

May 21, 2014

Mr. Peter Battaglia  
Buffalo Recycled Aggregate, LLC  
Battaglia Demolition, Inc.

Mr. Al Carlacci P.E. Division of Air  
New York State Department of Environmental Conservation  
Division of Air, Region 9  
270 Michigan Avenue  
Buffalo, New York 14203-2915

RECEIVED  
N.Y.S. DEPT. OF

MAY 27 2014

ENVIRONMENTAL CONSERVATION  
REGION 9

Dear Mr. Al Carlacci,

To repeat your complement from the division of air resources of NYSDEC to our recycling operation activities as you stated to me and all of Region 9 staff and 3 appointed individuals from Albany DEC in our December 20, 2013 meeting located in Region 9 offices you stated the following: "That my recycling activities located on our property (referencing 1037-1055 Seneca Street, Buffalo, New York 14210) run a very neat and clean operation as to controlling fugitive dust." You further stated that fugitive dust was controlled by The City of Buffalo on Peabody street.

Our Company sent you and the department documenting this record above.

Regarding your notice of violation dated May 16, 2014 we completely disagree with your Notice of Violation. Our company / attorney Mr. Joseph Gervase have sent numerous letters to the department of such claimed verbal violations of regulation by the department and numerous conversations that I have had personally with yourself and Mr. Al Zylinski of division of air, and numerous supporting documentation that the department division of air for escorting EPA officials to our site should of provided to EPA in pre, or post meeting about our facility. Mr. Victor Tu stated to me at the end of inspection that he was going back to NYSDEC Region 9 and meet regarding our facility. At This time NYSDEC Region 9 should have provided documentation that we provided to the department as public record to these claimed violations.

For the reasons stated below are the departments regulations that determine that we are not in any violation from the department

360-1.8(h)(5)

(5) The owner or operator may not undertake a registered activity until they have received a validated copy from the department of their registration. If a facility proposed for registration requires other department permits, or otherwise does not meet the conditions and requirements specified in this part, the department may disapprove a registration and require a permit rather than a registration.

Claimed violation 6NYCRR 201-1.2: This claimed violation should have been addressed by the department prior to the issuance of our validated registrations from the department. 360-1.8(h)(5) states:” If a facility proposed for registration requires other department permits, or otherwise does not meet the conditions and requirements specified in this part, the department may disapprove a registration and require a permit rather than a registration.”

Claimed violation 6NYCRR 211.1 and 6NYCRR 360-1.14(k): This claimed violation does not define what was the air contaminants. The comments on page 1 states fugitive dust? I disagree that Mr. Zylinski of NYSDEC and 2 EPA officials that claim they saw fugitive dust be encroaching on neighbors homes on Peabody street. 1) Mr. Zylinski and 2 other individuals were standing 250 ft from the east property line. Secondly they could not see the east side property line because their vision was block by different stockpiles preventing the determination that was made. All 3 individuals assumed what they saw as they were facing the sun in their determination. Mr. Al Zylinski was also wearing dark sunglasses along with Mr. Richard Kan that day. I find it difficult for to make that determination because of these reasons. I restate my beginning paragraph of this letter from engineer of division of air Mr. Al Carlacci determined of our recycling operations. I listed trivial regulations of 201-3.2 regulations that are trivial of our operations of little importance of activities of our site listed. We site a letter dated April 7, 2014 from The City of Buffalo Public Works stating 2<sup>nd</sup> paragraph states:” The DPW has taken extensive efforts to continually maintain Scatchurd Place and Peabody Streets due to traffic generated at your property.” From both numerous meetings and conversations with the department, and pictures of documentation provided by our company to the department for the malicious intent with an evil eye by the city of buffalo for sweeping half of Peabody street, or deliberately dumping pile of cold patch and hot black top blocking our only access to our **business**. This was documented in a letter dated May 17, 2014 from our company to The City of Buffalo Department of Public Works and copied the NYSDEC on this matter. Mr. Art Robinson spoke to me last fall at the intersection of Peabody Street and Scatchurd place and stated: “That he was having The City of Buffalo Department of Public Works Parks and Street sweep and wash down Peabody street twice per week as a commitment for our community.”

Regarding the matter of no documentation asked from Mr. Victor Tu specically asked me for company invoicing to customers, and requested to see documented inbound receipts of inbound material for recycling stored outside. I explained to Mr. Victor Tu that our

company invoicing is in our accounting office. I further explained that it was previously determined by NYSDEC Mr. Mark Hans and Mrs. Efrat Forget in year 2001 that it was not required to document inbound material for recycling. Mr. Victor Tu did not request any information about an engine. Mr. Victor Tu requested to see this Trivial section of NYSDEC Division of Air. I showed him the documentation on my cell phone internet, and he stated: He thought that it was very interesting and would discuss it further with NYSDEC”

Please see below NYSDEC regulation Section 201-3.2 Trivial Activities / Fugitive emissions that are of little importance by the department regulation applicable to our business activities at 1037-1055 Seneca Street:

(13) Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.

(19) Process, exhaust or ventilating systems or stationary combustion installations exclusively involved in the production of maple syrup.

(31) Emissions from the storage and application of road salt (calcium chloride or sodium chloride).

(34) Snow plowing, street sweeping, sanding and ashing of streets and roads to abate traffic hazards.

(37) Public or private roadways, parking lots.

(41) Solid waste handling equipment, including but not limited to: dumpsters, transfer stations, wood chippers, recycling operations, composting operations, tub grinders, **construction** and demolition waste crushers and associated activities. This activity does not include solid waste incinerators and other thermal treatment technologies.

(45) The following activities are considered trivial when they occur strictly for maintenance or construction activities: plastic pipe welding, soldering, brazing, cutting torches, janitorial activities, steam cleaning, water washing, acid and caustic washing activities, miscellaneous use of solvents, adhesives and caulking, miscellaneous sandblasting, non-asbestos insulation removal, application of refractory and insulation, the periodic use of air for clean-up, and, the process of demolition and rebricking boilers, smelters, furnaces and kilns (this does not include the subsequent operation of such equipment), the surface coating of equipment and buildings as is related to maintenance and construction, and activities which occur for maintenance of grounds such as lawn care, weed control and pest control.

52) Hand-held or manually operated equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding, sand blasting or turning ceramic art work, ceramic precision parts, leather, metal parts, plastics, fiberboard, fiberglass, masonry, carbon, glass, graphite, wood or rubber.

(54) Hand-held or manually operated welding, brazing and soldering equipment.

(57) Equipment lubricating systems, including metal cutting coolants and oils.

(60) Air vents from air compressors and pneumatically operated equipment emitting ambient air.

(67) Transportable chemical containers including rail cars, portable tanks, totes and trailers.

(81) Use of office equipment and products including, but not limited to, desktop printers, fax machines, scanners and photocopiers used as printers, but not including graphic arts processes as defined in Part 234 of this Title.

Claimed violation 40 CFR part 60 subpart OOO: The claimed violation of this regulation does not apply to us for the following reasons already submitted to your department numerous times: 1) Our recycling equipment is below the threshold of 150 tons per hour as an exception applicable of 60.670 that we provided numerous times to the department regarding this regulation.

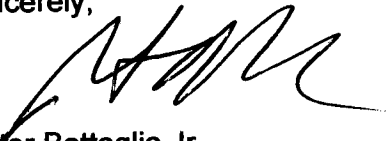
Claimed violation 40 CFR Part 60 Subpart IIII: The claimed violation is not applicable because of 40 CFR part 60 subpart OOO definitions.

To address your statement that we are to immediately install a wheel wash system. Our company for the past 16 years already had a wheel wash system already in place at the entrance of our facility prior to Scatchurd Place on our property that worked great. We designed a wheel wash control system that was in place and worked great for the past 16 years until The City of Buffalo paved over it on our property that eliminating our wheel wash system.

I call your attention also to (2) new concrete crushing operations that just recently set up operation in the Filmore district of Council member Mr. David Fronczyk district. I would hope to see the same requirements from your department, and other departments to these concrete crushing activities in residential ares, that are required to be permitted, and have installed wheel wash systems as you require of me.

Thank you in advance for your cooperation. If you have any questions, please contact me on my cell at (716) 725-4816.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Battaglia Jr.', written in a cursive style.

Peter Battaglia Jr.

President

Cc: NYSDEC Region 9 Ms. Maureen Brady Attorney  
NYSDEC Region 9 Mr. Al Zylinski Division of Air  
NYSDEC Region 9 Mr. Dennis Weiss P.E. Division of Solid Waste  
NYSDEC Region 9 Mrs. Efrat Forget Solid Waste Management