 360-16.4(b).
56. By Notice of Violation dated March 5, 2004 (Exh. 35), DEC Staff alleged several separate violations of Karta's permit and the second consent order. Based on this administrative record, a preponderance of the evidence demonstrates Karta committed the following violations on the dates indicated.
- A. Karta managed solid waste outside of approved areas on at the permitted facility on February 4, February 20 and March 2, 2004 in violation of 6 NYCRR 360-1.7(a).
 - B. Karta failed to operate the facility in accordance with its authorization. Specifically, Karta operated the new conveyor belt without prior DEC approval in violation of 6 NYCRR Part 360-1.14(f)(1) and 360-16.4(a). This violation was noted on February 4, February 20, and March 2, 2004. Karta also failed to notify DEC Staff within five days of the installation in violation of special condition 23 of its operating permit.
 - C. Karta failed to sufficiently confine and control solid waste on February 20 and March 2, 2004 in violation of 6 NYCRR 360-1.14(j) and 360-16.3(h)(4).
 - D. Karta failed to operate within allowable limits on February 20 and March 2, 2004 in violation of condition 5 of the second consent order.
 - E. Karta allowed marking lines to become obscure on

February 20, 2004 in violation of condition 5 of the second consent order.

57. By Notice of Violation dated March 29, 2004 (Exh. 34), DEC Staff alleged several violations at the facility. Based on this administrative record, a preponderance of the evidence demonstrates Karta Corp. committed the following violations on the dates indicated.
- A. Karta operated a C&D grinder outside on March 25, 2004 in violation of condition five of the second consent order.
 - B. Karta processed C&D material in unauthorized areas on March 25, 2004 in violation of the second consent order and 6 NYCRR 360-1.7(a)(1)(ii) and 360-1.14(f)(1).
 - C. Karta stored unauthorized amounts of C&D material on March 28, 2004. Specifically, over 3,000 cubic yards of material were stored outside, in excess of the 500 cubic yards permitted by the second consent order. This was also a violation of 6 NYCRR 360-1.7(a)(1)(ii), 360-1.14(j), 360-16.4(b)(5) and 360-16.4(f)(1).
 - D. Karta failed to entirely cover C&D piles stored outside with a waterproof tarp on March 28, 2004, in violation of item 5 of the second consent order.
58. By Notice of Violation dated April 5, 2004 (Exh. 32), DEC Staff alleged several violations at the facility. The text of this NOV is identical to the NOV dated March 29, 2004 (Exh. 34) except the date is different, therefore, it is likely that these documents refer to the same violations which are listed in Finding of Fact 57.
59. By Notice of Violation dated April 20, 2004 (Exh. 31), DEC Staff alleged a series of violations of Karta's permit, registration and the second consent order. Based on this administrative record, a preponderance of the evidence demonstrates Karta committed the following violations on the dates indicated.
- A. Karta managed solid waste outside of approved areas on March 24, April 9, April 14, and April 19, 2004 at the permitted facility and on March 24 and April 19, 2004 at the registered facility in violation of 6 NYCRR 360-1.7(a).

- B. Karta failed to sufficiently confine and control C&D material on March 24, April 14 and April 19 in violation of 6 NYCRR 360-1.14(j), 360-16.3(h)(4) and 360-16.4(b)(5) .
- C. Karta failed to operate the facility in accordance with its authorization. Specifically, Karta operated the new conveyor belt without prior DEC approval in violation of 6 NYCRR Part 360-1.14(f)(1) and 360-16.4(a). This violation was noted on March 24, April 9, April 14, and April 19, 2004. Karta also failed to notify DEC Staff within five days of the installation in violation of special condition 23 of its operating permit.
- D. Karta failed to effectively control dust on April 9, 2004 in violation of 6 NYCRR 360-1.14(k), 360-16.3(g)(5), 360-16.3(h)(5), and 360-16.4(b)(5).
- E. Karta stored unauthorized amounts of C&D material on April 9, April 14, and April 19, 2004, in excess of the 500 cubic yards permitted to be stored outside by the second consent order. This is also a violation of 6 NYCRR 360-16.4(f)(1).
- F. Karta failed to prevent solid waste from entering surface or groundwaters on April 14, 2004 in violation of 6 NYCRR 360-1.14(b)(1), specifically hand picking a truck of solid waste from a trailer truck and throwing the materials on the ground. This is also a violation of the August 2003 consent order.
- G. Karta failed to maintain storage piles of C&D materials at least 50 feet from the property line on April 14 and April 19, 2004 in violation of 360-16.4(f)(3), specifically allowing a pile to get too close to the facility's border with the L&L Scrap yard to the north.
- H. Karta accepted unauthorized waste, specifically over 500 tires, on April 19, 2004 at the permitted portion of the facility, and roll off containers containing C&D material on the permitted portion of the site, on March 24 and April 19, 2004, in violation of 6 NYCRR 360-1.14(e)(r), 360-16.1(a)(d), 360-16.3(h)(4) and 360-16.4(b)(1), (2), (4), and (5).
- I. Karta failed to properly separate materials on March 24, and April 19, 2004 in violation of 360-16.4(c)(3);

specifically, processed mulch made from chipped wood contained painted wood, pressure treated wood, stained wood and plywood.

60. By Notice of Violation dated June 8, 2004 (Exh. 30), DEC Staff alleged a number of violations of Karta's permit and registration. Based on this administrative record, a preponderance of the evidence demonstrates Karta Corp. committed the following violations on the dates indicated.
- A. Karta shipped approximately 8,800 tons of alternative daily cover (ADC) to Steuben County Landfill without the required DEC authorization in violation of 6 NYCRR 360-1.5(a), 360-1.7(a)(1)(ii), and 360-16.4(d).
 - B. Karta failed to include in its 2003 annual report that it had accepted bulk loads of tires on at least seven occasions in violation of 6 NYCRR 360-1.5(a)(2), 360-1.7(a)(1)(ii), 360-1.14(e)(1) & (2), 360-1.14(i)(1), 360-1.14(r), 360-16.1(a), 360-16.4(b)(1) & (2), and 360-16.4(f)(1).
 - C. Karta failed to file an annual report for 2001 and 2002 and failed to file the 2003 annual report within 60 days from the end of the calendar year for the registered portion of the facility in violation of 360-1.4(c), 360-1.14(i)(1) and 360-16.4(i)(1).
61. By Notice of Violation dated June 9, 2004 (Exh. 29), DEC Staff alleged a series of violations of Karta's permit, registration and the second consent order. Based on this administrative record, a preponderance of the evidence demonstrates that Karta committed the following violations on the dates indicated.
- A. Karta failed to manage solid waste within approved areas at the permitted portion of the site on March 25 and 28, April 26 and 29, May 10, 19 and 26, and June 3, 2004 and on six dates at the registered site on April 26 and 29, May 10, 19 and 26, and June 3, 2004 in violation of 6 NYCRR 360-1.7(a).
 - B. Karta failed to sufficiently control solid waste on March 28, April 26 and 29, May 10, 19 and 26, and June 3, 2004 at the permitted facility and on April 26 and 29, May 19 and 26 and June 3, 2004 at the registered facility in violation of 6 NYCRR 360-1.14(j), 360-3(h)(4), 360-16.4(b)(5) and condition five of the

second consent order.

- C. Karta allowed putrescible municipal solid waste to be spread on the ground outside on April 29, 2004 in violation of 6 NYCRR 360-1.14(j) and 360-11.4(e).
- D. Karta operated the conveyor belt without prior approval from DEC Staff. This violation was noted on March 25, April 26 and April 29, 2004 in violation of 6 NYCRR 360-1.14(f)(1) and 360-16.4(f). Karta also failed to notify DEC Staff within 5 days of the installation of the conveyor belt in violation of special condition 23 of its permit.
- E. Karta failed to effectively control dust on May 26 and June 3, 2004 at the permitted portion of the facility and on May 26, 2004 at the registered portion of the facility in violation of 6 NYCRR 360-1.14(k), 360-16.3(g)(5), 360-16.3(h)(5) and 360-16.4(b)(5).
- F. Karta failed to have adequate storage for piles of incoming C&D on March 28, April 26 and 29, May 10, 19 and 26, and June 3, 2004 in violation of 6 NYCRR 360-16.4(f)(1) and condition 5 of the second consent order.
- G. Karta failed to provide adequate storage for incoming putrescible municipal solid waste on May 10 and June 3, 2004 in violation of 6 NYCRR 360-11.4(g).
- H. Karta allowed solid waste to come into contact with surface water runoff and allowed solid waste to enter the surface waters on April 26 and 29, May 10 and 26 and June 3, 2004 at the permitted facility and on April 26 and 29, May 19 and 26 and June 3 at the registered facility in violation of 6 NYCRR 360-1.14(b)(1). This created leachate in violation of 6 NYCRR 360-1.14(b)(2), 360-16.3(f)(2) and 360-16.4(g).
- I. Karta failed to maintain storage piles of C&D materials at least 50 feet from the property line on April 29, May 10, 19 and 26, and June 3, 2004 in violation of 6 NYCRR 360-16.4(f)(3), specifically allowing a pile to get too close to the facility's border with L&L Scrap yard to the north.
- J. Karta accepted unauthorized waste on April 29; (large quantity of waste tires) and May 10, 2004 (air conditioning unit, refrigeration unit and patio sealing

chemicals in incoming C&D pile) in violation of 6 NYCRR 360-1.14(e)(r), 360-16.1(a)(d), 360-16.3(h)(4), and 360-16.4(b)(1), (2), (4), and (5).

- K. Karta failed to control vector breeding areas at both the C&D and MSW portions of the permitted site on April 29 and May 10, 2004 in violation of 6 NYCRR 360-1.14(l) and 360-16.4(b)(5)(I), (ii) and (iii).
- L. Karta failed to enclose processing, tipping, sorting, storage and compaction activities on the permitted site on April 29, 2004 in violation of 6 NYCRR 360-11.3(a)(3).
- M. Karta loaded MSW outside using a front-end loader instead of using balers as approved by DEC Staff in the facility's operation and maintenance manual on April 29, 2004 in violation of 6 NYCRR 360-1.14(f)(2).
- N. Karta weighed vehicles destined for the permitted facility at the scale on the registered site contrary to the facility's O&M manual on April 26 and 29, and May 10, 2004 in violation of 6 NYCRR 360-16.4(b)(2).
- O. Karta failed to remove unauthorized solid waste (bulk waste tires) within 24 hours on April 29 and May 10, 2004 in violation of 6 NYCRR 360-16.4(f)(1).
- P. Karta failed to have available a copy of the daily log for the permitted facility on May 10, 2004 in violation of 6 NYCRR 360-11.4(i).
- Q. Karta failed to have available the required records for C&D materials for both the permitted and registered facility on May 10, 2004 in violation of 6 NYCRR 360-1.4(c), 360-16.4(b)(2) and 360-16.4(i)(2).
- R. Karta failed to timely remove putrescible MSW from the facility on May 10 and June 3, 2004 in violation of 6 NYCRR 360-11.4(1).
- S. Karta failed to adequately inspect incoming loads of C&D on May 10, 2004 in violation of 6 NYCRR 360-16.4(b)(2) and 360-16.4(c)(3).
- T. Karta operated later than allowed on April 29, 2004 in violation of special condition 16 of the facility's operating permit.

- U. Karta accepted unauthorized waste at the registered facility on April 26 and 29, May 26 and June 3, 2004 in violation of 6 NYCRR 360-1.14(e) and (r), 360-16.1(a)(d), 360-16.3(h)(4) and 360-16.4(b)(1), (2), (4) and (5).
 - V. Karta failed to properly separate materials on May 10 and June 3, 2004 in violation of 6 NYCRR 360-16.4(c)(3), specifically, processed mulch made from chipped wood contained painted wood, pressure treated wood, stained wood and plywood.
 - W. Karta operated a portable grinder outside on March 25, 2004 in violation of condition 5 of the second consent order.
 - X. Karta improperly placed incoming C&D materials and allowed excessively high piles on April 26 and 29, May 10, 19, and 29 and June 3 in violation of condition five of the second consent order.
62. On July 12, 2004 and again on July 21, 2004, DEC Staff member Donald Weiss inspected the facility and issued inspection reports (Exh. 9 & 10, respectively). These inspection reports alleged a series of violations of part 360 and Karta's existing permit. Based on this administrative record, a preponderance of the evidence demonstrates that Karta committed the following violations on the dates indicated.
- A. Karta failed to manage solid waste in approved areas on July 12 and 21, 2004 in violation of 6 NYCRR 360-1.7(a)(1), 360-1.8(h)(1) & (5), and 360-16.1.
 - B. Karta failed to ensure that adequate equipment was available to remove MSW on July 12 and 21, 2004 in violation of 6 NYCRR 360-1.14(f)(2).
 - C. Karta failed to ensure adequate drainage on July 21, 2004 in violation of 6 NYCRR 360-11.4(f).
 - D. Karta failed to have available a daily log of wastes on July 12 & 21, 2004 in violation of 6 NYCRR 360-11.4(l).
 - E. Karta failed to sufficiently control solid waste, including blowing litter, on July 21, 2004 in violation of 6 NYCRR 360-1.14(j) and 360-11.4(e).

- F. Karta failed to control vectors and vector breeding areas on July 12 and 21, 2004 in violation of 6 NYCRR 360-1.14(l) and 360-11.4(e).
- G. Karta failed to control nuisance odors on July 12, 2004 in violation of 6 NYCRR 360-1.14(m) and 360-11.4(e).
- H. Karta failed to minimize leachate on July 12 and 21, 2004 in violation of 6 NYCRR 360-1.14(b)(2), 360-15.3(f)(2) and 360-15.4(g).
- I. Karta failed to maintain onsite roads in passable condition on July 12 and 21, 2004 in violation of 6 NYCRR 360-1.14(n).
- J. Karta provided inadequate storage of incoming solid waste on July 12 and 21, 2004 in violation of 6 NYCRR 360-11.4(g).
- K. Karta failed to timely remove solid waste on July 12 and 21, 2004 in violation of 6 NYCRR 360-11.4(g).
- L. Karta failed to weigh or measure incoming solid waste on July 12 and 21, 2004 in violation of 6 NYCRR 360-11.4(n)(2).
- M. Karta failed to submit an annual report by March 1, in violation of special condition 4 of the facility's existing permit.
- N. Karta accepted excess quantities of waste on July 12 and 21, 2004 in violation of special condition 8 of the facility's existing permit.
- O. Karta allowed excessively large wood storage piles on July 12 and 21, 2004 in violation of special condition 11 of the facility's existing permit.
- P. Karta accepted unauthorized waste on July 12 and 21, 2004 in violation of 6 NYCRR 360-1.14(e)(r), 360-16.1(a)(d), 360-16.3(h)(4), and 360-16.4(b)(1)(2)(4) & (5).
- Q. Karta failed to have operational records available on July 12 and 21, 2004 in violation of 6 NYCRR 360-1.4(c), 360-1.8(h)(8), 360-1.14(a)(2)(i) and 360-16.4(b)(2)(i).

- R. Karta failed to sufficiently control solid waste on July 12 and 21, 2004 in violation of 6 NYCRR 360-1.14(j), 360-16.3(h)(4), and 360-16.4(b)(5).
- S. Karta failed to effectively control dust on July 12 and 21, 2004 in violation of 6 NYCRR 360-1.14(k), 360-16.3(g)(5), 360-16.3(h)(5) and 360-16.4(b)(5).
- T. Karta failed to control vector breeding areas on July 12 and 21, 2004 in violation of 6 NYCRR 360-1.14(l) and 360-16.4(b)(5)(i)(ii) & (iii).
- U. Karta failed to prevent solid waste from entering surface waters on July 12 and 21, 2004 in violation of 6 NYCRR 360-1.14(b)(1).
- V. Karta failed to inspect incoming C&D loads on July 21, 2004 in violation of 6 NYCRR 360-16.4(b)(2).
- W. Karta failed to properly separate contaminated wood from a pile to be processed on July 12 and 21, 2004 in violation of 6 NYCRR 360-16.4(c)(3).
- X. Karta provided inadequate storage for incoming C&D on July 12 and 21, 2004 in violation of 6 NYCRR 360-16.4(f)(1).
- Y. Karta failed to remove unauthorized solid waste from the facility within 24 hours on July 21, 2004 in violation of 6 NYCRR 360-16.4(f)(1).
- Z. Karta allowed C&D to be stored uncovered outside for more than 30 days on July 12 and 21, 2004 in violation of 6 NYCRR 360-16.4(f)(2).
- AA. Karta allowed C&D to be stored covered outside or inside for longer than 90 days in violation of 6 NYCRR 360-16.4(f)(1).
- BB. Karta allowed piles of C&D to be excessively large on July 12 and 21, 2004 in violation of 6 NYCRR 360-16.4(f)(3).
- CC. Karta failed to maintain storage piles of C&D materials at least 50 feet from the property line on July 12 and 21, 2004 in violation of 6 NYCRR 360-16.4(f)(3), specifically allowing a pile to get too close to the

facility's border with L&L Scrap yard to the north.

- DD. Karta stored ADC onsite for more than 15 days on July 12 and 21, 2004 in violation of 6 NYCRR 360-16.4(d)(1) and 360-16.4(f)(5).
63. On October 27, 2004, DEC Staff member Donald Weiss inspected the facility and issued an inspection report (Exh. 89). This inspection report alleged a series of violations of part 360, Karta's existing permit and registration. Based on this administrative record, a preponderance of the evidence demonstrates Karta committed the following violations on the dates indicated.
- A. Karta failed to manage solid waste in approved areas on October 27, 2004 in violation of 6 NYCRR 360-1.7(a)(1), 360-1.8(h)(1) & (5), and 360-16.1.
 - B. Karta failed to control vectors and vector breeding areas on October 27, 2004 in violation of 6 NYCRR 360-1.14(l) and 360-11.4(e).
 - C. Karta provided inadequate storage of incoming solid waste on October 27, 2004 in violation of 6 NYCRR 360-11.4(g).
 - D. Karta failed to sufficiently control solid waste, including blowing litter, on October 27, 2004 in violation of 6 NYCRR 360-1.14(j) and 360-11.4(e).
 - E. Karta failed to prevent solid waste from entering surface waters on October 27, 2004 in violation of 6 NYCRR 360-1.14(b)(1).
 - F. Karta failed to minimize leachate on October 27, 2004 in violation of 6 NYCRR 360-1.14(b)(2), 360-15.3(f)(2) and 360-15.4(g).
 - G. Karta accepted unauthorized waste at the registered facility on October 27, 2004 in violation of 6 NYCRR 360-1.14(e) and (r), 360-16.1(a) and (d), 360-16.3(h)(4) and 360-16.4(b)(1), (2), (4) and (5).
 - H. Karta failed to inspect incoming C&D loads on October 27, 2004 in violation of 6 NYCRR 360-16.4(b)(2).
 - I. Karta failed to properly separate materials on October

27, 2004 in violation of 6 NYCRR 360-16.4(c)(3).

DISCUSSION

In this case both DEC Staff and Karta have proposed draft permits. These proposals have evolved during the negotiations and hearing process.

Evolution of Permit Modification Application

As discussed above, the 2003 consent order (Exh. 8) required Karta to submit a permit modification application to place both the registered site (1011 Lower State Street) and the permitted site (1017 Lower State Street) under a single permit. This application was deemed incomplete on a number of occasions and five subsequent amendments were then filed by Karta. DEC Staff apparently became frustrated at this process, the result of which would have considerably curtailed the throughput of the facility, and "decided to call the application complete notwithstanding the deficiencies in an attempt to move the process forward" (DEC brief, p. 2).

Karta's original application requested authority to operate 24 hours a day and process 2,750 tons per day (t. 888) but due to the settlement between the City and Karta concerning litigation not directly related to this case, Karta has reduced its requested throughput and hours of operation to the current proposal, which is discussed in detail below.

Karta's application has continued to evolve through the hearing process. New site drawings were completed in the weeks before the hearing showing new structures (specifically an enclosure between buildings 3 and 6 and a new canopy in front of building 6), equipment was moved (specifically a wood grinder was proposed to be placed in the proposed enclosure between buildings 3 & 6), and new operating restrictions were proposed on the last day of the hearing as the result of the supplemental noise assessment. Thus, the application materials (Exh. 2) are no longer an accurate description of proposed activities at the site.

DEC Staff's Position

DEC Staff argues that Karta has failed to meet its burden of proof required to demonstrate that its proposal will be in compliance with all applicable laws and regulations administered

by the DEC (see 6 NYCRR 624.9(b)(1)) and that DEC Staff's proposed permit should be issued. DEC Staff argues that Karta's proposed permit would not provide for proper oversight of the facility. DEC Staff argues that its proposed permit language tracks appropriate regulatory requirements, is consistent with requirements on similar facilities in DEC Region 3, and is necessary given the compliance history of this facility.

Karta's Position

Karta argues it has met its burden of proof and its proposed draft permit should be issued as final by the Commissioner.

Standard of Review

DEC Staff argues that its proposed permit conditions enjoy a prima facie presumption that they are rational and supported by the record and that the burden is on the applicant to prove that the contested conditions are arbitrary and capricious or contrary to law. In this case, DEC Staff argues the burden rests on Karta to demonstrate that DEC Staff's draft permit conditions are not supported by the preponderance of the evidence (DEC brief, p. 7).

Karta responds that in the context of a permit hearing, Karta need only show by a preponderance of the evidence that its proposed facility complies with the applicable regulations; it is up to DEC Staff to create a substantial basis in the record that any conditions surpassing the regulatory requirements are reasonably related to environmental impacts. Karta further argues that any permit condition not related to a specific regulatory requirement must relate to significant adverse impacts posed by the proposed activity.

In an administrative permit case where the matter to be decided relates to a dispute between DEC Staff and the applicant over substantial terms and conditions of a draft permit prepared by DEC Staff, there is no authority for DEC Staff's position that the draft permit enjoys a presumption of rationality. Rather, it is the responsibility of the parties to present supporting evidence for their proposed permit conditions. Then, it is the ALJ's responsibility to evaluate the evidence in the record and make recommendations to the Commissioner so she can make a final decision regarding the dispute.

History of Compliance

A primary justification used by DEC Staff to support its proposed restrictions on Karta's operations is Karta's history of

non-compliance. DEC Staff has introduced extensive evidence of violations of the Environmental Conservation Law (ECL), associated regulations and consent orders to support its argument that more restrictive permit conditions should be imposed.

In this record, DEC Staff has established nearly 300 violations at the facility over the past five years. Karta entered into a consent order on June 26, 2002 in which it admitted to three violations that occurred between 2000 and 2002 and paid a \$15,000 fine. Karta entered into another consent order on August 12, 2003 and paid a fine of \$30,000. In this consent order, Karta admitted to at least 82 separate violations, but because all of the documents listing the various violations are not in this record, the number could be substantially higher.

Since the 2003 consent order, DEC Staff has continued inspections at the facility and introduced a series of Notices of Violation and Inspection Reports alleging over 200 additional violations. Karta did not deny these violations or present evidence to defend against these violations although it was on notice that DEC Staff were arguing that past non-compliance was central to its case. Accordingly, using the information in this record and applying the "preponderance of the evidence" evidentiary standard applicable to DEC permit hearings (624.9(c)), I find that DEC Staff has established the fact that Karta has committed approximately 200 violations since the 2003 consent order became effective.

The reason for this approximation stems from the nature of the violations. For example, DEC Staff have cited Karta 15 separate times for installing the current conveyor belt without prior DEC Staff approval and this may only be one violation. DEC Staff has also cited Karta for conducting solid waste operations outside approved areas (in violation 360-1.7(a)) on twenty-seven different dates, but on eleven of these dates the violation has been noted at both the permitted and the registered portions of the facility, so this may be 38 separate violations. To avoid arguments regarding the total number of violations and to keep the focus on the type of violations, I have opted not to total the violations. In any event, the number of violations proven between August 2003 and October 2004 is approximately 200.

Karta argues that the vast majority of violations are either directly related to the site utilization restrictions imposed by the present division of the facility into a registered portion and a permitted portion as well as the operational restrictions imposed by the 2003 consent order (Karta reply brief, p. 2). Although a review of the violations committed by Karta since the

August 2003 consent order shows that some of the violations are related to site utilization restrictions imposed by this consent order, the evidence does not support Karta's assertion that the vast majority are so related. And even if they were, it only proves that Karta has failed to abide by the restrictions it agreed to follow in the consent order.

The Permit and Special Conditions

As discussed above, on June 16, 2004, the Permittee provided a list of thirty issues (Exh. 3) it proposed for adjudication regarding DEC's original proposed draft permit (Exh. 1). DEC Staff stipulated that all these issues were substantial disputes. The City did not propose any other issues. All issues identified by Karta were advanced to adjudication because they were disputes between DEC staff and the Permittee over substantial terms or conditions of the permit, which is the standard set forth in the regulations (6 NYCRR 624.4(c)(1)(i)).

At the opening of the adjudicatory hearing, a series of negotiated settlements were read into the record resolving a number of the more minor issues. In addition, as the result of information provided at the hearing, further understandings have been reached which have narrowed the number of issues remaining to be decided.

All the disputes identified relate to the "Special Conditions" section of DEC Staff's proposed draft permit. This discussion addresses each of the 67 proposed special permit conditions sequentially and notes whether an issue was raised regarding the condition, and if so, if the issue was resolved or not.

Paragraph 1 - *Status: issue raised and resolved.*

Karta objected to providing DEC Staff five copies of all submissions required by the permit. The parties agreed that only two copies will be required for submissions, other than permit modifications (t. 6).

Paragraphs 2 & 3 - *Status: no issue raised.*

Paragraph 4 - *Status: issue raised and resolved.*

A factual question remains regarding whether or not the Westchester County Department of Environmental Facilities (WCDEF) may accept leachate from Karta through existing sewer lines. The parties agreed that if WCDEF does not allow Karta to discharge

leachate into the sewers that Karta will collect and truck leachate to a facility equipped and authorized to accept leachate (t. 7). If WCDEF does accept leachate, Karta is authorized to discharge leachate to the on-site sewer.

Paragraphs 5 & 6 - *Status: no issue raised.*

Paragraph 7 - *Status: issue raised and resolved.*

The parties agreed to modify this paragraph regarding the requirement for a complete set of as-built drawings to be supplied within 30 days of permit issuance to recognize that some of the equipment used at the facility is portable and may be moved as part of normal facility operations. The as-built drawings will include the possible multiple positions for Karta's mobile equipment (t. 8).

Paragraph 8 - *Status: issue raised and resolved.*

DEC Staff agreed to remove language that would have required Karta to have a Professional Engineer (P.E.) certify that all buildings have proper ventilation and that air quality within the buildings will be safe for all employees. DEC Staff agreed to remove this language after Karta objected that the standard was not objective nor one that a P.E. could certify. The P.E. will certify that the submitted drawings are accurate and in compliance with applicable codes and statutes.

Paragraphs 9 & 10 - *Status: no issue raised.*

Paragraph 11 - *Status: issue raised and resolved.*

Karta withdrew its objection to this paragraph when informed by DEC Staff that weekly reporting was required of all facilities similar to Karta (t. 10).

Paragraph 12 - *Status: issue raised and resolved.*

Karta withdrew its objection to the language in DEC Staff's draft permit regarding the required use of tracking forms for each load of material leaving its facility after DEC Staff clarified that this requirement applied only to recyclables and not materials covered by a Beneficial Use Determination (BUD) (t. 10).

Paragraph 13 - *Status: issue raised and resolved.*

This paragraph requires that all solid waste passing through the facility ultimately be treated or disposed of at a facility authorized to accept such waste or be used consistent with an approved BUD. Karta sought clarification that marketable recyclables recovered from solid waste would not be treated as solid waste and has accepted the language in DEC Staff's draft permit.

Paragraph 14 - *Status: no issue raised.*

Paragraph 15 - *Status: issue raised and resolved.*

This paragraph requires an End User Form to be signed by all purchasers and end users of recycled aggregate and products made from processed C&D. Karta initially objected to this provision on the basis that some products were no longer classified as solid waste. However, after DEC Staff explained that all similar facilities must use the End User Form, Karta withdrew its objection.

Paragraph 16 - *Status: issue raised and resolved.*

In its June 16, 2004 letter, Karta objected to provisions of this paragraph regarding notification of DEC Staff in the event of damage to or a malfunction of structures or components at the facility. This objection has been withdrawn and Karta has accepted the draft language proposed by DEC Staff (t. 15).

Paragraph 17 - *Status: issue raised and resolved.*

Karta withdrew its objection to this paragraph requiring five-day prior notification of DEC Staff before activities (other than normal, routine operations) occur at the site after DEC Staff stated that it would not preclude immediate action to address emergency repairs (t. 15). Karta proposed revisions to this paragraph that were accepted by DEC Staff.

Paragraph 18 - *Status: issue raised and resolved.*

This paragraph requires Karta to submit all plans for new construction at the site to DEC Staff 90 days before proposed commencement for review and written approval. After DEC Staff clarified that any construction authorized by the permit would not be included in the requirement, Karta withdrew its objection (t. 17).

Paragraph 19 - *Status: issue raised and unresolved.*

DEC Staff proposed:

- "19. All construction shall be in strict conformance with the provisions of:
- a) 6 NYCRR Part 360 regulations and any revisions hereafter promulgated; and
 - b) General and Special Conditions of this permit."

Karta did not raise an issue related to this paragraph in its June 16, 2004 letter and, consequently, no issue related to this paragraph was advanced to adjudication. Nor was any issue related to this paragraph discussed during the hearing.

However, following the close of the adjudicatory hearing, Karta proposed in its version of the draft permit (Exh. 87) an additional subparagraph which reads:

- "c) the permittee may make minor modifications to the facility by providing the Department with 30 days prior written notice of the intended modification. The modification shall be deemed approved if the Department does not object to the proposed modification".

DEC Staff rejects this proposed language (DEC Staff brief p.34) and states that all changes of operation and protocol at the site must be submitted to and approved by the Department in writing prior to implementation, which is standard in such permits. DEC Staff continues that since the term "minor modification" is not defined, it creates ambiguity which, based upon Karta's history of compliance, could be used to allow major changes at the facility without prior DEC approval.

Karta responds that it would not undertake any modification until 30 days after notifying DEC Staff and if DEC Staff objected then no modification would occur. Karta argues that this would remove any form of ambiguity. Karta concludes that this would address DEC Staff's concern while allowing it a more expedient means of implementing minor modifications.

In its brief, DEC Staff stated that obtaining prior approval from DEC Staff for a proposed modification is standard for this type of permit, so the question is: should Karta be treated more leniently than other similar facilities? DEC Staff argues no and points to Karta's compliance history to support denying this request and the over 200 violations Karta committed since August 2003, including the instance where Karta modified its facility and installed the new conveyor belt following the fire without

DEC staff's prior approval.

A reasonable basis exists to deny Karta's request to allow minor modifications to the facility without DEC Staff's prior approval on the grounds that its compliance history does not warrant more lenient treatment than similar facilities.

Paragraph 20 - *Status: issue raised and unresolved.*

This paragraph was proposed in DEC Staff's May 12, 2004 draft permit and reads:

"20. Within ninety days of the issuance of this permit, the facility will repair and/or upgrade all drainage for the facility to prevent infiltration of storm water(s) into any and all buildings on-site. The storm water system must be depicted on the as-built plans referenced in special condition #7."

Stormwater issues are addressed in this paragraph as well as paragraph 33 and much of this discussion is equally relevant to that paragraph as well.

DEC Staff states that the purpose of this proposed paragraph is to prevent stormwater from entering structures at the facility and being mixed with waste so as to minimize leachate generation as required by 360-1.14(b)(2) (t. 857). There is no disagreement that the area around building 6 slopes toward the building, causing stormwater to flow into it (t. 310, 1097). The record contains several violations relating to stormwater mixing with solid waste in building 6 and then ponding, causing a vector breeding area (Exh. 9 & 10). DEC Staff asserts that steps need to be undertaken to prevent this, including possibly altering the slopes outside the building so that they are sloped away from the building (and all others on the site). DEC Staff states that stormwater has been observed entering building 6 through the front doors and the back wall (t. 860). DEC Staff is also concerned about stormwater entering building 6 from the area between building 3 and building 6 (t. 1111). DEC Staff believes that 90 days is enough time to address this issue (t. 860).

Karta's expert testified that stormwater does drain into building 6 and that this is how the facility was designed in the late 1980's (t. 310). This stormwater is captured in floor drains, flows through an oil/water separator and is discharged to municipal sewage pipes. He stated he believed that the amount of stormwater generated at the site would be insignificant given the size of the receiving wastewater treatment plant (t. 312). Karta

states that drainage collected within the facility buildings conducting solid waste operations is appropriately directed to the sanitary sewer, which is properly authorized (Exh. 3, p. 5-6).

Karta, in its June 16, 2004 letter identifying issues (Exh. 3), objected to this requirement on the grounds that it knew of no regulation prohibiting the infiltration of storm water into buildings and that all such storm water was collected and discharged to the sanitary sewer. This objection is effectively countered by the language of 360-1.14(b)(2) which requires the minimization of leachate generation:

"(2) Leachate. All solid waste management facilities must be constructed, operated and closed in a manner that minimizes the generation of leachate that must be disposed of and prevent the migration of leachate into surface and groundwaters. Leachate must not be allowed to drain or discharge into surface water except pursuant to a State Pollutant Discharge Elimination System permit and must not cause or contribute to contravention of groundwater quality standards established by the department pursuant to ECL section 17-0301."

Since it is undisputed that stormwater enters building 6 and mixes with waste, the generation of leachate is not minimized and action on Karta's part is necessary.

Also in its June 16, 2004 letter (Exh. 3), Karta argued that the facility's drainage system had been authorized by both the City of Peekskill (through site plan review) and DEC Staff (via coverage under DEC's SPDES General Permit for Stormwater Discharges [permit no. GP-98-03]). Karta also argued that DEC Staff had reviewed and approved the facility's Storm Water Pollution Prevention Plan (SWPPP) and Storm Water Management Plan (SWMP).

Karta did not submit any evidence at hearing regarding the City's site plan review. Karta did introduce an October 15, 2002 letter from DEC Staff member Merriman (Exh. 18) stating in part:

"On October 1st we received a 2-page letter and a multi-page Stormwater Management Plan from Ralph Mastro Monaco, PE, for the Part 360 renewal and modification.... As part of our review of your Part 360 application, your facility is required to satisfy the requirements of the Stormwater SPDES General Permits GP-98-06 for Construction Activities and GP-98-03 for Industrial Activities. Based on staff's review

of Mr. Mastromonaco's submission, we have determined that it satisfies the requirements of both of these Stormwater SPDES General Permits."

Exhibit 18 went on to note that information was missing from Karta's Stormwater Management Plan (appendix F of Exh. 2). At least three amendments to this plan were received by DEC Staff following this letter (January 27, February 28 and October 6, 2003). According to Karta's expert witness this plan was approved by DEC Staff (t. 299). DEC Staff does not challenge this assertion.

DEC Staff does not address Karta's argument that an approved stormwater plan satisfies the requirement that leachate generation be minimized. However, it seems that the stormwater management plans, authorized by article 17 of the ECL and applicable to many types of facilities other than transfer stations, regulate the proper management of stormwater, while the regulatory requirement to minimize leachate generation, based on statutory authority found in article 27 of the ECL, regulates the proper management of solid waste. As such they are separate requirements and compliance with the first is not proof of compliance with the second. A review of the stormwater plan included in the application materials (Exh. 2, Appendix F) reveals only a review of maximum storm flows and no mention of leachate minimization.

After reviewing DEC Staff's position, Karta has modified its position and seeks authority to construct a canopy to reduce stormwater infiltration into building 6, but opposes the requirement that surfaces around the building be pitched away from the building. Karta proposed the following substitute language:

"20. Within ninety days of the issuance of this permit, the facility will repair and/or upgrade all drainage for the facility to prevent or minimize the infiltration of storm water(s) into any and all buildings on-site. The storm water system must be depicted on the as-built plans referenced in special condition #7. Where outside surfaces are pitched to the building to collect water that may come in contact with solid waste in the drains inside the building, Karta shall install a canopy to minimize the infiltration of storm water into the buildings."

Karta's proposed language introduces the concept of a canopy to be constructed over the area in front of building 6. This

canopy was not included in the original permit modification application nor in any of the five subsequent amendments (Exh. 2). It seems to have been first discussed in a meeting between DEC Staff and Karta after the issues conference (t. 1100). The idea of a canopy was discussed at the hearing and was described as a roof structure with gutters (t. 1103). Its footprint is also represented in drawings which were revised just days before the hearing and not shown to DEC Staff prior to the hearing (Exh. 14). Karta's expert stated that the proposed canopy in front of building 6 would also have a series of gutters and downspouts that would divert the stormwater to on-site treatment areas and away from the sewer lines (t. 313).

DEC Staff does not object to the concept of a canopy, but argues that the record does not contain adequate information regarding the construction details of such a canopy for it to evaluate the proposal (t. 1105). Specifically, DEC Staff argues that while the footprint of the canopy is described in Exhibit 14, no engineering details have been provided to allow it to be considered. DEC Staff notes further that the supports for the canopy are not described, nor is there a proposal for what types of material the canopy would be made of, nor is there a description of whether the canopy would have sides, etc. As such, the concept of the canopy remains just that, a concept.

DEC Staff has demonstrated that a regulatory requirement to minimize the amount of leachate exists and that leachate is being generated by the flow of stormwater into building 6 where it mixes with wastes, due to the existing sloping at the site. DEC Staff has proposed requiring Karta to address this problem but not mandated a solution. It has suggested changing the slopes at the site so that stormwater runs away from the building instead of into it. Karta objects, but does not argue that DEC Staff's suggestion is impossible. Karta proposes installing a canopy to address this situation, but its proposal is incomplete and lacks vital engineering details. Karta's proposal may make sense, but based on the information in this record, there is not enough data to include Karta's proposed language in the final permit. Accordingly, there is a reasonable basis to include DEC Staff's draft language in the final permit. This would not preclude Karta from submitting another permit modification application with sufficient engineering details to allow a canopy to be constructed in the future.

Paragraph 21 - *Status: issue raised and unresolved.*

DEC Staff has proposed the following paragraph:

"21. Prior to use of the conveyor system between buildings #3 and 6, the permittee shall first submit plans to the Department for a cover system prepared by a PE, receive approval for those plans from the Department, construct the cover system in accordance with the approved plans, have a PE certify that the construction was performed in accordance with the approved plans, and receive written approval of the certification from the Department."

Before discussing this paragraph, some background is helpful. Following the fire at the facility in August 2000, the conveyor system was installed in building 6 without DEC Staff's approval. This system, also known as the ERINS system, was designed to be fed from building 3 and passes from building 3 across an open area between buildings 3 and 6 before entering building 6, where it is used to separate various wastes. Currently, Karta loads the conveyor system from this area between buildings 3 and 6 and after the permit modification is approved, waste would be loaded from inside building 3. According to DEC Staff, the loading of waste from the area between buildings 3 and 6 is not currently authorized and has been the source of numerous violations. Mr. Cartalemi testified that while this area is on the registered (1011 Lower South Street) property, the permitted facility (1017 Lower South Street) enjoys a 50 foot easement which would allow these operations (t. 37). This argument does not address the prohibition on C&D processing in this area under the terms of the August 2003 Consent Order (Exh. 8, p. 15). This area is presently uncovered and the parties agree that a covering is necessary if operations are to be permitted.

DEC Staff member Pollock testified that the purpose of this provision is to minimize leachate generation in the area between buildings #3 and #6 (t. 861). He testified that this could be addressed by enclosing the entire area between buildings 3 and 6 (t. 1112). With this proposed paragraph, DEC Staff seek to suspend the use of the ERINS system in this area until: (1) plans for a cover are submitted to and approved by DEC Staff; (2) the cover is constructed and certified as completed according to the plans by a PE; and (3) DEC Staff issues a written approval.

In the application materials and first five revisions to them, a simple canopy cover was proposed by the applicant to be placed over the conveyor. However, at the hearing, apparently without first notifying DEC Staff, Karta revised this concept and announced that it was now proposing to fully cover the entire area between buildings 3 and 6 (t. 315). Gleaning a description from the testimony presented, Karta proposes that this area would

have a concrete base and stormwater would be collected in a trench drain, run through an oil/water separator and into the sanitary sewer (t. 350). The revised process flow diagram (Exh. 14, drawing 7) also shows a "hammermill" placed in this area which is apparently a CBI wood grinder which would be fed from building 6 and material coming out of the grinder would be conveyed into building 3 (t. 277).

In response to this revision regarding enclosing the area between buildings 3 and 6, DEC Staff states that there is insufficient information in these materials to make the decision whether or not to authorize construction. Specifically, DEC Staff states that there are no specifications regarding how it will be constructed (t. 862) and maintains that it cannot approve this covering without reviewing specific plans and specifications (T. 863).

In its June 16, 2004 letter, Karta stated that it "objects to the provision requiring pre-construction review of its design drawings. Certification by a PE after construction that the covering has been completed in accordance with the permit and in compliance with applicable building codes will be provided to the Department" (p.2). In its proposed draft permit (Exh. 87), Karta proposes:

"21. Prior to use of the conveyor system between buildings #3 and 6, the permittee shall have a PE certify that the construction was performed in accordance with the approved plans, approved by the Department."

Apparently, Karta seeks approval for the construction in this area through this proceeding. After construction, Karta would then get a PE certification.

DEC Staff argues that the record does not contain drawings that can be approved. Indeed, there is no description other than the outline of the building and the words "proposed metal structure" on the drawings (Exh. 14, drawing 1). There is a reference to a concrete floor in the testimony, but no description of the wall, the structural supports or other necessary information to authorize construction.

Due to the lack of specificity as to what the proposed structure between buildings 3 and 6 would be, there does not appear to be sufficient information in the record to authorize construction in this area. Only once sufficiently detailed engineering drawings have been submitted, reviewed by DEC Staff and approved, would it be appropriate to authorize construction

of a structure in this area. Accordingly, a rational basis exists to include DEC Staff's draft language in the final permit, and reject Karta's proposed condition.

Paragraph 22 - *Status: issue raised and unresolved.*

DEC Staff's draft permit contains the following language regarding repairs at the facility.

"22. Within thirty (30) days of the issuance of this permit, the permittee shall complete construction and repair of buildings 1,2,3, and 6. This shall include, but shall not be limited to, walls, doors, floors, push walls, etc."

DEC Staff witness Pollock testified that the purpose of this paragraph is to ensure the facility has completed repairs of damage to structures and equipment and to require the completion of the construction of buildings at the site as the department believed they would be constructed (t. 865). DEC Staff selected the 30 day time frame because these repairs could be undertaken during the hearing process and could be finished by the time the permit was issued. Mr. Pollock indicated DEC Staff would be flexible on the 30 days if Karta could demonstrate the need for additional time to complete a specific repair (t. 867). When asked by the ALJ at the hearing if a list of repairs needed at the facility had been developed by DEC Staff, the answer was no. Mr. Pollock stated it wasn't clear what exactly needs to be repaired and finished (t. 868).

Karta objects to the short time frame and states that circumstances beyond its control, such as the time required to get a local building permit, weather considerations and scheduling contractors require longer than 30 days (t. 316). Karta also objects to DEC Staff's alleged failure to specify which repairs are necessary. It also seeks permission in this paragraph to undertake two areas of new construction: (1) covering the space between building 3 and 6; and (2) installation of a canopy at building 6.

"22. Within one hundred and twenty (120) days of the issuance of this permit, the permittee shall complete construction and repair of buildings 1, 2, 3, and 6. This shall include, but shall not be limited to: the enclosure of Building 3 including metal doors, the covering of the space between building 3 and 6 including the conveyor belt and the installation of a

canopy at building 6 where trucks may be loaded as well as any repairs to walls, doors, floors, push walls, etc."

DEC Staff rejects Karta's argument that Karta doesn't know what repairs DEC Staff is seeking (brief p. 34). DEC Staff noted that Karta has an continuing obligation (as do all facilities) to continue routine maintenance and repair. DEC staff argues that its proposed permit condition is fully justified and supported by the record. Karta does not dispute its continuing obligation to maintain buildings and equipment in a state of good repair, but challenges DEC Staff's assertion that the record demonstrates which repairs are needed. DEC Staff argues that even though it has not prepared a list of repairs necessary at the site, a facility operator should not need to be told by the government what repairs are necessary to keep its facility in good repair.

Karta claims that without more specificity from DEC Staff, ambiguity is created such that DEC Staff could cite Karta for failing to repair items Karta did not know had to be repaired (Karta's reply, p. 28). However, should DEC Staff cite Karta for a violation for failing to repair its facility and Karta objects stating that such repair is not necessary, this dispute is appropriate for an administrative enforcement hearing.

DEC Staff also rejects authorizing Karta's new construction at this time because Karta has not submitted adequate information for review and approval. The covering of the area between buildings 3 and 6 is discussed above in Paragraph 21 and the construction of a canopy in front of building 6 is discussed above in paragraph 20.

For the above reasons, DEC Staff's proposed language should be included in the final permit.

Paragraph 23 - *Status: no issue raised.*

Paragraph 24 - *Status: issue raised and unresolved.*

DEC Staff proposes the following language regarding outside activities at the facility.

"24. There shall be no tipping, storage, or processing of waste/recyclables and/or BUD materials outside of a building without prior written approval from the Department. Outside storage for this purpose will be defined as any area without a structure over same containing a roof, sufficient flooring, and four walls

sufficient to confine stored material, dust, odors, leachate, etc. from leaving the structure."

DEC Staff witness Pollock testified that the purpose of this provision was to: (1) control and minimize the generation of leachate; and (2) ensure recyclables (specifically paper products) are not damaged by being left out in the rain and thereby affecting marketability (t. 869). He continued that the application materials were confusing regarding which materials Karta wanted to store outside and DEC Staff was concerned that leachate controls might be inadequate (t. 871).

"Leachate" is defined as a liquid solid waste that "results from in contact with or passage through solid waste" (6 NYCRR 360-1.2(b)(98)). Mr. Pollock testified that materials produced at the Karta facility pursuant to a Beneficial Use Determination (BUD) (360-1.15), such as aggregate, were considered waste by DEC Staff until this material is placed in commerce and leaves the facility for use (t. 1058). He also testified that any recyclable material stored at the Karta facility was also considered a solid waste (t. 1080). Therefore, stormwater coming in contact with these materials was considered leachate and must be minimized pursuant to 6 NYCRR 360-1.14(b)(2).

Karta accepts the second sentence in DEC Staff's proposed paragraph 24, but seeks to change the beginning of the paragraph to read:

"24. There shall be no tipping or storage of waste materials outside. Waste materials shall not include recyclables or materials authorized for use pursuant to a BUD, including without limitation, stone, aggregate, such as NYSDOT Specification 4, clean soil or sand, separate concrete and aggregate unless the Department issued BUD otherwise restricts the outside storage of such material."

Karta argues that Part 360 does not prohibit where materials, which are essentially commodities, may be stored and that the record is devoid of any evidence that the outside storage of these commodities would constitute a nuisance or result in any adverse environmental impacts. While the regulations do contemplate the outside storage of materials at recyclables handling and recovery facilities (6 NYCRR 360-12.2(a)(3)), these materials remain solid waste, as defined by the regulations (360-1.2(a)). Therefore, leachate generation must be minimized (360-1.14(b)(2)).

Section 2.2.8 of the application (Exh. 2) describes three areas at the facility where temporary storage of materials will occur: (1) southwest of building 1 addition along the western property line; (2) adjacent to the building 1 addition to the southeast; and (3) to the rear of building 3. The first two areas will be on asphalt pavement and the third will be grassed. All stormwater from these areas will be collected and managed by the facility's stormwater management system. Items to be stored in this area include clean fill, metal, etc. Portable material barriers will be used as necessary to ensure separation of materials. These areas are clearly depicted on the site plan (Exh. 14, drawing 1).

DEC Staff argues that this information is insufficient to permit the outside storage of these wastes because not enough detail has been provided regarding the specific locations of each waste that would be stored, nor is there any mention of how stormwater would be managed to minimize leachate generation.

DEC Staff indicated it would consider a request by Karta to allow outside storage of certain materials including: recognizable concrete, brick, asphalt pavement, glass and rock with no fines (t. 1069); baled metals, aluminum and tin (t. 871, 1069); and NYSDOT Specification 4 or "aggregate," assuming Karta is authorized to manufacture this product. This consideration would be contingent upon Karta submitting additional information regarding how leachate would be minimized (stormwater diversion techniques, etc.).

DEC Staff stated that paper products could not be stored outside because those products could be damaged and would no longer be marketable, thwarting the state's goal of encouraging recycling (t. 870). Karta agrees that long-term outside storage may diminish the material's value. However, Karta argues that short-term outside storage is a regular practice in the industry and at the facility. Karta cites as an example the handling of such materials at supermarkets and retail stores (Karta reply brief, p.13). Karta states it has an economic interest in maintaining the quality of its recycled paper products. Neither party points to 360-12.2(a)(2), which applies to Karta (see 360-11.4(h)), and reads:

"(2) External storage of paper and other recyclables whose marketability may be adversely affected by exposure to the sun or weather conditions is prohibited unless stored in covered containers or in a manner otherwise acceptable to the department...."

Karta has failed to demonstrate the exact locations where outside storage of individual recyclables will occur, and more importantly, failed to include any details regarding how it intends to minimize leachate generation from such storage. Consequently, it has failed to demonstrate that its proposal to store these materials outside will be in compliance with applicable regulations as required by 624.9(b)(1). There is a reasonable basis to include DEC Staff's draft language relative to outside storage in the final permit.

Paragraph 25 - *Status: Issue raised and resolved.*

DEC Staff proposes that Karta not be allowed to store any waste, "products," beneficial use materials, recyclables, etc. within fifty feet of any property line unless otherwise approved by the Department in writing. Karta requested permission to store materials within 50 feet of the property line if such storage occurred inside. DEC Staff agreed (DEC brief p. 35).

Paragraph 26 - *Status: issue raised and unresolved.*

This paragraph is closely related to paragraph 21, above. DEC Staff's draft permit reads:

"26. No tipping/storage/loading will be allowed in the area located between buildings #'s 3 and 6."

DEC Staff states the purpose of this paragraph is to cause Karta to conduct its operations within enclosed areas. Currently, Karta is the only facility in DEC Region 3 to operate outside. One other is not enclosed but operates under a cover, which DEC Staff is in the process of having enclosed (t. 873). The enclosure of these facilities is designed to control odor, dust, and vectors, and minimize leachate generation (t. 875).

As discussed in paragraph 21, above, the permit application (Exh. 2) mentioned a cover over the conveyor belt which was changed to a proposed enclosure of the entire area between buildings 3 and 6. DEC Staff asserts that the application materials are unclear as to how Karta plans to use this area. On cross-examination, DEC Staff witness Pollock stated that he did not believe DEC Staff would object to language allowing tipping, storage and or loading in this area after an approved enclosure is in place (t. 1120); however, DEC Staff did not revise the language of this paragraph in its final draft permit (Exh. 90).

Karta seeks to add the following phrase at the end of DEC Staff's proposed paragraph:

"...until a covering approved by the Department is installed, including approved drainage."

DEC Staff responds that prior to any tipping activity in this area, the applicant should submit to DEC Staff an application with detailed designs of necessary changes in engineering reports along with proposed revisions to all manuals. DEC Staff also states that this area must be fully enclosed before waste may be placed in this area, consistent with DEC Staff's position that all operations be conducted indoors (DEC brief, p. 35).

As discussed above in paragraph 21, the record does not contain enough information to authorize the construction of the enclosure of the area between buildings 3 and 6 based because of the insufficient nature of the application materials regarding the details of this structure. Following the submission and approval of sufficient plans for this enclosure and its construction and certification by a P.E., it seems that DEC Staff would not object to the storage and processing of materials in this area. However, it may be prudent to require the applicant to specify such storage and processing activities in writing before these activities occur.

DEC Staff's draft language should be amended to allow Karta to submit a plan to allow tipping/storage/loading in this area following construction of an approved cover, pursuant to paragraph 21, as discussed above.

Paragraph 27 -*Status: issue raised and unresolved.*

DEC Staff proposes the following language regarding fines, which are the smallest pieces of C&D after it is crushed at the site:

"27. Construction and demolition debris fines resulting from the processing/crushing of concrete, brick, stone, soil, and asphalt pavement shall be disposed of at an authorized solid waste management disposal facility. Fines shall be considered as any portion of the waste stream that does not meet the definition of aggregate in special condition #29 below."

Karta objects to this entire proposed paragraph and seeks to have it deleted. Karta argues that fines associated with clean fill, the recovery of rock, stone, brick, asphalt, and concrete are acceptable aggregate and need not be landfilled. This paragraph is closely linked to paragraph 29 of DEC's draft

permit, which is discussed below.

DEC Staff Engineering Geologist Steven Parisio testified regarding the rationale for this proposed permit condition. DEC Staff's concern is that processed C&D, when finely ground, can have the appearance of natural soil to the untrained eye (t. 1512) and has been distributed as topsoil to unsuspecting property owners and contractors in Region 3 (t. 1519). This material is of concern because small particles of asphalt in this product contain polycyclic aromatic hydrocarbons (PAHs), some of which are carcinogens. DEC Staff's reference to "fines" means particles smaller than 2 millimeters (t. 1550).

As explained by Mr. Parisio, when asphalt is ground into small fragments, this increases the surface area which causes greater contamination risks from the PAHs. While runoff from roadways constructed of large slabs of asphalt does not present a health risk, smaller fragments of asphalt in soil can (t. 1523). The primary pathway for human exposure is through children playing in the soil and ingesting these PAHs, as well as people eating root vegetables grown in this soil (t. 1524). As further explained by Mr. Parisio, there are hundreds of different PAHs, and DEC Staff routinely tests for 17 different ones, of which 6 are carcinogens, benzo(a)pyrene being the PAH DEC Staff is most concerned about (t. 1525). The level used to determine whether or not soil is safe is found in DEC's Technical and Administrative Guidance Memorandum (TAGM) #4046 (Exh. 57) and the level for benzo(a)pyrene is 0.061 ppm (t. 1532).

The distribution of "fines" (also called "screenings") as topsoil has caused a number of problems in Region 3 including subdivisions where this material has been used to grade lawns around expensive homes (t. 1526) and seven to nine instances where schools in Westchester County have accepted "gifts" of new athletic fields using fill with elevated levels of PAHs (t. 1540). These examples were not linked to Karta at the hearing.

Three other examples of contaminated fines which did involve the Karta facility were discussed in Mr. Parisio's testimony. The first involved the Pelham Bay Landfill in New York City. In this case, Karta supplied approximately 30,000 cubic yards of material that NYC believed to be topsoil that was used to cap this closed landfill (t. 1530). When no vegetation would grow on the cap, NYC and DEC Staff investigated. It turned out that the reason nothing would grow was because the pH level of the soil had been altered by the addition of crushed concrete. During the course of the investigation it was also revealed that the product supplied by Karta also contained elevated levels of PAHs (Exh.

58). Apparently Karta did not sell this material directly to NYC and it is not clear from this record if DEC Staff took an enforcement action against Karta as a result of this inappropriate use of screenings (t. 1676).

The second example of contaminated fines being distributed from the Karta facility occurred in 1999 and involved approximately 2,000 cubic yards of "screened fill material" which was used as a subgrade for tennis courts at a town park in the Town of Putnam Valley, Putnam County (t. 1538). "A sample of the material collected by Department staff on May 27, 1999 was analyzed and found to contain pulverized C&D debris including brick, concrete, glass and asphalt pavement together with a significant amount of pulverized wood. Wood fragments made up 27% by volume of the >6 mm size fraction and 19% by volume of the 2-6 mm size fraction in the sample tested. In addition, the sample contained trace amounts of gypsum, plastic, paint chips, tile and metal" (Exh. 60, p.1). The record is unclear how this alleged violation was resolved (t. 1659).

The third example cited by Mr. Parisio involved property located at 1070 Lower South Street, Peekskill, just down the road from the facility. This property is apparently owned by Global Land, one of the companies closely associated with Karta Corp (Exh. 85). He testified that a quantity of this material has been deposited on this property (t. 1530) and DEC Staff has tested the fill at this site and discovered that levels of PAHs in the fill exceed health based standards (Exh. 62). On cross-examination, Karta established that the 1070 Lower South Street Property was adjacent to railroad tracks and that other sources for PAHs were likely on the site (t. 1739). However, Mr. Parisio testified that he was confident that the samples taken from the site were taken from the fill material originating at the Karta facility (t. 1741).

DEC Staff has demonstrated in this record that this facility has been the source of fines which have been distributed as topsoil and/or fill and that this material has elevated levels of PAHs, some of which are carcinogens. DEC Staff has also demonstrated that this fine material has been placed in areas where members of the public, including children, could be exposed to it and that in one case this material from this facility was placed in a public park. Further, under Karta's current application, fines from C&D would be sorted and end up in ADC (Exh. 14, drawing 7), which as discussed below (see discussion of paragraph 28) Karta is not currently authorized to produce. Other fines would be generated from the facility as C&D is crushed and then used in aggregate, which as discussed below (see

discussion of paragraph 29) can only be used for limited purposes. Accordingly, the record contains a rational basis for the Commissioner to include DEC Staff's proposed paragraph 27 in the final permit. This would not preclude the applicant from applying for a case-specific Beneficial Use Determination (BUD) for the use of its crushed C&D product which would allow greater DEC oversight of the material's production, testing, distribution and ultimate use nor would it preclude Karta from applying for permission to produce ADC, which may also contain fines. DEC Staff's draft permit language should be included in the final permit.

Paragraph 28 - *Status: issue raised and unresolved.*

DEC Staff's initial draft permit (Exh. 1) and revised draft permit (Exh. 90) both stated:

"28. The permittee is not an authorized facility to produce alternative daily cover (ADC). In addition, the Beneficial Use Determination (BUD) to produce ADC for Seneca Meadows issued on September 20, 1994 is hereby revoked. The permittee may submit a permit modification to become reauthorized, however, the submittal shall also contain, in addition to what is required pursuant to Part 360 and SEQRA, a testing protocol consistent with the information provided by the Region 3 office in a letter of December 29, 1997 to Sullivan County in which the permittee was copied."

In its brief, DEC Staff proposed deleting the second sentence from what was originally proposed, which it believes meets Karta's objections (DEC brief, p. 21). Karta, however, insists on its objection and seeks to have the entire proposed paragraph deleted from the final permit.

Two disputes regarding this paragraph exist. First, DEC Staff argues that two authorizations are needed regarding ADC: one for the facility producing the ADC and another for the facility accepting and using the ADC. Karta disagrees and argues only a single authorization is necessary and that it possesses one which cannot be revoked in a permit modification hearing. The second dispute involves whether sufficient information is contained in the instant permit modification application materials for Karta to be authorized to produce ADC, should such authorization be necessary.

The relevant regulations to the first dispute are found at 360-16.4(d):

"(d) Use of C&D debris as an alternative daily cover material at a landfill.

(1) Screenings. The department may approve the use of screenings separated prior to pulverizing operations at C&D debris processing facilities that only accept recognizable, uncontaminated, non-pulverized C&D debris for use as an alternative daily cover on landfills in the State, if:

(i) It can be demonstrated that the material is capable of meeting the following minimum performance criteria for daily cover material:

(a) to control and not sustain fire;

(b) to control and not contribute to odors (this may require the separation of plaster and wallboard from daily cover material);

(c) to control and not contribute to the propagation of vectors;

(d) to control and not contribute to blowing litter and dust; and

(e) to control scavenging.

(ii) The amount of fines (material passing through a number 200 sieve) in the screenings is less than 25 percent by weight (dry basis).

(iii) The organic content of the screenings is less than 15 percent by weight (dry basis).

(2) Pulverized C&D debris. The department may approve the use of pulverized C&D debris from permitted C&D processing facilities for use as an alternative daily cover material on landfills in New York State if:

(i) the pulverized C&D debris satisfies the same requirements for screenings as described in subparagraphs (1)(i)-(iii) of this subdivision; and

(ii) the pulverized C&D debris is used as daily cover only at landfills authorized by the department to accept pulverized C&D debris.

(3) Testing of C&D debris used for daily cover. All C&D debris intended to be used as daily cover must receive written department approval prior to its use as an alternative daily cover material. Facilities which recover C&D debris for use as daily cover on landfills in New York State must have a plan approved by the department which fully describes sampling and analytical procedures, including the frequency of testing, to ensure compliance with paragraph (1) of this subdivision."

Karta maintains that a 1994 letter from DEC Region 8 to an Albany Engineering firm authorizing the use of ADC from Karta at the Seneca Meadows Landfill (Exh. 27) authorizes both the landfill to use the ADC and Karta to produce it (Karta's brief, p.28). Karta argues that a valid BUD exists and that no separate authorization is required to produce ADC.

DEC Staff argues that the regulations require two approvals and that this letter only addresses approval to use ADC in Region 8, not to produce ADC in Region 3. DEC Staff states that Karta has never been authorized to produce ADC and that the first sentence of Paragraph 28 is not a revocation of an existing authorization. DEC Staff witness Pollock testified that while the 1994 authorization, which was issued by NYSDEC Region 8, allowed the use of processed C&D as ADC, Karta needed a separate authorization from NYSDEC Region 3 to produce ADC, which it does not have (t. 877, 1143). According to Mr. Pollock, Region 3 has had testing protocols for ADC since 1994 or 1995 and Karta has not been subject to the standard procedure to become authorized to produce ADC (t. 878).

In the record is a letter from DEC Region 3 dated December 29, 1996 to the Sullivan County Landfill (Exh. 28) which granted authorization to use ADC from Karta and reads in part: "This approval is applicable through July 1, 1998. If Sullivan County wishes to use ADC from Karta after July 1, 1998 Karta must submit the documents required by Part 360-16.4(d) and receive written approval from Region 3 for the production of the material." Karta was copied on this letter. Karta does not assert that it ever submitted this documentation or was ever approved to produce ADC.

A second letter in the record from Region 3 to Karta dated June 8, 2004 (Exh. 30) contained the following paragraph:

"The facility is in violation of 6NYCRR Part 360-1.5(a); 1.7(a)(1)(ii) and 16.4(d) for sending all, or a portion of 8,804.03 tons of material to Steuben County Landfill in New York to be used as Alternative Daily Cover (ADC). The facility has been informed a number of times, the most recently being the Department's October 4, 2002 correspondence, that Karta is not authorized to produce ADC until such time as a permit modification to do so is issued by the Department. Any application will require an approvable testing protocol (requirements previously noted). The only exception to this is the approval from the Department's Albany office dated September 20, 1994 allowing Karta to send construction and demolition debris to Seneca

Meadows Landfill for use as ADC. This is the only landfill at this time allowed to receive construction and demolition debris from Karta for use as ADC. The referenced approval does not however, authorize Karta to produce ADC."

It is clear from the regulations found at 360-16.4(d) that requirements are imposed upon a facility seeking to produce ADC: "Facilities which recover C&D debris for use as daily cover on landfills in New York State must have a plan approved by the department which fully describes sampling and analytical procedures, including the frequency of testing, to ensure compliance...." This is different from the requirements placed upon facilities receiving the ADC to become authorized. DEC Staff's reading of the regulations is correct and, Karta is not authorized to produce ADC.

With respect to Karta's second argument, that if a separate authorization to produce ADC is necessary, the application materials, which have been deemed by DEC Staff as complete, contain the necessary information. Karta also points out that an Operation and Maintenance Manual and testing protocol were already submitted (Exh. 2). According to Karta, DEC Staff must either approve or deny Karta's request to produce ADC on the basis of the information in the application before requiring additional submissions. Karta states this is an attempt by DEC Staff to defer action on this part of Karta's application until a future date.

The regulations set forth the information necessary to become approved to produce ADC. "Facilities which recover C&D debris for use as daily cover on landfills in New York State must have a plan approved by the department which fully describes sampling and analytical procedures, including the frequency of testing, to ensure compliance with paragraph (1) of this subdivision" (reproduced above).

In addition, the record also contains an authorization for production of ADC to one of Karta's competitors (Exh. 28, p.3). This authorization includes information on flamability, sulfate, total sulfur, pH, organic content, % passing #200 sieve, moisture content, specific gravity, asbestos, PCB, TCLP, ignitablility, corrosivity and reactivity.

Karta argues that its application contains enough information for the Department to authorize the production of ADC. It points to information in the record regarding production of ADC (Exh. 2, appendices G, H & I) and this statement from the application materials (Exh. 2, p.26):

"The ADC produced by the integrated C&D Recycling system will consist of 2-inch minus material that will [be] transported offsite to landfills for beneficial reuse as ADC under NYSDEC-issued Beneficial Use Determinations (BUD Material) issued to the respective landfill. Detailed information regarding the facility's BUD materials is provided in *Petition for Beneficial Use Determination for Alternative Landfill Daily Cover/Alternative Grading Material. Earth Tech, Inc. June 16, 1999, Revised February 2000*⁴. Karta will continue to provide testing data on its ADC to confirm conformance with the individual landfill's NYSDEC ADC approval, as requested by the landfill facility. In addition, to provide an ongoing baseline characterization of its ADC waste stream, on a semi-annual basis, the facility will test a representative sample of its ADC for hazardous waste characterization using the Toxic Constituent Leaching Procedure (TCLP; USEPA SW 846; Method 1311). These test results will be maintained in the facility's operating record, in addition to being provided to the landfills."

Karta did not introduce the "Petition for Beneficial Use Determination for Alternative Landfill Daily Cover/Alternative Grading Material. Earth Tech, Inc. June 16, 1999, Revised February 2000" as an exhibit, nor does it appear to be included in the application materials in the record (Exh. 2), so its relevance can only be speculated upon at this point.

According to Mr. Pollock, the current application materials do not contain sufficient information for DEC Staff to authorize Karta to produce ADC (t. 880). The specific deficiencies are not noted.

DEC regulations require that an applicant demonstrate that its proposal will be in compliance with all applicable laws and regulations administered by the department (624.9(b)(1)). In this case, Karta claims that the information in the application materials is sufficient for the Department to authorize Karta to produce ADC. Yet the materials Karta points to as evidence do not address the following issues found in the authorization to its competitor (Exh. 28): specifically, flammability, sulfate, total sulfur, pH, organic content, % passing #200 sieve, moisture content, specific gravity, asbestos, PCB, ignitability, corrosivity and reactivity. Indeed the only reference to one of these requirements is to TCLP. Accordingly, it is reasonable to

⁴ This document is not in the record of this proceeding.

conclude that DEC Staff is correct and that insufficient information has been presented by Karta to be authorized to produce ADC.

In sum, Karta has failed to show that it is authorized to produce ADC currently nor has it shown that its application materials contain sufficient information to be granted such authority. Accordingly, DEC Staff's proposed permit language for paragraph 28 should be adopted.

Paragraph 29 - *Status: issue raised and unresolved.*

DEC Staff have proposed the following:

"29. The receipt and processing of material will only occur within the following on-site buildings (buildings are numbered in accordance with the site plans of Attachment "A"):

Building #1 - South end - uncontaminated, non urban soils; North end - commingled recyclables (bottles, cans, plastics).

Building #2 - North end - source separated aluminum; South end - source separated metals (no vehicles or vehicle parts for dismantling, etc.); Center (between doors #2 and #5) - mulch and topsoil.

Building #3 - Within doors numbered 16 and 17 - (easterly side) - unadulterated wood (any loads containing adulterated wood must be taken into the building via doors 18 - 21 for proper sorting); (westerly side) - trees, stumps, pallets; within doors numbered 12, 13, 14, 15, and 22 - rock, concrete, brick, aggregate, or aggregate substitute. (Aggregate as referenced here means sand or gravel added to cement to make concrete or added to asphalt to make asphalt pavement); within doors numbered 18, 19, 20, 21 - C&D.

Building #4 - No waste, products, or recyclables.

Building #6 - North of door #2 - construction and demolition debris processing; between doors #2 and #3 - source separated newspaper and OCC (old corrugated cardboard); south of door #3 - Municipal Solid Waste (MSW).

All waste and product areas within the buildings referenced above must be clearly delineated by white or yellow lines painted on the floor that are clearly visible at any and all times."

DEC Staff witness Pollock testified that the intent of this paragraph was to allow the department to regulate the activities within the facility (t. 881). He stated that DEC Staff felt that the description of where specific activities would occur at the site was not sufficiently addressed in the application materials and that this type of condition is used for other, similar facilities (t. 883).

Karta does not object to the descriptions of where activities will occur in this paragraph, but does object to DEC Staff's proposed definition of "aggregate" found in the paragraph related to building #3 and suggests a revised definition.

"Aggregate as referenced here means sand, stone or gravel used for concrete, asphalt, and structural fill, including road base. Source separated concrete, bricks, stone, and asphalt or similar uncontaminated recognizable material separated from C&D may be processed to produce aggregate meeting the requirements of the generic BUD set forth at 6 NYCRR 360-1.15(a)." (Karta's brief, p. 71).

The definition of "aggregate" is important because the term is used in 360-1.15(b) which establishes categorical BUDs. This section reads:

"(b) Solid waste cessation: The following items are not considered solid waste for the purposes of this Part when described in this subdivision:...

(11) recognizable, uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil and rock placed in commerce for service as a substitute for conventional aggregate."

Currently, the facility accepts recognizable, uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil and rock and also recovers this material from C&D. This material is then crushed and marketed for several uses including road base and structural fill. This crushed material meets the specifications published by NYS Department of Transportation for Type 4 material, also known as crusher run (Exh. 17).

As discussed above, this paragraph is closely linked to the discussion of paragraph 27 above. There is no definition of "aggregate" in Part 360 or other relevant regulations. A review of the Final Environmental Impact Statement for Revisions/Enhancements to 6 NYCRR Part 360 Solid Waste Management Facilities, dated May 1993, when this categorical BUD was

established sheds no light on the definition of "aggregate".

The dispute regarding the definition of "aggregate" involves whether the term should be defined narrowly, as DEC Staff argues, or more broadly, as Karta seeks. DEC Staff argues that the definition found in Webster's Dictionary (Exh. 63) is the best definition. Specifically, the third definition of "aggregate" as a noun which reads "any of several hard inert materials (as sand, gravel, or slag) used for mixing with a cementing material to form concrete, mortar, or plaster". DEC Staff expert Steven Parisio argued that this narrow definition of "aggregate" is the best definition in light of the entire regulatory scheme for C&D. Specifically, Part 360-7.1(b)(1) & (11), which govern exempt C&D landfills, which can only accept uncontaminated, recognizable concrete and concrete products, brick, asphalt, pavement, soil, rock and glass, provides that such facilities can only operate during daylight hours and cannot accept compensation for such disposal (see also ECL 27-0707).

According to DEC Staff, a broader definition of "aggregate" advocated by Karta would in effect make the provisions of ECL 27-0707 null and void and would allow an exempt C&D landfill to operate at night and accept money for disposal by claiming it was just accepting aggregate pursuant to the categorical BUD. DEC Staff argues that if Karta wishes to market processed C&D waste for other purposes than mixing into concrete or asphalt, it can seek a case specific BUD (t. 1584), which is something DEC Staff encourages permittees to do. These case specific BUDs would allow DEC Staff greater control over where and how this material could be used. This control is necessary because the crushed asphalt contains PAHs, some of which are carcinogenic. DEC Staff argues that proper placement of this material is important to protect the environment and human health.

In its brief, Karta points out that the definition of "aggregate" that DEC Staff now seeks, and reproduced above from DEC Staff's revised draft permit, is at variance with DEC Staff's original draft permit (Exh. 1) which read: "(Aggregate as referenced here means sand or gravel added to cement to make concrete or added to asphalt to make asphalt pavement or used in the construction of subgrades, drainage layers, swales and subsurface drains)." DEC Staff did not explain this change in its brief, but DEC Staff witness Pollock testified that he believed this language, now deleted, was placed in the original draft permit in error (t. 1131).

In support of its argument for a broader definition of "aggregate" Karta argues that NYSDOT uses the term aggregate to

refer to type 4 material. Karta also introduced numerous other definitions of "aggregate" which define the term more broadly, including: information from the Connecticut Department of Environmental Protection (Exh. 68), a definition from the Civil Engineering Reference Manual (Exh. 70), a definition from Highway Engineering (sixth edition) (Exh. 72), a definition from Industrial Minerals and Rocks (fifth edition)(Exh. 73), and a research paper entitled "Use of Recycled Concrete Aggregate as a Base Course (Exh. 77). Other information in the record defines "aggregate" more narrowly or gives several definitions both narrow and broadly, including: the Dictionary of Geological Terms (Exh. 64) and the Dictionary of Mining, Mine and Related Terms (Exh. 78). This information is of marginal value to this proceeding and demonstrates only that "aggregate" can be defined either narrowly as a component of cement and asphalt or broadly to include road base and structural fill.

Based on the evidence in this record, the Commissioner should adopt DEC Staff's proposed definition because it is consistent with other aspects of the regulatory scheme and is protective of human health and the environment. If Karta wishes to continue to produce this material it will have to apply for a case-specific BUD pursuant to 360-1.15(d) which will allow greater control over where and how this material is used, so as to protect the public health and the environment.

Paragraph 30 - *Status: issue raised and unresolved.*

DEC Staff have proposed allowing a maximum daily throughput at the facility of 900 tons per day, with each of five sub-categories of waste having separate sub-limits. DEC Staff proposes:

- "30. Tonnage Limit - The permittee is authorized to accept the following maximum tonnage:
- No more than 100 tons per day of MSW as defined in 360-1.2(b)(106);
 - No more than 320 tons per day of C&D;
 - No more than 50 tons of source separated and commingled recycle materials per day;
 - No more than 350 tons per day of source separated C&D type materials; and
 - No more than 80 tons per day of unadulterated wood and land clearing debris."

This paragraph also contains three footnotes defining "C&D", "source separated and commingled recycle materials" and "source separated C&D type materials". These definitions are not in

dispute.

Karta proposes a lower daily throughput of 800 tons per day total, which is consistent with its agreement with the City (Exh. 85), but objects to the limits proposed by DEC Staff on sub-categories of waste. Karta does not object conceptually to sub-categorical limits, but argues that DEC Staff's proposed limits are too low (Karta reply, p. 10). Karta proposes to be allowed to choose any waste stream to meet the 800 ton daily limit, except MSW which would be capped at 500 tons per day (the amount currently authorized). Karta proposes the following language:

- "30. Tonnage Limit - The permittee is authorized to accept the following maximum tonnage:
- No more than 500 tons per day of MSW as defined in 360-1.2(b)(106);
 - No more than 800 tons per day of C&D;
 - No more than 800 tons per day of source separated and commingled recycle materials per day;
 - No more than 800 tons per day of source separated C&D type materials; and
 - No more than 800 tons per day of unadulterated wood and land clearing debris.
- Provided that the cumulative total of all categories of material shall not exceed 800 tons per day."

Karta argues that an important part of its business model is the flexibility to choose which waste it will process on a given day, based on the profitability of the different streams. An example provided at the hearing involved the acceptance of a series of trailers which were very high in metal content which has a high value when separated from the other waste. Under DEC Staff's proposed limits, Karta could not take larger quantities of this valuable waste on the days it becomes available. The loss of this flexibility would be a blow to the profitability of the facility.

DEC Staff makes three arguments in support of its proposed sub-categorical tonnage limits. First, DEC Staff is concerned that the facility does not have the capacity to properly handle the quantities of waste Karta seeks authority to accept and that DEC Staff's proposed sub-categorical limits are reasonable given the capacity of the equipment at the facility and the hours of operation proposed in paragraph 44. Second, Karta's compliance history warrants the lower sub-categorical tonnage limits. Third, permits for similar facilities in Region 3 contain similar restrictions.

Regarding DEC Staff's first argument that the facility does not have the capacity to properly handle larger amounts of waste, DEC Staff witness Pollock testified that the tonnage limits were included in the draft permit to ensure that the facility could actually receive, process and remove waste in appropriate time frames (t. 886). If too much waste were to be accepted, it could remain onsite for long periods of time causing problems such as odors, vectors and leachate (t. 889). The sub-categorical tonnages included in DEC Staff's draft permit were developed by several members of DEC Staff familiar with the operations of Karta (t. 1179). An analysis of what could be handled by the facility was done, although Mr. Pollock did not know if this analysis was in writing (t. 1179). Once DEC Staff evaluated the tonnage the facility could handle, it then developed the proposed operating hours (t. 1324). At the hearing, DEC Staff provided no quantitative analysis to justify the individual sub totals of tonnages but rather described qualitative factors in arriving at its decision. DEC Staff also considered the capability of the management and personnel of the facility in developing these subcategories (t. 1195).

Karta disputes DEC Staff's assertion that the facility cannot properly handle the quantities of waste it seeks authorization to accept and provided detailed quantitative analyses at the hearing. The discussion of capacity is dealt with in the following paragraphs regarding the individual sub-categories. It should be noted that, while the applicant's consultant sent DEC Staff a detailed series of calculations regarding operating capacities at the facility (Exh. 15) in early March 2004, these calculations were not reviewed by DEC Staff prior to its formulation of the sub-categorical limits in the draft permit in May 2004 (t. 1178).

Regarding DEC Staff's second argument, that the compliance history of the facility justifies these limits, DEC Staff points to the violations shown in the record. There are two parts to this argument: (1) the overall number of violations justifies the sub-categorical limits in total; and (2) that individual violations regarding each of the sub-categories justify the sub-totals. Regarding the overall argument, DEC Staff has presented evidence of approximately three hundred violations between August 2001 and October 2004. DEC Staff states in its brief that only by limitation of hours and tonnages and close supervision by environmental monitors, can the DEC Staff ensure that this Applicant will obey the laws applicable to all (DEC brief, p. 23). Arguments relating to individual violations and a specific sub-categorical limit are discussed in the separate discussions below.

Regarding DEC Staff's third argument, that because it is the practice in Region 3 to have sub-categorical tonnage limits in the permits of facilities like Karta, Karta's permit should have them included, DEC Staff offered the testimony of Mr. Pollock. He testified that these tonnage limitations are commonly used in other permits in Region 3 (t. 890) and that most if not all of Karta's competitors in Region 3 have sub-categorical tonnage limits (t. 888). He did acknowledge that no other facility in Region 3 accepts all five waste streams that Karta accepts. Other facilities which receive multiple waste streams (including waste streams not accepted by Karta), all have sub totals for each waste stream within their permits (t. 1199). Karta disputes this and states that its current permit and registration do not have subcategory limits and neither does a Waste Management facility in Kingston, NY (DEC permit #3-5154-00081/00003-0). The Waste Management facility permit nor is any information regarding this facility is not in the record.

Each waste stream and its proposed tonnage limit is discussed below.

Municipal Solid Waste (MSW):

Karta's consultant Kenneth Gelting testified that MSW would be processed in the southern portion of building 6, where loads containing high recyclable content are negatively sorted (picked over by hand to remove recyclables) and the residual waste is baled for removal (t. 379). The facility has two balers with a maximum capacity of 33 tons per hour each (t. 383), so in order to bale 500 tons of MSW would take approximately eight hours. Loads with high recyclable content can also be placed on the ERINS system to be sorted. If the ERINS system were not utilized to process MSW, Mr. Gelting estimated that 50 tons an hour would be the high end for negatively sorting (t. 386).

DEC Staff witness Pollock acknowledged that the balers could handle approximately 400 tons during an eight hour shift, but that DEC Staff was concerned about adequate storage for this quantity of waste and whether adequate personnel would be available (t. 1190). He testified that past violations and failure to timely remove MSW from the facility were factors in lowering this limit (t. 1203). The facility is authorized to receive 500 tpd of MSW presently and according to Mr. Pollock has had difficulty removing it in a timely fashion (t. 1223) due to insufficient trucking. Bales have been observed remaining on site for longer than 3 weeks (t. 896, 1224). This has been a running concern of DEC Staff, as bales have been left longer than

seven days onsite and not removed from floors as required (t. 1226). DEC Staff introduced evidence of several violations related to the failure to timely remove solid waste from the facility on four dates May 10, 2004 (Exh. 29), June 3, 2004 (Exh. 29), July 12, 2004 (Exh. 9) and July 21, 2004 (Exh. 10). This evidence seems to contradict Karta's argument that the failure to remove solid waste was an isolated incident that occurred when baled solid waste was not removed on a first-in, first-out basis (Karta's reply, p. 6).

Another factor relevant to this discussion is the activities that will occur in building 6 after the final permit is issued. If Karta's proposed canopy cannot be approved on the information submitted, all open top loading must be done inside building 6 (see paragraph 36), limiting the space available for MSW processing operations.

DEC Staff has shown a rational basis for the inclusion of a sub-categorical limit of 100 tons per day including past violations relating to the timely removal of MSW at the higher, 500 ton per day limit and the new requirement that top loading occur entirely within building 6. This would not preclude Karta from seeking to increase this limit at a later date, for example after leachate issues have been addressed and approvable plans for a canopy in front of building 6 have been approved.

Construction and Demolition (C&D)

Regarding DEC Staff's proposed limit of 320 tons per day of C&D, Mr. Pollock testified that an analysis was done involving several members of DEC Staff to derive this limit. Factors considered in developing this limit included: the ability of incoming vehicles to dump in building 3, the ability to load equipment and the throughput of the various machines (t. 1180) as well as the ability to store incoming and outgoing material (t. 1182). Past violations relating to C&D, including the placement of piles of material outside approved areas factored into this limit (t. 1204). He also testified that the sub-categorical limit on C&D was based on a concern that at the end of the processing line there is insufficient area in building 6 to load larger amounts of material and store it there without it sitting in a leachate pond in the building (t. 1213). Karta has been cited by DEC Staff for allowing leachate to pond inside building 6 in violation of 360-1.14(b)(2), 360-16.3(f)(2) and 360-16.4(g) (see finding of fact 55.D, above). DEC Staff did not dispute Karta's assertion that, once the permit modification is issued and all tipping of C&D occurs within building 3, there would be increased area to process C&D and it would improve operations at the

facility (t. 1208).

Karta's consultant, Kenneth Gelting, testified that after the modified permit is issued, C&D will be tipped in Building 3, pre-sorted to the extent feasible, and then fed on to the ERINS conveyor belt system for sorting and processing in building 6 (t. 358). Mr. Gelting testified that a reasonable capacity for the ERINS system and other associated pieces of equipment was 50-75 tons per hour (t. 363) and using the lower estimate, it would take 16 hours to process 800 tons, or two eight hour shifts (t. 367). Typically, maintenance in the industry is done in off-hours (t. 368). Obviously, the amount of C&D that could be processed at the facility is a function of the amount of time the facility is authorized to operate (see discussion of paragraph 44). If DEC Staff's proposal of nine hours on weekdays and five hours on weekends is included in the final permit, the facility could not process 800 tons per day of C&D. However, if Karta's proposed hours were included, seventeen hours on weekdays and fourteen hours on weekends, 800 tons of C&D could be processed on weekdays.

The record contains dozens of violations that have occurred at the facility involving C&D, including managing C&D outside approved areas; failure to inspect incoming loads of C&D, piles of C&D in excess of 20 feet; storing C&D too close to property lines; failure to cover C&D stored outside; storing C&D off-site at an unauthorized location; as well as violations related to dust and leachate. Karta argues that since the C&D operations will be moved indoors, these violations will not recur.

One factor to be considered depends upon the definition of "aggregate" (see discussion of paragraph 29). If the categorical BUD does not authorize Karta to produce NYSDOT item #4, this may substantially reduce the market for Karta's C&D product, until such time as Karta applies for and is granted a case specific BUD. With a more limited market for its crushed C&D product, Karta may not need the larger sub-categorical limit. This would not preclude Karta from seeking a higher limit after it has received its case specific BUD.

Based upon the above, the record includes evidence to support DEC Staff's proposed sub-categorical limit for C&D in the final permit.

Source separated and comingled recyclable materials:

Karta's consultant Gelting did not testify regarding the

capacity of the facility to process these wastes but his March 3, 2004 letter to DEC Staff did address this issue (Exh. 15). In his letter, he estimated that the facility could process: 3.5 tons per hour of metal in building 2; 1 ton per hour of aluminum in building 2; 38 tons per hour of newspaper in building 6; 24 tons per hour of cardboard in building 6; and one ton per hour of commingled recyclables in building 6 (Exh. 15, p. 7-9). It is unclear if these are maximum throughput estimates or if they have been adjusted to reflect typical operating conditions at the facility. Mr. Gelting testified that the facility does not handle much of this type of waste (t. 388).

Regarding source separated and commingled recyclable materials, DEC Staff stated that the 50 ton limit was arrived at by considering factors including the ability of vehicles to dump and load in the building and hours of operation (t. 1194).

Given the fact that Karta's expert testified that Karta does not handle much of this waste and other evidence in the record cited above, a rational basis exists to include DEC Staff's proposed sub-categorical limit in the final permit.

Source separated C&D

Mr. Gelting testified that source separated C&D is also received in building 3 and it is then run through a rock crusher and screener in this building (t. 372). The design capacity of the rock crusher is 320 tons per hour, so 800 tons of this material could be processed in less than three hours (t. 377). Therefore, it is reasonable to conclude that adequate processing capacity exists for this material using either DEC Staff's proposed hours of operation or those proposed by Karta.

The restricted space for processing C&D in building 6 is not an issue because source separated C&D is not processed there. However, the discussions above, regarding past violations relating to C&D and the potential loss of the market for the processed material (until Karta obtains a case-specific BUD and/or approval to produce ADC) are relevant and provide a reasonable basis to include DEC Staff's proposed 320 ton per day limitation in the final permit.

Unadulterated Wood and Land Clearing Debris:

Unadulterated wood is tipped and processed in building 3. Wood is also recovered from C&D in building 6 and processed in

building 3. Mr. Gelting testified that the facility used a grinder to process this material into mulch and that the capacity of this grinder was 50 tons per hour. This material is then dyed and sold as mulch. Therefore, in two eight hour shifts, the facility could process up to 800 tons per day of unadulterated wood and land clearing debris (t. 393). Again, the throughput of this facility depends on how many hours the facility is authorized to operate.

DEC Staff has introduced evidence of a number of violations related to this operation. On at least five occasions, Karta included contaminated wood (plywood, pressure treated wood, stained wood, painted wood, etc.) in this operation; December 30, 2003 (Exh. 36), March 24, 2004 (Exh. 31), April 19, 2004 (Exh. 31), May 10, 2004 (Exh. 29), and June 3, 2004 (Exh. 29). In addition, on July 12 and 21, 2004, Karta was cited for excessively large storage piles of wood (Exh. 9 & 10). Also, the tub grinder, which can be used to process this wood was operated outside, in violation of the August 2003 consent order on three occasions: December 3 & 12, 2003 (Exh. 37), and March 25, 2004 (Exh. 29 & 34).

Given the problems with wood processing in the past at the facility, there is a rational basis to include DEC Staff's proposed language in the final permit.

Paragraph 31 - *Status: issue raised and unresolved.*

An issue regarding this paragraph was raised by Karta regarding the height of piles allowed at the facility and the storage limits proposed by DEC Staff (Exh. 3, p. 5). At the beginning of the adjudicatory hearing, DEC Staff agreed to modify this paragraph to increase the maximum height from 15 to 20 feet for items such as C&D, topsoil and mulch, and separated recyclables. At the first day of the adjudicatory hearing, Karta's counsel stated that this amendment addressed all issues regarding this paragraph (t. 17).

DEC Staff proposed (amended to reflect the agreement on 20 foot pile heights):

- "31. The facility shall only store within the buildings as defined in special permit condition #29 no more than 1,400 cubic yards of incoming C&D debris, no more than 535 cubic yards of mulch and topsoil, no more than 1,500 cubic yards of source separated recyclables, and 830 cubic yards of source separated C&D as defined in

special condition #30 above. The pile height within each building shall be no more than 20 feet unless such additional height has been pre-approved in writing by the Department."

DEC Staff witness Pollock testified that the purpose of this paragraph was to place a limit on the amount of materials stored at the facility. He stated that these limits were based on what seemed reasonable by departmental standards considering the amounts that could be properly handled and processed in the various segments of the facility and safety concerns (t. 903).

In its closing brief, Karta asserts that an issue remains regarding the quantities of materials limited by this paragraph. Karta proposes:

- "31. The facility shall only store within the buildings as defined in special permit condition #29 in designated areas and subject to the following storage limits:
- incoming construction and demolition debris - 3,750 cubic yards;
 - mulch and topsoil - 555 cubic yards;
 - source separated and commingled recyclables - 4,700 cubic yards (includes metals, aluminum, newspaper, OCC and commingled residential recyclables, but not including tires which are subject to the limitations specified in paragraph 41);
 - source separated C&D - 2,400 cubic yards includes ("rock, brick, concrete, asphalt, soils, and direct incoming uncontaminated wood and similar materials")

The pile height shall be no more than 20 feet unless the Department shall approve a greater height in writing."

To support these higher storage limits, which it states are recalculations based upon the revised pile height, Karta includes a series of calculations in its brief. These calculations are based on calculations performed by its expert Mr. Gelting which were included in a March 3, 2004 letter to DEC Staff (Exh. 15) detailing the amount of storage available at the facility. However, these recalculations are more than simply substituting a new pile height. For example, in Exhibit 15's discussion of C&D Processing Areas, Mr. Gelting assumed a working area of 65' by 75', of which an area of 65' by 35' would be 10' high for loading the pan feeder and an area of 65' by 40' would be 1.5' high for presorting. The calculations in Karta's brief assume the entire

65' by 75' area would be 20' high with no description of how presorting or pan feeding would be accomplished. Other recalculations increase pile heights from 3' in Exhibit 15, to 20' in Karta's brief with no explanation as to why the 3' pile height was originally chosen and what effect a 20' pile height would have on the operations of the facility.

DEC Staff does not note that the issue of storage quantities was not proposed or advanced to adjudication and does not point to the statement by Karta's counsel that following agreement to change the pile height that all issues regarding this paragraph were resolved. Karta did not disclose that an issue existed regarding storage capacity until its closing brief. Karta now claims that DEC Staff's proposed storage limits have no basis in the record.

DEC Staff in its brief, attacks the calculations in Karta's brief stating in its brief on the basis that Karta's new calculations are based upon vertical slope and the fact there are no apparent push walls against which the material can be pushed against (DEC brief, p. 14). DEC Staff also states that it used factors including the space needed to load and dump trucks indoors, equipment movement inside and triangular or trapezoidal shaped piles to calculate a reasonable capacity (DEC brief, p. 15). Karta responds that the assumptions behind Karta's calculations are not unrealistic.

If one looks past the procedural problems regarding Karta's challenge to DEC Staff's proposed storage limits, it would be reasonable to conclude that Karta has not met its burden of proof regarding its proposed, higher limits. Karta implicitly acknowledges this with the inclusion of factual data in its closing brief. This information is not simply recalculations, but also unexplained adjustments to underlying assumptions. This forced DEC Staff to address this data in DEC Staff's brief. Karta's new calculations are in the form of evidence which should have been introduced during the hearing, when cross-examination could have helped to resolve these factual issues.

There is a reasonable basis to include DEC Staff's proposed paragraph 31 in the final permit.

Paragraph 32 - *Status: issue raised and unresolved.*

DEC Staff's draft permit reads:

"32. The facility shall operate with the doors closed at all times except when a truck delivering waste is entering

or leaving a building. The doors must be closed while dumping is taking place and immediately after the transit movement has been completed."

DEC Staff acknowledges that operations behind closed doors are not required by the regulations, however, such operations assist in the control of vectors, dust and odors (DEC brief, p. 25). At the hearing, DEC Staff witness Pollock clarified that the language in this paragraph would allow for the doors to be opened and closed to let forklifts and other equipment in and out of the building (t. 905).

Karta agrees to operate with doors closed from 7 p.m. until 6 a.m. to minimize noise, but seeks to operate with doors open at other times. Karta proposes:

"32. The facility shall operate with the doors closed from 7 p.m. until 6 a.m. except when a truck delivering waste is entering or leaving a building."

Waste is received in buildings 1, 2, 3 and 6 (Exh. 15, drawing 7). Karta did object to this proposed requirement as it related to "buildings" on the site in its letter identifying issues (Exh. 3, p. 5), and Karta's proposed paragraph 32, above, seems to apply to all buildings. Karta introduced testimony regarding this provision as it applies to buildings 3 & 6. There is nothing in the record regarding buildings 1 & 2. In its brief and reply, Karta only makes arguments relating to building 6.

DEC Staff witness Pollock testified that the purpose of this provision is to limit the effects of tipping, including dust, odors and noise and proposes the installation of metal doors (t. 904). However, on cross examination he stated that he was unaware of any complaints related to having the doors open on building 6 (t. 1250).

Mr. Pollock also testified that other facilities are not all required to operate with their doors closed all the time. All facilities similar to Karta's have metal doors which can be closed, except one which is currently facing an enforcement action by DEC Staff seeking installation of doors (t. 1253-4). The nearby solid waste incinerator is not required to operate with its doors open because it is operated under negative air pressure (t. 1301).

Building 6

Building 6 is approximately 24,000 square feet and the ERINS

system occupies between one third and one half of the floor space (t. 1206). There are five doors on Building 6, all facing toward Lower South Street. Mr. Cartalemi testified that the doors on building 6 have not been closed more than twice since 1989 and never while operations have been ongoing (t. 130). DEC Staff witness Pollock testified that in the six or so years he has been familiar with the facility, he has never seen the doors on building 6 closed (t.1250). As can be seen from the site plan, the doors of building 6 do not open onto a public street and are set back more than 200 feet from the road. Mr. Cartalemi testified that the doors on building 6 are a constant maintenance problem and are difficult to close and open (t. 129). DEC Staff responds that the assertion that the doors cannot be opened and closed often is not based on meaningful evidence and speaks to poor planning and workmanship in the construction of the facility that occurred largely without DEC oversight. In addition, DEC Staff notes that other industrial facilities have large doors that open and close often (DEC brief, p. 25-6).

Additionally, Karta argues that it is physically impossible for a truck to tip inside building 6 with the doors closed (t. 128) and that the doors on building 6 are not designed for continuous opening and closing (t. 129). As discussed above regarding DEC Staff's motion to include additional evidence, DEC Staff stated in its brief that it had photographs of trucks tipping inside building 6 which were not introduced at the hearing. When DEC Staff was given an opportunity to produce such photos, DEC Staff only submitted photos of trucks inside building 6, and no photos of these trucks tipping were provided.

Karta argues that the nature of its operations requires the doors to be open because the material deposited in building 6 is positively picked to remove valuable recyclables, which are aggregated in building 6 and then moved to other areas of the facility. Karta's expert testified that, due to the inherent nature of the operations at the facility, trucks moving in and out and materials being moved by other mobile pieces of equipment, it would not be feasible to operate with the doors closed (t. 395).

Evidence regarding whether or not it is physically possible to tip waste in building 6 with the doors closed is unclear. Karta's expert Gelting did state that it was physically possible to dump inside building 6 with the doors closed but that it could cause significant problems in terms of clearances, etc. (t. 395). This statement seems to contradict the assertion by Mr. Cartalemi that it would be impossible for a garbage truck to tip inside building 6 and pull away from the load with the doors closed (t.

128). DEC Staff witness Pollock testified that in his professional view there is space in building 6 for tipping, and that the application materials do not indicate that such indoor tipping is impossible (t. 904-5). In its brief, DEC Staff asserted that "DEC Staff have observed and photographed rolloff trucks and compactor trucks dumping inside of building 6 with sufficient room for the doors to be closed" (DEC brief, p. 24). However, there is no statement in the record from a DEC Staff member that such observation has occurred. Further, when provided with an opportunity to present the photographs of trucks dumping inside building 6, DEC Staff only produced photographs of trucks operating inside the building, not actually dumping (see discussion of DEC Staff's motion above). Perhaps the best analysis of these conflicting statements is that it may be possible to tip a garbage truck inside building 6 with the doors closed, however, given the nature of the sorting activities ongoing inside, it would be very difficult.

Since no regulatory requirement for the doors on building 6 to be kept closed exists, DEC Staff's argument rests on the rationale that the doors should be kept closed due to violations related to vectors, dust and odor (DEC brief, p.25). However, DEC Staff witness Pollock testified he was unaware of any complaints related to the having the doors open on building 6 (t. 1250). Mr. Pollock also testified that other facilities are not all required to operate with their doors closed all the time and that some facilities do and others don't, so this doesn't appear to be a policy applied consistently throughout Region 3. Accordingly, DEC Staff have not identified a valid reason why the doors on building 6 should be kept closed and Karta should be allowed to operate with its doors open on building 6.

Building 3

Building 3 is a 26,500 square foot L-shaped building with 14 doors (Exh. 14, drawing 1). Mr. Cartalemi testified that building 3 was not designed to have trucks tip inside with the doors closed and because it is only 100 feet deep where the pan feeder for the ERINs system is located, it would not be possible to store material, process it and tip (t. 131). DEC Staff did not challenge this testimony or offer evidence that tipping is possible within building 3 with the doors closed.

The record contains no violations related to odors on the registered portion of the site, where building 3 is located. Three instances of dust violations were noted on April 9 (Exh. 29), July 12 (Exh. 9), and July 21, 2004 (Exh. 10). Three

instances of violations related to vectors are also contained in the record on July 12 (Exh. 9), July 21 (Exh. 10), and October 27 (Exh. 89). The violations noted in documents in the record do not mention building 3, specifically, so it is impossible to discern whether these violations relate to operations in building 3. DEC Staff does not offer any specific violation related to the need to close the doors on building 3.

There is no regulatory requirement to operate with doors closed, and it does not appear to be a policy of Region 3 to require all similar facilities operate with their doors closed. Moreover, there is no specific information in the record involving violations related to building 3 that would be cured by operating with the doors closed, and Mr. Cartalemi testified that it would be impossible to tip material in building 3 with other planned operations ongoing. Therefore, DEC Staff's proposed language requiring building 3 operate with its doors closed should not be included in the final permit.

Buildings 1 & 2

There is very little in the record regarding these buildings. Building 1 is a 15,800 square foot building with eight doors where soil, commingled recyclables and material to be screened is accepted. Building 2 is a 16,000 square foot building with seven doors that accepts aluminum and metal. I find nothing in the record regarding why DEC Staff seek to have the doors closed on these buildings during operations, other than the general statement regarding odor, vector and dust control. No specific violations are noted. Karta also offers no information regarding these buildings.

Using reasoning applicable to building 3 above, DEC Staff's proposed language relating to these two buildings should not be included in the final permit.

Paragraph 33 - *Status: issue raised and unresolved.*

This paragraph deals with stormwater at the facility and is closely linked to paragraph 20. DEC Staff originally proposed in its draft permit (Exh. 1):

- "33. No stormwater shall be allowed to run onto the site. All water on the site that contains a pollutant is considered leachate. All leachate generated on-site shall be collected and treated at an authorized sewage treatment plant. This may be accomplished through

collection and trucking to said plant and/or through direct discharge to a sewage collection system which ultimately leads to a sewage treatment plant. The permittee must get all necessary approvals from the agency having jurisdiction over the sewage treatment plant and provide copies of said approval to the Department before operating the facility. See also special condition #4 above."

In the revised draft of its proposed permit the second sentence is deleted (Exh. 90).

Karta objected and argued that there are no regulations prohibiting stormwater from running onto a site. DEC Staff did not identify any regulatory authority for this provision.

Karta also argued that the facility's drainage system is fully recognized and authorized by the City of Peekskill Site Plan Approval actions and further, that the facility's drainage system is specifically authorized by the DEC via coverage under DEC's SPDES General Permit for Stormwater Discharges associated with Industrial Activity except Construction Activity (Permit No. GP-98-03), including specific DEC review and approval of the facility's Storm Water Pollution Prevention Plan (SWPPP) and Storm Water Management Plan (SWMP). These arguments are similar to Karta's arguments in Paragraph 20 above.

Karta proposed deleting the first and last sentences of DEC Staff's draft permit and inserting two new sentences at the beginning of the paragraph so it would read:

"33. Stormwater drainage from the site shall comply with the facilities approved Stormwater Management Plan. All water on site that comes into contact with solid waste is considered leachate. All leachate generated on-site shall be collected and treated at an authorized sewage treatment plant. This may be accomplished through collection and trucking to said plant and/or through direct discharge to a sewage collection system which ultimately leads to a sewage treatment plant. The permittee must get all necessary approvals from the agency having jurisdiction over the sewage treatment plant and provide copies of said approval to the Department before operating the facility."

DEC Staff responded in footnote 2 of its brief (p. 29), and now proposes amending the first sentence of this paragraph to read:

"33. The permittee shall take all reasonable steps, including the placement of berms, to prevent stormwater from entering the site from neighboring properties. In addition, all stormwater that comes into contact with piles of waste, including but not limited to: dyed mulch, concrete/asphalt, etc. is considered leachate and must be disposed of at an authorized facility. This may be accomplished through collection and trucking to said plant and/or through direct discharge to a sewage collection system which ultimately leads to a sewage treatment plant. The permittee must get all necessary approvals from the agency having jurisdiction over the sewage treatment plant and provide copies of said approval to the Department before operating the facility. See also special condition #4 above."

Karta responds that to the extent that this imposes any obligation on Karta to undertake any additional measures to prevent stormwater from flowing onto the site from other properties, it is not supported by substantial evidence in the record. Karta asserts there is no evidence in the record that there have been issues relating to poor stormwater management at the facility, particularly with respect to stormwater entering the facility from other properties.

At the hearing, DEC Staff member Pollock testified that the purpose of this paragraph was to minimize the generation of leachate and to ensure its proper disposal (t. 906). Contrary to Karta's assertion that there was no evidence regarding stormwater entering the facility from neighboring properties, DEC Staff witness Pollock stated that given the configuration of the site, stormwater may be running onto the site from Route 9 (which is uphill from the facility) and that this may be running into some of the buildings on the site (t. 908). He also stated that stormwater has been observed entering Building 6 through the back wall (t. 860), which is down hill from Route 9. Karta's expert testified that it is physically feasible to prevent stormwater from running onto the site (t. 396) but that it was typically not done.

DEC Staff's rewrite of this paragraph in a footnote in its closing brief suffers from a series of problems. First, it introduces the concept of placing berms on the site to control stormwater running on to the site. This is the first time this subject has been proposed and was not discussed at the hearing. Many factual questions remain, such as where these berms would be placed, what they would be constructed of, the size of these proposed berms and if it is physically possible to place berms on

the site to accomplish the goal of reducing or eliminating stormwater run on. Second, DEC Staff have not identified a regulatory requirement prohibiting run on. Third, DEC Staff fail to explain why this provision is necessary, given the requirements included in its proposed paragraph 20, above. Fourth, there is nothing in the record regarding problems of stormwater coming into contact with mulch.

Given the problems above with DEC Staff's newly proposed paragraph 33 and the provisions of paragraph 20 (above), a reasonable basis for DEC Staff's proposed language does not exist. Therefore, Karta's proposed language should be included in the final permit.

Paragraph 34 - *Status: issue raised and unresolved.*

DEC Staff proposes:

"34. In addition to being swept down and washed at the end of each day, the facility tipping floors shall be emptied at least quarterly of all material, swept and/or washed as appropriate, and inspected by Department personnel to determine the condition of the same. This process shall be done one building at a time, however, if all floors are not done within each quarter, the Department reserves the right to have all floors done at the same time. The Department reserves the right to have the facility clean off any tipping floor at any other time for inspection if it is suspected that the integrity of the floor might be questionable. These quarterly inspections shall be documented along with photographs for each inspection, in a log book to be maintained by the facility, and available for viewing by regulatory personnel from any agency having jurisdiction over the facility. The Department must be notified in writing no later than five (5) working days in advance of each quarterly inspection in writing to allow the on-site Environmental Monitor, or other appropriate Department staff, the opportunity to be present during an inspection. This condition does not supercede the requirement to have all Municipal Solid Waste (MSW) tipping and sorting areas clean on a daily basis (see special condition #35)."

DEC Staff witness Pollock testified that the purpose of this paragraph is to ensure that the facility's equipment and floors

are not compromised. He continued that frequently at these types of facilities damage can occur that allows the release of contaminants from the facility through the floor into the subsoil. The only way to prevent this is to have the entire area clean for an inspection by both DEC Staff and facility employees (t. 910). He testified that similar permit conditions are also found in the permits of other facilities in Region 3 (t. 912), but these permit conditions are not in the record of this proceeding. These provisions are being included in the latest round of permit revisions for facilities in Region 3 as the standards for these facilities evolve (t. 912).

Karta raises two issues regarding this paragraph: (1) that there is no regulatory mandate which requires tipping floors used for C&D to be cleaned every day; and (2) that while it agrees to quarterly inspections, inspections of half a building at a time would cause less disruption to the business while providing adequate opportunity for inspections.

Karta proposes:

"34. The facility tipping floors shall be emptied at least quarterly of all material, swept and/or washed as appropriate, and inspected by Department personnel to determine the condition of same. The inspection process shall be done by inspecting one half of each building floor at a time, except that the Department may require that two buildings be inspected on the same day. However, ... (resume DEC Staff's proposed text in line 7, above).

Regarding the first dispute, involving the first part of the first sentence which would require all tipping floors to be cleaned each day, Karta argues that only tipping floors where MSW is received should have to be cleaned each day (360-11.4(n)(3)). Karta pointed to the testimony of DEC Staff witness Pollock who stated that daily cleaning requirement only applies only to MSW and that DEC Staff would not object to clarifying that this requirement applied only to tipping floors where MSW was processed (1257-8). Karta's own expert testified he knew of no requirement that C&D tipping floors be washed every 24 hours (t. 402). However, in its final draft permit, DEC Staff have not clarified that the first phrase of the first sentence applies only to MSW. This is probably an oversight. Since the issue of when tipping floors must be cleaned is dealt with in paragraph 35, this phrase should be deleted from the final permit, as Karta has suggested.

Regarding the second dispute, whether quarterly inspections should be done for an entire building at once or just half a building, Karta does not object to these inspections, but seeks to have half a building inspected at a time, to reduce the disruption of business activities at the facility. Karta would be willing to have more than one building inspected at a time, so as not to increase the total number of inspections. Karta points to the testimony of DEC Staff witness Pollock who stated that the quarterly inspections could be done half a building at a time (t. 1262-4). In its brief, DEC Staff stated it wants a plan for how the inspections would work before approval (DEC brief, p. 31). Karta replies "should DEC Staff view it as necessary that Karta submit a detailed plan for approval with respect to how its proposal for quarterly inspections would work, DEC could impose as a permit condition the approval of such a plan rather than foreclosing the possibility of this method altogether" (Karta's reply brief, p. 23).

Karta's point is well taken. DEC Staff's proposed language on this point should be incorporated in the final draft permit, with the addition of language that would allow Karta to submit a plan for inspections of half a building at a time to DEC Staff, that, if approved by DEC Staff, would supercede the requirement that building floors be entirely emptied each quarter.

Paragraph 35 - *Status: issue raised and unresolved.*

DEC Staff proposes:

"35. All MSW shall be removed from the tipping floor, bailer, conveyors and the temporary bail storage area (in the south end of building #6) and loaded into appropriate trucks/trailers by the end of each operating day. The MSW tipping floor must be free of waste and cleaned at the end of each operating day. No waste shall be left in the incoming vehicles over night. All waste shall be removed from the site as soon as truck/trailers are full or as soon as is practicable, but in no event shall loaded trailers or waste bails remain at the site more than 72 hours. All trucks/trailers shall be loaded until full prior to loading the next. Regardless, no MSW shall remain on-site longer than seven (7) days."

Karta raises three issues regarding DEC Staff's proposed language. First, Karta objects to the requirement that all waste be removed from the tipping floor in building 6 at the end of

each day. Second, Karta objects to cleaning the entire tipping floor at one time. Third, Karta objects to the requirement that trucks full of waste be removed the day they are filled. Karta proposes:

"35. All MSW, other than material with a high recyclable content which has not been sorted to recover recyclables, shall be removed from the tipping floor, bailer, conveyors and the temporary bail storage area (in the south end of building #6) and loaded into appropriate trucks/trailers by the end of each operating day. The tipping floor must be cleaned every 24 hours. No waste shall be left in the incoming vehicles over night. All waste shall be removed from the site as soon as truck/trailers are full. All trucks/trailers shall be loaded until full prior to loading the next. Regardless, no MSW shall remain on-site longer than seven (7) days."

Karta's objects to having to remove all wastes from the tipping floor at the end of each day. Karta argues that the regulations do not require this. Karta instead proposes to remove all MSW (other than MSW which consists of high recyclable content) from the floor at the end of each day, but proposes that MSW with high recyclable content (a term it does not define) be allowed to remain on the tipping floor for up to 72 hours (Karta brief, p. 10). Karta argues that the nature of its business, the dumping of loads of MSW with high recycled content and the subsequent negative sorting by hand of this material requires additional time and requests a holding period of 72 hours for MSW with high recyclable content while all other MSW would be removed from the tipping floor at the end of the day. Karta does not state how the different types of MSW would be distinguished or by whom. Karta states that if it is not allowed to operate as requested, it would have the effect of discouraging recycling.

DEC Staff responds that the waste Karta receives is no different from that received by other facilities which do not need 72 hours to separate recyclables (DEC brief, p. 32). DEC Staff witness Pollock testified that both DEC Region 2 and 3 require an hour when the floor is clean with no waste on the floor (t. 1248). The removal of the waste from the floor allows for cleaning which allows the facility to control vectors and odors. He also testified that this provision is standard at all facilities (t. 911) and, according to DEC Staff's interpretation, required by the regulations (t. 915). He also testified that Region 3 staff interprets the regulations to require the removal of all waste from the floor at the end of each day and its

placement on a truck.

This dispute centers on the application of section 360-11.4(n)(3) to this facility, which reads:

"(3) Facility maintenance. The facility processing area must be cleaned each day by washing or other appropriate method to prevent odors and other nuisance conditions with all residuals properly removed and disposed."

This regulation, which applies to transfer stations receiving more than 12,500 tons per year, applies to Karta's facility. It clearly requires that all residuals must be properly removed and disposed of at the end of each day. Karta's request to be allowed to keep certain solid waste on the tipping floor for up to 72 hours must be rejected as contrary to this regulation.

Karta also objects to having to clean the entire tipping floor each day and proposes to clean half the floor at a time and designate two separate 30 minute periods when one half of the tipping floor must be free of waste at which time that half floor would be swept and washed. DEC Staff takes the position that the entire floor has to be emptied and cleaned. The unprocessed material does not have to be removed from the facility, it could be moved to another part of the facility, but the floor must be clean at the end of each day (t. 2057).

DEC regulation section 360-11.4(n)(3), reproduced above, states that tipping floors must be cleaned each day by washing or other appropriate method to prevent odors and other nuisance conditions. Karta's proposal, to wash half the floor, then push the solid waste on the floor on the clean half and then wash the other half, never results in an entirely clean floor, which a reasonable reading of the regulation requires. In addition, Karta does not describe how under its proposal, it would prevent odors and other nuisance conditions, and therefore, Karta has failed to meet its burden of showing that it meets permit issuance standards.

Karta's third objection to this paragraph involves the requirement that full trailers of waste be required to be removed when filled. Karta argues that it typically disposes of its wastes at out-of-state facilities and that it is more economical to use brokers to secure trucks to back haul the waste. This can lead to delays in removing trucks full of waste. Karta seeks authorization to keep outgoing MSW on trucks at the facility up to 72 hours (Karta brief, p. 65). Karta claims that the

regulations only require the removal of solid waste within seven days. However, section 360-11.4(1) reads:

"(1) *Removal of waste.* All putrescible solid waste must be removed from the transfer station whenever transfer containers are full, or within seven days of receipt, whichever comes first."

DEC Staff responds that Karta's suggestion is unacceptable and contrary to the regulations. DEC Staff argues that other facilities in Region 3 remove trucks once full. DEC Staff witness Pollock testified that a truck may remain onsite until it is full, then must be removed (t. 1228).

The regulations on this point are unambiguous. Putrescible solid waste must either be removed when a container is full, or if the container is not full, then must be removed within seven days. The regulations do not permit Karta to keep trucks full of waste at the site. A reasonable basis exists to include DEC Staff's draft permit language in the final permit.

Paragraph 36 -*Status: issue raised and unresolved.*

DEC Staff proposes:

"36. No open top loading of MSW is authorized unless wholly contained within Building #6 south of door #3."

DEC Staff states that the regulations only allow open-top loading of MSW in an enclosed or covered area (6 NYCRR 360-11.4(n)(1)) and that at present open top loading occurs at the facility outside (t. 913, 1307). No facilities are authorized by DEC to perform open top loading of MSW outdoors (t. 915). DEC Staff interprets this regulation to require that top loading occur indoors and is currently involved in an enforcement action against another facility in Region 3 which uses a covered area for open top loading of waste to get that facility to enclose the area where such loading occurs (t. 1311). Open top loading has lead to violations related to MSW being spread on the ground when the loader spills MSW it is loading (t. 1374, Exh. 29, paragraph (a)(3)).

DEC Staff's proposed language would seem to be consistent with the permit application which states that mixed solid waste destined for off-site disposal would be either baled and loaded on trucks, or in the alternative "processing of mixed solid wastes within Building No. 6 would include at-grade loading of open topped transfer trailers" (Exh. 2, p. 22). Mr. Cartalemi

testified that there was insufficient room inside building 6 to allow the open-top loading of trucks (t. 138, 190) while DEC Staff testified that there was (t. 1310). Either way it doesn't matter because the regulations prohibit open-top loading outside.

Karta does not dispute the legal requirement that open-top loading occur indoors or under cover, however, it does seek additional language and proposes:

"36. No open top loading of MSW is authorized unless wholly contained within Building #6 south of door #3 or under an approved canopy attached to Building 6."

As discussed above in paragraph 20, Karta's proposed permit modification application has been evolving since being originally proposed in August of 2001. In its listing of issues for hearing, Karta identified this paragraph and stated "to comply with this requirement, permittee will require authorization to build an enclosed loading dock" (Exh. 3, p. 6). This idea evolved into a proposed canopy or "roof extension" along the front of building 6 (see Exh. 14, drawing 1 completed one week before the hearing). Also as discussed above, many details remain unknown about this proposed canopy, including the spacing of supports, whether it would have sides, and if so, their dimensions and the height of the canopy.

As discussed in paragraph 20, because Karta has not submitted design specifications for the canopy, DEC Staff cannot evaluate it to determine whether the canopy would sufficiently protect the solid waste from intrusion by water, as testified to by Mr. Pollock (t. 1311-2). Therefore, because the regulations require open top loading only in enclosed or covered areas and the only area to do this at present is inside building 6, DEC Staff's proposed language should be included in the final permit. As discussed above, the applicant may seek approval from DEC Staff after issuance of the permit for construction of the canopy at which time the permit may be amended to allow for open top loading in this area.

Paragraph 37 - *Status: issue raised and resolved.*

The parties agreed to modify this paragraph regarding storage of materials so that it would state that solid waste would only be stored at the permitted facility or at another location which is otherwise authorized for storage of waste ((t. 19).

Paragraph 38 - Status: issue raised and unresolved.

DEC Staff originally proposed:

38. Unacceptable Wastes. The permittee is prohibited from accepting household hazardous waste, liquid waste, sewage sludge or septage, chemical or explosive wastes, bulk tires, or industrial wastes as defined in 6NYCRR Part 360 or Part 371, infectious or medical wastes as defined in 6NYCRR Part 364, or asbestos, and all other waste/recyclables not specifically authorized in special condition #39 below. Also prohibited is the acceptance of motor vehicles until such time as the facility can adequately demonstrate to the Department and has received written approval from the Department that the procedures for proper handling of all potential byproducts of automobiles are in place, that there is sufficient room in a building on-site to dismantle vehicles, and that all other appropriate permits are in place to receive and dismantle motor vehicles.

No issue regarding this paragraph was raised initially by Karta in response to DEC Staff's original draft permit (Exh. 3) However, following the close of the adjudicatory hearing and before the record closed, DEC Staff proposed amending this paragraph to include the following sentence:

".... The facility is not authorized to receive any waste tanks at the premises other than hot water and water pressure tanks. All other tanks that are found in incoming loads must be removed by the transporter for proper disposal. The permittee shall take all appropriate measures to educate persons/companies using the facility as to the policy regarding tanks, including but not limited future denial of the use of the facility. All such actions shall be documented and included in the facilities (sic) weekly report (see condition #11 above)."

DEC Staff also sought to amend this paragraph to include this additional requirement:

(b) Unacceptable Waste Recognition Training. Within thirty (30) days of the effective date of this permit, all staff shall be trained in their respective primary language as to what are acceptable and unacceptable wastes. The staff shall be trained in and instructed to follow all waste inspection procedures found in section 3 of the facility's O&MM dated

October 2003. Special attention shall be given to the identification of the various waste tanks and regulated medical/biohazard waste, whether or not the regulated medical/biohazard/infectious waste is properly marked and in a red bag, or any potential hazardous/unauthorized waste. Department staff shall be present at such training. The training shall occur at a mutually agreed upon time. All new staff must be trained before starting work.

DEC Staff seeks this language to be included based upon an accident that occurred at the facility on October 4, 2004 in which one worker was killed and a second was badly injured (DEC Staff brief p.33). The workers were apparently using a welding torch to cut a steel backhoe bucket in half when a large metal tank nearby exploded (Exh. 92, p.3). DEC Staff argues that this incident and other examples of the mishandling of tanks containing flammable materials warrants the banning of tanks, other than hot water and water pressure tanks, from being processed at the facility. DEC Staff states that this condition is necessary to protect human life and the environment (brief, p.34).

Karta objects to the inclusion of this condition on a number of grounds. First, Karta argues the provision should not be included in the final permit because it was not included in the list of adjudicable issues advanced to hearing. While this is true, Karta itself has attempted to adjudicate issues not advanced to adjudication (see discussion of paragraph 31). In this case, the hearing process has been flexible to allow the parties to continue exchanging proposed new language regarding issues. In some cases, this new language has resolved disputes (see discussion in paragraph 59) and in some case it has not (see discussion in paragraphs 28 and 33). Given the flexibility of the hearing process and the fact that Karta is employing exactly the same tactics regarding the quantity of materials to be stored at the site (paragraph 31, the discussion is based on the merits) that it complains of here, Karta's argument must fail.

Karta also claims that the late inclusion in DEC Staff's proposed permit denied Karta the right to challenge this permit condition through testimony and cross-examination (Karta brief, p.67). However, all the evidence relevant to this discussion was either previously in the record or entered into the record after Karta was on notice of this proposed change by DEC Staff. Karta does not specify who it would seek testimony from nor who it would seek to cross examine. Again this argument must fail.

Karta's argument that there is no evidence in the record

regarding the improper handling of tanks containing flammable materials is not correct. Karta states in its brief (without reference to any material in the record) that it has routinely handled large tanks, deemed unsuitable for use, that have been opened and pre-cleaned by propane distributors and contractors and these tanks do not present a fire hazard. However, evidence in the record contradicts these assertions. In the 2003 consent order (Exh. 8, appendix A, p. 2)), Karta admitted to violations involving the improper handling of tanks on August 16, 2002 (propane), September 5, 2002 (propane and oxygen), September 18, 2002 (propane), and October 16, 2002 (propane). In addition, an inspection report from October 27, 2004 (Exh. 89) and from July 21, 2004 (Exh. 10) documents the improper handling of a propane tanks. Also, DEC Staff member Donald Weiss, an on-site monitor at the facility, testified that he had seen Mr. Cartalemi stop a worker at the facility from attempting to cut a propane tank several years ago (t. 1888). This evidence taken together with the information regarding the October 2004 accident which Karta has not objected to including in the record are all relevant to the Commissioner's decision on this proposed permit condition and form the basis for the conclusion that a rational basis exists for its inclusion in any final permit.

Karta states that, following the accident, it instituted new procedures that require the inspection of all incoming loads, the segregation in a designated area of all tanks that may have contained explosive substances, and the prohibition on the use of torches near these tanks. Karta states it would not object to the inclusion of permit conditions which included the above. Karta has not indicated that these procedures are in written form, nor has it moved to include these procedures in the record. The description of Karta's new procedures is insufficient. It fails to detail where tanks will be segregated and how the prohibition of the use on torches in these areas will be implemented.

Regarding the second proposed paragraph relating to training, the record contains many instances of mishandled tanks. In its brief, DEC Staff states that this proposed permit condition is there to protect human life and the environment (DEC brief, p.34). Karta's brief speaks only to the tank prohibition (Karta's brief, p. 68) as does its reply brief (Karta's Reply brief, p. 27). Thus, it is not clear that Karta objects to the specific training requirements.

DEC Staff have shown that the proposed permit condition restricting the types of tanks that may be accepted and implementing training requirements for staff at the facility will

protect human health and the environment. Accordingly, DEC Staff's proposed permit language should be included in the final permit.

Paragraph 39 - *Status: issue raised and resolved.*

DEC Staff agreed to include tires in the category of waste that may be accepted at the facility, provided that there may not be more than 1,000 tires onsite at one time.

Paragraph 40 - *Status: no issue raised.*

Paragraph 41 - *Status: issue raised and unresolved.*

DEC Staff proposes:

"41. The facility may accept an incidental number of tires (1-2 tires in a load of waste) contained in loads, provided that no more than 1,000 such tires are stored onsite at any given time. The permittee is not authorized to process said tires and storage must be inside a building or within an enclosed tractor trailer box. Provisions must be provided for storage of these tires to prevent vector breeding areas as determined solely by the Department. Acceptance of bulk loads of tires is prohibited until such time as the facility can show its capability to handle same under the provisions of 6 NYCRR part 360 regulations, and has received a permit modification to do so. If in the sole discretion of the Department, storage of incidental tires is not properly controlled, the permittee shall correct such violation and/or remove the tires to an authorized facility immediately. The Department in its sole discretion, reserves the right to revoke such approval upon written notification."

The purpose of this provision, according to DEC Staff, is to ensure the proper management of bulk loads of tires at the facility (t. 916). DEC Staff states that it is willing to consider a request from Karta to handle bulk loads of tires. Such request would include: the location of storage areas for tires, stormwater management details, and processing locations (t. 918, 1316). The application materials lacked sufficient information for DEC Staff to approve the acceptance of bulk loads of tires (t. 919).

Karta proposed in its draft permit (Exh. 87) the following language:

"41. The facility may accept an incidental number of tires (1-2 tires in a load of waste) contained in loads, provided that no more than 1,000 such tires are stored onsite at any given time. Provisions must be provided for storage of these tires to prevent vector breeding areas as determined solely by the Department. If the storage of tires is not properly controlled, the permittee shall correct such violation and/or remove the tires to an authorized facility immediately. The Department in its sole discretion, reserves the right to revoke such approval upon written notification."

Karta then changed this proposed language in its brief (p. 73) and now proposes:

"41. Acceptance of bulk loads of tires is prohibited until such time as the facility can show its capability to handle the same under the provisions of 6 NYCRR part 360 regulations through submission of a supplemental operating plan to the Department addressing processing of bulk tires, and the Department approves such plan. If in the sole discretion of the Department, storage of incidental tires is not properly controlled, the permittee shall correct such violation and/or remove the tires to an authorized facility immediately. The Department in its sole discretion, reserves the right to revoke such approval upon written notification."

Two major differences between DEC Staff's and Karta's proposals: (1) whether the incidental tires that Karta is authorized to accept may be processed onsite; and (2) what form should Karta's application to accept bulk tires take.

Karta does not include the following sentence from DEC Staff's draft permit: "the permittee is not authorized to process said tires and storage must be inside a building or within an enclosed tractor trailer box". Karta provides no explanation for this change in its brief (Karta's brief, p. 68). DEC Staff witness Pollock stated that while the revised floor plan for the facility (Exh. 14) shows the location of a tire shredder and a storage container where tires would be stored prior to shredding that additional information was necessary to permit processing of tires, including an engineer's narrative of how processing would occur demonstrating compliance with applicable regulations, where processed tires would be stored and contingency plans (t. 1314-1317). Accordingly, Karta has not met its burden of demonstrating that it meets applicable permit issuance standards.

Both DEC Staff and Karta agree that additional information needs to be submitted to authorize the acceptance of bulk loads of tires. The dispute remains regarding the form of DEC Staff approval for this, DEC Staff seeking a formal permit modification and Karta seeking another, unspecified form of approval for its supplemental operating plan. Since the prohibition on processing waste tires should be included in the permit (see paragraph above), a permit modification would be necessary to eliminate or modify this language.

Based on the above, DEC Staff's proposed language should be included in the final permit.

Paragraph 42 - *Status: issue raised and unresolved.*

DEC Staff proposes:

"42. Recyclables recovered from the C&D debris may not be stored onsite for more than sixty (60) days."

DEC Staff states that this is a requirement found in the regulations (360-16.4(f)(4)), which reads:

"(4) Recyclables recovered from the C&D debris may be stored up to 60 calendar days. Recyclables may be stored for a longer period of time with prior written department approval if the department finds that:

(i) there is a demonstrated need to do so (such as a market agreement with terms of receipt based on greater than 30-day intervals or volumes that may take longer than 30 days to acquire);

(ii) there is sufficient department-approved storage area;

(iii) an inventory methodology, which states the maximum time material will be stored, is used to ensure that the recyclables do not remain on the facility site for longer than specified;

(iv) the inventory methodology is approved in writing by the department before storage begins; and

(v) it is demonstrated that the storage will not affect the quality of the recyclables."

These five criteria were not addressed in the application materials (t. 921). Karta does not argue this point but proposes:

"42. Recyclables recovered from the C&D debris may not be stored onsite for more than sixty (60) days, except that aggregate, mulch and other commodities used in construction or landscaping may be stored for up to six months, upon submission of documentation, reasonably acceptable to the Department, that demonstrates that such additional storage time is necessary to address market demand for such materials."

Karta's language does not address the five criteria found in the regulations and should not be adopted. Karta is free to make a submission to DEC Staff requesting storage terms longer than 60 days, but must do so in accordance with the regulations. DEC Staff's language should be included in the final permit.

Paragraph 43 - *Status: issue raised and resolved.*

In its original draft permit (Exh. 1) and its revised draft permit (Exh. 90), DEC Staff proposed:

"43. All recovered recycle materials as defined in special condition #30 shall be removed to the appropriate market or disposal site within seven days after sufficient material to constitute a truck load is generated. In no case shall the recycled materials be stored on site for more than sixty days (see special condition #42)."

Karta objected and seeks to have this paragraph deleted. Karta argued that: (1) there was no regulatory requirement to remove recyclables in seven days; (2) Karta needed to maintain an inventory of recyclables at the facility; and (3) this paragraph was inconsistent with the sixty day limit found in paragraph 42 (Karta brief, p. 70).

In response DEC Staff proposes changing this paragraph to read (DEC Staff brief p. 36):

"43. All recovered recycling material and source separated recyclables may be stored on-site for no more than 60 days provided adequate approved storage areas are available. Storage areas are to be consistent with special condition 29 of this permit. If adequate storage is not available, the permittee shall begin removal of recyclables to an appropriate market immediately. A department approved inventory system must be maintained on a daily basis of all

recyclables.”

Karta does not object (Karta’s reply, p. 29) and DEC Staff’s revised language should be included in the final permit.

Paragraph 44 - *Status: issue raised and unresolved.*

DEC Staff proposed the following:

“44. The facility shall receive waste only between 7:00 AM to 4:00 PM Monday through Friday and from 7:00 AM to 12:00 PM on Saturdays. All operations shall end by 5:00 PM daily (1:00 PM Saturday), except those of a facility maintenance nature. All facility maintenance activities shall be limited to those of a nature that do not constitute an off site nuisance, as determined in the Department’s sole discretion. No Sunday operations are allowed. The facility shall not operate on the following Legal Holidays: New Year’s Day, Memorial Day, Independence Day (July 4th), Labor Day, Thanksgiving Day, and Christmas.”

There are several sub-issues in this paragraph and some are not disputed. The parties agree that the facility shall not operate on Sundays or on the following legal holidays: New Year’s Day, Memorial Day, Independence Day (July 4th), Labor Day, Thanksgiving Day and Christmas.

In addition, it is agreed that facility maintenance activities may occur at the site outside of the hours of operation, provided that the activities are limited to those of a nature that do not constitute an off-site nuisance. DEC Staff seeks to include language that it, alone, would have the discretion to determine when an off-site nuisance occurs.

Two central disputes regarding this paragraph remain regarding the hours when the facility may accept waste and the hours during which the facility may process waste at the facility.

DEC Staff states that most waste transfer facilities have similar hours of operation (t. 922) and that it tries to treat similar facilities equally (t. 925). Some facilities, such as incinerators, are allowed to operate for up to 24 hours a day (t. 923). DEC Staff estimates that the hours of operation proposed are adequate to handle the amount of waste proposed in paragraph 30, above (t. 925). DEC Staff evaluated the tonnage the facility

could handle and then developed the proposed operating hours (t. 1324).

As discussed in paragraph 30, DEC Staff has provided a rational basis for its proposed tonnage limits for the sub-categories of waste in the permit. Based on the information provided by Karta's expert, the hours of operation proposed by DEC Staff are adequate to process the amount of waste proposed by DEC Staff. However, should those proposed by Karta be accepted, additional hours of operation would be necessary to process the waste. It is unclear whether or not Karta would wish to be authorized to operate for longer hours with the tonnages proposed by DEC Staff in paragraph 30.

Karta proposes:

"44. The facility shall receive waste only between 6:00 AM to 7:00 PM Monday through Friday and from 6:00 AM to 5:00 PM on Saturdays, at the 1011 Lower South Street Parcel and from 4:00 AM to 9:00 PM, Monday through Friday and from 4:00 AM to 6:00 PM, Saturday, at the 1017 Lower South Street Parcel. All outside operations shall end by 7:00 PM daily (5:00 PM, Saturday) except those of a facility maintenance nature. All facility maintenance activities shall be limited those of a nature that do not constitute an off site nuisance, as determined in the Department's sole discretion. No Sunday operations are allowed. The facility shall not operate on the following Legal Holidays: New Year's Day, Memorial Day, Independence Day (July 4th), Labor Day, Thanksgiving Day, and Christmas. In addition the following restrictions shall apply to specific operations: (i) the rock crusher in Building 3 shall not operate from the hours of 7:00 PM to 9:00 AM; (ii) the CBI wood grinder shall not operate from 9:00 PM until 7:00 AM; and (iii) the Erin system in Building 6 shall only be used for processing paper and cardboard between the hours of 9:00 PM and 7:00 AM. Non-impact crushing of concrete, brick, and asphalt may only occur between the hours of 8:00 AM and 5:00 PM Monday through Saturday."

DEC Staff explained its rationale for the hours of operation that it proposed as being based upon the compliance history of the facility and its "dismal track record as a persistent and consistent violator of environmental laws" (DEC brief p. 21). "Only by limitation of hours and tonnages and close supervision by environmental monitors, can the DEC assure that this Applicant

will obey the laws applicable to all" (DEC brief, p. 23). DEC Staff witness Pollock testified that DEC Staff arrived at the proposed hours of operation based upon the amount of time it estimated it would take the facility to process the amounts of waste it proposes in paragraph 30 (t. 1324).

Karta argues that if the sub-categorical tonnage limits in paragraph 30 are adjusted in accordance with its position, the hours of operation should be similarly adjusted to allow the processing of waste at the facility.

Karta points out that in the settlement agreement with the City, the City has agreed to authorize the hours of operation sought by Karta. DEC Staff counters that Karta's agreement with the City is in no way binding upon DEC. It should be noted that the hours of operation proposed by DEC Staff are a significant reduction in currently authorized hours of operation.

In an effort to meet its burden of proof and demonstrate that its proposal will be in compliance with all applicable laws and regulations administered by the department (as required by 624.9(b)(1)), Karta presented evidence that its proposal would meet applicable noise standards. DEC Staff did not request a noise analysis as part of the permit application (t. 1467). However, paragraph 66, which is not at issue in this case, states:

"66. Within sixty (60) days of the issuance of this permit, the permittee shall conduct a noise evaluation study in accordance with Part 360 - 1.14(p). Within thirty (30) days of said study, the permittee shall submit the results of the study to the Department. If the facility is found to be in non-compliance, the study shall include what measures will be implemented to correct the violations of Part 360 including a schedule for implementation. The Department reserves the right to require changes to any proposed corrective measures or schedules. Also included in the study shall be a proposed schedule for follow up studies to ensure compliance."

Karta does not challenge DEC Staff's proposed paragraph 66. At the hearing Karta presented the testimony of Mr. Fang Yang, a Project Manager and Senior Environmental Scientist with Earthtech, one of Karta's consultants (Exh. 22). Mr. Yang prepared a Noise Impact Assessment (Exh. 20) and a Supplemental Noise Impact Assessment (Exh. 83) for the purpose of demonstrating that the noise impacts from longer facility

operation would be in compliance with applicable noise regulations administered by DEC. The applicable noise regulations are found at 6 NYCRR 360-1.14(p), which reads:

"(p) Noise levels. Noise levels resulting from equipment or operations at the facility must be controlled to prevent transmission of sound levels beyond the property line at locations zoned or otherwise authorized for residential purposes to exceed the following Leq energy equivalent sound levels:

Character of Community	Leq Energy Equivalent Sound Levels	
	7 a.m. - 10 p.m.	10 p.m. - 7 a.m.
Rural	57 decibels (A)	47 decibels (A)
Suburban	62 decibels (A)	52 decibels (A)
Urban	67 decibels (A)	57 decibels (A)

"The Leq is the equivalent steady-state sound level which contains the same acoustic energy as the time varying sound level during a one-hour period. It is not necessary that the measurements be taken over a full one-hour time interval, but sufficient measurements must be available to allow valid extrapolation to a one-hour time interval.

"(1) If background residual sound level (excluding any contributions from the solid waste management facility) exceed these limits, the facility must not produce an Leq exceeding that background.

"(2) The sound level must be the weighted sound pressure level measured with the slow metering characteristic and A-weighted.

"(3) Measuring instruments must be Type 1 general purpose sound level meters, Type 2, or corresponding special sound level meters Type S1A or S2A.

"(4) Mufflers are required on all internal combustion-powered equipment used at the facility. Sound levels for such equipment must not exceed 80 decibels at a distance of 50 feet from the operating equipment."

Mr. Yang testified that he supervised the collection of noise data on July 28, 29 and August 5, 2004 which he based his "Noise Impact Assessment" upon (Exh. 20). Mr. Yang testified that a Type 1 meter had been used to collect his data (t. 583) and that the data had been collected at three residences located

near the facility in areas zoned residential (t. 637). The three residences used in this analysis are: 838 McKinley Street (which is the closest to the facility on a hill overlooking it), 642 Mountain View Street (the closest house to the north) and 820 McKinley Street. To conduct his analysis Mr. Yang used the suburban limits from 360-1.14(p) which are 62 decibels during the day and 52 decibels at night. Mr. Yang stated he thought the use of suburban standards was conservative, considering the facility is located in an industrial area in the City of Peekskill and that he knew of no DEC guidance as to when to use the rural, suburban and urban categories (t. 1950).

Background noise was sampled during seven different time periods during the day and the facility was shut down during this sampling time. The results are presented in Exh. 20 and showed that: at 838 McKinley Street the background noise exceeded the levels in 360-1.14(p) both during the day and night, at 642 Mountain View Street the background noise levels exceeded the levels in 360-1.14(p) between 6:00 a.m. and 7:00 a.m., and at 820 McKinley Street the background noise exceeded the levels in 360-1.14(p) both during the day and night. The dominant noise source at these receptors was found to be Route 9A, which borders the site to the East.

Mr. Yang then identified eight noise sources (including excavator/loaders, a rock crusher, a wood chipper, conveyor belt, C&D sorting machine, ventilation fans, and trucks) at the site and the exact location on the site and noise levels from these sources. With this information, Mr. Yang then predicted the noise impacts on these three residences. Mr. Yang testified that his predictions were based on conservative worst-case scenarios and that actual noise impacts would be expected to be lower than those predicted.

The results of this assessment predicted that at the noise impacts of the facility would be less than 3 decibels(A) for all times of the day at all three receptors. Mr. Yang testified that the less than 3 decibel(A) increase over background noise was acceptable under the regulations which read "(1) if background residual sound level (excluding any contributions from the solid waste management facility) exceed these limits, the facility must not produce an Leq exceeding that background" (6 NYCRR 360-1.14(p)(1)). Mr. Yang testified that due to the logarithmic nature of the decibel scale, whenever two noise sources with identical decibel readings are placed together, the result is a 3 decibel increase.

On cross-examination, Mr. Yang admitted that this 3 decibel

increase was not noted in the regulations. However, he noted that, if his reading was not correct, DEC could never issue a permit to a solid waste facility where the background noise levels exceed the standards because it would be physically impossible for a facility emitting noise not to increase sound levels above background (t. 1958). Mr. Yang also noted that the City of Peekskill's regulations pertaining to Recycling Facilities noise impacts (Exh. 24), Code of the City of Peekskill 300-38.1(4)(a)(7), which states "the applicant shall demonstrate that the ambient noise level shall not be increased as measured at any property line" would be impossible to meet if any noise at all was made at the site (t. 725).

Also on cross examination, Mr. Yang admitted that there were other residential properties within the industrial zone closer to the facility. He also stated that he had not considered these properties because they were not zoned residential. DEC Staff argued that these properties were "otherwise authorized for residential purposes" and that the analysis was incomplete.

Mr. Yang was called as a rebuttal witness and presented his "Supplemental Noise Impact Assessment" (Exh. 83). During his testimony regarding this supplement, Mr. Yang explained that he had driven around the neighborhood surrounding the facility and identified three residences closer to the facility than those in his original assessment. He identified three occupied buildings at 1001, 1012, and 1018 Lower South Street but chose to analyze the sound impacts from 1001 and 1012 Lower South Street because the impacts at 1012 would be greater or similar than those at 1018 based on the proximity of 1012 to 1018 and the facility, in his professional opinion.

Mr. Yang then repeated the procedures used for his original analysis. He began by taking background noise measurements and then noise measurements with the facility operating. These measurements showed that during the hour between 6 a.m. and 7 a.m. the urban standards in 360-1.14(p) were exceeded at 1012 Lower South Street, all other measured levels were in compliance with the urban standards.⁵ Had the suburban standards been used,

⁵In this supplemental analysis, Mr. Yang used the urban standards from 360-1.14(p) which he believed appropriate (t. 1951). He based his opinion on his experience, personal views and his reading of the New York City Noise Code and the City of Yonkers Noise Code which establish higher noise levels for industrial areas (which he used to interpret DEC's "urban" standard (Exh. 84). The original "Noise Impact Assessment" was

the existing Karta operations would have violated the noise regulations at 1012 for all hours of operation (Exh. 83, p. 5).

Next Mr. Yang used the measurements of equipment used on the site from his original assessment and added one other source, a fork lifter/bob cat used for tipping and baling in Building 6 and then recalculated his results assuming the ERINS conveyor belt was only using used for paper and cardboard (as opposed to C&D material in the original assessment).⁶

Mr. Yang then used this data to predict the noise impacts at these locations during the extended hours of operations. This prediction also altered the assumptions about truck traffic at the site, as compared to the original analysis. This alteration was characterized as a refinement and is certainly more detailed regarding the size of truck, the length of time on the property, the frequency of trips, etc. (t. 1965-70). Again, whether these revised truck traffic assumptions would materially impact the assessment of the noise impacts on the three properties evaluated in the original study is unclear.

Mr. Yang's predictions showed that Karta's proposed hours of operation would not violate noise standards at 1001 Lower South Street if either suburban or urban noise standards were imposed. However, for 1012 Lower South Street exceedences of DEC noise standards would occur during evening hours if urban standards were used and at all times if suburban standards were used.

Mr. Yang then changed his assumptions so that the facility would not operate the C&D sorting operations and wood chipper operations between 9 p.m. and 7 a.m., a modification to the permit modification application agreed to by the facility operator (t. 1977). The results of the noise impacts from the facility predict that there would be no violation of the urban noise standards in 360-1.14(p). However, if suburban standards are used, the facility would be in violation of the standard for the following time periods: 4:00 a.m. - 6:00 a.m.; 7:00 a.m. - 9:00 a.m.; 11:00 a.m. - 1:00 p.m.; and 4:00 p.m. - 6:00 p.m.

Mr. Yang concluded that based on his assessment and interpretation of the applicable noise regulations that the

based upon suburban standards.

⁶ It is unclear from this record whether not including the noise of the forklifter/bob cat in the original assessment would have a material impact on its results.

facility met those standards. Obviously, his use of urban standards in his supplemental assessment is critical, because if the appropriate standard to be applied is the suburban standard, the applicant has failed to meet permit issuance standards and this application must be denied.

The noise analyses were not part of the application materials submitted to DEC Staff and this material was not shared with DEC Staff prior to the hearing. DEC Staff did not have a noise expert available at the hearing but reserved the right to call a rebuttal witness (t. 689), which it did not. DEC Staff did cross examine Mr. Yang on a number of points of his testimony. First, DEC Staff questioned whether Mr. Yang had chosen the proper receptors and whether other houses along Lower South Street should have been chosen. Mr. Yang stated that as he drove along Lower South Street the other houses suggested by DEC Staff appeared abandoned, but he did not get out of his car, nor did he know if these houses could be inhabited in the future (t. 1990). DEC Staff also asked why the house on the site (located on Travis Lane, which is apparently unoccupied but used by the facility owner) was not included as a receptor. Mr. Yang responded that since it was part of the site, it was not an appropriate site to analyze (t. 1991). However, Mr. Yang did not know of any reason why this house could not be rented out in the future. DEC Staff questioned whether the regulations required noise levels to be measured at the property line of the facility or at the receptor. Mr. Yang responded the receptor (t. 2001).

In its brief, DEC Staff did not challenge Mr. Yang's interpretation of the noise standard or any other specific section of Mr. Yang's analysis. DEC Staff does call Mr. Yang's analysis "questionable" in the one fleeting reference in its brief (p. 23), however, on what grounds this statement is based is not elaborated. DEC Staff do not assert that Karta's proposed hours of operation would not be in compliance with an applicable law or regulation. Based on the above, it can be reasonably concluded that Karta has met permit issuance standards for noise and these noise studies will be reviewed by DEC Staff following permit issuance.

Even without consideration of the noise issue, DEC Staff has provided a rational basis for its proposed shorter hours of operation, specifically the hundreds of violations at the facility over the past few years. In addition, DEC Staff has shown a rational basis for its tonnage limits in paragraph 30 and shown that its proposed hours of operation are adequate to process this tonnage. Therefore, it is reasonable to conclude that a rational basis exists for DEC Staff's proposed hours of

operation.

Paragraphs 45, 46, 47 & 48 - *Status: no issues raised.*

Paragraph 49 - *Status: issue raised and unresolved.*

DEC Staff originally proposed (Exh. 1):

"49. Unless otherwise stated in this permit, processed and unprocessed C&D storage piles within Building #3 shall not exceed 15 feet in height, and the area of the storage piles at the base of the pile shall not exceed 5,000 square feet. No material including, but not limited to C&D, BUD material, or waste of any kind shall be stored outside of any building."

In its letter identifying issues for the adjudicatory hearing, Karta stated that this paragraph was duplicative (Exh. 3, p. 7). In its proposed language Karta suggests:

"49. Unless otherwise stated in this permit, processed and unprocessed C&D storage piles within Building #3 shall not exceed 20 feet in height, unless the department shall approve a greater height in writing, and the area of the storage piles at the base of the pile shall not exceed 5,625 square feet.

There are three disputes regarding this paragraph: (1) the height of piles in building 3; (2) the size of the base of the piles; and (3) outside storage of waste.

The issue of pile height is also addressed in paragraph 31. As discussed above, DEC Staff agreed to increase the maximum pile height from 15 to 20 feet in paragraph 31 (t. 17). Twice in the record, DEC Staff confirms that the pile heights in this paragraph should also be adjusted to 20 feet (t. 21, 1327). However, DEC Staff has not amended the language of its original draft permit (above) to reflect the agreement. I conclude that this is likely an oversight and that the paragraph should be amended to substitute "20" for "15" in the first sentence.

The issue of the area of the base of the pile was raised for the first time by Karta when it submitted its draft permit on November 1, 2004. Karta's counsel stated at the hearing that after DEC Staff's agreement on pile height all issues related to this paragraph had been resolved (t. 21). Since this issue was not raised in Karta's June 16, 2004 letter setting forth issues it was not advanced to adjudication. It is unclear where Karta

derives its 5,625 square foot calculation for the base of the piles (it seems to be referring to a pile 75' x 75'). In Exhibit 15, which set forth calculations regarding operations inside building 3, the area for tipping and processing C&D is 65' x 75' or 4,875 square feet, the aggregate processing area is 50' x 30' or 1,500 square feet, the material storage area is 200' x 20' or 4,000 square feet, and the building 3 storage area is 50' x 25' or 1,250 square feet. Even Karta's revised calculations included in its closing brief note no piles larger than those described in Exhibit 15. Accordingly, DEC Staff's restriction on the size of piles within building 3 of 5,000 square feet should be included in the final permit.

The final issue, relating to outside storage of materials and waste at the facility, is addressed extensively in paragraph 24 of the draft permit, above, and therefore, this sentence should not be included in this paragraph. Accordingly, DEC Staff's proposed paragraph should be included in the final permit, with an adjustment to reflect the agreement regarding pile height.

Paragraphs 50, 51, 52, 53, 54, 55, 56 & 57 - *Status: no issues raised.*

Paragraph 58 - *Status: issue raised and resolved.*

DEC Staff clarified that it sought a desk and 100 square feet of office space for the on-site environmental monitor (with access to a telephone). With this clarification, Karta withdrew its objection to this paragraph (t. 21).

Paragraph 59 - *Status: issue raised and resolved.*

In its draft permit, DEC Staff proposed the following language regarding an on-site environmental monitor:

"59. The permittee shall fund a minimum 75% on-site environmental monitor for the approved hours of operation in condition 44."

After DEC Staff clarified that this paragraph would require Karta to fund an onsite environmental monitor for 75% of the time the facility is authorized to operate, Karta withdrew its substantive concerns regarding this paragraph (t. 22). However, Karta does propose language which is clearer on this point.

"59. The permittee shall fund an on-site environmental monitor for a minimum of 75% of the approved hours of operation in condition 44."

DEC Staff subsequently accepted this change (brief p. 35) and Karta's language should be included in the final permit.

Paragraphs 60, 61, 62, 63, 64, 65, 66 and 67 - Status: no issue raised.

RECOMMENDATIONS

The Commissioner should direct DEC Staff to issue a final permit to Karta that contains the following special conditions. All other uncontested portions of the draft permit should be included in the final permit.

Special Conditions 1 - 18 are uncontested and should read as set forth in Exhibit 90.

Special Condition 19 should read as follows:

"19. All construction shall be in strict conformance with the provisions of:
a) 6 NYCRR Part 360 regulations and any revisions hereafter promulgated; and
b) General and Special Conditions of this permit."

Special Condition 20 should read as follows:

"20. Within ninety days of the issuance of this permit, the facility will repair and/or upgrade all drainage for the facility to prevent infiltration of storm water(s) into any and all buildings on-site. The storm water system must be depicted on the as-built plans referenced in special condition #7".

Special Condition 21 should read as follows:

"21. Prior to use of the conveyor system between buildings #3 and 6, the permittee shall first submit plans to the Department for a cover system prepared by a PE, receive approval for those plans from the Department, construct the cover system in accordance with the approved plans, have a PE certify that the construction was performed in accordance with the approved plans, and receive written approval of the certification from the

Department."

Special Condition 22 should read as follows:

"22. Within thirty (30) days of the issuance of this permit, the permittee shall complete construction and repair of buildings 1,2,3, and 6. This shall include, but shall not be limited to, walls, doors, floors, push walls, etc."

Special Condition 23 is uncontested and should read as set forth in Exhibit 90.

Special Condition 24 should read as follows:

"24. There shall be no tipping, storage, or processing of waste/recyclables and/or BUD materials outside of a building without prior written approval from the Department. Outside storage for this purpose will be defined as any area without a structure over same containing a roof, sufficient flooring, and four walls sufficient to confine stored material, dust, odors, leachate, etc. from leaving the structure."

Special Condition 25 is uncontested and should read as set forth in Exhibit 90.

Special Condition 26 should read as follows:

"26. No tipping/storage/loading will be allowed in the area located between buildings #'s 3 and 6, however, following the construction of a cover system described in paragraph 21 of this permit, the permittee may submit a plan for tipping, storage and/or loading in this area and such activity shall only be authorized following receipt of written authorization by the department."

Special Condition 27 should read as follows:

"27. Construction and demolition debris fines resulting from the processing/crushing of concrete, brick, stone, soil, and asphalt pavement shall be disposed of at an authorized solid waste management disposal facility. Fines shall be considered as any portion of the waste stream that does not meet the definition of aggregate in special condition #29 below."

Special Condition 28 should read as follows:

"28. The permittee is not an authorized facility to produce alternative daily cover (ADC). The permittee may submit a permit modification to become reauthorized, however, the submittal shall also contain, in addition to what is required pursuant to Part 360 and SEQRA, a testing protocol consistent with the information provided by the Region 3 office in a letter of December 29, 1997 to Sullivan County in which the permittee was copied."

Special Condition 29 should read as follows:

"29. The receipt and processing of material will only occur with the following on-site buildings (buildings are numbered in accordance with the site plans of Attachment "A"):

Building #1 - South end - uncontaminated, non urban soils; North end - commingled recyclables (bottles, cans, plastics).

Building #2 - North end - source separated aluminum; South end - source separated metals (no vehicles or vehicle parts for dismantling, etc.); Center (between doors #2 and #5) - mulch and topsoil.

Building #3 - Within doors numbered 16 and 17 - (easterly side) - unadulterated wood (any loads containing adulterated wood must be taken into the building via doors 18 - 21 for proper sorting); (westerly side) - trees, stumps, pallets; within doors numbered 12, 13, 14, 15, and 22 - rock, concrete, brick, aggregate, or aggregate substitute. (Aggregate as referenced here means sand or gravel added to cement to make concrete or added to asphalt to make asphalt pavement); within doors numbered 18, 19, 20, 21 - C&D.

Building #4 - No waste, products, or recyclables.

Building #6 - North of door #2 - construction and demolition debris processing; between doors #2 and #3 - source separated newspaper and OCC (old corrugated cardboard); south of door #3 - Municipal Solid Waste (MSW).

All waste and product areas within the buildings referenced above must be clearly delineated by white or yellow lines painted on the floor that are clearly visible at any and all times.

Special Condition 30 should read as follows:

- "30. Tonnage Limit - The permittee is authorized to accept the following maximum tonnage:
- No more than 100 tons per day of MSW as defined in 360-1.2(b)(106);
 - No more than 320 tons per day of C&D;
 - No more than 50 tons of source separated and commingled recycled materials per day;
 - No more than 350 tons per day of source separated C&D type materials; and
 - No more than 80 tons per day of unadulterated wood and land clearing debris."

The uncontested footnotes to this special condition should be included as they appear in Exhibit 90.

Special Condition 31 should read as follows:

- "31. The facility shall only store within the buildings as defined in special permit condition #29 no more than 1,400 cubic yards of incoming C&D debris, no more than 535 cubic yards of mulch and topsoil, no more than 1,500 cubic yards of source separated recyclables, and 830 cubic yards of source separated C&D as defined in special condition #30 above. The pile height within each building shall be no more than 20 feet unless such additional height has been pre-approved in writing by the Department."

Special Condition 32 should be deleted from the permit.

Special Condition 33 should read as follows:

- "33. Stormwater drainage from the site shall comply with the facilities approved Stormwater Management Plan. All water on site that comes into contact with solid waste is leachate. All leachate generated on-site shall be collected and treated at an authorized sewage treatment plant. This may be accomplished through collection and trucking to said plant and/or through direct discharge to a sewage collection system which ultimately leads to a sewage treatment plant. The permittee must get all necessary approvals from the agency having jurisdiction over the sewage treatment plant and provide copies of said approval to the Department before operating the facility."

Special Condition 34 should read as follows:

"34. The facility tipping floors shall be emptied at least quarterly of all material, swept and/or washed as appropriate, and inspected by Department personnel to determine the condition of the same. Karta may submit a plan to the Department proposing that these quarterly inspections of tipping floors be done partially, so as to minimize business operations, however, only upon written approval by Department Staff shall such partial inspections be permitted. This process shall be done one or more buildings at a time, however, if all floors are not done within each quarter, the Department reserves the right to have all floors done at the same time. The Department reserves the right to have the facility clean off any tipping floor at any other time for inspection if it is suspected that the integrity of the floor might be questionable. These quarterly inspections shall be documented along with photographs for each inspection, in a log book to be maintained by the facility, and available for viewing by regulatory personnel from any agency having jurisdiction over the facility. The Department must be notified in writing no later than five (5) working days in advance of each quarterly inspection in writing to allow the on-site Environmental Monitor, or other appropriate Department staff, the opportunity to be present during an inspection. This condition does not supercede the requirement to have all Municipal Solid Waste (MSW) tipping and sorting areas clean on a daily basis (see special condition #35)."

Special Condition 35 should read as follows:

"35. All MSW shall be removed from the tipping floor, bailer, conveyors and the temporary bail storage area (in the south end of building #6) and loaded into appropriate trucks/trailers by the end of each operating day. The MSW tipping floor must be free of waste and cleaned at the end of each operating day. No waste shall be left in the incoming vehicles overnight. All waste shall be removed from the site as soon as truck/trailers are full. All trucks/trailers shall be loaded until full prior to loading the next. Regardless, no MSW shall remain on-site longer than seven (7) days."

Special Condition 36 should read as follows:

"36. No open top loading of MSW is authorized unless wholly contained within Building #6 south of door #3."

Special Condition 37 is uncontested and should read as set forth in Exhibit 90.

Special Condition 38 should read as follows:

38. Unacceptable Wastes. (a) The permittee is prohibited from accepting household hazardous waste, liquid waste, sewage sludge or septage, chemical or explosive wastes, bulk tires, or industrial wastes as defined in 6 NYCRR Part 360 or Part 371, infectious or medical wastes as defined in 6 NYCRR Part 364, or asbestos, and all other waste/recyclables not specifically authorized in special condition #39 below. Also prohibited is the acceptance of motor vehicles until such time as the facility can adequately demonstrate to the Department and has received written approval from the Department that the procedures for proper handling of all potential byproducts of automobiles are in place, that there is sufficient room in a building on-site to dismantle vehicles, and that all other appropriate permits are in place to receive and dismantle motor vehicles. The facility is not authorized to receive any waste tanks at the premises other than hot water and water pressure tanks. All other tanks that are found in incoming loads must be removed by the transporter for proper disposal. The permittee shall take all appropriate measures to educate persons/companies using the facility as to the policy regarding tanks, including but not limited to future denial of use of the facility. All such actions shall be documented and included in the facility's weekly report (see condition #11 above)."

(b) Unacceptable Waste Recognition Training. Within thirty (30) days of the effective date of this permit, all staff shall be trained in their respective primary language as to what are acceptable and unacceptable wastes. The staff shall be trained in and instructed to follow all waste inspection procedures found in section 3 of the facility's O&MM dated October 2003. Special attention shall be given to the identification of the various waste tanks and regulated medical/biohazard waste, whether or not the regulated medical/biohazard/infectious waste is properly marked and in a red bag, or any potential

hazardous/unauthorized waste. Department staff shall be present at such training. The training shall occur at a mutually agreed upon time. All new staff must be trained before starting work.

Special Conditions 39 and 40 are uncontested and should read as set forth in Exhibit 90.

Special Condition 41 should read as follows:

"41. The facility may accept an incidental number of tires (1-2 tires in a load of waste) contained in loads, provided that no more than 1,000 such tires are stored onsite at any given time. The permittee is not authorized to process said tires and storage must be inside a building or within an enclosed tractor trailer box. Provisions must be provided for storage of these tires to prevent vector breeding areas as determined solely by the Department. Acceptance of bulk loads of tires is prohibited until such time as the facility can show its capability to handle same under the provisions of 6 NYCRR part 360 regulations, and has received a permit modification to do so. If in the sole discretion of the Department, storage of incidental tires is not properly controlled, the permittee shall correct such violation and/or remove the tires to an authorized facility immediately. The Department in its sole discretion, reserves the right to revoke such approval upon written notification."

Special Condition 42 should read as follows:

"42. Recyclables recovered from the C&D debris may not be stored onsite for more than sixty (60) days."

Special Condition 43 should read as follows:

"43. All recovered recycling material and source separated recyclables may be stored on-site for no more than 60 days provided adequate approved storage areas are available. Storage areas are to be consistent with special condition 29 of this permit. If adequate storage is not available, the permittee shall begin removal of recyclables to an appropriate market immediately. A department approved inventory system must be maintained on a daily basis of all recyclables."

Special Condition 44 should read as follows:

"44. The facility shall receive waste only between 7:00 AM to 4:00 PM Monday through Friday and from 7:00 AM to 12:00 PM on Saturdays. All operations shall end by 5:00 PM daily (1:00 PM Saturday), except those of a facility maintenance nature. All facility maintenance activities shall be limited to those of a nature that do not constitute an off site nuisance, as determined in the Department's sole discretion. No Sunday operations are allowed. The facility shall not operate on the following Legal Holidays: New Year's Day, Memorial Day, Independence Day (July 4th), Labor Day, Thanksgiving Day, and Christmas."

Special Conditions 45, 46, 47, and 48 are uncontested and should read as set forth in Exhibit 90.

Special Condition 49 should read as follows:

"49. Unless otherwise stated in this permit, processed and unprocessed C&D storage piles within Building #3 shall not exceed 20 feet in height, and the area of the storage piles at the base of the pile shall not exceed 5,000 square feet."

Special Conditions 50, 51, 52, 53, 54, 55, 56, 57 and 58 are uncontested and should read as set forth in Exhibit 90.

Special Condition 59 should read:

"59. The permittee shall fund an on-site environmental monitor for 75% of the approved hours of operation in condition 44."

Special Conditions 60, 61, 62, 63, 64, 65, 66, and 67 are uncontested and should read as set forth in Exhibit 90.