

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

INDEX NO.

PEOPLE OF THE STATE OF NEW YORK, the
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION and BASIL
SEGGOS, as ACTING COMMISSIONER OF THE
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,
by ERIC T. SCHNEIDERMAN,
Attorney General for the State of New York,

JURY TRIAL
DEMANDED

VERIFIED PETITION

Petitioners,

-against-

PETER J. BATTAGLIA JR.,
as an Individual and Corporate Officer of
BATTAGLIA DEMOLITION INC.,
BUFFALO RECYCLED AGGREGATE LLC,
and BATTAGLIA TRUCKING INC.,

Respondents.

The People of the State of New York, the New York State Department of Environmental Conservation (“DEC”), and Basil Seggos, as acting DEC Commissioner (collectively, the “State”), by their attorney, Eric T. Schneiderman, Attorney General for the State of New York, allege as follows.

INTRODUCTION

1. The State brings this petition pursuant to Executive Law § 63(12), common law public nuisance, and Environmental Conservation Law (“ECL”) Articles 19, 27 and 71 to enjoin the illegal operation of a construction and demolition debris processing facility and concrete crusher located at 1037-1055 Seneca Street in Buffalo New York (“Facility”) by Respondent Peter J. Battaglia Jr. (“Peter Battaglia”) and corporate alter-egos Battaglia Demolition Inc., Buffalo Recycled Aggregate LLC and Battaglia Trucking, Inc. (collectively, “Battaglia”).

2. The Facility creates an ongoing nuisance for residential neighbors on Peabody and other nearby streets in Buffalo, New York¹ (“Peabody Neighborhood” or “Neighborhood”). Impacts include dust, noise, vibrations, odors, vermin infestation and excessive truck traffic that injure the property, safety and comfort of Neighborhood residents, and disrupt daily activities. In so doing, Battaglia causes a public nuisance and further violates 6 New York Codes Rules and Regulations (“NYCRR”) § 211.1 (prohibiting air pollution—including dust—that unreasonably interferes with the comfortable enjoyment of life or property) and 6 NYCRR § 360-1.14(k) (regulating nuisance dust emissions from solid waste management facilities).

3. In addition, Respondents operate the Facility without required DEC approvals that safeguard the environment and the surrounding community. Since February 13, 2013, Battaglia has been without a required 6 NYCRR Part 360 solid waste management facility permit (“Part 360 Permit”), and since November 5, 2011 Battaglia has failed to submit an ECL Article 19 Air State Facility Permit (“State Facility Permit”) application for the operation of the Facility’s Eagle Ultra Max 1400-45 concrete crusher (“Eagle Ultra Max Crusher” or “Crusher”).

4. Respondents are well aware of these nuisance impacts and compliance failures. They have not complied with directives contained in six DEC notices of violation (“NOV”), and have even disregarded the January 27, 2016 Order of the Honorable Deborah Chimes (rejecting Battaglia’s contention that DEC permit requirements and notices are unlawful) (“Chimes Decision”). Most recently, on May 12, 2016, Peter Battaglia told DEC personnel that he would never submit these permit applications.

¹ Specifically, the blocks of Peabody, Walter, and Maurice Streets that are bordered by Seneca and Quinn Streets in Buffalo, New York.

5. The State asks this Court to enjoin further operation of the Facility until the public nuisance is abated, required permits are obtained, and its operation is otherwise brought into compliance with the law. In addition, the State seeks penalties for regulatory violations pursuant to ECL §§ 71-2103 and 71-2703, and costs.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to Executive Law § 63(12), ECL §§ 71-2103, 71-2107, 71-2703, 71-2727(2), Judiciary Law § 140-b, and common law public nuisance.

7. Venue is proper pursuant to CPLR § 506 and because Respondents' principle place of business is in Erie County, Petitioners have offices in Erie County and the activities which gave rise to this petition occurred in Erie County. See CPLR §§ 503(a), 503(c) and 503(d).

STATUTORY AND REGULATORY FRAMEWORK

A. Executive Law § 63(12)

8. Executive Law § 63(12) empowers the Attorney General to bring a State Supreme Court petition for relief against a person or business entity that has engaged in repeated or persistent illegality in the course of conducting business. Injunctive relief, damages and/or restitution are authorized under Executive Law § 63(12).

B. Solid Waste Management Facility Regulation

i. General Provisions

9. DEC has broad authority to regulate solid waste management and resource recovery facilities under ECL Article 27, Title 7. See, e.g., ECL § 27-0703(2). Pursuant to this authority, DEC has promulgated comprehensive regulations governing the licensing, inspection, and operation of solid waste management facilities. See, e.g., 6 NYCRR Part 360 ("Part 360").

10. Part 360 solid waste management regulations cover a variety of facilities including construction and demolition (“C&D”) debris landfills and processing facilities, municipal solid waste landfills that are permitted to accept putrescible, or decomposable waste, waste transfer stations and facilities engaged in recyclables handling and recovery.
11. Under 6 NYCRR § 360-1.7(a)(1)(i), no person may operate a solid waste management facility, or any phase of it, except in accordance with a valid permit issued pursuant to Part 360.
12. 6 NYCRR § 621.2(t) defines a permit modification as “any change or amendment whatsoever to a permit that is currently in force, including a permit transfer.”
13. An approved permit renewal authorizes a new permit term for previously approved activities that will continue at the same site or facility without material change. See 6 NYCRR § 621.2(aa).
14. A permitted C&D debris processing facility may receive and process construction and demolition debris, including, inter alia, uncontaminated solid waste resulting from the construction, remodeling, repair and demolition of utilities, structures and roads and uncontaminated solid waste resulting from land clearing. See 6 NYCRR §§ 360-1.2(b)(38), 360-1.2(b)(39).
15. A permitted C&D processing facility may not receive putrescible waste. 6 NYCRR § 360-1.2 (b)(126) defines putrescible waste as “solid waste that contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for disease vectors.”
16. A permit application must include the plans, reports and other supporting information required by Part 360. See 6 NYCRR § 360-1.8(a)(1).

17. An application for a new Part 360 permit must comply with the requirements of the ECL's Uniform Procedures Act, which is codified in ECL Article 70 and 6 NYCRR Part 621.
18. A Part 360 permit holder who intends to continue operating after permit expiration "must file a complete application for renewal of the permit at least 180 days before the existing permit expires." See 6 NYCRR § 621.11(a)(1); see also 6 NYCRR § 360-1.8(f)(1).
19. An applicant for a renewal permit may continue operating while DEC considers the renewal application "only if the permittee files a timely and complete renewal application." See 6 NYCRR § 360-1.8(f)(2).
20. DEC may determine that a permit renewal application "will be treated as a new application" if "the renewal application is not timely or sufficient." See 6 NYCRR § 621.11(h)(4).
21. 6 NYCRR § 360-16.1(d)(1) provides that a facility which is receiving and processing only recognizable uncontaminated concrete that has not been in contact with a spill, hazardous waste or industrial waste, and that is not commingled with any other solid waste, is subject to a solid waste management facility registration.
22. 6 NYCRR § 360-1.14 sets forth operational requirements for all solid waste management facilities, including C&D debris processing facilities. 6 NYCRR § 360-1.14 (k) provides that "[d]ust must be effectively controlled so that it does not constitute a nuisance or hazard to health, safety, or property."
23. Pursuant to 6 NYCRR § 360-1.2(b)(117) a "person" is defined as "any individual, public or private corporation, political subdivision, government agency, authority, department or bureau of the State, municipality, industry, partnership, association, firm, trust, estate or any other legal entity whatsoever."

24. Pursuant to 6 NYCRR § 360-1.2(b)(114), a facility “owner” is defined as “a person who owns a solid waste management facility or part of one.”

25. Pursuant to 6 NYCRR § 360-1.2(b)(113) an “operator” or “facility operator” means the person responsible for the overall operation of a solid waste management facility or a part of a facility with the authority and knowledge to make and implement decisions, or whose actions or failure to act may result in noncompliance with the requirements of [Part 360 or DEC-approved] operating conditions at the facility or on the property on which the facility is located.”

ii. Enforcement Provisions

26. Pursuant to ECL § 71-2703, any person who violates any provision of Title 7 of ECL Article 27 or its implementing regulations shall be liable for a penalty of up to \$7,500 for a first violation and an additional penalty of not to exceed \$1,500 for each day during which such violation continues, and such person may also be enjoined from continuing such violation.

27. In addition, ECL § 71-2727 authorizes the Attorney General to “initiate any appropriate action or proceeding” for the enforcement of ECL Article 27 and/or its implementing regulations.

C. Air Pollution Regulation

i. General Provisions

28. ECL Article 3 (“General Powers and Duties”) and Article 19 (“Air Pollution Control Act”) authorize DEC to regulate sources of air pollution within the State.

29. ECL § 3-0301(l)(i) grants broad authority to the DEC Commissioner to regulate pollution, including, but not limited to “particulates, gases, dust, vapors, noise [and] odor.”

30. Pursuant to ECL § 19-0301(1)(a), DEC is empowered to promulgate regulations for “preventing, controlling or prohibiting air pollution.”

31. ECL § 19-0107 and 6 NYCRR Part 200 contain definitions related to the Air Pollution Control Act.

32. ECL § 19-0107(2) defines an “air contaminant” as “dust, fume, gas, mist, odor, smoke, vapor, pollen, noise, or any combination thereof.”

33. ECL § 19-0107(3) defines “air pollution” as “the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are injurious to human, plant, or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life or property.”

34. 6 NYCRR § 200(bi) defines a “person” as “any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.”

ii. Codification of Air Nuisance Prohibitions

35. In addition to quantitative emission standards that comply with minimum federal requirements, New York has established qualitative air pollution standards under state law.

36. 6 NYCRR § 211.1 codifies public nuisance prohibitions that are related to air pollution:

No person shall cause or allow emissions of air contaminants into the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property.

iii. Part 201 Air Registration and Permitting Requirements

37. Air contamination sources, unless specifically exempted, are subject to the air registration and permitting requirements of 6 NYCRR Part 201.

38. Pursuant to 6 NYCRR § 201-4.1(b), a facility with an emission source that could otherwise satisfy Part 201 requirements through application for a 6 NYCRR § 201-4 air

registration, may be required to apply for a 6 NYCRR Part 201-5 State Facility Permit if DEC determines that permit conditions are necessary to ensure compliance with state air quality laws and regulations.

39. There are limited exemptions to 6 NYCRR Part 201 registration and permitting requirements.

40. 6 NYCRR § 201-3.2(c)(29) exempts “stone crushers” that are “permanent or fixed” emission sources with a maximum rated processing capacity of 25 tons of minerals per hour or less; or are “portable emission source[s] with a maximum rated processing capacity of 150 tons of minerals per hour or less.”

41. 6 NYCRR § 201-3.3(c)(41) exempts from registration requirements “construction and demolition waste crushers” that are temporary and portable with a maximum rated crushing capacity of less than 150 tons per hour.

42. 6 NYCRR § 201-2.1(b)(29) defines “temporary” as “an emission source that is transient in nature and will be operated at a facility for a single period of less than 90 consecutive days.”

43. The federal standard for the regulation of crushers is set forth in 40 CFR Part 60 Subpart OOO (the “EPA crusher rule”). This rule requires, inter alia, that crushers be tested using EPA Method 9 protocols and be compliant with opacity requirements that limit visible emissions including visible dust.

44. DEC has authority to enforce the EPA crusher rule under 6 NYCRR Part 201.

iv. Enforcement Provisions

45. Pursuant to ECL § 71-2103, any person who violates any provision of ECL Article 19 or its implementing regulations shall be liable for a penalty of up to \$18,000 for a first violation and

an additional penalty of not to exceed \$15,000 for each day during which such violation continues.

46. In the case of a second or any further violation, ECL § 71-2103 provides for a penalty of up to \$26,000, and an additional penalty not to exceed \$22,500 for each day during which such violation continues.

47. ECL § 71-2103 authorizes the Attorney General to bring a court action for penalties. Pursuant to ECL § 71-2107 the Attorney General is required, upon the request of the DEC Commissioner, to bring an action for an injunction that would prohibit the violation of ECL Article 19 and its underlying regulations.

D. Public Nuisance

48. A public nuisance exists when there is an unreasonable interference with a right common to the general public.

49. The Attorney General is authorized pursuant to common law and under Executive Law § 63(12) to seek abatement, restitution and damages to redress a public nuisance.

PARTIES

A. Petitioners

50. The State of New York, a body politic and sovereign entity, brings this proceeding on its own behalf, and as *parens patriae* on behalf of the environment and its residents, including the Peabody Neighborhood residents.

51. Petitioner DEC is an executive department of the State.

52. Petitioner Basil Seggos is the acting DEC Commissioner.

53. Eric T. Schneiderman is the Attorney General of the State of New York and is authorized to bring this proceeding pursuant to Executive Law § 63(12) and ECL Article 71.

B. Respondents

54. Peter J. Battaglia Jr. is the chief executive officer of all of the Respondent business entities. He is actively involved in day-to-day operations at the Facility and makes all decisions pertaining to legal compliance.

55. Battaglia Demolition, Inc. ("Battaglia Demolition") is the New York corporation most closely associated with the operation of the Battaglia Facility, and is the owner of the property where the Facility is located.

56. Buffalo Recycled Aggregate, LLC ("Buffalo Recycled Aggregate") is a New York corporation with corporate offices located at 1037 Seneca Street in Buffalo. Buffalo Recycled Aggregate has close ties to Battaglia Demolition, including shared facilities, offices and management.

57. Battaglia Trucking Inc. is a New York corporation that operates a trucking business based at the Facility.

58. All of the Respondents act as one in relation to the day-to-day operation of the Facility, including, but not limited to, operation of the Crusher, and cannot be meaningfully distinguished from one another.

FACTS

A. Location of the Battaglia Facility

59. The Facility is bordered by Peabody Street to the southeast, Seneca Street to the northeast, the New York State Thruway to the southwest, and by railroad tracks to the northwest.

60. Only fencing separates the Facility from Peabody Street backyards and only a thin chain separates the Facility entrance from the surrounding neighborhood.

61. Respondents stockpile and process construction and demolition debris. Their business includes, but is not limited to, concrete crushing.
62. The Eagle Ultra Max Crusher is located approximately 254 feet from the nearest Peabody Street residential backyard.
63. Trucks must drive up or down Peabody Street to access the Facility, and then turn onto Scatchard Place, which is a city street that exclusively functions as a haul road for Battaglia.
64. Since December 2011, Battaglia's concrete crushing activities have resulted in a significant increase in Peabody Street truck traffic.
65. Some of the trucks that travel to and from the Facility are owned and operated by Respondent Battaglia Trucking Inc. The remaining trucks are operated by Battaglia's customers.

B. The Peabody Neighborhood

66. Peabody is a small residential street in the Seneca Babcock neighborhood of South Buffalo. Homes located on the northwest side of Peabody, between Quinn and Seneca Streets, are bordered by the Battaglia Facility.
67. The Seneca Babcock neighborhood was developed as housing for employees of National Aniline and Chemical Company. It is bordered by railroads and expressways. Most of the housing was constructed in the late 1800s.
68. The Neighborhood qualifies as a potential "environmental justice community" under DEC guidelines. According to the most recent U.S. Census data, 42.3% of the children in the 14210 zip code (which includes most of the Seneca Babcock neighborhood) live below the poverty line. The overall poverty level for the zip code is estimated to be 23.4%.²

² See <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>

69. Life in South Buffalo was well described by journalist Tim Russert in his memoir about his father, Big Russ & Me.³ Like Big Russ—a World War II veteran who worked two blue-collar jobs while raising four children—Neighborhood residents are faith and family oriented. Their origins are blue collar and—as reflected by the 30 residents who provided affidavits⁴ in support of this Petition—work in a variety of occupations including waitressing, nursing, clerical, trucking and industrial positions.

70. The Resident Affidavits show that Peabody Neighborhood home ownership is often kept within families and that the Neighborhood population is stable. At least 23 of the 30 Resident Affiants lived in the Peabody Neighborhood prior to Battaglia's receipt of initial government approvals circa 2000.

71. Affiant Norman Weaver indicates there are 53 children on Peabody Street. Over half of the Resident Affiants have children and/or grandchildren who live with them or frequently visit their Peabody Street homes.

³ Tim Russert, Big Russ & Me: Father and Son: Lessons of Life (2004).

⁴ These are the affidavits of Michael Vincent Banks of 153 Peabody St.; Tracy Cannon of 120 Peabody St.; Brian Cummings of 147 Peabody St.; William Fox of 107 Peabody St.; Elsie Karpinski of 145 Peabody St.; Ron Karpinski of 145 Peabody St.; Michelle Knepper of 151 Peabody St.; Judy La Press of 106 Peabody St.; Ron La Press of 106 Peabody St.; Tracy Lee of 113 Peabody St.; Diane Lemanski of 126 Peabody St.; Leonard Lemanski of 125 Peabody St.; Rob Lemanski of 114 Peabody St.; Carol Lenczyk of 129 Walter St.; Edward Loucks of 118 Peabody St.; Jean Loucks of 118 Peabody St.; Robert McCune of 124 Peabody St.; Mary Mitchell of 125 Walter St.; Helen Panikowski of 112 Walter St.; Loretta Parker of 115 Peabody St.; Shirley Parker of 113 Peabody St.; Art Robinson of 192 Maurice St.; Karen Skelton of 102 Peabody St.; Sarah Skelton of 102 Peabody St.; John Wagner of 108 Peabody St.; Jacqueline Weaver of 156 Peabody St.; Jan Weaver of 156 Peabody St.; Jill Weaver of 156 Peabody St.; Ken Weaver of 137 Peabody St.; Norman Weaver of 158 Peabody St. As referred to throughout this Memorandum of Law, the shorthand of “[Name] Aff.” is used. Collectively, these are the “Resident Affiants” and the “Resident Affidavits”.

C. The Facility's Part 360 Permit History

72. On August 17, 2000, Battaglia submitted a Part 360 permit application to DEC that sought permission to process construction and demolition debris. The application was approved on April 24, 2001. On September 19, 2002, DEC approved a permit modification that allowed for an increase in the limit of accepted C&D debris from 3,000 tons to 3,800 tons per month.

73. On April 17, 2003 Battaglia sought DEC approval to accept and process putrescible household waste at the Facility. Putrescible waste processing can cause nuisance and public health impacts, and is therefore carefully regulated. Applicants must provide plans for drainage, odor and disease vector control. See, e.g., 6 NYCRR § 360-1.2(b)(126) (listing requirements).

74. In addition, pursuant to 6 NYCRR § 617.4(b), the permitting of a putrescible waste processing facility is a Type I action under the State Environmental Quality Review Act ("SEQRA") (ECL §§ 8-0101 et seq.). The applicant must prepare a full environmental assessment form ("EAF") for review by lead and coordinating SEQRA agencies. See 6 NYCRR § 617.20.

75. Respondents were informed of these requirements through DEC's June 13, 2003 Notice of Incomplete Application ("NOIA"), which advised, inter alia, that Battaglia's permit modification application lacked required information regarding the origin, processing and containment of putrescible waste and plans for traffic and rodent control. Battaglia was further required to receive municipal approvals from the City of Buffalo.

76. In June 2005 Battaglia voluntarily withdrew the 2003 DEC Permit Modification application. However, Respondents continued to take steps to receive government approvals to accept and process putrescible waste. These included the circulation of a draft public participation plan that met with significant public opposition.

77. On December 19, 2005, Battaglia Demolition submitted a Part 360 permit renewal application for the processing of C&D debris. It was approved for a five year term commencing February 14, 2008.

78. By letter dated March 6, 2008, Peter Battaglia asked DEC to permit a 49% increase in the amount of C&D debris tonnage the Facility could accept, and by letter dated June 12, 2008, sought approval for the construction of a concrete pad, foundation and structure next to the existing Facility.

79. DEC responded with a July 16, 2008 Notice of Incomplete Application. The NOIA indicated that approval of these proposals would require submission of a plan for an enhanced public process because of the Facility's location in a potential environmental justice community and required additional information regarding the impact of increased traffic on the surrounding neighborhood.⁵ It noted the application's failure to comply with specific Part 360 permit application requirements, and explained that the application must include a full SEQRA EAF.

80. Battaglia did not respond to the July 16, 2008 NOIA. Instead, Respondents submitted a January 16, 2009 application that again sought permission to accept putrescible waste and to increase the overall permitted waste acceptance rate from 3,800 tons per month to 1,600 tons per day.

81. DEC responded, inter alia, with a March 9, 2009 NOIA, noting that the application failed to analyze the proposed permit modification's potential impacts on the surrounding neighborhood, including impacts to traffic flow including vehicle queuing onto neighborhood streets, and impacts attendant to expanded hours of operation. DEC asked Battaglia to better

⁵ See DEC Commissioner Policy 29, Environmental Justice and Permitting, March 19, 2003, <http://www.dec.ny.gov/regulations/36951.html>.

identify proposed waste loading and unloading areas, and to provide proposed control methods for disease vectors, litter, dust, odor and noise, as required by 6 NYCRR § 360-11.4(e).

82. DEC did not receive a response to the March 9, 2009 NOIA until October 8, 2013, which was four and one-half years after the service of DEC's notice, and nearly seven months after DEC informed Battaglia that the Facility's renewal application was untimely, as discussed below.

83. On November 23, 2009, Respondents submitted a permit modification application that sought permission to process up to 750 tons of C&D material per day. DEC sent a June 22, 2010 NOIA indicating that the application must comply with SEQRA and DEC's environmental justice policy and that the application was not signed. Almost three years later, on November 20, 2012, DEC received a signed permit modification application. However, none of the other issues raised in the June 22, 2010 NOIA were addressed.

D. Battaglia's failure to timely renew the Part 360 Permit

84. DEC regulations require that a Part 360 renewal application be submitted 180 days prior to the expiration date of the prior permit. See 6 NYCRR § 621.2(aa).

85. Battaglia's February 14, 2008 Part 360 permit expired on February 13, 2013. DEC did not receive a renewal application until February 11, 2013. The application was therefore untimely because it was submitted fewer than 180 days before the February 13, 2013 expiration of Battaglia's existing Part 360 permit.

86. DEC forwarded a March 14, 2013 Notice of Incomplete Application. The NOIA advised that continued legal operation of the Facility would require submission of a new Part 360 application.

87. Battaglia has not submitted a new Part 360 permit application and has operated without a required Part 360 permit since February 13, 2013.

88. DEC staff has made ongoing visits and inspections that confirm Battaglia continues to receive C&D waste through visual observation and a review of Respondents' logbook entries. The most recent site visit was on May 12, 2016.

89. Additionally, Battaglia admitted, in their unsuccessful August 31, 2015 Article 78 challenge to DEC's permitting requirements, that their C&D processing operation is ongoing.

90. As discussed below, DEC served Battaglia with three notices of violation of 6 NYCRR § 360-1.7(a)(1)(i) permit requirements dated April 30, 2014, May 12, 2014, and May 8, 2015.

91. In addition, as discussed below, on January 27, 2016 the Honorable Deborah A. Chimes affirmed DEC's authority to require Battaglia to submit a new Part 360 permit application.

E. DEC Air Quality Regulation of the Facility

92. Crushers that operated pursuant to 6 NYCRR § 201-4 air registrations have been used at the Facility from time to time since 2009.

93. On or about December 5, 2011, Battaglia installed the Eagle Ultra Max Crusher. Battaglia has continuously operated the Crusher at the same location since that time.

94. The Eagle Ultra Max is a modern impact crusher that is used regularly, as opposed to the crushers that were previously intermittently used at the Facility. The manufacturer characterizes the Eagle Ultra Max as a "high volume, primary/secondary crushing plant."

95. Battaglia uses a wheel loader to feed material into a 19-cubic yard feed hopper on the Crusher. The hopper controls the flow of material through a 56" x 35" opening that empties into a 38,700-pound horizontal shaft impactor. The material is dropped onto a spinning 50" by 56" rotor with blow bars that crush the material on impact. The material is then thrown onto impact

plates and ricocheted back to the rotor. This process is repeated until the material reaches the desired size.

96. DEC engineering staff has analyzed the Eagle Ultra Max Crusher and determined it is capable of crushing at least 500 tons of minerals per hour, depending on the material being crushed.

97. Therefore, the Eagle Ultra Max Crusher is not subject to exemption—as Battaglia has claimed—from Part 201 registration and permitting requirements. See, e.g. 6 NYCRR §§ 201-3.2(c)(29)(i) and 201-3.2(c)(29)(ii). Similarly, it is not subject to exemption—as Battaglia has claimed—from registration and permitting requirements as a trivial activity. See, e.g. 6 NYCRR § 201-3.3(c)(41) (which exempts “construction and demolition waste crushers” with maximum rated mineral crushing capacities less than 150 tons per hour).

98. Battaglia has not supplied a certification of compliance with the EPA crusher rule to EPA or DEC, despite requests to so do during an April 25, 2014 joint agency inspection.

F. Particle sampling by DEC

99. In 2011, DEC verified through air pollution microscopy analysis that dust particles generated from the Facility were deposited on Peabody Street homes and property.

100. DEC compared six residential dust samples with three source samples that were collected from the Facility in May 2011.⁶

101. On June 2, 2011, DEC collected additional samples from Peabody Street properties. DEC placed four round plastic plates, called petri dishes, at two residential properties located at 108 and 126 Peabody Street. DEC collected these samples on June 7, 2011 and replaced them

⁶ The sampling was conducted during the time that Battaglia allowed K&R Day to operate on the Site.

with another four petri dishes that were collected on June 10, 2011. When compared, the particulates found in all the June 2011 residential samples (crushed concrete, earthy minerals, and reddish brick) exhibited the same morphological characteristics as the particulates found in the source samples from May 2011.

102. On March 11, 2014, DEC reanalyzed the same residential samples in order to determine the size of silica particle that were detected in the residential samples. DEC concluded the particles were too large in size to be subject to federal regulation (larger than 10 microns),⁷ but were evidence of nuisance dust impacts on the Peabody Street Neighborhood.

G. DEC's Air State Facility Permit Application Requirement

103. Although generally, concrete crushers may comply with 6 NYCRR Part 201 requirements by applying for an air registration under 6 NYCRR § 201-4, DEC has the authority to require an application for a State Facility Permit if the agency determines that specific permit conditions are likely necessary to ensure compliance with air quality regulations. See 6 NYCRR § 201-4.1(b).

104. DEC invoked this authority in its December 20, 2011 notice of violation to Battaglia, and many times thereafter, in relation to Battaglia's operation of the Eagle Ultra Max Crusher.

105. DEC reasoned that the permit application will allow the agency to determine whether the Crusher qualifies for registration and, if not, what permit conditions are necessary to ensure ongoing regulatory compliance. The decision was based on inspections of Battaglia's equipment and operation, the close proximity of the residential neighborhood to the Facility, and a review of the manufacturer's specifications.

⁷ See 40 CFR 60.675; see also Particulate Matter, U.S. Environmental Protection Agency, <http://www3.epa.gov/airquality/particlepollution/>.

106. To date, Battaglia has not submitted a State Facility Permit application, despite DEC's service of notices of violation dated December 9, 2011, April 30, 2014, May 12, 2014 and May 8, 2015 that set forth the requirement. Moreover, as discussed below, on January 27, 2016 the State Supreme Court upheld DEC's right to require Battaglia to submit a State Facility Permit application for the Crusher.

107. The operation of the Eagle Ultra Max Crusher has greatly expanded the volume of Battaglia's business, which has in turn increased the amount of truck traffic in the Peabody Neighborhood. This has resulted in the ongoing 6 NYCRR § 211.1-prohibited nuisance dust violations.

108. DEC personnel have witnessed these impacts. Moreover, they are repeatedly described by the Resident Affiants and are amply reflected in files maintained by the Office of the Attorney General ("OAG"), as discussed below.

H. Battaglia's Nuisance Impacts on the Peabody Neighborhood

i. Complaint History

109. The OAG has reviewed records related to complaints generated by the Facility's operation and has maintained a file that reflects some of these complaints ("OAG File" or "Complaint History").

110. The Complaint History shows that the Facility—and trucks traveling to and from the Facility—generate nuisance dust, odor, noise and vibrations that regularly disrupt ordinary daily activities and present safety and quality of life concerns for Peabody Neighborhood residents.

111. The OAG File shows long-standing community opposition to the Battaglia Facility. For example, in March 2000, at least 173 individuals signed a petition opposing approval for Battaglia's proposed waste processing facility in the Seneca Babcock neighborhood.

112. A 2004 survey asked whether the City should sell Scatchard Place to Battaglia. The purchase was opposed by thirty-three out of thirty-eight survey participants, all of whom lived on Peabody Street.

113. Eleven Peabody Street residents took a 2010 issues impact survey that verified Battaglia-generated nuisance conditions on Peabody Street.

114. Thirty-six Peabody Street residents signed a May 2013 petition objecting to DEC approval for an increase in the amount of permissible tonnage Battaglia is permitted to accept.

115. In 2013, forty-one individuals, twenty-one of which were Peabody Street residents, forwarded postcards to the OAG and DEC objecting to the Battaglia's dust and related nuisance impacts.

116. Five Peabody Street residents signed an April 2, 2014 letter to the City of Buffalo Mayor asking for government action in relation to Battaglia's nuisance impacts.

117. Seventeen Peabody Neighborhood residents submitted eighty-four complaint forms about the Battaglia Facility to the OAG. Most of these complaints concerned nuisance dust impacts.

118. Sixteen Neighborhood residents submitted a total of twenty-four complaint logs regarding Battaglia's nuisance impacts to DEC. The lion's share of the complaints regarded Battaglia's dust impacts.

119. In summary, sixty-four Peabody Street residents, living at a total of twenty-six separate properties, made a total of 253 written complaints about Battaglia's nuisance impacts.

ii. The Resident Affidavits

120. The 30 Resident Affidavits should be fully reviewed to gain a real understanding of the pernicious and inescapable nuisance impacts inflicted by Battaglia on the Peabody Neighborhood.

121. The primary issue for the residents is Battaglia's dust impacts. Peabody Resident affiants indicate that the dust is "unbearable" and "a constant problem" and that the dust "makes it hard to breathe." The Crusher "spews dust all over (one affiant's) property" and there is "no escaping it." Dust "flies through the neighborhood and covers (the affiant's) pool, windows, and vehicles."

122. The Resident Affiants say that the trucks "create a great deal of dust" and the large number of trucks means "the dust never ends."

123. The dust compromises indoor and outdoor quality of life. Resident Affiants indicate "the dust is particularly bothersome in warm weather," report that they "socialize less with neighbors," and worry that "older neighbors are becoming more isolated because no one spends time outside."

124. Most of the Resident Affiants "keep the windows closed" which can become unpleasant "especially during the summer." But they further note that closing the windows is futile because "no matter what we do the dust gets into my family's lungs."

125. Resident Affiants have "been driven indoors." They can't "sit on [a] porch and enjoy the night air." They "go inside because I can feel the particles hit my body."

126. The Resident Affiants also express a great deal of concern about truck traffic safety and related impacts. They indicate that "the truck drivers often ignore stop signs on Peabody Street,"

“they are big trucks and they drive pretty fast,” and that “one of my puppies almost got hit by one of the dump trucks.”

127. The Affiants are concerned about Battaglia’s impact on children. “The trucks ... are a safety concern. My son likes to play basketball with his friends. I worry about him,” and “I no longer let [my children] play in the front yard,” or “my children and their friends cannot play outside because I fear they will get hit.”

128. The dust is an especially burdensome issue for parents and grandparents. They indicate that “[t]he pool used to be a fun way to have family time. Now it’s a chore to keep it clean . . . it’s become a burden. This is very upsetting,” or “I have three grandchildren who visit often and would love to play in the backyard, but I restrict this activity because of the dust.”

129. Battaglia frequently violates permitted hours of operation. Residents indicate they are “lucky [to] get a good night’s sleep,” “trucks wake me up in the morning,” “[the] crusher and the trucks make unbearable noise. It can start early in the morning and go late into the evening.”

130. Residents describe Battaglia’s noise as omnipresent. “I’ve been woken up from a sound sleep by truck and crusher noises,” that the noise is “at times . . . a constant rumble,” that “we have to shout to hear each other or turn up the television to drown out the sound of the trucks and the crusher,” that “the noise makes everyone more edgy and short tempered,” and they “never get any peace.”

131. The Crusher, in particular, “bangs loudly” and is said to make “a huge racket.” The trucks are said to be “loud and disturbing.”

132. The Resident Affiants indicate that the overall impact is “all day long engines, tires and horns.”

133. Vibrations come from the Facility and the trucks. The Resident Affiants indicate that “[t]here is a lot crashing and banging. It even startles my cat,” that “[y]ou can feel vibrations from the trucks and Battaglia's crusher inside my house. The housing here is old and it's a real problem,” that “[t]he trucks create vibrations that shake our home,” that “I sometimes feel my bathroom floor vibrate,” or, to synopsize, “[i]t's like having a little earthquake all day long.”

134. Resident Affiants say that “[t]he sickening odors from the diesel trucks and Battaglia's piles of rubbish float into my home,” that “the smells make me nauseous and “we never had these smells before [Peter Battaglia] expanded his business.”

135. The Resident Affiants believe “Battaglia's dump has caused an increase in vermin, especially rats,” that “the mosquitos in the summer are terrible,” that “the rats can be as big as cats [and] I have seen them all over Battaglia's warehouse.”

136. The Affiants are concerned about health impacts. The dust “cannot be a healthy situation for me ... or for my grandchildren,” that “Battaglia's dust causes eye irritation, sneezing, and coughing for me and my family,” that Battaglia's operation “makes it hard to breathe when I go outside and I sometimes can't escape it since it comes right into my house.”

137. Generally, the Resident Affiants describe being unduly burdened by Battaglia's nuisance impacts. “His dust, noise and truck traffic cause huge problems for me,” that Battaglia “fills the neighborhood with noise, dust and stink,” and “I want to be able to live in peace.”

I. DEC Notices of Violation

138. November 9, 2011 DEC began to receive complaints about the Eagle Ultra Max Crusher shortly after its unpermitted December 2011 installation. DEC inspected the Facility on December 7, 2011 and determined that Battaglia had installed and was operating the Crusher, but had not notified DEC or obtained required approvals from the Department. Peter Battaglia was

advised at the time of the inspection that he was required to submit a 6 NYCRR Part 201-5 State Facility Permit application. DEC served a notice of violation ("NOV"), dated December 9, 2011, based on the December 7, 2011 inspection, on December 20, 2011.

139. On April 25, 2014, the U.S. EPA and DEC conducted a joint inspection of the Battaglia Facility. Both federal and state inspectors observed Battaglia's dust migrating and impacting Peabody Street Neighborhood homes and property. The resulting NOV, dated May 12, 2014, set forth violations of the dust nuisance prohibitions contained in 6 NYCRR §§ 211.1 and 360-1.14(k), and violations of the air and solid waste permit requirements contained in 6 NYCRR §§ 201-1.2 and 360-1.7(a)(1)(i).

140. DEC issued an April 30, 2014 Notice of Violation of nuisance dust regulatory prohibitions under 6 NYCRR § 211.1 and 360-1.14(k). The NOV also set forth violations air and solid waste permit requirements contained in 6 NYCRR §§ 201-1.2 and 360-1.7(a)(1)(i). The NOV was returned as unclaimed certified mail, was reissued on May 27, 2014, and personally served on Peter Battaglia on June 17, 2014.

141. DEC inspected the Facility on May 27, 2014 and observed dust being generated by trucks entering and leaving the Facility via Scatchard Place that resulted in nuisance impacts on Peabody Street properties, in violation of 6 NYCRR §§ 211.1 and 360-1.14(k). Dust migrated into the neighborhood whenever a truck entered or left the Facility. DEC issued a May 28, 2014 NOV for violations of 6 NYCRR §§ 211.1 and 360-1.14(k).

142. On July 11, 2014, DEC observed five trucks come in and out of the Facility over a one-hour period. All of the trucks kicked up large amounts of dust that landed on a Peabody Street resident's house and car. This incident was incorporated into a September 9, 2014 Notice of Violation.

143. During an August 5, 2014 visit, DEC observed seven trucks generate nuisance dust that impacted the Peabody Neighborhood, in particular Affiant Kenneth Weaver's property, in a manner that violated 6 NYCRR § 211.1. This incident was also incorporated into the September 9, 2014 Notice of Violation.

144. On May 4, 2015, DEC inspected the Facility in response to reports that Battaglia had put up signs that misrepresented the Facility's legal hours of operation and the types of materials it is permitted to receive. In the course of the inspection DEC observed a truck turn onto Peabody Street from Scatchard Place that generated a cloud of dust that spread to nearby homes. The resulting May 8, 2015 NOV asked Battaglia to correct the misleading signs. In addition, it described nuisance dust impacts that violated 6 NYCRR §§ 211.1 and 360-1.14(k) and set forth Battaglia's ongoing violation of the permit requirements contained in 6 NYCRR §§ 201-1.2 and 360-1.7(a)(1)(i).

J. Battaglia's Unsuccessful Court Challenge to DEC's Permit Requirements

145. On August 31, 2015, Battaglia brought a hybrid Article 78/Declaratory Judgment proceeding in State Supreme Court that sought, inter alia, a declaratory judgment that DEC's permit application requirements under 6 NYCRR Parts 360 and 201-4 were in excess of the agency's authority. The Honorable Deborah A. Chimes dismissed the action against DEC, and upheld the agency's right to require Battaglia to submit a Part 360 permit application and a State Facility Permit application. See Battaglia Demolition et al. v. NYSDEC et al., Erie County Supreme Court Index No. 810585/2015. Battaglia has not appealed the Chimes Decision.

146. To date, Battaglia has failed to submit required solid waste and air permit applications, and has failed to address the dust-related regulatory violations. A May 12, 2016 DEC site visit

confirmed the Facility's ongoing operation. In the course of the visit Peter Battaglia told DEC personnel that he would never submit these required permit applications.

FIRST CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12)
VIOLATION OF THE PERMIT REQUIREMENTS
FOR SOLID WASTE MANAGEMENT FACILITIES
6 NYCRR § 360-1.7(a)(1)(i)

147. The State repeats and realleges all of the allegations set forth above.

148. Each of the Respondents is a person as defined by 6 NYCRR § 360-1.2(b)(117), a facility operator as defined by 6 NYCRR § 360-1.2(b)(113), and an owner as defined by 6 NYCRR § 360-1.2(b)(114).

149. Pursuant to 6 NYCRR § 360-1.7(a)(1)(i), no person may operate a solid waste management facility, or any phase of it, except in accordance with a valid permit issued pursuant to 6 NYCRR Part 360.

150. A construction and demolition debris processing facility is a type of solid waste management facility, and therefore, pursuant to 6 NYCRR § 360-1.7(a)(1)(i), a valid 6 NYCRR Part 360 permit is required for its operation.

151. From April 23, 2001 to the present, Respondents have continuously operated a construction and demolition debris processing facility located at 1037-1055 Seneca Street in Buffalo, New York.

152. Respondents have not held a valid Part 360 permit since February 13, 2013.

153. Therefore, from February 14, 2013 to the present, Respondents have violated the permit requirements of 6 NYCRR § 360-1.7(a)(1)(i).

154. Pursuant to § 71-2703, the State is entitled to a penalty of up to \$7,500 for Respondents' first violation of 6 NYCRR § 360-1.7(a)(1)(i) and an additional penalty of not to exceed \$1,500 for each day the violation has continued.

155. Pursuant to ECL § 71-2727 the State is further entitled to an order enjoining further violation of 6 NYCRR § 360-1.7(a)(1)(i).

156. Respondents' repeated violation of 6 NYCRR § 360-1.7(a)(1)(i) further violates the Executive Law § 63(12) prohibition against repeated illegality in the conduct of business.

157. The OAG is therefore entitled to injunctive relief pursuant to Executive Law § 63(12).

SECOND CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12):
OPERATING A CRUSHER IN
VIOLATION OF AIR PERMIT REQUIREMENTS
6 NYCRR Part 201

158. The State repeats and realleges all of the allegations set forth above.

159. Respondents are each a "person" as that term is defined under 6 NYCRR § 200(bi).

160. Respondents installed and began to operate the Eagle Ultra Max Crusher on or about December 5, 2011.

161. The Eagle Ultra Max Crusher is an air contamination source as that term is defined by 6 NYCRR § 200.1(d).

162. Air contamination sources, unless specifically exempted, are subject to the air registration and permitting requirements of 6 NYCRR Part 201.

163. The Crusher is not exempt from 6 NYCRR Part 201 requirements or the requirements of the EPA crusher rule.

164. Pursuant to 6 NYCRR § 201-4.1(b), a facility with an air contamination emission source that could otherwise satisfy Part 201 requirements through application for a 6 NYCRR § 201-4

air registration may be required to apply for a 6 NYCRR Part 201-5 State Facility Permit if DEC determines that permit conditions are necessary to ensure compliance with air quality regulations.

165. On December 7, 2011 DEC conducted an inspection and determined, pursuant to 6 NYCRR § 201-4.1(b), that Respondents are required to submit a State Air Facility permit application for the operation of the Crusher.

166. Respondents were so informed on December 7, 2011 and, inter alia, through four DEC notices of violation and by DEC personnel during a May 12, 2016 visit to the Facility.

167. On January 27, 2016 the Honorable Deborah A. Chimes dismissed Respondents' court action against DEC, and upheld the agency's right to require Respondents to submit a State Facility Permit application. See Battaglia Demolition et al. v. NYSDEC et al., Erie County Supreme Court Index No. 810585/2015.

168. To date, Respondents have continued to operate the Crusher but have not submitted a State Facility permit application to DEC.

169. Respondents have further failed to comply with the requirements of the EPA crusher rule.

170. Therefore, Respondents are liable for repeated violation of the air permitting requirements of 6 NYCRR Part 201.

171. Pursuant to ECL § 71-2103, the State is entitled to injunctive relief prohibiting further violations of 6 NYCRR Part 201.

172. Pursuant to ECL § 71-2103 the State is entitled to penalties in the amount of up to \$18,000 for a first violation and an additional penalty of not to exceed \$15,000 for each day during which such violation continues.

173. Respondents' repeated violations of 6 NYCRR Part 201 in the conduct of their business further violates Executive Law § 63(12).

174. The OAG is therefore entitled to injunctive relief pursuant to Executive Law § 63(12).

THIRD CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12):
VIOLATION OF OPERATIONAL REQUIREMENTS FOR
ALL SOLID WASTE MANAGEMENT FACILITIES:
DUST CONTROL
6 NYCRR § 360-1.14(k)

175. The State repeats and realleges all of the allegations set forth above.

176. Each of the Respondents is a person as defined by 6 NYCRR § 360-1.2(b)(117), a facility operator as defined by 6 NYCRR § 360-1.2(b)(113), and an owner as defined by 6 NYCRR § 360-1.2(b)(114).

177. Respondents operate a solid waste management facility located at 1037-1055 Seneca Street, as that term is defined under 6 NYCRR Part 360.

178. 6 NYCRR § 360-1.14 sets forth operational requirements for all solid waste management facilities.

179. 6 NYCRR § 360-1.14(k) requires that solid waste management facility operators and owners control dust so that it does not constitute a nuisance or hazard to health, safety or property, and further requires that facility owners or operators undertake any and all measures as required by DEC to maintain and control dust at and emanating from a facility.

180. Through their actions and omissions, Respondents have allowed fugitive dust to migrate into the Peabody Neighborhood. Said dust creates a nuisance and impacts the health, safety and/or property of Peabody Neighborhood residents.

181. The violation of 6 NYCRR § 360-1.14(k) is ongoing.

182. Therefore, Respondents are liable for repeated and continuing violations of 6 NYCRR § 360-1.14(k).

183. Pursuant to § 71-2703, the State is entitled to a penalty of up to \$7,500 for Respondents' first violation of 6 NYCRR § 360-1.14(k) and an additional penalty of not to exceed \$1,500 for each day the violation has continued.

184. Pursuant to ECL § 71-2727 the State is further entitled to an order enjoining further violation of 6 NYCRR § 360-1.14(k).

185. Respondents' repeated violation of 6 NYCRR § 360-1.14(k) further violates the Executive Law § 63(12) prohibition against repeated illegality in the conduct of business.

186. The OAG is therefore entitled to injunctive relief pursuant to Executive Law § 63(12).

FOURTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12):
VIOLATION OF ECL ARTICLE 19 REGULATIONS:
6 NYCRR § 211.1

187. The State repeats and realleges all of the allegations set forth above.

188. Respondents are each a "person" as that term is defined under 6 NYCRR § 200(bi).

189. 6 NYCRR § 200.1(d) defines an "air contaminant" to include, *inter alia*, dust.

190. Respondents operate a construction and demolition debris processing business located at their 1037-1055 Seneca Street Facility.

191. Respondents' activities at the Facility result in the generation of significant dust, which is defined as an "air contaminant" under 6 NYCRR § 200.1(d).

192. The dust generated by the Facility's operation unreasonably interferes with the comfortable enjoyment of life and property for Peabody Neighborhood residents in violation of 6 NYCRR § 211.1.

193. Respondents' violation of 6 NYCRR § 211.1 is continuing.

194. Pursuant to ECL § 71-2103, the State is entitled to an injunction prohibiting further violation of 6 NYCRR § 211.1.

195. Pursuant to ECL § 71-2103 the State is entitled to penalties in the amount of up to \$18,000 for a first violation and an additional penalty of not to exceed \$15,000 for each day during which such violation continues.

196. Pursuant to ECL § 71-2103, the State is further entitled to penalties of \$26,000 for each second and additional violation of 6 NYCRR § 211.1, and an additional penalty of \$22,500 for each day the violations continue.

197. Respondents' repeated violations of 6 NYCRR § 211.1 in the conduct of their business further violates the Executive Law § 63(12).

198. The OAG is therefore entitled to injunctive relief pursuant to Executive Law § 63(12).

FIFTH CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12):
CREATION AND MAINTENANCE
OF A PUBLIC NUISANCE

199. The State repeats and realleges all of the allegations set forth above.

200. Respondents have operated and continue to operate their Facility in a manner that offends, interferes with, and causes damage to the public in the exercise of rights common to all. Respondents' chronic generation of offensive dust, noise, vibrations, odors and vermin interfere with the property, comfort, health, safety, and environment of a substantial number of persons, including Battaglia Neighborhood residents.

201. Respondents' acts and omissions have caused and/or contributed to the creation and maintenance of the public nuisance.

202. Further, Respondents have failed to abate the public nuisance caused by the operation of the Facility, despite having actual knowledge of the conditions causing said nuisance.

203. Petitioners have no adequate remedy at law for the public nuisance created and maintained by Respondents.

204. The State is therefore entitled to an injunction requiring abatement of the public nuisance.

205. Respondents' repeated violation of common law public nuisance prohibitions in the conduct of their business, further violates the Executive Law § 63(12).

206. The OAG is therefore entitled to injunctive relief pursuant to Executive Law § 63(12).

PRAYER FOR RELIEF

WHEREFORE, the State respectfully asks this Court for an order and judgment against Respondents as follows:

A. Pursuant to ECL §§ 71-2103, 71-2707 and Executive Law § 63(12), enjoin continued operation of the Facility until required DEC permits and approvals are obtained and the Facility is brought into compliance with 6 NYCRR § 360-1.7(a)(1)(i), 6 NYCRR § 211.1 and all applicable law.

B. Pursuant to ECL § 71-2703, impose a penalty of up to \$7,500 for Respondents' initial violation of the solid waste management facility permit requirements set forth in 6 NYCRR § 360-1.7(a)(1)(i), and an additional penalty of not to exceed \$1,500 for each day Respondents continued to operate their Facility without a required Part 360 permit.

C. Pursuant to ECL § 71-2103, impose a penalty of up to \$18,000 for Respondents' initial violation of the registration and permitting requirements contained in 6 NYCRR Part 201 and an additional penalty of not to exceed \$15,000 for each day Respondents continued to operate the Crusher in violation of 6 NYCRR Part 201 requirements.

D. Pursuant to ECL § 71-2703, impose a penalty of up to \$7,500 for each time Respondents' violated the dust control requirements set forth in 6 NYCRR 360-1.14(k) and an additional penalty of not to exceed \$1,500 for each day the violation continues.

E. Pursuant to ECL § 71-2103, impose a penalty of up to \$18,000 for Respondents' violation of the air pollution control requirements set forth in 6 NYCRR § 211.1, and an additional penalty not to exceed \$15,000 for each day the violation of 6 NYCRR § 211.1 continues.

F. Pursuant to ECL § 71-2103, impose a penalty of up to \$26,000 for Respondents' second and all additional violations of the air pollution control requirements set forth in 6 NYCRR § 211.1, and an additional penalty not to exceed \$22,500 for each day the second and additional violation of 6 NYCRR § 211.1 continues.

G. Pursuant to the common law doctrine of public nuisance and Executive Law § 63(12), require Respondents to abate the public nuisance they have created in the Peabody Neighborhood.


H. Retain jurisdiction over this matter until the violations of law have been addressed.

I. Pursuant to CPLR § 8303(a)(6), grant costs to the State of two thousand dollars (\$2,000) against Respondents.

Dated: Buffalo, New York
May 27, 2016

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York

BY:



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(716) 853-8579

MICHAEL J. MYERS
Assistant Attorney General,
of Counsel

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

INDEX NO.

**PEOPLE OF THE STATE OF NEW YORK, the
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION and BASIL
SEGGOS, as ACTING COMMISSIONER OF THE
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,
by ERIC T. SCHNEIDERMAN,
Attorney General for the State of New York,**

**Petitioners,
-against-**

**PETER J. BATTAGLIA JR.,
as an Individual and Corporate Officer of
BATTAGLIA DEMOLITION INC.,
BUFFALO RECYCLED AGGREGATE LLC,
and BATTAGLIA TRUCKING INC.,**

Respondents.

VERIFICATION

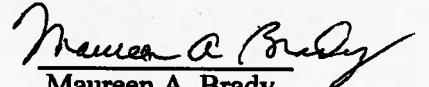
STATE OF NEW YORK)
) SS:
ERIE COUNTY)

MAUREEN A. BRADY, being duly sworn, deposes and says:

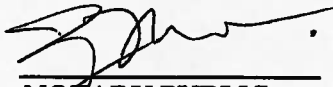
I am the Regional Attorney for the New York State Department of Environmental Conservation, Region 9. I have read the foregoing Petition and know the contents thereof, and the same is true to my own knowledge except to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true. The sources of my knowledge, information, and belief, other than direct knowledge, are my review of documents and files of the DEC and the New York State Attorney General's Office and my knowledge of Environmental Conservation

Law Articles 19 and 27, and their implementing regulations. I make this verification pursuant to CPLR 3020(d)(2), on the basis that I am acquainted with the facts.

Dated: Buffalo, New York
May 27, 2016


Maureen A. Brady

Sworn to before me this
27th Day of May, 2016



NOTARY PUBLIC

TERESA J. MUCHA
Notary Public State of New York
Qualified in Erie County
My Commission Expires 7/29/18