STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Proposed Revocation of DEC Permit No. 3-5512-00054-00004 Based Upon Alleged Violations

ORDER

DEC Case No. 3-5512-00054-00009

- by -

KARTA CORPORATION,

Respondent.

In this administrative enforcement proceeding, staff of the Department of Environmental Conservation ("Department") seeks revocation of respondent Karta Corporation's solid waste management facility permit for a solid waste transfer station located in Peekskill, New York ("facility"). Department staff seeks permit revocation based upon respondent's alleged violations of its May 3, 2006, permit, a consent order effective September 15, 2006 ("2006 consent order"), and the Department's regulations governing solid waste management facilities (6 NYCRR part 360), as well as respondent's long history of environmental noncompliance at the facility.

Department staff commenced this enforcement proceeding by service of a May 29, 2007, notice of intent to revoke respondent's May 3, 2006, permit. By letter dated June 11, 2007, respondent gave reasons why the permit should not be revoked, and requested a hearing. The matter was referred to the Department's Office of Hearings and Mediation Services for adjudicatory proceedings and assigned to the Chief Administrative Law Judge ("Chief ALJ") James T. McClymonds.

Because this Department-initiated permit revocation proceeding is based upon alleged violations of a permit, a consent order, and the Department's regulations implementing the Environmental Conservation Law ("ECL"), this proceeding is governed by the uniform enforcement hearing procedures at part 622 ("Part 622") of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (see 6 NYCRR 622.1[a][6]). Accordingly, Department staff's notice of intent to revoke constitutes the complaint in this matter, and

respondent Karta's request for hearing constitutes the answer (see 6 NYCRR 622.3[b][2]).

After preliminary pre-hearing matters were resolved, Chief ALJ McClymonds conducted an adjudicatory hearing on April 1 and 2, 2009. After the parties filed post-hearing submissions, Chief ALJ McClymonds prepared the attached hearing report, which I adopt as my decision in this matter, subject to the following comments.

I agree with the Chief ALJ that Department staff has established by a preponderance of the record evidence that respondent is liable for more than 4,500 violations, including violations of the Department's environmental regulations, the terms of the 2006 consent order, and the conditions of the May 3, 2006, permit. These violations occurred during the period from May 3, 2006 through April 2, 2009. Respondent is liable not only for its own violations, but also for the violations caused by Tarrytown R&T Corporation ("TRAT"), with whom respondent entered into a management agreement for the management of the facility.

I also agree that Department staff has established by a preponderance of the record evidence that respondent has a history of significant and persistent environmental noncompliance with environmental regulations and prior consent orders reaching at least as far back as August 2000. Accordingly, I accept the recommendation that the relief requested by Department staff be granted and that respondent's May 3, 2006, permit be revoked.

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

I. Respondent Karta Corporation is adjudged to have committed over 4,500 violations at its facility located in Peekskill, New York, during the period from May 3, 2006 through April 2, 2009, including violations of various provisions of the Department's solid waste management regulations (6 NYCRR part 360), respondent's May 3, 2006, permit, and the 2006 consent order.

II. Respondent Karta Corporation is adjudged to have a significant and persistent history of noncompliance with the provisions of 6 NYCRR part 360 that govern its facility and with prior consent orders, beginning in at least August 2000 and continuing for years through to the hearing in this proceeding.

III. Based upon the violations established on the record of this proceeding, and respondent's pattern of environmental noncompliance, respondent's May 3, 2006, permit is revoked.

IV. Within thirty (30) days after service of this order upon respondent, respondent shall empty the facility of any remaining waste, scrap, or recyclables, and secure the facility's gates to prevent further access to the facility.

V. All communications from respondent to the Department concerning this order shall be made to:

Michael S. Caruso, Esq.
Senior Attorney
NYS Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, New York 12233.

VI. The provisions, terms, and conditions of this order shall bind respondent Karta Corporation, and its agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/

By: _____
Alexander B. Grannis
Commissioner

Dated: August 10, 2010
Albany, New York

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Proposed Revocation of DEC Permit No. 3-5512-00054-00004 Based Upon Alleged Violations

HEARING REPORT

DEC Case No. 3-5512-00054-00009

- by -

KARTA CORPORATION,

Respondent.

Appearances of Counsel:

-- Alison H. Crocker, Deputy Commissioner and General Counsel (Michael S. Caruso of counsel), for staff of the Department of Environmental Conservation

-- Michele Marianna Bonsignore, for respondent Karta Corporation

Staff of the Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding seeking revocation of respondent Karta Corporation's solid waste management facility permit for a solid waste transfer station located in Peekskill, New York. Department staff seeks permit revocation based upon respondent's alleged violations of the permit, a 2006 consent order, and the Departmental regulations governing solid waste management facilities, as well as respondent's long history of environmental noncompliance at the facility. For the reasons that follow, I recommend that the Commissioner revoke respondent's permit.

PROCEEDINGS

Pursuant to section 621.13 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), Department staff commenced this permit revocation proceeding against respondent Karta Corporation by service of a May 29, 2007, notice of intent to revoke Karta's

May 3, 2006, permit for a solid waste transfer station located at 1011-1017 Lower South Street, Peekskill, New York (DEC Permit No. 3-5512-00054-00004). Department staff seeks revocation based upon alleged violations of the conditions of the permit, violations of a consent order respondent executed in September 2006, and violations of 6 NYCRR part 360 ("Part 360"), which implements Environmental Conservation Law ("ECL") article 27.

Pursuant to 6 NYCRR 621.13(d), respondent Karta filed a letter dated June 11, 2007, giving reasons why the permit should not be revoked, and requesting a hearing. The matter was referred to the Department's Office of Hearings and Mediation Services for adjudicatory proceedings and assigned to the undersigned presiding Administrative Law Judge ("ALJ").

Because this Department-initiated permit revocation proceeding is based upon alleged violations of a permit, a consent order, and the Department's regulations implementing the ECL, this proceeding is governed by the uniform enforcement hearing procedures at 6 NYCRR part 622 ("Part 622") (see 6 NYCRR 622.1[a][6]). Accordingly, Department staff's notice of intent to revoke constitutes the complaint in this matter, and respondent Karta's request for hearing constitutes the answer (see 6 NYCRR 622.3[b][2]).

An adjudicatory hearing was duly noticed and convened on October 3, 2007. The hearing was adjourned while the status of Tarrytown R&T Corporation ("TRAT") as a party to this proceeding was determined (see ALJ Ruling on Motion to Intervene, Oct. 17, 2007, lv denied by Commissioner). Ultimately, TRAT withdrew as a party in November 2008 (see ALJ Ruling on Motion to Join Third-Party Respondent, Dec. 8, 2008).

After further discovery, the hearing was noticed to resume on April 1, 2009, in the Department's Region 3 offices. The hearing was convened as scheduled and concluded on April 2, 2009.

The following post-hearing submissions were authorized and filed: (1) Department staff's post-hearing brief dated May 15, 2009; (2) respondent Karta Corporation's post-hearing brief dated June 19, 2009; (3) Department staff's post-hearing reply dated July 16, 2009;[1] and (4) respondent Karta Corporation's

[1] Attached to Department staff's post hearing reply brief is a copy of an order of the U.S. Bankruptcy Court in In re Karta Corp. (Order Confirming Debtors' Fifth Amended Joint Plan of Reorganization Pursuant to 11 U.S.C. Section 1129, U.S. Bankruptcy Court, SD NY, April 28, 2006, Hardin, J., Case

post-hearing sur-reply dated July 24, 2009. With the filing of respondent's sur-reply, the hearing record closed.

FINDINGS OF FACT

Background

1. Respondent Karta Corporation is presently the holder of a permit to construct and operate a solid waste management facility located at 1011 and 1017 Lower South Street, and 110, 116 and 120 Travis Lane, Peekskill, New York 10566 (the "facility") (see DEC Permit No. 3-5512-00054-00004 ["permit"], Hearing Exhibit ["Exh"] 1B). The permit is effective May 3, 2006, and expires May 2, 2011.

2. The facility is a solid waste transfer station that is approved to accept and process municipal solid waste ("MSW"), construction and demolition ("C&D") debris, source separated C&D materials, source separated and comingled recycled materials, and unadulterated wood and land clearing debris.

3. The permit was issued to respondent alone (see id.). No other entity is listed on the permit as a permittee. As the permittee for the facility, respondent is obligated under the permit to require its independent contractors, employees, agents and assigns to read, understand and comply with the permit, including all special conditions (see Permit, Exh 1B, Item B).

4. At the time the permit was issued, respondent was the owner and operator of the facility (see Finding of Fact No. 9, Matter of Karta Corp., ALJ Hearing Report, April 20, 2006, at 7 [Exh 1D]). Also at the time of permit issuance, the property underlying the facility was owned by other entities: the 1017 Lower South Street parcel was owned by the Peekskill Industrial Development Agency and leased to respondent; the 1011 Lower South Street parcel was owned by Global Land; and the Travis Lane parcels were owned by Global Collection, Inc. (see Finding of Fact Nos. 6-8, id.).

5. At the time the current permit was issued, Kenneth J. Cartalemi was the president and 35 percent owner of respondent. Kenneth Jon Cartalemi ("K.J. Cartalemi"), respondent's sole witness at the enforcement hearing and Kenneth's son, was a principal of respondent with a 10 percent ownership interest at

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No. 02B22028 (ASH), et al.). The court's order has been marked for identification as Exhibit 37.

the time the permit was issued (see Finding of Fact No. 2, id. at 6). At the time of the enforcement hearing, K.J. Cartalemi remained a principal. However, whether his ownership interest changed from 10 percent was not established.

Prior Enforcement and Permit Hearing Proceedings

6. Respondent has operated a solid waste management facility at the site since approximately 1988. Respondent has held various permits and registrations since that time, including the current permit.

7. In August 2001, respondent filed an application to modify its then-existing permit for the facility. In December 2003, respondent's 2001 permit application was referred to the Department's Office of Hearings and Mediation Services ("OHMS") for adjudicatory proceedings.

8. Meanwhile, in January 2002, respondent and two other associated corporations, filed for Chapter 11 bankruptcy relief in the United States Bankruptcy Court, Southern District of New York. In that same month, the City of Peekskill revoked a special permit that authorized recycling activities on the 1011 parcel. The United States District Court, Southern District of New York, subsequently granted respondent a preliminary injunction and enjoined the City from terminating the special permit (see In re Karta Corp., 296 BR 305 [SD NY 2003] [Exh B]).

9. In June 2002, respondent entered into an order on consent with the Department (see Order on Consent [6-26-02], DEC Case No. 3-20010329-41, Exh 9). In the consent order, respondent admitted to multiple violations of Part 360's operating requirements occurring at the facility from August 2000 through April 2002, and to a violation of ECL 17-0801 arising from a spill of hydraulic oil observed at the site in January 2001 (see id.; see also Finding of Fact Nos. 45-49, ALJ Hearing Report, at 12-13). Respondent consented to a payable penalty of $15,000, and a suspended penalty of $30,000 conditioned upon respondent remaining in compliance with the order's terms and conditions.

10. In August 2003, respondent entered into a second order on consent with the Department (see Order on Consent [8-12-03], DEC Case No. R3-5512-00054-00004, Exh 8). The consent order itemized 82 separate violations of Part 360, the Department's regulations governing petroleum bulk storage, and the June 2002 consent order, occurring at the facility between June 2002 and

January 2003 (see id.; see also Finding of Fact No. 51, ALJ Hearing Report, at 14-16). Respondent consented to a payable penalty of $30,000, and a suspended penalty of $50,000.

11. In January 2005, the City and respondent executed a settlement agreement resolving litigation concerning the special permit revocation. The agreement gave the City until July 1, 2009, to exercise an option to purchase the 1017 parcel from respondent (see Amendment to Section 31, Exh A). The purchase price of the property was to be the greater of the fair market value of the property based upon the then-current zoning of the property, or the combined value of the property accounting for the special permits then active, as amortized over a period of 10 years from July 1, 2010 (see id.).

12. As part of its bankruptcy reorganization plan, respondent entered into a management services agreement with TRAT in March 2006 (see Management Agreement, Exh 36). Pursuant to that agreement, TRAT was appointed to operate the facility, and granted exclusive possession of the premises (see id., ¶ 1). The agreement indicates that TRAT was an independent contractor (see id.). The commencement date of the agreement was conditioned upon the parties obtaining all necessary authorizations, permits or approvals from the relevant governmental agencies with jurisdiction over the facility or parties (see id., ¶ 2[b]).

13. In April 2006, the United States Bankruptcy Court conditionally approved respondent's reorganization plan, including the management services agreement with TRAT (see Order Confirming Debtors' Fifth Amended Joint Plan of Reorganization, U.S. Bankruptcy Court, SD NY, April 28, 2006, Hardin, J., Case No. 02B22028 [ASH], et al. [Exh 37], at 7). The court authorized respondent and TRAT to enter into the service agreement only upon satisfaction of certain conditions, including respondent's receipt of all necessary approvals by and satisfaction of all requirements of relevant governmental agencies with jurisdiction over the facility, and respondent's delivery of written confirmation to the court that all necessary authorizations, permits, or approvals were obtained from those relevant governmental agencies (see id. at 7-8).

14. Also in April 2006, the adjudicatory permit hearing proceedings on respondent's 2001 permit application culminated in a decision of the Executive Deputy Commissioner approving the permit with significant special conditions (see Matter of Karta Corp., Decision of the Executive Deputy Commissioner, April 20,

2006 [Exh 1C]). Based on the hearing record, the Executive Deputy Commissioner confirmed the ALJ's findings that respondent committed approximately 300 violations of the ECL and Part 360, as well as its operating permit and the August 2003 consent order, at the facility during the period from December 2003 through October 2004 (see id. at 2, 8 [Exh 1C]; Finding of Fact Nos. 54-63, ALJ Hearing Report [Exh 1D], at 16-28). The Executive Deputy Commissioner further concluded that respondent's history of non-compliance with the ECL, Part 360, and consent orders during the previous five years warranted the inclusion of the stringent conditions included in the permit (see Decision, at 8-9, 14-15).

Post-Permit Issuance Proceedings

15. Pursuant to the Executive Deputy Commissioner's decision, the current permit was issued to respondent on May 3, 2006 (see Letter from Michael D. Merriman, Deputy Regional Permit Administrator, to Kenneth J. Cartalemi [5-3-06], Exh 1A). In its letter issuing the permit, Department staff notified respondent that several special conditions in the permit must be complied with within 30 days and 60 days, respectively. Among the submissions due from respondent within 30 days were either a letter from the Westchester County Department of Environmental Facilities accepting leachate[2] from respondent's facility for treatment or an alternative plan for leachate treatment (see Permit, Exh 1B, Special Condition ["SC"] No. 4), a revised operations and maintenance manual and other plans (see id. SC No. 5), a complete set of as-built plans together with a professional engineer's certification (see id. SC Nos. 7, 8), and an acceptable form of surety in the amount of $500,000 and a standby trust agreement (see id. SC No. 54). A noise evaluation study was to be conducted within 60 days and results submitted within 30 days after that (see id. SC No. 66).

16. Department staff subsequently reminded respondent of its obligation to make the required submissions repeatedly from June 2006 through November 2008, either through letters to respondent, or by noting violations of the special conditions on inspection reports and notices of violations provided to respondent. A late-filed contingency plan was eventually submitted in August 2006, and the surety was received prior to

[2] Leachate means any solid waste in the form of a liquid that results from contact with or passage through solid waste (see 6 NYCRR 360-1.2[b][98]). Leachate is also defined in respondent's permit (see Permit, Exh 1B, Special Condition 33 ["All water on site that comes into contact with solid waste is leachate."]).

December 2006 in response to a September 2006 order on consent (discussed in finding of fact no. 20, following). By the time of the hearing, the Department had not received any of the remaining submittals required by the permit.

17. In accordance with the management services agreement between them, respondent and TRAT had filed an application in February 2006 to modify the permit to list TRAT as the operator of the facility. In June 2006, Department staff informed respondent and TRAT that staff had not received the original Record of Compliance ("ROC") forms from the principals of TRAT as requested (see Letter from Vincent Altieri to Paul Casowitz and Steve Wislocki [6-15-06], Exh 2). Accordingly, Department staff noted that the existing permit remained solely with respondent, and that to the extent TRAT was operating the facility without a permit, an enforcement proceeding might ensue.

18. Meanwhile, TRAT began conducting day-to-day operations at the facility in early 2006, and without Departmental approval. TRAT continued to run the facility until December 30, 2008.

19. In August 2006, TRAT applied to the Department to modify the permit to consolidate permitted operations on a 50 percent smaller site. The Department notified TRAT that its application, as well as its application to modify the permit to identify TRAT as an operator of the facility, were incomplete (see Letter from Michael D. Merriman to Ron Carbone [8-21-06], Exh 3). Department staff noted that TRAT was an incorrect applicant, and that updated ROC forms for each company principal, among other things, were required to be submitted before the application would be deemed complete. Staff also noted the failure to submit the various documents required by the permit, and numerous operating violations occurring since the April 2006 Commissioner's decision.

20. In September 2006, respondent entered into a third consent order with the Department (see Order on Consent [9-15-06], DEC Case Nos. R3-20050211-21 and R3-20060818, Exh 7). The consent order documented over 420 violations of the Department's regulations and 33 violations of the August 2003 consent order occurring from October 2002 through April 2005. Respondent consented to a civil penalty of $240,000, with $90,000 payable within 60 days, and the remaining amount of $150,000 suspended on condition of respondent's strict compliance with the order (see id. at 13). The consent order further provided for certain

corrective action. Respondent paid the penalty, but failed to comply with or perform the corrective actions listed in the order.

21. In October 2006, TRAT resubmitted an application to modify the permit for the facility. Department staff notified TRAT that the application remained incomplete. Staff again noted that TRAT was not the permit holder and, thus, not authorized to apply for a modification of the permit (see Letter from Michael D. Merriman to Ron Carbone [10-30-06], Exh 4). The notice reiterated staff's request for updated, signed original ROCs from TRAT's principals, among other submittals.

22. In November 2006, TRAT submitted the requested ROC forms, and clarified the status of their interests (see Letter from Stephan Wislocki to Michael D. Merriman [11-13-06], Exh 24). In December 2006, respondent submitted a permit modification application, ratifying all prior submissions made in connection with the facility whether submitted by respondent or TRAT (see Letter from Paul Casowitz to Michael D. Merriman [12-21-06], Exh 25).

Permit Revocation Proceedings

23. One hundred fifty-six (156) inspections conducted during the period from May 3, 2006, through September 25, 2008, revealed the following persistent and recurring conditions at the facility:

a. MSW and C&D debris was repeatedly stored and processed outside of approved areas for those wastes within the facility.

b. Solid wastes not authorized for acceptance at the facility were repeatedly received, including air conditioning units, refrigerators, and bio-hazard wastes, among other wastes.

c. After buildings 1 and 2 were dismantled, solid wastes authorized for processing only in those building continued to be accepted, and were processed outside of authorized areas.

d. Solid waste was not contained within buildings and was dumped and stored uncovered outside buildings. Departmental pre-approval for the outside storage of waste was never obtained.

e. Rats, gulls, and other vectors[3] were not sufficiently contained or controlled.

f. Leachate was regularly allowed to pond at the facility, and was discharged into a sanitary sewer without proper authorization.

g. The facility was operated with doors open at times other than during the unloading of wastes. Solid waste and dust was regularly allowed to spill uncontrolled out of open doorways and into outside areas.

h. The facility was not emptied and cleaned each day to prevent odors and other nuisance conditions.

i. Repairs and drainage upgrades to the facility to prevent infiltration of storm water into the buildings onsite were not undertaken as required by the May 2006 permit.

j. A conveyor system between buildings 3 and 6 was operated without a properly engineered and approved cover system.

k. Repairs to all buildings required by the permit were not undertaken.

l. Quarterly inspections of the facility as required by the permit were not conducted.

24. During the period from June 27, 2006, through February 26, 2007, the Department issued to respondent five notices of violations ("NOVs") documenting multiple violations of respondent's May 2006 permit, the 2003 and 2006 consent orders, and various provisions of Part 360 (see Notice of Violations [6-27-06], Exh 16.13; Notice of Violations [6-28-06], Exh 16.12; Notice of Violations [8-16-06], Exh 16.11; Notice of Violation [2-26-07], Exh 16.10; Notice of Violation and Cessation of Operations [4-10-07], Exh 16.9). The notices of violations were based upon the inspection reports filed by onsite environmental monitors ("OSEMs") from May 3, 2006, through February 7, 2007. The April 10, 2007, NOV notified respondent of its failure to

[3] Vectors include flies and other insects, rodents, birds, and vermin capable of transmitting pathogens from one organism to another (see 6 NYCRR 360-1.2[b][181]).

pay its OSEM bill, as required by the permit, and directed respondent to pay the bill within five days or cease operations.

25. On May 29, 2007, Department staff issued to respondent a notice of intent to revoke the May 2006 permit, thereby commencing this administrative enforcement proceeding (see Notice of Intent to Revoke a Permit [5-29-07], Exh 5A). Staff based the notice on respondent's alleged failure to comply with the conditions of the permit, the five notices of violations issued in the 12 months since the permit was issued, and additional inspection reports issued since February 7, 2007. By letter dated June 11, 2007, respondent opposed the revocation, and requested a hearing (see Letter from Paul Casowitz to Michael Merriman [6-11-07], Exh D).

26. In the May 2007 notice of intent to revoke, Department staff indicated that it was aware that in 2006, approximately one-third of the site and three buildings were taken over by the City of Peekskill, and that respondent's permit modification applications were an effort to revise the operations on the remaining site (see Notice of Intent to Revoke, Exh 5A). Staff also noted, however, that as indicated in its October 26, 2006, and October 30, 2006, notices of incomplete application letters, the permit modification applications remained incomplete, and the April 2006 permit remained in effect.[4]

27. In July 2007, respondent resubmitted its request to modify the permit for the facility. Pursuant to 6 NYCRR 621.3(e), Department staff notified respondent that processing of the permit modification was suspended pending resolution of the Department-initiated revocation proceeding commenced in May 2007 (see Letter from Michael Merriman to Kenneth J. Cartalemi [7-27-07], Exh 6).[5]

[4] Although the October 26, 2006, notice of incomplete application was not submitted for the record, the October 30, 2006, notice was (see Exh 4).

[5] Department staff's July 27, 2007, letter cites 6 NYCRR former 621.3(f) as the basis for suspension of its permit application review. Effective September 6, 2006, however, former section 621.3(f) was renumbered section 621.3(e).

CONCLUSIONS OF LAW

Violations Established

At the hearing conducted on April 1 and 2, 2009, Department staff submitted into evidence 184 inspection reports documenting inspections at the facility conducted from February 1, 2006, through November 20, 2008; 18 separate notices of violations dated from February 22, 2006, through November 28, 2008; and photographs taken at the facility from January 2006 through September 2008, in addition to other documentary evidence. Staff also presented the testimony of Deputy Regional Permit Administrator Michael Merriman; David Pollack, the supervisor of the OSEM program at respondent's facility; and onsite environmental monitors Donald Weiss, Larry Ricci, Zachary Cogon, and William Myers, all monitors for respondent's facility. Based upon the credible testimony of the Department's witnesses, as corroborated by the documentary and photographic evidence, I conclude that Department staff established by a preponderance of the record evidence that over 2,100 violations of the Department's regulations, over 2,100 violations of the May 2006 permit, and over 200 violations of the September 2006 consent order, as summarized in Department staff's Exhibit 23, occurred at the facility between May 3, 2006 and September 25, 2008. Moreover, many of the violations continued until the close of testimony on April 2, 2009.

Regulatory Violations

Among the most notable regulatory violations are the following:

1. Respondent violated 6 NYCRR 360-1.7(a); 360-1.8(h)(1), (5); and 360-16.1 by storing and processing MSW and C&D debris outside approved areas. Respondent committed these violations on 139 separate occasions during the period from May 10, 2006, through September 25, 2008 (see Violations Summary, Exh 23, ¶ 1).

2. Respondent violated 6 NYCRR 360-1.14(e), (r); 360-16.1(a), (d); 360-16.3(h)(4); and 360-16.4(b)(1) and (2) by accepting unauthorized solid waste materials, including air conditioning units, refrigerators, and bio-hazard wastes. Respondent committed these violations on 78 separate occasions during the period from May 10, 2006, through September 25, 2008 (see id., ¶ 5).

3. Respondent violated 6 NYCRR 360-1.14(f) and 360-16.4(a) by failing to maintain and operate facility components in accordance with authorization and without an approved operations and maintenance ("O&M") manual. Respondent committed these violations on 127 separate occasions (see id., ¶ 9).

4. Respondent violated 6 NYCRR 360-16.4(a) by failing to maintain and make available for reference and inspection an O&M manual. Respondent committee these violations on 96 separate occasions (see id., ¶ 10).

5. Respondent violated 6 NYCRR 360-1.14(j) and 360-16.4(b)(5) by failing to sufficiently confine or control solid waste in the C&D debris processing portion of the facility. Respondent committed these violations on 124 separate occasions (see id., ¶ 18).

6. Respondent violated 6 NYCRR 360-1.14(j) and 360-11.4(e) by failing to sufficiently confine or control solid waste, including blowing litter, in the MSW processing portion of the facility. Respondent committed these violations on 101 separate occasions (see id., ¶ 19).

7. Respondent violated 6 NYCRR 360-1.14(l) and 360-16.4(b)(5)(i), (ii), and (iii), by failing to effectively prevent and control vectors and vector breeding areas in the C&D processing portion of the facility. Respondent committed these violations on 65 separate occasions (see id., ¶ 21).

8. Respondent violated 6 NYCRR 360-1.14(l) and 360-11.4(e) by failing to effectively prevent and control vectors and vector breeding areas in the MSW processing portion of the facility. Respondent committed these violations on 83 separate occasions (see id., ¶ 22).

9. Respondent violated 6 NYCRR 360-1.14(b)(2), 360-16.3(f)(2) and 360-16.4(g) by failing to minimize leachate and prevent or control leachate discharges to waters. Respondent committed these violations on 105 separate occasions (see id., ¶ 31).

10. Respondent violated 6 NYCRR 360-11.4(n)(1) by failing to conduct processing, tipping, sorting, storage, compaction and related activities in an enclosed, covered area. Respondent committed these violations on 104 separate occasions (see id., ¶ 40).

11. Respondent violated 6 NYCRR 360-11.4(n)(3) by failing to empty facility processing areas and clean them each day to prevent odors or other nuisance conditions. Respondent committed these violations on 76 separate occasions (see id., ¶ 41).

Permit Condition Violations

Among the most notable violations of the conditions of respondent's May 2006 permit are the following:

12. Respondent violated special conditions 4 and 33 by failing to submit a letter from Westchester County authorizing the facility to dispose of leachate into the Peekskill sewer system for treatment by the county, or otherwise comply with the leachate collection and treatment requirements of the permit. These violations were noted on 83 separate solid waste management facility inspection reports, and have occurred from June 2, 2006, through the date of the hearing on April 2, 2009 (see id., ¶ 52).

13. Respondent violated special conditions 5 and 6 by failing to submit to the Department a revised O&M manual for approval and maintain the manual at the facility for inspection. These violations were noted on 89 separate inspection reports and occurred from June 2, 2006, through April 2, 2009 (see id., ¶ 53).

14. Respondent violated special condition 7 by failing to submit to the Department as built plans for approved equipment at the facility. This violation was noted on 85 separate inspection reports and occurred from June 2, 2006, through April 2, 2009 (see id., ¶ 55).

15. Respondent violated special condition 8 by failing to have a qualified professional engineer ("PE") certify approved as built plans prior to operation. This violation was noted on 84 separate inspection reports and occurred from at least June 8, 2006 (the earliest inspection report on which the violation was noted), through April 2, 2009 (see id., ¶ 56).

16. Respondent violated special condition 20 by failing to repair and upgrade facility components to prevent storm water infiltration. This violation was noted on 67 separate inspection reports and occurred from August 1, 2006, through April 2, 2009 (see id., ¶ 65).

17. Respondent violated special condition 21 by failing to construct a properly engineered cover system for a conveyor between buildings three and six prior to use. This violation occurred on 83 separate occasions (see id., ¶ 66).

18. Respondent violated special condition 22 by failing to complete construction and repair of buildings. This violation was noted on 84 separate inspection reports and occurred from June 2, 2006, through April 2, 2009 (see id., ¶ 67).

19. Respondent violated special condition 23 by failing to operate the facility in strict conformance with Part 360 and all conditions of its permit. This violation occurred on at least 79 separate occasions (see id., ¶ 68).

20. Respondent violated special condition 24 by storing materials outside without prior written approval of the Department. Respondent committed this violation on 104 separate occasions (see id., ¶ 69).

21. Respondent violated special condition 29 by receiving and processing specified materials in buildings not approved for receipt of such materials. Respondent committed this violation on 120 separate occasions (see id., ¶ 73).

22. Respondent violated special condition 32 by failing to operate the facility with closed doors except when vehicles are entering or leaving, or during dumping operations. Respondent committed this violation on 125 separate occasions (see id., ¶ 76).

23. Respondent violated special condition 34 by failing to conduct quarterly floor inspections. This violation was noted on 94 separate inspection reports and was committed quarterly from May 3, 2006, through April 2, 2009 (see id., ¶ 77).

24. Respondent violated special condition 37 by storing materials in areas other than those authorized for specific items. Respondent committed this violation on 69 separate occasions (see id., ¶ 80).

25. Respondent violated special condition 38 by accepting waste defined as unacceptable by the permit, and failing to train staff to recognize unacceptable wastes. Respondent committed this violation on 75 separate occasions (see id., ¶ 81).

26. Respondent violated special condition 54 by failing to timely submit an acceptable form of surety and by failing to provide a stand-by trust agreement. Respondent committed this violation from June 2, 2006, through April 2, 2009 (see id., ¶ 91).

27. Respondent violated special condition 66 by failing to conduct a noise evaluation within 60 days of permit issuance. This violation was noted on 58 separate inspection reports and occurred from July 2, 2006, through April 2, 2009 (see id., ¶ 96).

September 15, 2006, Consent Order Violations

Among the notable violations of the September 15, 2006, consent order are the following:

28. Respondent violated Item IIB of the consent order by continuing activities authorized only for buildings 1 and 2 after those building were dismantled. Respondent committed this violation on 73 separate occasions (see id., ¶ 98).

29. Respondent violated Item IID by failing to timely provide surety in the amount of $500,000 and by failing to provide a stand-by trust agreement to the Department. Respondent committed this violation from October 15, 2006, through April 2, 2009 (see id., ¶ 100).

30. Respondent violated Item IIE by failing to provide the Department with a complete application for a reduced-sized facility. This violation was noted on 71 separate inspection reports and occurred from October 15, 2006, through April 2, 2009 (see id., ¶ 101).

Record of Compliance

31. Respondent's violations of the May 2006 permit, the September 2006 consent order, and Part 360 are part of a pattern of significant, continuous and repeated noncompliance by respondent with the provisions of Part 360 and prior consent orders with the Department. This pattern of noncompliance began as early as August 2000 and continued through to the hearing in this proceeding.

DISCUSSION

Solid waste management facility permits, such as the permit issued to respondent, are governed by the Uniform Procedures Act ("UPA") (ECL 70-0107[3][l]; see also 6 NYCRR 621.1[m]). Pursuant to the UPA, the Department has the authority to modify, suspend or revoke a permit after notice and opportunity for hearing (see ECL 70-0115[1]). A permit may be modified, suspended or revoked where the permittee fails to comply with any terms or conditions of the permit, orders of the Commissioner, or any provisions of the ECL or the Department's regulations related to the permitted activity, among other grounds (see 6 NYCRR 621.13[a]).

Where the Department initiates administrative proceedings to revoke a permit based upon alleged violations of the ECL, its implementing regulations, or an order or permit issued by the Department, adjudicatory proceedings are conducted pursuant to the Department's Uniform Enforcement Hearing Procedures set forth at 6 NYCRR part 622 ("Part 622") (see 6 NYCRR 622.1[a][6]). Pursuant to Part 622, Department staff bears the burden of proof on all charges and matters they affirmatively assert in the instrument that initiated the proceeding, in this case, the notice of intent to revoke (see 6 NYCRR 622.11[b][1]). Respondent bears the burden of proof regarding all affirmative defenses (see 6 NYCRR 622.11[b][2]). Whenever factual matters are involved, the party bearing the burden of proof must sustain that burden by a preponderance of the evidence (see 6 NYCRR 622.11[c]).

Violations

Department staff carried its burden of proving by a preponderance of evidence at least 4,500 separate violations of the May 2006 permit, the September 2006 consent order, and the provisions of Part 360 by respondent from May 2006 through the date of the hearing. In addition, staff proved by a preponderance of the evidence that the current violations are part of a pattern of significant, continuous and repeated noncompliance with the provisions of Part 360 and prior consent orders reaching as far back as August 2000.

Respondent contends that the weight of evidence does not support the Department's charges. I disagree. Respondent challenges the reliability of the Department's monitors, arguing

that they lacked sufficient training. As an initial matter, respondent did not object to the monitors' qualifications at the hearing and, thus, the admissibility of their testimony is not at issue. With respect to reliability, in addition to the training they received, the monitors' years of actual practical experience, both individually and combined, in inspecting solid waste management facilities in general, and respondent's facility in particular, more than qualified them to not only make the factual observations about which they testified, but also to offer expert opinion concerning violations of the Department's regulations, consent orders and the permit, to the extent expert testimony was required (see Caprara v Chrysler Corp., 52 NY2d 114, 121-122 [1981]; Meiselman v Crown Heights Hosp., Inc., 285 NY 389, 398 [1941]).

In addition, the monitors' opinions, to the extent their testimony constituted opinion, were based upon facts in the record and personally known to the witnesses (see Cassano v Hagstrom, 5 NY2d 643, 646 [1959]; cf. Matter of Tubridy, Decision of the Commissioner, April 19, 2001, at 8-9). The monitors testified at hearing concerning the conditions at respondent's facility witnessed during inspections and respondent's failure to comply with permit conditions and consent order terms. Based upon these observations, the monitors offered their conclusions concerning whether respondent violated Departmental regulations, prior consent orders, and the permit.

The monitors' factual observations were further corroborated by the inspection reports entered into evidence that the monitors prepared during or shortly after inspections at respondent's facility. In addition to the circumstance that such reports, albeit hearsay, are properly considered in administrative adjudicatory proceedings (see Matter of Town of Brunswick v Jorling, 149 AD2d 832, 834 [3d Dept 1989]), those reports constitute reliable evidence as either public records or business records of the Department (see Meiselman, 285 NY at 397; Kozlowski v City of Amsterdam, 111 AD2d 476, 478 [3d Dept 1985]). The factual observations both testified to and recorded in the inspection reports were further corroborated by unrefuted photographic evidence.

Respondent also challenges the reliability of Mr. Pollock, who was the supervising monitor for respondent's facility and author of most of the notices of violations entered into evidence, on the ground that he only visited the facility on a couple of occasions and, thus, lacked first-hand knowledge

about the facility. Mr. Pollock properly relied, however, on the inspection reports in reaching conclusions about the facility and its compliance with regulations, the consent orders, and the permit (see Hambsch v New York City Tr. Auth., 63 NY2d 723, 726 [1984]). Moreover, Mr. Pollock had personal knowledge about respondent's failure to file the documents and other submissions required by the permit and consent orders and, thus, was competent to testify concerning those violations.

Respondent further argues that Department staff failed to meet the preponderance of evidence standard because they failed to call the other Departmental employees who were involved in the decision to seek revocation of respondent's permit. However, the testimony of such officials was not necessary to establish the violations charged. Department staff supported its case with the reliable and credible testimony of the monitors and permit administrator that had personal knowledge of the conditions at the facility or respondent's compliance with permit and consent order requirements, or both, and corroborated that testimony with reliable records of the Department and photographic evidence. Thus, Department staff carried its burden of proving the violations by a preponderance of the credible record evidence. The circumstance that other agency officials involved in the decision to commence this proceeding were not called to testify does not diminish the weight of the evidence presented by the Department.

Liability and Defenses

Pursuant to ECL 27-0707(1), no person shall operate a solid waste management facility without a Departmental permit. A "person" includes any private corporation, such as respondent here (see ECL 1-0303[18]). Upon receipt of a permit, the permittee remains responsible for operating the facility in full compliance with all applicable laws, regulations, consent orders and permit conditions (see ECL 27-0707[5]; ECL 71-2703[1]). As noted above, the Commissioner is authorized to revoke or suspend a permit held by any person who operates a facility in violation of any applicable law, regulation, consent order or permit condition (see ECL 71-2703[1]).

By accepting the permit, respondent expressly agreed to operate the facility in strict compliance with all statutory and regulatory requirements, and the terms of its permit (see Permit, Exh 1B, at 1). Respondent also agreed to require its independent contractors, employees, agents and assigns to read, understand and comply with the permit (see id. at 2, Item B).

Thus, by statute and pursuant to the express terms of its permit, respondent is liable for violations of the ECL and its implementing regulations, and the terms of its permit and consent order executed with the Department occurring at the facility, whether those violations were caused by respondent itself, or its agents, employees, or independent contractors.

Respondent raises a number of arguments in defense of its liability for the violations established in this case or in mitigation of the remedy sought by the Department, that is, revocation of respondent's permit. Foremost among respondent's assertions is that Department staff was aware that TRAT became the operator of the facility as a result of the bankruptcy proceeding and was primarily responsible for violations at the facility. Respondent asserts that staff abused its discretion by allowing TRAT to accumulate violations at the facility and then prosecuting respondent for those violations. Respondent further contends that its violations are primarily paperwork violations, the majority of which would be cured if staff would review respondent's submissions. Respondent also argues that it has done everything possible to bring the facility into compliance, particularly after TRAT abandoned the facility. Respondent's arguments, however, are unpersuasive and not supported by the record in this proceeding.

As an initial matter, respondent argues that Department staff is collaterally estopped from denying TRAT's status as the operator of the facility as a result of the Bankruptcy Court's April 2006 order (see Exh 37). The Bankruptcy Court's order does not have the issue preclusive effect argued by respondent, however. For the doctrine of issue preclusion to apply, there must be both an identity of issues and an identity of parties between the prior and subsequent proceedings (see Ryan v New York Telephone Co., 62 NY2d 494, 500-501 [1984]). For an identity of issues, the issue sought to be precluded in a subsequent proceeding must have been raised and necessarily decided in the prior proceedings. The Bankruptcy Court, however, did not necessarily decide that TRAT was the operator of the facility. At most, the court merely approved respondent's reorganization plan, contingent upon respondent receiving all necessary approvals from agencies with jurisdiction over the facility. The agency with jurisdiction to approve TRAT as an operator under ECL article 27 and Part 360 was not the Bankruptcy Court, but the Department. The Bankruptcy Court's conditional approval of respondent's reorganization plan was not a determination on the merits that TRAT was an operator pursuant to ECL article 27 or Part 360.

Thus, the Bankruptcy Court did not necessarily decide that TRAT was an approved operator under ECL article 27 and Part 360.

As to the identity of parties, collateral estoppel may only be invoked against a party, or those in strict privity with a party, to the prior proceeding (see id. at 501; Matter of New York Site Dev. Corp. v New York State Dept. of Envtl. Conservation, 217 AD2d 699, 699 [2d Dept 1995]). In this case, the Department was neither a party nor in privity with any party to the bankruptcy proceeding and, thus, did not have a full and fair opportunity to litigate the issue. Accordingly, the Bankruptcy Court order does not estop the Department from asserting that TRAT was not an approved operator under ECL article 27 and Part 360. Respondent cites no authority for its assertion that the mere circumstance that the Department could have sought to intervene in the bankruptcy proceeding is a ground for collateral estoppel.

Respondent also contends that the Department should be equitably estopped from holding it liable for the violations at the facility. Equitable estoppel, however, is generally not applicable to an agency acting in a governmental capacity in the discharge of its statutory responsibilities (see Matter of Wedinger v Goldberger, 71 NY2d 428, 440-441 [1988]; Matter of Parkview Assocs. v City of New York, 71 NY2d 274, 282 [1988]). Only in the rarest of cases may an agency be equitably estopped for wrongful or negligent acts or omissions by the agency that induce reliance by a party who is entitled to rely and who changes its position to its detriment or prejudice (see Parkview, 71 NY2d at 282; Bender v New York City Health & Hosps. Corp., 38 NY2d 662, 668 [1976]).

In this case, the Department is acting within its governmental capacity in enforcing the ECL and its implementing regulations, as well as the prior consent order and the Part 360 permit. The record contains no evidence of any misconduct on the part of Department staff upon which respondent justifiably relied to its detriment. To the contrary, the Department repeatedly notified respondent that it did not consider TRAT to be an approved operator. When respondent and TRAT submitted applications to the Department seeking to include TRAT on the permit, staff timely notified them concerning the deficiencies in their applications and how they might be cured. The Department's failure to intervene in the bankruptcy proceeding cannot be considered misconduct. Thus, no basis exists for equitably estopping the Department from seeking revocation of respondent's permit.

Respondent also argues that the doctrine of laches should be applied due to the Department's failure to act on the permit transfer applications and its alleged delay in enforcement. As with the doctrine of equitable estoppel, however, laches is also not applicable to an agency acting in its governmental capacity (see Matter of Cortlandt Nursing Home v Axelrod, 66 NY2d 169, 177 n 2 [1980], cert denied 476 US 1115 [1986]; Flacke v NL Indus., Inc., 228 AD2d 888, 890 [3rd Dept 1996]). A limited form of laches is only available when a governmental agency fails to schedule or conduct a hearing within a reasonable amount of time after the hearing is requested (see Cortlandt, at 177-179; see also Matter of Giambrone, Decision and Order of the Commissioner, March 17, 2010, at 11-15). Among the factors that must be established is that the delay caused significant prejudice to a respondent in the defense of its case (see Cortlandt, at 178, 180-181; Giambrone, at 12-14).

In this case, the almost four-month period between respondent's June 2007 request for a hearing and the commencement of hearing in October 2007 does not constitute unreasonable delay. Moreover, respondent does not claim, and the record does not reveal, any prejudice to respondent in the defense of this case resulting from the four month period. Thus, no basis exists for applying the Cortlandt doctrine to this matter.

With respect to respondent's argument that Department staff abused its discretion and failed to assist respondent in coming into compliance with its obligations, respondent's assertions are unconvincing. As the operator of the facility and holder of the permit, respondent, and not the Department, bore the responsibility of maintaining regulatory compliance at the facility (see ECL 27-0707[5]). Whether the Department provided assistance to respondent or not has no bearing on respondent's liability resulting from its failure to comply with statutory and regulatory requirements, its permit obligations, and obligations agreed to under consent orders with the Department.

In any event, the record establishes that Department staff did provide assistance to respondent. Through inspection reports, notices of violations, and consent orders, Department staff repeatedly brought violations at the facility to respondent's attention. The Department's monitors also advised respondents' representatives, including K.J. Cartalemi, about

methods for coming into compliance. Department staff also advised respondent concerning options for obtaining a standby trust agreement. In addition, Department staff repeatedly and timely notified respondent concerning deficiencies in its permit modification application materials and advised as to how those deficiencies could be corrected. Respondent repeatedly failed, however, to follow up or provide the required submissions. Thus, contrary to respondent's assertion, Department staff did provide assistance to respondent. That assistance simply was not followed by respondent.

Respondent further argues that Department staff abused its discretion when it suspended review of respondent's permit modification application and other submissions after commencement of this enforcement proceeding. Respondent contends that its violations were mostly paperwork violations, the majority of which would have been cured if staff had continued its review. Respondent failed to offer its submissions for the record, however, so its assertions remain unsubstantiated. In contrast, the record reveals hundreds of violations of operational requirements that exist independent of any paper work requirements.

Moreover, Department staff is authorized by regulation to suspend review of any permit application upon commencement of an enforcement proceeding against an applicant (see 6 NYCRR 621.3[e]). No abuse of discretion is apparent on this record concerning Department staff's exercise of its regulatory authority to suspend review of respondent's permit modification application upon commencement of this enforcement proceeding.

Respondent further asserts that Department staff abused its prosecutorial discretion in enforcing against respondent when TRAT was allegedly the party solely responsible for the violations charged. No abuse of discretion is apparent on this record, however. Department staff has broad discretion to determine whether and how to enforce the provisions of the ECL, including ECL article 27, and against whom it will bring enforcement proceedings (see, e.g., Matter of New York Pub. Interest Research Group, Inc. v Town of Islip, 71 NY2d 292, 306 [1988]; Leland v Moran, 235 F Supp 2d 153, 169-170 [ND NY 2002], affd 80 Fed Appx 133 [summary order]). The notification in the permit that persons other than respondent, including employees and independent contractors, may be liable for violations of the law and the permit does not limit Department staff's discretion in this regard (see Permit, Item B, Exh 1B, at 2). Certainly, TRAT could be liable for its own actions in operating a solid

waste management facility without a permit. However, TRAT's liability would be joint and several with respondent. Respondent, as the owner and permit holder for the facility and, thus, the duly authorized operator of the facility, remained primarily responsible for the activities at the facility, including the activities of TRAT, with whom it contracted to manage the facility (see Management Agreement ¶ 1, Exh 36, at 1). Moreover, given the remedy sought in this proceeding -- namely, permit revocation -- the Department does not abuse its prosecutorial discretion in prosecuting respondent, who is the permit holder, for permit revocation, and not TRAT, who is not the permit holder.

The circumstance that respondent lacked sufficient contractual controls over TRAT does not render the Department's action an abuse. Respondent's own submissions to the Department reveal its understanding that it was the facility operator until TRAT was added to the permit (see Letter from Paul Casowitz to Michael Merriman [12-21-06], Exh 25). It was respondent that allowed TRAT to begin operations at the facility prior to obtaining all necessary approvals, as required by the Bankruptcy Court and respondent's own contract with TRAT. Moreover, nothing in the record indicates that respondent enforced TRAT's contractual obligation to comply with all applicable laws, regulations, or rules. To the extent that respondent's contractual controls over TRAT went unenforced by respondent or were otherwise ineffective in bringing TRAT's activities at the site into compliance does not render the Department's determination to prosecute respondent as the responsible party an abuse of discretion.

In sum, respondent remains primarily responsible for the violations at the facility, including those violations that are the result of the activities of its subcontractor TRAT. The defenses to liability raised by respondent are either inapplicable or insufficiently established to relieve respondent of liability in whole or in part.

Relief Requested

Department staff argues that permit revocation is the appropriate remedy in this case for the violations established. Staff cites to respondent's almost ten-year history of noncompliance with Departmental regulations, prior consent orders, and its permit. In addition, in contrast to other cases where the Commissioner directed modification of a permit rather than revocation (see Matter of A-1 Compaction Corp., Decision

and Order of the Acting Commissioner, June 22, 1994), staff argues that respondent was already given that opportunity through the permit hearing proceedings that resulted in the 2006 permit. Notwithstanding the multiple opportunities provided to respondent, staff notes that respondent has failed to bring the facility into compliance with its permit, consent orders, and Departmental regulations in any meaningful way. Accordingly, Department staff requests that the permit be revoked, that the facility be emptied of any remaining waste, scrap or recyclables, and the gates secured to prevent further access.

In response, respondent argues that Department staff's request that the permit be revoked be denied. In support of its argument, respondent asserts that the violations at issue do not involve the health and safety of the public. Respondent also cites to Department staff's alleged bad faith in failing to review its permit modification applications and failing to assist respondent in coming into compliance. Respondent further relies on its assertion that TRAT was the party actually responsible for the operational violations at the facility. Respondent also urges that its alleged "extensive efforts" to bring the facility into compliance should be taken into account. In particular, respondent's relies on K.J. Cartalemi's alleged efforts to clean up the site after TRAT abandoned the facility.

In determining whether to revoke a permit or grant some less drastic remedy, the Department has the inherent authority to consider the fitness of a permittee to hold a permit (see Matter of Barton Trucking Corp. v O'Connell, 7 NY2d 299, 307 [1959]; see also Matter of American Transfer Co., Interim Decision of the Commissioner, Feb. 4, 1991, at 1). Prior violations of law are relevant on the issue of a permittee's fitness (see Matter of Al Turi Landfill, Inc. v New York State Dept. of Envtl. Conservation, 98 NY2d 758, 760-761 [2002]; Matter of DiGeorgio v Swarts, 68 AD3d 1791, 1792 [4th Dept 2009] [agency entitled to consider past violations of applicable statutes and regulations by all owners and employees of applicant]; Matter of Ottati v Town of Hector Town Bd., 229 AD2d 746, 747-748 [3d Dept 1996] [continuing pattern of evasive, nonconforming and illegal conduct]; Matter of Olson v Town of Saugerties, 161 AD2d 1077 [3d Dept 1990] [prior or existing willful violations of statute are relevant to suitability of an applicant]). Moreover, a party's history of compliance with environmental and other laws is relevant, whether the determination is to issue a permit in the first instance or to revoke an existing permit (see Matter of Berman Enters., Inc., Decision and Order of the Executive Deputy Commissioner, March

25, 1991, at 7, confirmed on judicial review sub nom. Matter of Standard Marine Servs., Inc. v Jorling, 214 AD2d 424 (1st Dept 1995); Matter of American Transfer Co., Interim Decision, at 2).

An applicant's or permittee's record of environmental compliance is examined on a case by case basis, and requires a balancing of facts and policy considerations (see Matter of Waste Mgt. of New York, LLC, Interim Decision of the Commissioner, May 15, 2000, at 7; Matter of Laidlaw Envtl. Servs., Inc., Decision of the Acting Commissioner, June 28, 1994, at 1; Matter of CECOS Intl., Inc., Decision of the Commissioner, March 13, 1990, at 3-4; see also Enforcement Guidance Memorandum, Record of Compliance, DEC Commissioner Policy DEE-16, section IV [1993] ["Record of Compliance Policy"]). Among the grounds for permit revocation are: (1) prior convictions of laws related to the permitted activity (see Matter of A-1 Compaction Corp., Decision and Order of the Acting Commissioner, June 22, 1994, at 2); (2) prior violations of environmental laws or regulations, Departmental consent orders, or Departmental permits that pose significant potential threats to human health or the environment (see Matter of Mohawk Valley Organics, LLC, Order of the Commissioner, July 21, 2003); or (3) prior violations of environmental laws or regulations, Departmental consent orders, or Departmental permits that constitute a pattern of environmental noncompliance (see Matter of Berman Enters., Decision and Order, at 7; see also Record of Compliance Policy, section IV).

Where a pattern of environmental noncompliance is the asserted basis, the Commissioner has revoked permits based upon a pattern of significant and persistent violations of environmental laws and regulation, coupled with the failure of a respondent to take meaningful steps to address those violations (see Matter of Berman Enters., Decision and Order, at 7 [11-year history of significant operational problems, both before and after issuance of a license, warranted license revocation]). On the other hand, where the violations are not severe or pervasive, and the respondent takes responsible action to address the violations, the Commissioner has declined to revoke a permit (see Matter of Waste Mgt. of New York, LLC, Interim Decision of the Commissioner, May 15, 2000, at 9 [applicant's compliance history is not of such a serious and persistent nature that would justified permit denial]; Matter of CECOS Int'l, Inc., Decision of the Commissioner, March 13, 1990, at 3-4 [prior operational problems severe enough to warrant enforcement action, but responsibly addressed by applicant when problems brought to attention]).

In this case, the record establishes a pattern of significant and persistent violations of environmental laws and regulations, prior consent orders, and the 2006 permit by respondent. Since at least August 2000 to the date of the hearing, the facility has been the site of thousands of environmental violations, most of which are persistent and repeated. Even when the multiplicity of some violations is taken into account -- i.e., that some of the activities and conditions at the facility constitute violations of regulations, consent order provisions, and permit conditions with identical elements (see Matter of Wilder, ALJ Hearing Report, at 9-11, adopted by Supplemental Order of the Acting Commissioner, Sept. 27, 2005) -- the record still reveals a vast number of separate persistent and recurring violations. Moreover, contrary to respondent's assertion, many of the violations pose significant risks to public health and the environment, including respondent's repeated failure to control discharges of leachate to the environment, to control blowing litter, dust, and odors, and to prevent breeding areas for rats and other vectors, among other recurring problems.

The record also fails to reveal any meaningful steps by respondent to address these violations after they were brought to respondent's attention. Through inspection reports, notices of violations, consent orders, and extensive permit hearing proceedings, among other means, the persistent and recurring environmental problems at the facility were repeatedly brought to respondent's attention. Although respondent paid penalties pursuant to the consent orders and took some steps to make some required repairs and modify operations to account for the loss of certain buildings, respondent has not addressed the vast majority of recurring environmental violations at the facility. Moreover, the record does not support respondent's conclusory assertion that it has improved conditions at the facility since TRAT vacated the premises.

As to the other factors respondent urges should be taken into account, as concluded above, the record contains no evidence of wrongdoing by Department staff that would warrant mitigation of the relief sought. With respect to respondent's asserted lack of control over the activities of TRAT, the Commissioner has taken into account a respondent's relative culpability and whether a violation was reasonably beyond the control of a respondent, at least for purposes of assessment of a monetary penalty (see Matter of Steck, Order of the Commissioner, March 29, 1993, at 5-6; Matter of Town of LeRay,

Order of the Commissioner, March 24, 1989, at 2 [no penalty imposed were a fire was not the result of either the intentional or negligent conduct on the part of a respondent, and respondent took prompt and satisfactory action to control the fire]). The Commissioner has not indicated whether relative culpability is relevant to the determination whether to revoke a permit. Even assuming without deciding that it is, however, as noted above, it was respondent that allowed TRAT to begin operations at the facility without first obtaining all necessary approvals. Moreover, the record fails to reveal any significant steps by respondent to enforce the provision of its management agreement with TRAT requiring TRAT to comply with all applicable laws, regulations and rules. Thus, it cannot be concluded on this record that the violations at the facility were beyond the reasonable control of respondent.

RECOMMENDATION

Department staff has established by a preponderance of the record evidence that respondent is liable for over 4,500 violations of environmental regulations, the terms of the 2006 consent order, or the conditions of its 2006 permit, occurring during the period from May 2006 through April 2, 2009. In addition, Department staff has established by a preponderance of the record evidence that respondent has a history of significant and persistent environmental noncompliance reaching back at least as far as August 2000. Consequently, I recommend that the Commissioner grant the relief requested by Department staff and revoke respondent's 2006 permit.

/s/

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James T. McClymonds
Chief Administrative Law Judge

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Matter of Karta Corporation
DEC Case No. 3-5512-00054-00009

EXHIBIT LIST
(as of August 6, 2010)

Exhibit No.	Description	Offered By	Notes
1A	Letter from Michael D. Merriman, Deputy Regional Permit Administrator, DEC Region 3, to Kenneth J. Cartalemi, Global Recycling & Collection, Inc., and Paul D. Casowitz, Esq., Sive, Paget & Riesel, PC (dated May 3, 2006), RE: Permit Issuance and Notification of Response Dates in Special Conditions	DEC Staff	
1B	DEC Permit No. 3-5512-00054-00004 (effective May 3, 2006)	DEC Staff	
1C	Matter of Karta Corporation, Decision of the Executive Deputy Commissioner, April 20, 2006	DEC Staff	
1D	Matter of Karta Corporation, Hearing Report of ALJ Garlick	DEC Staff	

Exhibit No.	Description	Offered By	Notes
2	Letter from Vincent Altieri, Regional Attorney, DEC Region 3, to Paul Casowitz, Esq., Sive, Paget & Riesel, P.C., and Steve Wislocki, Esq. (dated June 15, 2006), RE: Karta Corp. and TRAT, Inc.	DEC Staff	
3	Letter from Michael D. Merriman, Deputy Regional Permit Administrator, to Ron Carbone, President, Tarrytown R&T Corp. (dated Aug. 21, 2006), RE: Notice of Incomplete Application	DEC Staff	
4	Letter from Michael D. Merriman, Deputy Regional Permit Administrator, DEC Region 3, to Ron Carbone, President, Tarrytown R&T Corp. (dated Oct. 30, 2006), RE: Notice of Incomplete Application	DEC Staff	
5A	Letter from Michael D. Merriman, Deputy Regional Permit Administrator, DEC Region 3, to Kenneth J. Cartalemi, Global Recycling & Collection, Inc. (dated May 29, 2007), RE: Notice of Intent to Revoke a Permit	DEC Staff	
5B	Memorandum from Michael D. Merriman, Deputy Regional Permit Administrator, DEC Region 3, to James McClymonds, Chief Administrative Law Judge (dated June 21, 2007), RE: Karta Corporation Permit Revocation	DEC Staff	

Exhibit No.	Description	Offered By	Notes
6	Letter from Michael D. Merriman, Deputy Regional Permit Administrator, DEC Region 3, to Kenneth J. Cartalemi, Karta Corporation (dated July 27, 2007), RE: Notice of Suspension of UPA Deadlines	DEC Staff	
7	Matter of Karta Indus., Inc. and Karta Corp., Order on Consent, Case Nos. R3-20050211-21 & R3-200650818 (effective Sept. 15, 2006)	DEC Staff	
8	Matter of Karta Corp., Order on Consent, Case No. R3-5512-00054-00004 (effective Aug. 12, 2003)	DEC Staff	
9	Matter of Karta Corp., Order on Consent, Case No. 3-20010329-41 (effective June 26, 2002)	DEC Staff	
10	Matter of Karta Indus., Inc., Order on Consent, Case No. 3-2998/9712 (received Aug. 20, 1998)	DEC Staff	
11.1 through 11.47	DEC Inspection Reports (47 different inspections in reverse chronological order from 12/27/06 through 2/1/06)	DEC Staff	
12.1 through 12.49	DEC Inspection Reports (49 different inspections in reverse chronological order from 9/1/07 through 1/4/07)	DEC Staff	

Exhibit No.	Description	Offered By	Notes
13.1 through 13.33	DEC Inspection Reports (33 different inspections in reverse chronological order from 4/14/08 through 9/7/07)	DEC Staff	
14.1 through 14.28	DEC Inspection Reports (27 different inspections in reverse chronological order from 9/4/08 through 5/9/08)	DEC Staff	Exhibit 14.14 not received or admitted
15.1 through 15.28	DEC Inspection Reports (28 different inspections in reverse chronological order from 11/20/08 through 7/24/07)	DEC Staff	
16.1 through 16.16	DEC Notices of Violation issued to Kenneth J. Cartalemi (16 separate notices of violation in reverse chronological order from 6/17/08 through 2/22/06)	DEC Staff	
17	DEC Notice of Violation issued to Kenneth J. Cartalemi, President, Karta Corp. (dated Sept. 8, 2008)	DEC Staff	
18	DEC Notice of Violation issued to Kenneth J. Cartalemi, President, Karta Industries, Inc. (dated Nov. 28, 2008)	DEC Staff	
19	Annual Report from Karta Corp., signed by Kenneth J. Cartalemi (dated 2/25/08)	DEC Staff	
20	Annual Report from Karta Corp., signed by Kenneth J. Cartalemi (dated 2/22/07)	DEC Staff	

Exhibit No.	Description	Offered By	Notes
21	Annual Report from Karta Corp., managed by TRAT, Inc., signed by Ronald Carbone (dated 2/22/07)	DEC Staff	
22	Annual Report from Karta Corp./TRAT, Inc., signed by Kenneth Cartalemi (dated 2/22/07)	DEC Staff	
23	Summary of Violation from May 3, 2006 to September 25, 2008	DEC Staff	
24	Letter from Stephan Wislocki, Esq., to Michael D. Merriman (dated Nov. 13, 2006), RE: Tarrytown R&T Corp.; 1011/1017 Lower South Street, Peekskill	DEC Staff	
25	Letter from Paul Casowitz, Esq., to Michael D. Merriman (dated Dec. 21, 2006) RE: Notice of Incomplete Application	DEC Staff	
26	Letter from Kenneth Cartalemi to Michael D. Merriman (dated Nov. 20, 2006) RE: DEC #3-5512-00054-0004	DEC Staff	
27.1 through 27.4	Four (4) Letters from Kenneth Cartalemi to Michael Merriman (dated Nov. 9, 2006) RE: DEC #3-5512-00054-0004	DEC Staff	

Exhibit No.	Description	Offered By	Notes
28	Letter from Kenneth Cartalemi to Mr. Weiss, New York State Dept. of Envtl. Conservation (dated Sept. 22, 2006)	DEC Staff	
29	Letter from David G. Pollock, Environmental Engineer, to Kenneth J. Cartalemi, President, Karta Industries, Inc. (dated Oct. 15, 2007) RE: Floor repair job	DEC Staff	
30	Letter from Michele M. Bonsignore, Esq., to KJ Cartalemi, Steven Wislocki, and Steven Parisio, Supervising Engineer (dated April 3, 2008) RE: DEC Notice Served Upon Karta	DEC Staff	
31	CD containing 2006 Karta pictures	DEC Staff	
32	CD containing 2007 Karta pictures	DEC Staff	
33	CD containing 2008 Karta pictures through 5/14/08	DEC Staff	
34	CD containing permit hearing transcript from Matter of Karta Corp., DEC Case No. 3-5512-00054/00004	DEC Staff	
35	CD containing 2008 Karta pictures through 9/18/08	DEC Staff	

Exhibit No.	Description	Offered By	Notes
36	Management Service Agreement for Transfer Station between Karta Corp. and Karta Industries, and Tarrytown R&T Corp. (dated March 2006)	DEC Staff	
37	In re Karta Corp., Order Confirming Debtors' Fifth Amended Joint Plan of Reorganization Pursuant to 11 U.S.C. Section 1129 (U.S. Bankruptcy Court, SD NY, April 28, 2006, Hardin, J., Case No. 02 B 22028 [ASH], et al.)	DEC Staff	Submitted with Post Hearing Reply Brief
A	Excerpt from Amended Sunset Provision, incorporated into Settlement Agreement between Karta Corp. and City of Peekskill (Option Right) (Jan. 7, 2005)	Karta	
B	In re Karta Corp., 296 BR 305 (SDNY 2003)	Karta	
C	Management Services Agreement ¶ 10, between Karta Corp. and TRAT, excerpt (March 16, 2006)	Karta	
D	Letter from Paul Casowitz, Esq., Sive, Paget & Riesel, P.C., to Michael D. Merriman, Deputy Regional Permit Administrator, DEC Region 3 (dated June 11, 2007), RE: Global Recycling & Collection, DEC # 3-5512-0054-0009	Karta	