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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MORRIS COUNTY
DOCKET NO.: MRS-

JOHN J. HOFFMAN, Acting Attorney General of New Jersey, and STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION, Plaintiffs, v. STRATEGIC ENVIRONMENTAL PARTNERS, LLC, RICHARD BERNARDI, individually, and MARILYN BERNARDI, individually, Defendants.	CIVIL ACTION **COMPLAINT**

Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey, with offices located at 25 Market Street in Trenton, New Jersey, and the State of New Jersey, Department of Environmental Protection ("Department" or "DEP"),

with offices located at 401 East State Street in Trenton, New Jersey, by way of Complaint against Strategic Environmental Partners, LLC ("SEP"), and Richard and Marilyn Bernardi, individually (collectively, "Defendants"), say:

NATURE OF THE ACTION

1. This civil suit seeks damages, disgorgement of ill-gotten profits, civil penalties, and injunctive relief against Defendants, the owners and operators of the Fenimore Landfill ("Landfill"). In short, Defendants fraudulently secured a closure authorization from the Department, misappropriated funds dedicated to and ultimately necessary for closure expenses, and created a public nuisance by failing to control noxious hydrogen sulfide emissions created by Defendants' activities on the Landfill.

2. Defendants fraudulently secured approval to redevelop the Landfill by omitting debts of approximately $2.5 million in a required financial plan submission. Defendants induced the Department to rely upon the deficient financial plan to approve an underfunded project. Had the Department known the scope of Defendants' debts it would not have approved a closure plan without proof of adequate revenues to effectuate the closure.

3. Defendants misappropriated at least $1.2 million in acknowledged tipping revenues and an estimated $3.4 million in total tipping revenue earned from fees charged to waste haulers for the delivery of hundreds of thousands of cubic yards of crushed construction and demolition debris ("C&D fines") and other fill material at the Landfill. Defendants had agreed to deposit all such "tipping revenues" into escrow to be used only for the cleanup, capping, and installation of environmental controls at the Landfill. But, although Defendants opened an escrow account, they kept the money themselves and never actually deposited any tipping revenues.

4. Beginning in November 2012, nearly one year after Defendants began importing fill, the Landfill plagued surrounding neighborhoods with the pungent odor of rotten eggs. The odor was hydrogen sulfide, a noxious byproduct of rotting ground-up gypsum wallboard that Defendants were paid to accept at the Landfill. Under their agreement with the Department, Defendants were required to control odors by covering all imported demolition debris with clean fill at the end of every day. However, Defendants never fully complied with this provision of their closure plan approval and the odors only grew worse as the months passed.

5. On November 30, 2012, the Department filed an Order to Show Cause in Superior Court, Morris County, seeking to

prevent SEP from accepting additional fill material until Defendants brought odors under control. On December 10, 2012 Judge Deanne Wilson ordered Defendants to cover the debris at the end of each day with a layer of clean soil, but Defendants failed to comply. Defendants dithered and made excuses and continued to accept deliveries of demolition debris while the odors grew worse, thereby causing great discomfort to the residents of Roxbury Township forced to live daily with the worsening hydrogen sulfide fumes.

6. Richard and Marilyn Bernardi used SEP to perpetrate a fraud and to divert tipping revenues away from the closure-dedicated escrow fund for their own use. Richard Bernardi is individually liable for his integral role in all of SEP's unlawful practices. Marilyn Bernardi, as SEP's owner and sole member, is individually liable for damages and penalties sought by Plaintiffs.

PARTIES

7. Plaintiff John J. Hoffman, Acting Attorney General of the State of New Jersey, is charged with enforcing violations of the False Claims Act, N.J.S.A. 2A:32C-1 to -17.

8. Plaintiff Department of Environmental Protection is a principal department of the State of New Jersey. The Department is charged with enforcement of New Jersey's

environmental protection statutes and regulation of solid waste facilities. The Department regulates solid waste and sanitary landfills in New Jersey under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

9. Defendant Strategic Environmental Partners, LLC is a limited liability company formed in 2002 under the laws of New Jersey. SEP owns the Fenimore Landfill, a 101-acre property on Mountain Road in Roxbury Township, identified as Block 7404, Lot 1 on the tax map of Roxbury Township in Morris County. SEP operates from the residence of Richard and Marilyn Bernardi at 7 Michael Court in Millstone, Monmouth County.

10. Defendant Marilyn Bernardi, named individually, is the owner and sole member of SEP.

11. Defendant Richard Bernardi, also named individually, is husband to Marilyn Bernardi. At all times hereinafter mentioned, Richard Bernardi was the duly authorized agent of SEP and Marilyn Bernardi. Richard Bernardi was in charge of and managed the Landfill, communicated directly with the Department as SEP's representative in all regulatory matters, and managed the day-to-day operations of SEP.

DEFENDANTS' PROPOSAL FOR REDEVELOPMENT OF THE LANDFILL

12. The Landfill was opened in the 1950s and accepted municipal solid waste from nearby towns until the late 1970s.

The Landfill was abandoned by the former owners and operators and, although DEP ordered the former owners to close the site, the Landfill was never properly closed or capped.

13. In the 1981 Sanitary Landfill Facility Closure and Contingency Fund Act, the Legislature declared that the "proper closure of sanitary landfills is essential to the public health, safety and welfare" and that "the improper operation or closure of sanitary landfill facilities can result in the contamination of surface and ground waters, including potable water supplies; [and] that the migration of methane gas from sanitary landfill facilities poses a significant threat to life and property . . . ." N.J.S.A. 13:1E-101.

14. The Legislature directed the Department to adopt rules and guidelines for the closure of sanitary landfills, promulgated at Title 7, Chapter 26, Subchapter 2A of the New Jersey Administrative Code. The Legislature also authorized the Department to review and approve closure plans for abandoned landfills such as the Fenimore Landfill. N.J.S.A. 13:1E-5; N.J.S.A. 13:1E-114.

15. The Department's rules serve to protect water resources and to regulate odors and flammable gases generated by decomposing landfill waste. DEP's rules require an impermeable landfill "cap" on closed sites to prevent rainwater from infiltrating buried waste, leaching contaminants and polluting

groundwater. The rules also require a leachate collection and filtration system to capture and treat any water flowing off or out from the landfill before it reaches surface or ground waters, and require the installation of groundwater monitoring wells. A landfill gas management system must be installed to vent flammable and noxious landfill gases such as methane and hydrogen sulfide. See N.J.A.C. 7:26-2A.6(a).

16. SEP purchased the Landfill in February 2011, purportedly to redevelop the site as a 10 mega-watt solar electricity generating facility (the "Solar Project"). To maximize the solar energy collecting potential of the property, Defendants proposed to import 1.2 million cubic yards of fill material, primarily C&D fines, to raise the elevation and contour the site before capping the Landfill with a layer of low-permeability processed dredge material and installing an array of photovoltaic panels.

17. As a condition of obtaining DEP approval to import and charge for acceptance of this material and to install the solar array, Defendants agreed to cap the Landfill and to install, maintain, and monitor environmental controls (the "Closure Project") in accordance with the Department's subchapter 2A sanitary landfill closure rules.

18. Defendants applied for a closure plan from the Department in June 2011.

THE FRAUDULENT FINANCIAL PLAN

19. As part of their closure plan application, Defendants were required to prepare a closure and post-closure financial plan. N.J.A.C. 7:26-2A.9(f).

20. The financial plan must set forth the costs and expenses of closure and establish a means for meeting them. In addition to direct closure costs, the financial plan also must include an estimate of "general and administrative costs, including but not limited to, fees for engineering, legal, accounting, auditing and banking services, property and sales taxes, . . . Department permits and review fees, and utility costs." Ibid.

21. Defendants fraudulently misrepresented their financial position in a financial plan submitted to the Department on or about September 6, 2011 ("Financial Plan"), which the Department reviewed and relied upon to issue a closure plan approval to Defendants.

22. The September 6, 2011 Financial Plan submitted by Defendants purported to satisfy N.J.A.C. 7:26-2A.9(f). The Financial Plan included both closure costs and general and administrative costs, and described how Defendants proposed to finance the Closure and Solar Projects. The Financial Plan showed that SEP's anticipated revenues from the tipping fees and future revenues from the sale of electricity generated at the

site would cover the costs of properly closing the Landfill as well as the costs of maintaining environmental controls during a mandatory thirty-year post-closure monitoring period.

23. However, the Projects only just broke even. The Financial Plan included a thirty-year projection of expenses for closure costs and long-term Landfill monitoring and maintenance expenses, as well as anticipated revenues from tipping fees and solar energy sales for the same period. The Financial Plan only showed net revenues of $24,562 over the entire projection.

24. Unbeknownst to the Department, by the time the Financial Plan was submitted, Defendants had already accumulated more than $2.5 million in debts related to the Closure and Solar Projects. Although the Financial Plan included an estimate of engineering costs for 2011-2013 of $600,000, Defendants knowingly omitted $1.3 million in unpaid engineering costs already accrued in 2010 and 2011 and owed to Matrix New World Engineering, Inc. (“Matrix”), and another $60,000 in expenses owed to Birdsall Services Group for its role in preparing the Financial Plan. Defendants also omitted $250,000 owed to a contractor, Cerra, Inc., for site preparation costs in 2010 and 2011.

25. Defendants also knowingly omitted SEP’s $950,000 private mortgage on the Landfill property. The mortgage falls into the category of general costs and was required to be

accounted for in the Financial Plan because, on information and belief, SEP planned to repay the mortgage using the revenue stream from the Closure and Solar Projects.

26. SEP first disclosed these debts in February 2012, four months after the ACO was executed on October 6, 2011. On February 2, 2012, in response to an inquiry from the Department, Richard Bernardi, via email, disclosed for the first time SEP's pre-existing debts to Matrix, Birdsall, Cerra, and for the Landfill mortgage.

27. On February 16, 2012, during a meeting between the Department and Richard Bernardi, DEP directed Defendants to submit a revised Financial Plan accounting for the debts identified in Mr. Bernardi's February 2, 2012 email.

28. Despite repeated requests to do so, Defendants never submitted a revised financial plan that accounted for the previously undisclosed debt. Revised financial plans submitted by Defendants in March and May of 2012 were rejected by DEP, in part because neither accounted for repayment of the previously undisclosed debts, but also because the March and May financial plans contained wholly new and wildly inflated revenue projections for which Defendants provided no supporting documentation.

NEGOTIATION OF THE ACO AND CLOSURE PLAN

29. After months of negotiations between Defendants and DEP over Defendants' closure plan application and the terms and conditions for the design of the Closure and Solar Projects, in October 2011 the parties reached an agreement on measures required to close the Landfill.

30. Before DEP would approve the plan it required financial assurance from Defendants consistent with the requirements of N.J.A.C. 7:26-2A.9(f) that, once begun, the Closure Project would be completed even if SEP did not find investors for the Solar Project.

31. The Department negotiated with SEP as to what form this financial assurance would take. Defendants themselves suggested and offered to place all tipping revenues into an escrow fund controlled by the Department in lieu of another form of financial assurance for closure costs, such as a performance bond, letter of credit, or insurance policy. Defendants proposed the 100% escrow requirement because Defendants were unwilling or unable to provide the other forms of financial assurance.

32. The Department agreed to Defendants' proposal and the escrow requirement was included in the terms of the closure plan approval.

33. The purpose of the escrow account is two-fold: the fund is meant to ensure that monies would be available to the State to carry out closure activities in the event of default by Defendants on their closure obligations, and the account creates a mechanism by which the Department can monitor and approve how tipping revenues are used by SEP and ensure that tipping revenues are spent only on qualifying closure costs.

34. The Department's rules for landfill closure escrow accounts, which Defendants agreed to be bound by, specify that the account "shall not constitute an asset of the owner or operator" of the landfill. In the event of bankruptcy of the landfill owner, "funds in the account will not be available to any creditor other than the Department." N.J.A.C. 7:26-2A.9(g)(19).

35. On October 6, 2011, Defendants and the Department memorialized the terms of the agreement in an Administrative Consent Order ("ACO"). Richard Bernardi signed it on behalf of SEP and in his individual capacity, agreeing to be personally liable for compliance during Phase I of the closure. Assistant Commissioner Wolfgang Skacel signed the agreement on behalf of the Department.

36. The primary purpose of the ACO (attached as **Exhibit A**) is to "effectuate the necessary closure of the Landfill" consistent with the agreed-upon terms of the

accompanying Closure and Post-Closure Plan Approval ("Closure Plan") issued on the same date (attached as **Exhibit B**).

37. The Closure Plan includes a DEP-approved Materials Acceptance Protocol ("MAP" or "Protocol") that authorizes Defendants to accept certain classes of recyclable fill material onto the Landfill including C&D fines, masonry brick, block, crushed glass, chipped tires, and certain contaminated materials with concentrations within the ranges established in the Department's regulations (collectively the "regulated fill materials").

38. Under the specific terms negotiated by Defendants and DEP, SEP was authorized to retain (without deposit in escrow) the first $100,000 of tipping revenues generated. After that milestone was met, SEP would retain 50% of subsequent tipping revenues up to $650,000 for specific expenses:

a. $50,000 for mobilization of site operations to receive and manage fill;
b. $100,000 for site operations for the first two months;
c. $150,000 for installation of soil erosion and sediment controls;
d. $300,000 for engineering and consulting fees for closure and regulatory permits; and
e. $50,000 for regulatory review and permit fees.

39. Thus, of the first $1.4 million in tipping revenues, Defendants would retain $750,000 and were required to escrow the remaining $650,000.

40. Once these up-front funds were retained, Defendants agreed to escrow all (i.e. 100%) of subsequent tipping revenues.

41. This escrow requirement -- that 100% of tipping revenues be placed into escrow once up-front monies were secured -- is an indispensable condition of the overall approval that appears no fewer than five times in the ACO and Closure Plan (Exhibit A ¶¶ 13, 21; Exhibit B ¶¶ 2, 3, 4).

42. Defendants agreed that they were not entitled to use the funds for any purpose without preauthorization from the Department. According to the Closure Plan, all withdrawals from the escrow account "shall be preauthorized on an expedited basis as feasible by the Department in writing before any funds are withdrawn to cover the costs of closure and post-closure care," in accordance with DEP's rules for landfill closure escrow accounts at N.J.A.C. 7:26-2A.9. Exhibit B, p. 1-2, ¶ 3. DEP in turn agreed to "expedite" authorization of withdrawals so Defendants could pay contractors and purchase necessary materials for closure in a timely fashion.

43. Defendants agreed to provide the Department with regular updates on tipping revenues and the escrow account. Pursuant to paragraphs 15 and 24 of the ACO, Defendants are to submit monthly progress reports to the Department detailing the receipt and disposition of MAP-approved materials. In the

reports, Defendants committed to providing information on revenues received by SEP as tipping fees for each type of MAP-approved material, including "a financial summary detailing the revenues received" from tipping fees (Exhibit A at p. 7, ¶ 24).

44. Defendants also agreed to maintain records of tipping revenues, including invoices, dump tickets, and receipts, and to make the records available for review by the Department upon request.

45. The parties agreed that if Defendants defaulted on any of their closure obligations, funds in the escrow account could be directly accessed and used by the Department to stabilize and/or close the Landfill, in part or in whole, to ensure protection of public health and safety and the environment.

46. The ACO and the Closure Plan require Defendants to cap the Landfill and install soil and sediment erosion control measures, a leachate collection and treatment system, a methane gas collection and venting system, and groundwater monitoring wells.

47. These controls, which are required by the Department's landfill closure rules, are justified at the Landfill because both the pre-existing landfilled waste and the regulated fill material imported by Defendants contain

contaminants that may pose a threat to the environment if not properly controlled.

48. The ACO and Closure Plan also require Defendants to fund and implement 30 years of post-closure monitoring and maintenance.

49. The ACO represents the complete and integrated agreement between Defendants and DEP. The agreement is binding upon Defendants and, by its terms and effect, inures to the benefit of the public, the State, and the Department.

50. The ACO and the Closure Plan allowed notice and opportunity to challenge the terms of the Department's approval in an administrative hearing if Defendants were not satisfied with the bargained-for terms. Defendants neither requested an administrative hearing nor otherwise filed an appeal from either document.

DEFENDANTS MISAPPROPRIATED TIPPING REVENUES

51. The Closure Plan describes a four-phase approach to closure of the Landfill. Phase I of the Closure Plan authorizes Defendants to re-contour 18 acres of the Landfill using 360,000 cubic yards of imported fill material.

52. Defendants began importing regulated fill material for Phase I in December 2011.

53. Defendants opened an escrow account with Wells Fargo Bank in February 2012 with a token deposit of $100, but thereafter Defendants failed to escrow any of their tipping revenues.

54. In a February 8, 2012 email, Richard Bernardi acknowledged that SEP was required to escrow its tipping revenues and he expressed his intention to comply with the ACO's escrow provisions: "When we hit $100,000 we begin escrowing 50% as per the ACO."

55. However, Defendants never complied with the ACO and failed to deposit any of the tipping revenues into escrow.

56. Defendants' consulting professional engineer, Bashar Assadi, prepared monthly reports to the Department detailing the exact amounts of material delivered each day. At all times relevant to this complaint, Assadi worked for Birdsall Services Group and was contracted to provide engineering services to Defendants on the Landfill Closure and Solar Projects.

57. At a meeting on May 10, 2012, Assadi admitted to the Department that Defendants had collected at least $250,000 in tipping revenues, but that no monies had been placed into escrow.

58. Assadi confirmed that Defendants were aware of the escrow obligation, but that Defendants were refusing to

comply in an attempt to pressure the Department to revise the terms of the ACO to Defendants' liking.

59. In eighteen (18) monthly reports submitted to the Department between December 2011 and June 2013, Defendants deliberately withheld all information concerning tipping revenues and the rates that Defendants charged to haulers.

60. Richard Bernardi refused to provide any information about revenues when confronted by the Department. On May 14, 2012, during a routine inspection of the Landfill, a Department inspector asked Richard Bernardi to review a price list for incoming materials. The inspector informed Bernardi that such records were required to be provided to the Department. Bernardi refused to provide any records relating to tipping revenues.

61. In July 2012, in filings opposing the Department's Order to Show Cause to halt fill deliveries to the Landfill because of a laundry-list of violations by Defendants, Richard Bernardi certified that Defendants had received $1,265,184 in tipping revenues between January 1, 2012 and July 15, 2012 for 137,130 cubic yards of fill material, charging on average $9.22 per cubic yard.

62. On information and belief, and based on a review of all monthly reports to date, Defendants have collected tipping fees on 375,366 cubic yards of regulated fill material.

Using Defendants' average tipping fee of $9.22 per cubic yard as of July 2012, Plaintiffs estimate that Defendants have collected more than $3.4 million in tipping revenues for Phase I.

63. No tipping revenue was ever deposited in the escrow account, which has a current balance of $86.

64. On information and belief, Defendants have used all or a portion of the tipping revenues to pay Defendants' pre-existing and undisclosed debts instead of closure costs, and/or have been siphoned off as profit by Richard and Marilyn Bernardi through SEP.

65. Defendants have neither sought nor obtained any authorization from the Department to use tipping revenues for closure costs. Defendants have not accounted for the use of these funds.

66. As of June 2013, Defendants were far behind schedule on closure of the Landfill and were not consistently covering the landfill with clean soil at the end of each day to contain odors. Defendants had not installed any part of a landfill gas collection system or installed any part of the required leachate collection and treatment system. Defendants had not installed all of the required groundwater monitoring wells and had not obtained permits needed to proceed with Phase II of the closure.

DEFENDANTS HAVE CREATED A PUBLIC NUISANCE

67. Beginning in November 2012, the decomposition of gypsum-containing C&D fines imported at the Landfill began to generate foul odors caused by the anaerobic decomposition of sulfate in ground wallboard into hydrogen sulfide, a noxious gas that smells like rotten eggs.

68. The odors caused by Defendants' fill materials grew, over subsequent months, to be overwhelming to neighboring property owners, and continue to this day. The odors pose a continuing public nuisance.

69. Defendants are responsible for abating this nuisance under the terms of the ACO and the Closure Plan, yet they have failed to contain, treat, abate, and/or mitigate the odors.

70. The Closure Plan forbids the release of air contaminants in violation of N.J.A.C. 7:27-5.2(a), which prohibits emission of contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, or which unreasonably interferes with the enjoyment of life or property in the State.

71. Roxbury Township began receiving numerous complaints regarding "sewage" odors in the area of the Landfill in November 2012. After investigating the complaints, the Roxbury Health Department determined that there was no problem

with the sanitary sewer system, and that the odors were originating from the Landfill. During a November 20, 2012 inspection of the site, Richard Bernardi acknowledged that the odors were from hydrogen sulfide gas produced by decomposing fill at the Landfill.

72. Defendants agreed in the ACO to control odors by applying daily cover (soil). If this is not sufficient, Defendants must apply a suitable DEP-approved deodorant (odor control chemical), or DEP can require a change in the type of materials accepted.

73. On November 30, 2012, the Department filed an Order to Show Cause in Superior Court, Docket No. MRS-C-50-12, seeking to restrain SEP from accepting additional fill material until Defendants covered the exposed malodorous material with soil on a daily basis, as required by the Closure Plan.

74. Reports prepared by DEP and a court-appointed expert retained by Superior Court Judge Deanne Wilson both concluded that the decay of sulfate-containing gypsum wallboard material accepted by SEP is the cause of emissions of hydrogen sulfide, accounting for the rotten-egg like odors experienced by nearby residents and the general public.

75. The Department’s Report on Odor Control Issues at Fenimore Landfill found that the disposal of ground-up C&D fines resulted in recurring odors from the Landfill. The report

states that the level at which an odor is detectable to the olfactory senses in the ambient air is around eight parts per billion ("ppb").

76. The Court's independent expert concluded that the odor complaints were attributable to the hydrogen sulfide emissions and were consistent with decomposition of gypsum wallboard in ground construction debris. The expert's report described hydrogen sulfide gas as a highly odorous, noxious gas with a characteristic rotten-egg odor.

77. On December 10, 2012, Judge Wilson ordered SEP to cover the eighteen-acre Phase I area with fill by December 12, 2012, and to import and store sufficient extra clean cover soil so any exposed areas could be covered at the end of every work day.

78. Defendants did not comply with the odor control requirements of the Closure Plan, or with the Court's December 10th order. While Defendants applied cover soil to some portions of the Phase I area, Defendants did not maintain continuous soil cover and the noxious odors grew worse. The side slopes of the Landfill remain exposed and to this day have never been covered.

79. In the spring of 2013, Roxbury Township hired an engineering firm to install stationary hydrogen sulfide monitors in the neighborhoods west and south of the Landfill. The

monitors recorded instantaneous gas readings as well as average readings in fifteen- and thirty-minute blocks.

80. In April, May, and June 2013, these stationary monitors recorded hundreds of instances of thirty-minute block hydrogen sulfide readings over the olfactory threshold of eight ppb, including thirty-minute average readings as high as 419 ppb on June 15, 2013.

81. The Roxbury Township Manager estimates that Roxbury received hundreds of complaints from neighboring property owners and the public regarding foul, rotten-egg like odors affecting both residents' and the general public's enjoyment of private property and public spaces.

82. The Roxbury Health Department has received almost daily reports from residents complaining of headaches, breathing difficulties, nose and throat discomfort, along with difficulty carrying on daily living activities, including sleeping, due to the odors in the vicinity of the Landfill. Residents have complained that the odor is so strong that it makes their eyes water, irritates their skin, and even induces vomiting.

83. As of June 26, 2013, the Department had received 2,523 complaints spanning a six-month period about rotten-egg odors from the Landfill. Department inspectors personally verified 172 of the complaints, meaning that an inspector personally determined that the duration and intensity of the

odor unreasonably interfered with the complainant's enjoyment of life and property in the vicinity of the odor.

84. Roxbury School District officials have reported a noticeable increase in students reporting to the school nurse's office with complaints and/or symptoms consistent with those documented as resulting from exposure to hydrogen sulfide gas. This increase has been most noticeable at the two elementary schools and one middle school that service students living in close proximity to the Landfill, which is almost twenty-five percent of the student population for the Roxbury public schools.

85. DEP issued ten Administrative Orders and Notices of Civil Administrative Penalty Assessment to Defendants for violating the noxious odor prohibitions of the New Jersey Air Pollution Control Act between December 2012 and June 2013. Roxbury Township has issued at least twenty-six summonses for causing a public health nuisance.

86. On June 24, 2013, in the case of Roxbury Township ex rel. State of New Jersey v. Richard Bernardi, Strategic Environmental Partners, LLC, the Roxbury Township Municipal Court found SEP and Richard Bernardi guilty of twenty-six statutory health code violations for creating a nuisance and allowing it to continue.

87. As a result of Defendants' failure to control odors, on June 26, 2013, after months of half-steps and excuses by Defendants, the Department assumed emergency control of the Landfill under the legislative authority granted the Commissioner to prevent imminent environmental harm and to abate the public nuisance from the continued hydrogen sulfide emissions. See L. 2013, c. 69, § 9.

88. Since then, at a cost of at least $400,000, the Department has taken emergency measures to abate and mitigate the noxious emissions polluting the environment and negatively affecting the reasonable enjoyment of life and property by residents living near the Landfill. DEP installed a temporary Posi-Shell® cap over the fill and a gas collection system to capture the hydrogen sulfide in an effort to reduce odors from the Landfill.

89. Noxious odors from the Landfill continue to this day and DEP continues to expend public funds to abate them.

INDIVIDUAL LIABILITY OF RICHARD AND MARILYN BERNARDI

90. Richard Bernardi defrauded the State by failing to report debts prior to entering into the ACO and Post-Closure Plan, failing to ensure compliance with the ACO and Post-Closure Plan, failing to report revenues generated through the

collection of tipping fees and failing to deposit tipping fees into the escrow account as he, by signing the ACO, agreed to do.

91. SEP operates from the Bernardis' home at 7 Michael Court in Millstone, New Jersey. On information and belief, SEP does not have any employees and its principal asset is the Landfill.

92. Although Marilyn Bernardi is SEP's legal owner and sole member, she has ceded control over the company to her husband. Richard Bernardi signs legal documents on SEP's behalf, makes SEP's business decisions, represents the business in communications with the Department, and runs the business' day-to-day operations.

93. At all times described in this Complaint, Richard Bernardi was acting within the scope of the authorization granted by Marilyn Bernardi. In a certification dated July 26, 2013 and filed in the Office of Administrative Law, Marilyn Bernardi declared that Richard Bernardi "has always had my permission and authority to act on behalf of SEP. I am and at all times have been aware that my husband has signed contracts and has executed legally binding documents in the name of SEP and has at all times had my permission and authority to do so."

94. Richard Bernardi assumes whatever title and role suits his purposes at the time. He has held himself out as, variously, SEP's managing member (on the mortgage for the

Landfill property), its director (on the ACO), and its president (in a Verified Complaint filed in Superior Court on May 20, 2012) in binding legal documents.

95. Despite these unequivocal representations, Richard Bernardi has also alleged, in a creditor-debtor action filed against him earlier this year, that he was unemployed with no assets or income, no cash on hand, and no property valued at more than $1,000. Through counsel, Richard Bernardi claimed that he had “never been an employee, officer, member, independent contractor or consultant” of SEP and “never before received any compensation” from SEP.

96. Through their attempts to obfuscate Richard Bernardi's role within SEP, the Bernardis have abused the legal protection of a limited liability company in an attempt to shield Marilyn Bernardi from liability by avoiding direct involvement in her business' dealings, all while retaining the benefit of collecting and keeping for their personal use at least $1.265 million, and potentially up to $3.4 million, in tipping revenue.

97. Under the principles of corporate veil piercing, Richard and Marilyn Bernardi may both be held individually, jointly, and severally liable for any judgment entered against SEP.

98. As SEP's sole member, Marilyn Bernardi is individually responsible as a corporate officer for ensuring that SEP complies with the terms of the ACO and the Closure Plan and that SEP abides by the laws of New Jersey, including the False Claims Act, N.J.S.A. 2A:32C-1 et seq.

99. Moreover, Marilyn Bernardi is individually, jointly, and severally liable for the actions of Richard Bernardi under the principles of agency, respondeat superior, and vicarious liability.

COUNT 1

(Common Law Fraud)

100. Plaintiffs repeat and re-allege the allegations set forth above as if set forth herein in their entirety.

101. Before the ACO was executed, Defendants knowingly, and with intent to defraud the Department and to induce the Department's reliance, submitted the Financial Plan, omitting approximately $2.5 million in debts already owed by SEP related to the Closure and Solar Projects under consideration by the Department.

102. Defendants had an obligation to disclose approximately $2.5 million in pre-existing debts in the Financial Plan. Matrix certified that the engineering debt was for services rendered in 2010 and 2011 on the Closure and Solar Projects. This debt and those owed to Birdsall (for preparation

of the Financial Plan and consulting services during negotiations over the ACO) and Cerra (for site clearing and other site preparation services performed in 2011 before the ACO was signed) fall into the category of "general and administrative costs" required to be disclosed by N.J.A.C. 7:26-2A.9(f). Similarly, the mortgage was a "general cost" that was required to be disclosed because it is an expense integral to SEP's Closure and Solar Projects. See ibid.

103. Had the Defendants properly accounted for these debts, the Financial Plan would have shown that the Closure and Solar Projects were not financially viable. Instead of breaking even over the life of the Projects -- the Financial Plan's projected net revenues exceed net expenses by a narrow margin of $24,562 over the life of the Projects and post-closure monitoring period -- SEP's Financial Plan should have shown that anticipated revenues would fall short of projected expenses by more than $2 million.

104. Defendants concealed the Financial Plan's material omissions and the Department reasonably believed the Financial Plan to be representative of all expenses and debts required to be disclosed by N.J.A.C. 7:26-2A.9(f).

105. The Department justifiably relied on the Financial Plan to evaluate SEP's application for closure plan authorization.

106. Richard Bernardi was aware when signing the ACO that the Department did rely on the Financial Plan and only entered into the agreement "based on . . . its review of financial information presented by SEP." Ex. A, pp. 2-3, ¶ 10.

107. Considering Defendants' true financial situation, SEP would not be able to fund closure activities from the tipping revenues if these monies were funneled to the repayment of its pre-existing debt. Under these circumstances, the Department would not have approved a closure plan for SEP and no fill would have been imported to the Landfill.

108. Had Defendants disclosed the pre-existing debts in the Financial Plan without accounting for additional revenues to cover the shortfall between revenues and expenses, the Department would have negotiated for additional financial assurance and possibly would not have entered into the agreement. In any event, DEP would not have entered the ACO as currently drafted.

109. The State has suffered damages as a result of SEP's and Richard Bernardi's fraudulent submission. At significant expense to the public, the Department is engaged in efforts to abate the public nuisance caused by SEP and Richard Bernardi and exacerbated by their refusal to comply with the requirements of the ACO to manage odors at the Landfill.

WHEREFORE, Plaintiffs respectfully request the entry of a judgment against Defendants SEP, Richard Bernardi, and Marilyn Bernardi jointly and severally:

a. Awarding damages to Plaintiffs for actual response costs already incurred by the Department, with interest;

b. Imposing liability for continuing expenditures by the Department to abate and mitigate hydrogen sulfide emissions at the Landfill, including post-mitigation monitoring and maintenance costs;

c. Awarding costs; and

d. Granting such other relief as the Court shall deem just and proper.

COUNT 2

(Equitable Fraud)

110. Plaintiffs repeat and re-allege the allegations set forth above as if set forth herein in their entirety.

111. In September 2011 Defendants submitted the Financial Plan in support of Defendants' application for closure plan authorization.

112. The Financial Plan omitted material facts concerning SEP's finances and the feasibility of the Closure and Solar Projects because it failed to account for $2.5 million in

pre-existing debts that were required to be disclosed to the Department.

113. Defendants concealed the Financial Plan's material omissions and the Department reasonably believed the Financial Plan to be representative of all expenses and debts required to be disclosed by N.J.A.C. 7:26-2A.9(f).

114. The Department justifiably relied upon the false representations in the Financial Plan to enter into the ACO and issue the Closure Plan to SEP.

115. Considering Defendants' true financial situation, SEP would not be able to fund closure activities from the tipping revenues if these monies were funneled to the repayment of its pre-existing debt. Under these circumstances, the Department would not have approved a closure plan for SEP and no fill would have been imported to the Landfill.

116. Had Defendants disclosed the pre-existing debts in the Financial Plan without accounting for additional revenues to cover the shortfall between revenues and expenses, the Department would have negotiated for additional financial assurance and may not have entered into the agreement. In any event, DEP would not have entered the ACO as currently drafted.

WHEREFORE, Plaintiffs respectfully request the entry of a judgment against Defendants SEP, Richard Bernardi, and Marilyn Bernardi jointly and severally:

a. Imposing equitable remedies, including:

1. Imposing a constructive trust on all tipping revenues received by Defendants;
2. Ordering Defendants to provide an accounting, at Defendants' expense and performed in accordance with Generally Accepted Accounting Principles, of the business records and accounts of SEP and the personal records and accounts of Richard and Marilyn Bernardi, from the time of SEP's purchase of the Landfill to the present;
3. Ordering Defendants to provide all underlying documents and information used to prepare the accounting, including but not limited to, invoices, dump tickets, receipts, checks received, and bank records;
4. Appointing a receiver to assume control of the Landfill property on completion of the Department's abatement measures and to carry out closure activities prescribed in the

Closure Plan, drawing upon the tipping revenues in the trust;

5. Ordering Defendants to reimburse the receiver for all costs to complete the Landfill closure which exceed the value of the trust funds; and

6. Ordering Defendants to pay the reasonable expenses of the receiver to administer the Landfill closure.

b. Awarding costs; and

c. Granting such other relief as the Court shall deem just and proper.

COUNT 3

(False Claims Act, N.J.S.A. 2A:32C-3(g))

117. Plaintiffs repeat and re-allege the allegations set forth above as if set forth herein in their entirety.

118. The False Claims Act imposes civil penalties and treble damages upon any person who knowingly makes or causes to be made a false record or statement to conceal, avoid, or decrease an obligation to transmit money to the State. N.J.S.A. 2A:32C-3(g).

119. Civil penalties are linked to the penalty range in the federal False Claims Act, 31 U.S.C. 3729 et seq. and currently range from $5,500 to $11,000 per violation.

120. At all times relevant to this complaint, Defendants knew of their obligation to transmit tipping revenues into an escrow account under the control of the Department for exclusive use to fund the Landfill's closure. If the Defendants defaulted, the escrow funds would pass to the State for closure purposes. The State therefore has a compelling interest in the use of the escrow funds, which inure to the public's benefit when used as required to fund closure costs, as well as a contingent ownership right to the monies in the event of default by SEP.

121. In direct violation of the ACO, Defendants did not deposit any of at least $1.2 million in acknowledged tipping revenues and an estimated $3.4 million in total tipping revenue into escrow. Defendants misappropriated all of the tipping revenues for themselves.

122. Defendants submitted -- and Richard Bernardi as SEP's manager, who oversaw all daily operations of the LLC, caused to be submitted -- false records to the Department every time Defendants provided monthly reports that omitted tipping revenues.

123. Defendants omitted this information to conceal the extent of revenues collected by Defendants and thereby avoid making escrow payments. This omission constitutes a false statement to the State.

124. To date the State has incurred damages in the amount of at least $400,000 to install a landfill gas collection system and a temporary cap on the Landfill.

125. These closure-related costs were paid with public funds because Defendants have misappropriated the tipping revenues and the escrow account is empty.

126. The State will spend significant public funds in the future for closure-related expenses at the Landfill.

WHEREFORE, Plaintiffs respectfully request the entry of a judgment against Defendants SEP, Richard Bernardi, and Marilyn Bernardi jointly and severally:

a. Assessing civil penalties of $11,000 allowable under N.J.S.A. 2A:32C-3 for each of the eighteen monthly reports submitted between December 2011 and June 2013 that omitted the rate and total revenues charged for deliveries of fill material to the Landfill in that period, with interest;

b. Awarding damages in the amount of three times the value of the funds owed to the escrow account, with interest;

c. Awarding reasonable attorney's fees, expenses, and costs allowable pursuant to N.J.S.A. 2A:32C-8; and

d. Granting such other relief as the Court shall deem just and proper.

COUNT 4

(False Claims Act, N.J.S.A. 2A:32C-3(d))

127. Plaintiffs repeat and re-allege the allegations set forth above as if set forth herein in their entirety.

128. The False Claims Act imposes civil penalties and treble damages upon any person who has possession, custody, or control of money to be used by the State and who knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt. N.J.S.A. 2A:32C-3(d).

129. Defendants took possession and retain control over tipping revenues, which monies were to be escrowed in the Department-controlled account for use at the State's behest under the terms of the ACO and Closure Plan.

130. Defendants issued invoices and received receipts and/or certificates from the haulers in the amount of the tipping revenues charged by Defendants.

131. Defendants did not deliver any of the tipping revenues into the escrow account.

WHEREFORE, Plaintiffs respectfully request the entry of a judgment against Defendants SEP, Richard Bernardi, and Marilyn Bernardi jointly and severally:

a. Assessing civil penalties of $11,000 for each of the eighteen monthly reports submitted between December 2011 and June 2013 that omitted the rate and total revenues charged for deliveries of fill material to the Landfill in that period, with interest;

b. Awarding damages in the amount of three times the value of the funds owed to the escrow account, with interest;

c. Awarding reasonable attorney's fees, expenses, and costs allowable pursuant to N.J.S.A. 2A:32C-8; and

d. Granting such other relief as the Court shall deem just and proper.

COUNT 5

(Breach of Fiduciary Duty)

132. Plaintiffs repeat and re-allege the allegations set forth above as if set forth herein in their entirety.

133. An implied fiduciary relationship existed between Defendants and the Department. Defendants were entrusted to charge and take receipt of tipping revenues and to conduct the

closure of the Landfill for the benefit of the public and the environment. Defendants, by entering into the ACO and Closure Plan, were under a duty to the State to fully and properly account for all tipping revenues received, to escrow all of the funds for use in the Landfill closure, and to use the funds only for pre-approved closure costs.

134. The tipping revenues intended for the escrow account are not assets belonging to Defendants. N.J.A.C. 7:26-2A.9(g)(19).

135. Defendants breached this duty by concealing the amount of tipping revenues received, by refusing to account for how these funds were used, and by failing to escrow the funds.

136. To date the State has incurred damages in the amount of at least $400,000 to install a landfill gas collection system and a temporary cap on the Landfill.

137. These closure-related costs were paid with public funds because Defendants have misappropriated the tipping revenues and the escrow account is effectively empty.

138. The State will spend more public funds in the future for closure-related expenses at the Landfill.

WHEREFORE, Plaintiffs respectfully request the entry of a judgment against Defendants SEP, Richard Bernardi, and Marilyn Bernardi jointly and severally:

a. Imposing a constructive trust on all tipping revenues;

b. Awarding damages in the amount of the tipping revenues collected by Defendants and which were required to be placed into escrow, with interest;

c. Awarding costs; and

d. Granting such other relief as the Court shall deem just and proper.

COUNT 6

(Unjust Enrichment)

139. Plaintiffs repeat and re-allege the allegations set forth above as if set forth herein in their entirety.

140. Defendants agreed to close the Landfill in return for permission from the State to import regulated fill material that Defendants were not otherwise authorized by law to accept.

141. The fill material was a necessary component of the Solar Project, from which Defendants expected to obtain significant revenue.

142. Defendants received a benefit in return for promising to perform a landfill closure that would inure to the benefit of the public and to the environment.

143. The tipping revenues intended for the escrow account are not assets belonging to Defendants. N.J.A.C. 7:26-2A.9(g)(19).

144. Defendants misappropriated tipping revenues dedicated to the Landfill closure without performing the closure.

145. The State upheld its end of the bargain by allowing Defendant to import fill material, and Defendants enriched themselves unjustly by withholding the tipping revenues and by not performing their obligations under the ACO.

146. To allow Defendants to retain the tipping revenues would be a manifest injustice.

WHEREFORE, Plaintiffs respectfully request the entry of a judgment against Defendants SEP, Richard Bernardi, and Marilyn Bernardi jointly and severally:

a. Imposing a constructive trust on all tipping revenues received by Defendants;

b. Ordering Defendants to provide an accounting, at Defendants' expense and performed in accordance with Generally Accepted Accounting Principles, of the business records and accounts of SEP and the personal records and accounts of Richard and Marilyn Bernardi, from the time of SEP's purchase of the Landfill to the present;

c. Ordering Defendants to provide all underlying documents and information used to prepare the accounting, including but not limited to, invoices, dump tickets, receipts, checks received, and bank records;

d. Awarding disgorgement to Plaintiffs of all tipping revenues by which Defendants have been unjustly enriched, with interest;

e. Awarding costs; and

f. Granting such other relief as the Court shall deem just and proper.

COUNT 7

(Public Nuisance)

147. Plaintiffs repeat and re-allege the allegations set forth above as if set forth herein in their entirety.

148. Hydrogen sulfide is being emitted from the Landfill and has traveled (and continues to travel) off-site into the surrounding areas where noxious odors pollute the environment and negatively affect the public's reasonable enjoyment of life and property in the vicinity of the Landfill.

149. Emissions of hydrogen sulfide gas from the Landfill constitute a substantial and unreasonable interference with the public rights of the State's citizens, including but not limited to the right to public comfort and welfare, and the

right of members of the public to use and enjoy public spaces such as schools, parks, playing fields, and the public streets, and the use of private property, without unreasonable intrusion or interference.

150. Defendants, by their operation of the Landfill and the resulting emissions of hydrogen sulfide gas therefrom, are knowingly, intentionally or negligently creating, maintaining, and/or contributing to a public nuisance disruptive to the State's citizens and residents on whose behalf Plaintiffs seek relief.

151. Defendants failed to take reasonable and timely measures to control and abate odors from the Landfill.

152. Defendants repeatedly were directed to implement odor control measures, including the application and maintenance of a continuous layer of clean cover material during Phase I, but Defendants did not fully comply either with orders from the Court or from DEP.

153. If unabated, hydrogen sulfide emissions will continue to contribute to noxious odors and resulting in pollution of the environment and unreasonably interfering with the rights of the public.

154. By failing to abate odors from the Landfill, Defendants have caused and contributed to, and continue to cause and contribute to, the maintenance of a public nuisance.

155. Defendants are jointly and severally liable for these emissions under the common law of public nuisance.

WHEREFORE, Plaintiffs respectfully request the entry of a judgment, against Defendants SEP, Richard Bernardi, and Marilyn Bernardi jointly and severally:

a. Holding Defendants liable for creating, contributing to, and/or maintaining a public nuisance;

b. Awarding reimbursement to Plaintiffs for actual response costs already incurred by the Department, with interest;

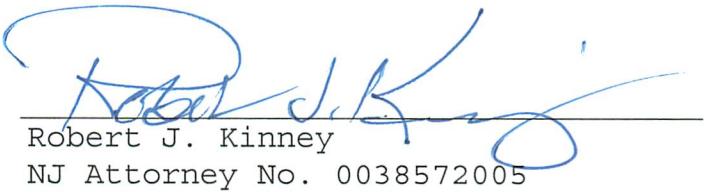
c. Imposing liability for reimbursement of continuing expenditures by the Department to abate and mitigate hydrogen sulfide emissions at the Landfill;

d. Imposing liability for post-mitigation monitoring and maintenance costs;

e. Awarding costs; and

f. Granting such other relief as the Court shall deem just and proper.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Robert J. Kinney
NJ Attorney No. 0038572005
Deputy Attorney General

DATE: September 24, 2013

RULE 4:5-1 CERTIFICATION

I hereby certify that I am a Deputy Attorney General assigned to prosecute this matter and am counsel of record for the within matter. I am designated trial counsel pursuant to R. 4:5-1(c). The matter in controversy is also the subject of two administrative hearings pending before the Office of Administrative Law (Strategic Envtl. Partners, LLC, et al. v. Dep't of Envtl. Protection, Dkt. No. ECE 08213-2012 N, ECE 08214-2012 N), two actions in Morris County Superior Court, Law Division (O'Brien, et al. v. Strategic Envtl. Partners, LLC, Dkt. MRS-L-1100-13 (consolidated with MRS-L-1385-13) and Dep't of Envtl. Protection v. Strategic Envtl. Partners, LLC et al., MRS-L-2278-13), two appeals before the Appellate Division (Strategic Envtl. Partners, LLC v. Dep't of Envtl. Protection, Dkt. A-4676-12 and Dkt. A-5283-12), and a federal lawsuit in the District of New Jersey (Strategic Envtl. Partners, LLC et al. v.

Bucco et al., Dkt. No. 13-cv-5032). The relevant parties are SEP, Richard Bernardi, Marilyn Bernardi, and the Department.

I am not aware of any other parties who should be joined in this litigation.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

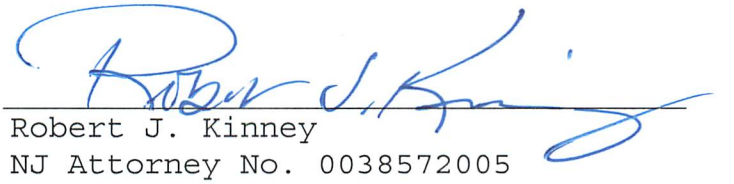
By: _____
Robert J. Kinney
NJ Attorney No. 0038572005
Deputy Attorney General

DATE: September 24, 2013

DESIGNATION OF TRIAL COUNSEL

Deputy Attorney General Robert J. Kinney is hereby designated as trial counsel for this matter.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Robert J. Kinney
NJ Attorney No. 0038572005
Deputy Attorney General

DATE: September 24, 2013