

JOHN J. HOFFMAN
Acting Attorney General of New Jersey
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093
Attorney for New Jersey Department of
Environmental Protection

By: Robert J. Kinney (NJ Bar # 0038572005)
Lisa Almeida (NJ Bar # 001062008)
Deputy Attorneys General
(609) 292-1557

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

STATE OF NEW JERSEY, DEPARTMENT	:	
OF ENVIRONMENTAL PROTECTION,	:	
	:	
Plaintiff,	:	<u>CIVIL ACTION</u>
	:	
v.	:	
	:	
STRATEGIC ENVIRONMENTAL	:	VERIFIED COMPLAINT FOR
PARTNERS, LLC, RICHARD BERNARDI	:	SUMMARY ACTION PURSUANT TO
AND MARILYN BERNARDI,	:	<u>R. 4:67-1, N.J.S.A. 13:1E-</u>
individually.	:	<u>9(d) AND N.J.S.A. 26:2C-19(a)</u>
	:	
Defendants.	:	

Plaintiff, State of New Jersey, Department of Environmental Protection ("DEP" or "Department"), by way of Verified Complaint against Strategic Environmental Partners, LLC ("SEP"), Richard Bernardi and Marilyn Bernardi, individually (collectively, "Defendants"), says:

NATURE OF THE ACTION

1. This is a summary action pursuant to R. 4:67-1, N.J.S.A. 13:1E-9(d) of the Solid Waste Management Act ("SWMA") and N.J.S.A. 26:2C-19(a) of the Air Pollution Control Act ("ACPA") for civil penalties, injunctive relief and appropriate costs as authorized by each statute.

PARTIES

2. The Department is a principal department of the State of New Jersey and the agency charged with enforcement of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., with offices at 401 East State Street in Trenton, New Jersey.

3. SEP owns the Fenimore Landfill, an approximately 101-acre property identified as Block 7404, Lot 1 on the tax map of Roxbury Township in Morris County. SEP was incorporated in 2002 and lists an address of 7 Michael Court in Millstone, New Jersey. See Certification of Robert Kinney ("Kinney Cert."), Exhibit 1.

4. Marilyn Bernardi, named individually, is the sole owner and President of SEP. ("Kinney Cert."), Exhibit 11.

5. Richard Bernardi, named individually, is the spouse of Marilyn Bernardi and operates the landfill on a daily basis as the "authorized agent" of SEP. Kinney Cert., Exhibit 13.

STATEMENT OF FACTS COMMON TO ALL COUNTS

6. The Fenimore landfill operated as a sanitary landfill from the mid-1950s to approximately 1979, accepting municipal solid waste from nearby municipalities. Kinney Cert., Exhibit 1, ¶ 2. In 1977, the Department ordered the landfill to close, but it was never properly closed and capped to control emissions of landfill gases or to collect and treat contaminated leachate. Ibid.

7. In 2009, Richard Bernardi approached the Department with a proposal to close and cap the Fenimore landfill and install a solar energy generating array. See "Certification of Robert Confer" ("Confer Cert."), ¶ 6. To facilitate the installation of the proposed array, SEP requested authorization to bring in approximately 1.2 million cubic yards ("CY") of regulated fill materials, principally crushed construction and demolition debris ("C&D fines"). Id.

8. In February 2011, SEP acquired the Fenimore landfill property for \$1 million. Kinney Cert., Exhibit 15. In conjunction with the acquisition, Richard Bernardi executed a \$950,000 mortgage agreement as the "Managing Member" of SEP. Kinney Cert., Exhibit 16. Marilyn Bernardi, President of SEP, personally guaranteed the mortgage. Id.

9. On October 6, 2011, the Department issued a Closure and Post-Closure Plan and Post-Closure Financial Plan ("Closure Plan") to SEP, pursuant to the SWMA and regulations established at

N.J.A.C. 7:26-2A.9, to close and cap the Fenimore landfill over a four-year, four-phase period. See Kinney Cert., Exhibit 2. The Closure Plan authorized SEP to accept regulated fill material pursuant to a Materials Acceptance Plan ("MAP") and collect tipping fees while obligating it to install and improve numerous environmental safeguards, including ground water monitoring wells, a leachate collection and treatment system, and a landfill gas collection system. Id., at p. 4-5.

10. In conjunction with the Closure Plan, the Department and SEP also entered into a corresponding Administrative Consent Order ("ACO") pursuant to the SWMA. Kinney Cert., Exhibit 1. By its express terms, the ACO incorporated the Closure Plan, and represented the complete, integrated agreement of the parties. Defendant Richard Bernardi signed the ACO in his individual capacity, assuming personal liability for "Phase I" of the closure. Id., p. 12. Mr. Bernardi also signed the ACO as "Director" of SEP. Id. The ACO was executed by SEP, Richard Bernardi and the DEP on October 6, 2011.

11. The ACO constituted a Final Agency Order, enforceable in a summary proceeding under R. 4:67-6 against SEP. Id., p. 10, ¶ 37. Both the ACO and the Closure Plan provided SEP with notice and opportunity to challenge any disputed terms in an administrative hearing. SEP did not request an administrative hearing or file a timely appeal of the Final Agency Order.

12. While variously describing himself as SEP's managing member, director, and president, Richard Bernardi failed to report debts prior to the entering into of the ACO and Post-Closure Plan, failed to ensure compliance with the ACO and Post-Closure Plan, failed to report revenues generated through the collection of tipping fees and failed to deposit tipping fees into the escrow account.

13. 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." Kinney Cert., Exhibit 12.

14. As SEP's legal owner and sole member, Marilyn Bernardi has ceded control over the company to her husband, Richard Bernardi, who has held himself out as a duly authorized representative of SEP, signed documents on SEP's behalf, is involved in SEP's business decisions, represents the business in communications with the Department, and runs the day-to-day Landfill operations.

15. The ACO and Closure Plan authorized SEP to begin the first phase of the closure. Among its numerous provisions, SEP was required to comply with appropriate provisions of the SWMA and its regulations regarding the importation and handling of MAP-approved materials. See Id. ¶¶ 8, 18. SEP also was required by the Closure Plan to control "malodorous emissions" from the landfill, pursuant to N.J.A.C. 7:27-5.2(a) of the ACPA. Id. at ¶ 12.

16. Pursuant to paragraphs 15 and 24 of the ACO, SEP was required to submit monthly progress reports to the Department detailing the receipt and disposition of MAP-approved materials brought to the site. Id. ¶¶ 15, 24. These monthly reports also were required to include information on revenues received by SEP as tipping fees for each type of MAP-approved material. Ibid.

17. Pursuant to paragraph 21 of the ACO and condition 2 of the Closure Plan, SEP was required to establish a means for meeting the costs of each phase of the closure as well as the post-closure care period. Kinney Cert., Exhibit 1, p. 6, ¶ 21, Exhibit 2, p. I-1, ¶ 2. This included establishing and funding an alternative funds escrow account pursuant to N.J.A.C. 7:26-2A.9(g) within 30 days of the effective date of the ACO, and depositing the revenue from the previous month into the account on a monthly basis. Ibid.

18. Pursuant to Condition 31 of the Closure Plan, all tipping fee revenue was to be spent on closure or post-closure activities. Kinney Cert., Exhibit 2, p. I-7, ¶ 31.

19. SEP was required to establish the escrow account no later than November 6, 2011, 30 days after the effective date of the ACO. SEP did not set up the escrow account (with Wells Fargo Bank) until February 1, 2012. Kinney Cert., Exhibit 19. Marilyn Bernardi signed the escrow agreement and account documents as "President" of SEP. Id.

20. According to the monthly escrow statements from Wells Fargo, SEP made an initial deposit of \$100 in February 2012 and a second deposit of \$150 in April 2012. Kinney Cert., Exhibit 20. SEP withdrew \$150 in June 2012 and made no other deposits. The escrow account balance as of June 26, 2013 was \$86. Ibid.

21. On May 11, 2012, the Department issued a Notice of Termination of Administrative Consent Order to SEP for failing to comply with various conditions of the ACO, including SEP's failure to escrow its tipping fee revenues and demonstrate sufficient funding for the closure. Kinney Cert., Exhibit 3. The Department also issued a Notice of Intent to Revoke the Closure Plan. Id.

22. Subsequently, on May 21, 2012, SEP filed an action in Morris County Superior Court to enjoin DEP's actions, which the Department opposed. In July 2012 at the direction of the Court, Richard Bernardi submitted a Certification stating that SEP had received \$1,265,184 in tipping fees from January 1, 2012 to July 15, 2012 from the deposit of 137,130 CY of fill material (approximately \$9.22/CY). Kinney Cert., Exhibit 8, p. 6, ¶ 19.

However, as of July 2012, SEP's escrow account held only \$100. Kinney Cert., Exhibit 20.

23. Since the Closure Plan was issued in October 2011, SEP has accepted 375,366 CY of regulated material. At \$9.22/CY, total tipping fees received would be \$3,460,874.50. The current balance of the escrow account is \$86. Id.

24. In mid-November 2012, the Department began receiving complaints about odors emanating from the landfill. The Department's investigation indicated that anaerobic digestion of ground gypsum wallboard from construction debris delivered to the landfill was generating hydrogen sulfide, a colorless gas that stinks of rotten eggs.

25. Pursuant to Paragraph 12 of the Closure Plan, SEP was required to control malodorous emissions from the landfill by use of daily cover soil or other DEP approved odor controls. Kinney Cert., Exhibit 2, p. I-4, ¶ 12.

26. On November 30, 2012, the Department filed an Order to Show Cause in Superior Court, seeking to restrain SEP from accepting additional fill material until SEP covered the exposed malodorous material with soil on a daily basis, as required by the Closure Plan. Kinney Cert., Exhibit 9.

27. On December 10, 2012, the Court ordered SEP to comply with the Closure Plan and import and apply sufficient amounts of daily cover soil to abate the malodorous hydrogen sulfide

emissions. Kinney Cert., Exhibit 18. Defendants have failed to comply with the Court's order and numerous orders of the DEP. Conti Cert., ¶ 8.

SOLID WASTE MANAGEMENT ACT VIOLATIONS

COUNT 1 - FAILURE TO FUND ESCROW ACCOUNT

28. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs as if they were set forth herein in their entirety.

29. The SWMA authorizes the Department to issue approvals to facilities for the acceptance of solid waste, N.J.S.A. 13:1E-5, and provides that every owner or operator of a solid waste facility shall be jointly and severally liable for proper operation and closure of a solid waste facility N.J.S.A. 13:1E-103.

30. To implement the requirements of the SWMA, the Department also is authorized to promulgate rules and regulations regarding operation and closure of solid waste facilities. See N.J.S.A. 13:1E-6; N.J.S.A. 13:1E-114.

31. By execution of the ACO and Closure Plan, SEP agreed that the operations of the Fenimore landfill would be governed by the SWMA and landfill closure regulations at N.J.A.C. 7:26-2A.9. Kinney Cert., Exhibit 1, ¶¶ 8, 18.

32. The ACO is a final order of the Department pursuant to the SWMA, and the Closure Plan is a fully-authorized permit. Kinney Cert., Exhibit 1, ¶¶ 37, 43. These documents gave

Defendants authorization to accept MAP-approved materials that otherwise would be regulated as solid waste, at the Fenimore landfill. Kinney Cert., Exhibit 1, ¶ 8, Exhibit 2. p. 5, ¶¶ 1, 50.

33. Defendants were required to establish an alternative funds escrow account under the ACO and Closure Plan by no later than November 6, 2011. Kinney Cert., Exhibit 1, ¶21. The escrow account is critical to landfill closure, as it represents the major source of funds for closure and post-closure care of the landfill. The escrow account was not established until February 1, 2012, 88 days later than required by the ACO and Closure Plan. Kinney Cert., Exhibit 20.

34. After retaining initial operating expenses of \$100,000, Defendants were required to deposit 50% of revenues from the receipt of MAP-approved materials ("tipping fee revenues") into the escrow account until Defendants had accrued an additional \$650,000. Kinney Cert., Exhibit 1, ¶ 4. Thereafter, Defendants were to have deposited all tipping fee revenues into the alternative funds escrow account.

35. Defendants began receiving MAP-approved materials at the landfill on December 11, 2011. Kinney Cert., Exhibit 17. This was 35 days after the date the escrow account was to have been established. Defendants did not actually set up the escrow account for another 53 days.

36. Defendants failed to make any payments of tipping fees into the escrow account. As a result, there are no funds available for closure and post-closure care at the landfill.

37. Defendants failed to comply with escrow provisions of the ACO and Closure Plan by a) failing to establish the escrow until 88 days after the required deadline, and b) failing to make any payments to escrow between December 11, 2011 and September 6, 2013 (636 days).

38. N.J.S.A. 13:1E-9(f) of the SWMA authorizes the Department to seek civil penalties of not more than \$50,000 per day for violations of the Act.

39. N.J.S.A. 13:1E-9(d) of the SWMA authorizes the Department to seek a temporary or permanent injunction, and to recover costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case; any cost incurred by the State in removing, correcting or terminating the adverse effects upon water and air quality resulting from any violation of any provision of this act or any rule, regulation or condition of approval for which the action under this subsection may have been brought; and compensatory damages for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by any violation of this act or any rule, regulation or condition of

approval established pursuant to this act for which the action under this subsection may have been brought.

WHEREFORE, the Department seeks the following relief against the Defendants, jointly and severally:

- A. Assessing civil penalties as authorized by the SWMA for each day of violation of the escrow provisions of the ACO and Closure Plan, as described herein, in the amount of \$871,500.00;
- B. Permanently enjoining the Defendants from violations of the SWMA, ACO and Closure Plan;
- C. Immediately imposing a constructive trust upon the assets of the Defendants as they relate to Defendants' obligations to fund the escrow account - or, alternatively, ordering that revenues related to Defendants' escrow obligations be deposited into a Court-managed escrow account;
- D. Ordering Defendants to provide a complete accounting (based upon Generally Accepted Accounting Principles) of all tipping fee revenues to date, to include but not be limited to invoices, bills and other information detailing the sources of all revenues, information as to all bank accounts or other accounts into which tipping fee revenues were deposited, and information as to all expenditures by each defendant since December 11, 2011;

E. Awarding to the Plaintiff the costs of the Department's investigation that led to the establishment of the violations, the Department's reasonable costs of preparing and litigating the case; as well actual damages caused by Defendants' violations of the Act, ACO and Closure Plan; and

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

COUNT 2 - FAILURE TO ACCOUNT FOR TIPPING FEE REVENUES

40. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs as if they were set forth herein in their entirety.

41. Paragraph 24 of the ACO and Paragraph 43 of the Closure Plan require Defendants to submit monthly progress reports to the Department. According to the ACO, these reports were to include, among other information, "a financial summary detailing the revenues received from the acceptance of MAP-approved material and SEP's expenditures associated with the landfill, pursuant to Paragraph 31 of the Plan Approval [Closure Plan]." Kinney Cert., Exhibit 1, ¶ 24; Exhibit 2, ¶ 43.

42. Defendants' Monthly Reports consistently failed to include the information required by Paragraph 24 of the ACO and Paragraph 43 of the Closure Plan. Confer Cert., ¶ 8.

43. On May 14, 2012, a Department inspector asked Defendant Richard Bernardi to provide the inspector with information as to

tipping fee revenues, as required by the ACO and Closure Plan. Bernardi refused, informing the inspector that the information would have to be requested in Court. "Certification of Gina Conti" ("Conti Cert."), ¶ 5, 6.

WHEREFORE, the Department seeks the following relief against the Defendants, jointly and severally:

A. Assessing civil penalties as authorized by the SWMA for each month of violation of Paragraph 24 of the ACO and Paragraph 43 of the Closure Plan, as described herein in the amount of \$595,000;

B. Permanently enjoining the Defendants from violations of the SWMA, ACO and Closure Plan;

C. Immediately imposing a constructive trust upon the assets of the Defendants as they relate to Defendants' obligations to fund the escrow account - or, alternatively, ordering that revenues related to Defendants' escrow obligations be deposited into a Court-managed escrow account;

D. Ordering Defendants to provide a complete accounting (based upon Generally Accepted Accounting Principles) of all tipping fees and expenditures to date, to include but not be limited to deposits and withdrawals from all bank accounts associated with each defendant which may relate to tipping fee revenues obtained by Defendants;

E. Awarding to the Plaintiff the costs of the Department's investigation which led to the establishment of the violations, and the Department's reasonable costs of preparing and litigating the case, and for other actual damages caused by Defendants' violations of the Act, ACO and Closure Plan; and

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

COUNT 3 - FAILURE TO CONTROL MALODOROUS EMISSIONS

44. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs as if they were set forth herein in their entirety.

45. Paragraph 12 of the Closure Plan requires Defendants to control malodorous emissions by the use of daily cover or another suitable odor control. Kinney Cert., Exhibit 2, ¶ 12.

46. On November 19, 2012, the Department began receiving citizen complaints of malodorous emissions in the vicinity of the landfill. See "Certification of Jeffrey Meyer" ("Meyer Cert.,") ¶2.

47. An initial investigation by Department inspectors determined that the malodorous substance was hydrogen sulfide gas, which has a characteristic odor of rotten eggs, emanating from the landfill. Id., ¶3-9.

48. On November 29, 2012, the Department sought an injunction in Superior Court, Morris County, Chancery Division, ordering SEP

to cease receipt of C&D fines (ground gypsum wallboard containing sulfur compounds), which the Department determined was responsible for the hydrogen sulfide odors, and requesting that the Court order Defendants to abate the odors immediately. Kinney Cert., Exhibit 9.

49. On December 10, 2012, the Court denied the Department's request to enjoin Defendants' receipt of C&D fines, but ordered Defendants to cover all malodorous materials with daily cover, as required by Paragraph 12 of the Closure Plan. Id., Exhibit 18.

50. Despite the Court's December 10, 2012 order, and numerous subsequent orders from the Department to implement odor controls at the landfill, hydrogen sulfide emissions persisted unabated because Defendants failed to comply with Paragraph 12 of the Closure Plan or the Court's December 12, 2012 order and apply daily cover to all malodorous materials. Conti Cert., ¶ 8.

51. On June 6, 2013, Department inspectors took hydrogen sulfide emissions readings at the landfill. The inspectors noted large areas of the landfill from which hydrogen sulfide was being emitted that were not covered with daily cover, as required by Paragraph 12. Meyer Cert., ¶ 6-7.

52. On June 26, 2013, pursuant to an Emergency Order issued by DEP Commissioner Bob Martin, Department contractors entered the landfill in order to abate hydrogen sulfide emissions from the site, which the Department had determined exceeded the 30 part-per-

billion standard established for hydrogen sulfide emissions by the legislature in L. 2013, c. 69 (June 26, 2013). Kinney Cert., ¶ 5.

WHEREFORE, the Department seeks the following relief against the Defendants, jointly and severally:

A. Assessing civil penalties as authorized by the SWMA for each day of violation of Paragraph 12 of the ACO as described herein in the amount of \$335,000.00;

B. Permanently enjoining the Defendants from violations of the SWMA, ACO and Closure Plan;

C. Awarding to the Plaintiff the costs for the Department's investigation which led to the establishment of the violations, and the Department's reasonable costs of preparing and litigating the case; as well as costs incurred by the State in removing, correcting or terminating the adverse effects upon water and air quality resulting from the violations alleged herein, and for other actual damages caused by Defendants' violations of the Act, ACO and Closure Plan; and

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

COUNT 4 - INSPECTION REFUSAL

53. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs as if they were set forth herein in their entirety.

54. Paragraph 15 of the ACO and Paragraph 27 of the Closure Plan grant the Department authority to inspect the facility and to review documents related to the Defendants' compliance with the ACO and Closure Plan. Kinney Cert., Exhibit 1, ¶ 15; Exhibit 2, ¶ 27.

55. On December 12, 2012 and again on December 17, 2012, Department inspectors visited the site to perform authorized inspections of the site and to review related documents. On each date, Defendants refused or inhibited access by inspectors to documents and information related to the inspection. Further, during the inspection of December 17, 2012, Defendant Richard Bernardi not only refused to provide the Department's inspectors with access to records, but ordered them to leave the site and threatened to call local police. "Certification of Rajendraku Ghandi" ("Ghandi Cert.").

WHEREFORE, the Department seeks the following relief against the Defendants, jointly and severally:

- A. Assessing civil penalties as authorized by the SWMA for Defendants' refusal to allow and cooperate with authorized and lawful inspections by the Department, as described herein, in the amount of \$60,000.00;
- B. Permanently enjoining the Defendants from violations of the SWMA, ACO and Closure Plan;
- C. Awarding to the Plaintiff the costs of the Department's investigation which led to the establishment of the

violations, and the Department's reasonable costs of preparing and litigating the case, and for other actual damages caused by Defendants' violations of the Act, ACO and Closure Plan; and

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

AIR POLLUTION CONTROL ACT VIOLATIONS

COUNT 5 - EMISSION OF AN AIR POLLUTANT THAT UNREASONABLY

INTEREFERES WITH THE ENJOYMENT OF LIFE OR PROPERTY

56. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs as if they were set forth herein in their entirety.

57. On or about November 19, 2012, the Department began receiving odor complaints from citizens in the Roxbury Township area complaining of foul rotten-egg smells and identifying the landfill as the source. Meyer Cert., ¶ 2.

58. Rotten-egg type odors are consistent with hydrogen sulfide gas, which forms when sulfur-containing materials break down under anaerobic conditions. Id., ¶ 3

59. When an odor complaint is received, the Department sends an inspector to investigate. Department inspectors are trained to identify the source of the odor and assess its intensity on a graduated scale, beginning at 0 (not detectable), 1 (very light), 2 (light), 3 (moderate), 4 (strong), and 5 (very strong). In addition

to the intensity scale, Department inspectors characterize the odor, its duration and frequency. Id. A complaint is "verified" if, after investigation, Department inspectors confirm that the odors are having an unreasonable effect on the complainant's life and property. N.J.S.A. 26:2C-19(g).

60. As of June 26, 2013, the Department had received 2,523 complaints identifying a sulfur-like or "rotten egg" odor emitting from the landfill. Meyer Cert., ¶ 4, 9; See "Certification of Leslie Bates" ("Bates Cert."), ¶3, Exhibit 1; "Certification of Patrick Sanders" ("Sanders Cert."), ¶3, Exhibit 1; "Certification of Hiram Oser" ("Oser Cert."), ¶3, Exhibit 1; "Certification of Philip Savoie" ("Savoie Cert."), ¶3, Exhibit 1; "Certification of Todd Boyer" ("Boyer Cert."), ¶3, Exhibit 1; "Certification of Jennifer McClain" ("McClain Cert."), ¶3, Exhibit 1; "Certification of Robert J. Heil, Jr." ("Heil Cert."), ¶3, Exhibit 1; "Certification of Douglas Bannon" ("Bannon Cert."), ¶3, Exhibit 1; "Certification of Scott Michenfelder" ("Michenfelder Cert."), ¶3, Exhibit 1; "Certification of Mark Burghoffer" ("Burghoffer Cert."), ¶3, Exhibit 1; "Certification of Michael Cisek" ("Cisek Cert."), ¶3, Exhibit 1; "Certification of Robin Jones" ("Jones Cert."), ¶3, Exhibit 1; "Certification of Elizabeth Dorry" ("Dorry Cert."), ¶3, Exhibit 1.

61. Department representatives verified a total of 172 odor complaints on the following dates: November 21, 2012; November 30,

2012; December 7, 2012; December 9, 2012; December 10, 2012; December 15, 2012; December 17, 2012; December 18, 2012; December 20, 2012; December 23, 2012; December 24, 2012; December 26, 2012; December 27, 2012; December 29, 2012; January 2, 2013; January 8, 2013; January 9, 2013; January 11, 2013; January 28, 2013; January 30, 2013; February 7, 2013; February 9, 2013; February 10, 2013; February 14, 2013; February 15, 2013; February 19, 2013; February 21, 2013; February 22, 2013; February 23, 2013; February 26, 2013; February 27, 2013; March 6, 2013; March 10, 2013; March 14, 2013; March 18, 2013; March 21, 2013; April 8, 2013; April 11, 2013; April 12, 2013; April 15, 2013; April 18, 2013; April 22, 2013; April 23, 2013; April 25, 2013; April 26, 2013; April 29, 2013; May 3, 2013; May 7, 2013; May 8, 2013; May 9, 2013; May 14, 2013; May 17, 2013; May 19, 2013; May 28, 2013; May 31, 2013; June 4, 2013; June 5, 2013; June 6, 2013; June 8, 2013; June 10, 2013; June 12, 2013; June 13, 2013; June 15, 2013; June 16, 2013; June 17, 2013; and June 19, 2013. Meyer Cert., ¶ 4-9, Exhibit 1; Bates Cert., ¶3, Exhibit 1; Sanders Cert., ¶3, Exhibit 1; Oser Cert., ¶3, Exhibit 1; Savoie Cert., ¶3, Exhibit 1; Boyer Cert., ¶3, Exhibit 1; McClain Cert., ¶3, Exhibit 1; Heil Cert., ¶3, Exhibit 1; Bannon Cert., ¶3, Exhibit 1; Michenfelder Cert., ¶3, Exhibit 1; Burghoffer Cert., ¶3, Exhibit 1; Cisek Cert., ¶3, Exhibit 1; Jones Cert., ¶3, Exhibit 1; Dorry Cert., ¶3, Exhibit 1.

62. The APCA defines "air pollution" as the "presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property throughout the State of New Jersey." N.J.S.A. 26:2C-2.

63. "No person shall cause, suffer, allow or permit to be emitted into the outdoor atmosphere substances in quantities which shall result in air pollution." N.J.A.C. 7:27-5.2(a). A violation of an air pollution regulation is a violation of the APCA. N.J.S.A. 26:2C-8(a).

64. "In determining whether an odor unreasonably interferes with the enjoyment of life or property in violation of the [APCA], the Department shall consider all of the relevant facts and circumstances, including but not limited to, the character, severity, frequency and duration of the odor, and the number of persons affected thereby." N.J.S.A. 26:2C-19(g).

65. Department representatives determined that the odors were caused by emissions of hydrogen sulfide and that the landfill was the source of the odors. Meyer Cert., ¶ 4-9; Bates Cert., ¶4, Exhibit 1; Sanders Cert., ¶4, Exhibit 1; Oser Cert., ¶4, Exhibit 1; Savoie Cert., ¶4, Exhibit 1; Boyer Cert., ¶4, Exhibit 1; McClain Cert., ¶4, Exhibit 1; Heil Cert., ¶4, Exhibit 1; Bannon Cert., ¶4, Exhibit 1; Michenfelder Cert., ¶4, Exhibit 1; Burghoffer Cert., ¶4,

Exhibit 1; Cisek Cert., ¶4, Exhibit 1; Jones Cert., ¶4, Exhibit 1; Dorry Cert., ¶4, Exhibit 1.

66. The Department representatives further determined during their investigations that the duration and intensity of the hydrogen sulfide/rotten egg odors unreasonably interfered with the individual complainants' reasonable enjoyment of life and property in the vicinity of the landfill. Id.

67. As such, the Defendants violated the APCA, N.J.S.A. 26:2C et seq., and the regulations pursuant thereto on 172 verified occasions on 66 separate days.

68. The APCA authorizes the Department to institute a summary civil action in Superior Court for injunctive relief and penalties of up to \$10,000 for the first offense, \$25,000 for the second offense and \$50,000 for the third and each subsequent offense per day for each violation. N.J.S.A. 26:2C-19(a) and (d).

WHEREFORE, the Department seeks the following relief against the Defendants, jointly and severally:

- A. Ordering Defendants to immediately abate the emissions of hydrogen-sulfide pollution;
- B. Ordering payment by Defendants, jointly and severally, of civil penalties in the amount of \$2,447,000.00 for violations of the APCA; and
- C. Granting such other relief as the Court shall deem just and proper.

COUNT 6 - FAILURE TO REPORT EMISSIONS OF AN AIR CONTAMINANT

69. Plaintiff repeats and re-alleges the allegations set forth in the previous paragraphs as if they were set forth herein in their entirety.

The Defendants were made aware of the emissions of hydrogen sulfide from the landfill and the complaints regarding the odors related to the hydrogen sulfide emissions on the following dates: November 21, 2012; November 30, 2012; December 7, 2012; December 9, 2012; December 10, 2012; December 15, 2012; December 17, 2012; December 18, 2012; December 20, 2012; December 23, 2012; December 24, 2012; December 26, 2012; December 27, 2012; December 29, 2012; January 2, 2013; January 8, 2013; January 9, 2013; January 11, 2013; January 28, 2013; January 30, 2013; February 7, 2013; February 9, 2013; February 10, 2013; February 14, 2013; February 15, 2013; February 19, 2013; February 21, 2013; February 22, 2013; February 23, 2013; February 26, 2013; February 27, 2013; March 6, 2013; March 10, 2013; March 14, 2013; March 18, 2013; March 21, 2013; April 8, 2013; April 11, 2013; April 12, 2013; April 15, 2013; April 18, 2013; April 22, 2013; April 23, 2013; April 25, 2013; April 26, 2013; April 29, 2013; May 3, 2013; May 7, 2013; May 8, 2013; May 9, 2013; May 14, 2013; May 17, 2013; May 19, 2013; May 28, 2013; May 31, 2013; June 4, 2013; June 5, 2013; June 6, 2013; June 8, 2013; June 10, 2013; June 12, 2013; June 13, 2013; June 15, 2013; June

16, 2013; June 17, 2013; and June 19, 2013. Meyer Cert., ¶ 4-9, Exhibit 1; Bates Cert., ¶3, Exhibit 1; Sanders Cert., ¶3, Exhibit 1; Oser Cert., ¶3, Exhibit 1; Savoie Cert., ¶3, Exhibit 1; Boyer Cert., ¶3, Exhibit 1; McClain Cert., ¶3, Exhibit 1; Heil Cert., ¶3, Exhibit 1; Bannon Cert., ¶3, Exhibit 1; Michenfelder Cert., ¶3, Exhibit 1; Burghoffer Cert., ¶3, Exhibit 1; Cisek Cert., ¶3, Exhibit 1; Jones Cert., ¶3, Exhibit 1; Dorry Cert., ¶3, Exhibit 1.

70. "A person who causes a release of air contaminants in a quantity or concentration which poses a potential threat to public health, welfare or the environment or which might reasonably result in citizen complaints shall immediately notify the department." N.J.S.A. 26:2C-19.

71. Defendants were aware of emissions of hydrogen sulfide from the landfill as early as November 19, 2012, but did not at any time notify the Department that hydrogen sulfide was being released from the landfill, even after learning that the emissions resulted in numerous citizen complaints. See e.g. Meyer Cert., ¶ 2, 19-20.

72. Richard Bernardi was hand delivered a Notice of Violation documenting the odors from the landfill on November 30, 2012. Id., ¶19. At no time since hydrogen sulfide gas has been detected at the Landfill have the Defendants notified the Department of emissions of hydrogen sulfide. Id., ¶20.

73. By failing to notify the Department of the release of hydrogen sulfide which resulted in 172 verified complaints on 66

different dates, the Defendants committed 66 violations of the APCA.

74. The APCA authorizes the Department to institute a summary civil action in Superior Court for injunctive relief and penalties of up to \$10,000 for the first offense, \$25,000 for the second offense and \$50,000 for the third and each subsequent offense per day for each violation. N.J.S.A. 26:2C-19(a) and (d).

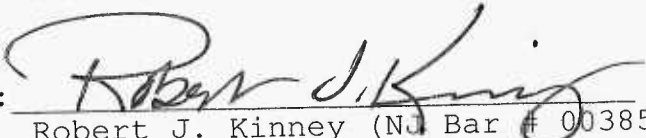
WHEREFORE, the Department seeks the following relief against the Defendants, jointly and severally:

- A. Ordering Defendants to immediately abate the emissions of hydrogen-sulfide pollution.
- B. Ordering payment by Defendants, jointly and severally, of civil penalties in the amount of \$110,200.00 for violations of the APCA; and
- C. Granting such other relief as the Court shall deem just and proper.

Respectfully Submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:


Robert J. Kinney (NJ Bar # 0038572005)
Deputy Attorney General

DATE:

9/24/13

CERTIFICATION PURSUANT TO R. 4:5-1

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 a civil action filed in Morris County Superior Court (New Jersey Dep't of Environmental Protection v. Strategic Environmental Partners, et al., Docket MRS-L-002278-13), an administrative appeal currently pending before the Office of Administrative Law (Strategic Environmental Partners, LLC, Richard Bernardi, individually v. New Jersey Department of Environmental Protection, Dkt. No. ECE 08213-2012 N, ECE 08214-2012 N), a putative class action pending before the Morris County Superior Court, Law Division (O'Brien, et al. v. Strategic Environmental Partners, LLC, Dkt. MRS-L-1100-13, MRS-L-1385-13); two appeals pending before the Appellate Division: Strategic Environmental Partners, LLC v. New Jersey Department of Environmental Protection, Dkt. A-5283-12-T3, and Strategic Environmental Partners, LLC v. New Jersey Department of Environmental Protection, Dkt. A-004676-12, and a Federal lawsuit in the District of New Jersey, Strategic Environmental Partners, et al. v. Senator Tony Bucco, et al., Docket 13-cv-5032.

The relevant parties to each action 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: 

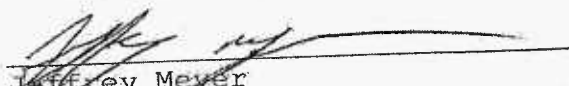
Robert J. Kinney
Deputy Attorney General
NJ Attorney No. 0038572005

DATE: 9/24/13

VERIFICATION

JEFFREY MEYER, by way of certification, states that:

1. I am employed by the New Jersey Department of Environmental Protection as the Acting Environmental Specialist 4 (Supervisor) for Air Compliance and Enforcement, Northern Regional Office.
2. I have read the Verified Complaint.
3. I certify that the factual allegations contained in Paragraphs 2 through 27, and 56 through 74, are true and correct.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.



Jeffrey Meyer
Acting Environmental Specialist 4
(Supervisor)
Air Compliance and Enforcement,
Northern Regional Office

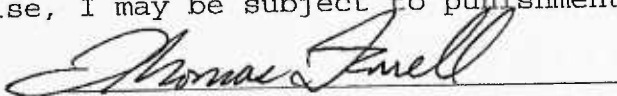
DATE:

9/10/13

VERIFICATION

THOMAS FARRELL, by way of certification, states that:

1. I am employed by the New Jersey Department of Environmental Protection as the Bureau Chief for the Bureau of Solid Waste Compliance and Enforcement.
2. I have read the Verified Complaint.
3. I certify that the factual allegations contained in Paragraphs 2 through 55 are true and correct.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.



Thomas Farrell
Bureau Chief
Bureau of Solid Waste Compliance and
Enforcement

DATE:

9/10/13