

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
25 Market Street, PO Box 093  
Trenton, NJ 08625-0093

By: Aaron A. Love (035972010)  
Dianna E. Shinn (242372017)  
Willis A. Doerr (266042018)  
Deputy Attorneys General  
(609) 376-2762

Counsel for Plaintiff, New Jersey  
Department of Environmental Protection

SUPERIOR COURT OF NEW JERSEY, OCEAN COUNTY  
LAW DIVISION  
Docket No. L-\_\_\_\_-19

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,  
Plaintiff,

v.

SAM S. RUSSO, individually,  
SAM S. RUSSO, INC., and  
SUZIE Q. RUSSO, LLC, d/b/a  
SUZIE Q. FARM,  
Defendants.

Civil Action

**VERIFIED COMPLAINT**

For a Preliminary Injunction  
and for Summary Action on  
Permanent Injunctive Relief  
and Statutory Penalties

**NATURE OF THE ACTION**

1. The New Jersey Department of Environmental Protection (DEP) is suing the owners and operators of an unpermitted solid waste facility at 27 Hopkins Lane and Stoney Hill Road in Plumsted Township, Ocean County.

2. The defendants are Sam S. Russo, the owner of the property, and two companies that Russo controls, Sam S. Russo, Inc., and Suzie Q. Russo, LLC (doing business as Suzie Q. Farm).

3. Between April 6, 2018, and April 5, 2019, nearly two dozen companies disposed of at least 1,719 dump truck loads of dirt totaling approximately 34,000 to 42,000 tons; 234 loads of food waste totaling approximately 1,100 to 1,600 tons; 300 dump truck loads of asphalt millings; 444 loads of grass clippings; 302 loads of leaves; 229 loads of woodchips; and 25 loads of crushed concrete on Russo's property.

4. In that same twelve-month period, Suzie Q. Farm charged at least \$300,800 in disposal fees to these companies.

5. Accepting and disposing of these types of materials requires DEP-issued solid waste and water pollution discharge permits that Defendants do not have.

6. In May 2017, DEP entered a final order directing Russo to obtain pollution discharge permits for his activities. In December 2017 Russo dropped his appeal of that final order, signed a settlement with DEP, and agreed to apply for a pollution discharge permit.

7. But Russo never applied for a discharge permit, nor have Defendants applied for any solid waste facility permits.

8. Defendants' unpermitted activities can directly harm the environment: runoff and leachate from large quantities of food waste, grass clippings, woodchips, and leaves, and water-borne sediment from huge stockpiles of dirt on the property, contain pollutants and pose a risk to ground and surface waters.

9. DEP suspects that pollutants from Defendants' activities were discharged to a stream running through Russo's property and may have caused the sudden death of hundreds of fish and aquatic plants in a pond downstream of Russo's property on two occasions last year.

10. Defendants' actions violate the Water Pollution Control Act, the Solid Waste Management Act, a final order from DEP, and a settlement Defendants reached with DEP. To remedy these violations, DEP asks the court to enter preliminary and permanent injunctions blocking all imports to the site of dirt and soil, asphalt millings, grass clippings, leaves, woodchips, food waste, and crushed concrete, and to issue an order requiring Defendants to remove all buried and stockpiled solid waste and recyclable materials on the property to an approved solid waste facility. DEP also seeks an order requiring Defendants to pay both statutory and stipulated penalties. And, at the same time, DEP requests an order granting it access to the property to conduct further site inspections, and to require Defendants to produce all relevant records.

#### **PARTIES AND THE PROPERTY**

11. Plaintiff New Jersey Department of Environmental Protection is a principal department of the State of New Jersey. DEP is charged with the enforcement of New Jersey's environmental protection statutes and regulation of solid waste

facilities. In addition to its other statutory powers, DEP regulates discharges of pollutants to surface and ground waters, transport and disposal of solid waste, and processing of recyclable materials under the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

12. Defendant Sam S. Russo (Russo), named individually, is the owner of four tax lots known as Block 58, Lots 13 and 14; Block 61, Lot 14; and Block 62, Lot 7 on the Township's tax maps.

13. Suzanne Russo owns Block 61, Lot 2 with a street address of 8 Stoney Hill Road. This property adjoins Block 58, Lot 13.

14. A holding company called 350 E. Millstream Road, LLC, owns Block 61, Lots 3 and 6. These tax lots adjoin Block 58 Lot 13 and Block 61, Lot 14, both owned by Russo. Corporate filings by 350 E. Millstream Road list Russo as its sole officer and 27 Hopkins Lane as its principal address.

15. These seven tax lots cover 94.3 acres. Collectively, they are referred to here as "the Property."

16. Russo and his family do not live at the Property. They live at 148 Brynmore Road in New Egypt, New Jersey.

17. Defendant Suzie Q. Russo, LLC, is a limited liability company formed in 2011 under the laws of New Jersey and doing business as Suzie Q. Farm from 27 Hopkins Lane.

18. Defendant Sam S. Russo, Inc., (Russo Inc.) is a corporation formed in 1984 under the laws of New Jersey. Russo Inc. is wholly owned and operated by Russo. Russo Inc. provides site clearing, demolition, and waste hauling services. Russo Inc. operates from the Property where it has its offices and where it stores its equipment.

19. Russo Inc. has a solid waste transporter license issued by DEP. Russo Inc. provides dumpster services in the Ocean and Burlington Counties area and primarily hauls construction and demolition waste.

#### **JURISDICTION AND VENUE**

20. The Superior Court has jurisdiction over suits by DEP for injunctive relief, penalties, recovery of costs, and for other relief arising from violations of the Solid Waste Management Act, N.J.S.A. 13:1E-9(d) and the Water Pollution Control Act, N.J.S.A. 58:10A-10(c).

21. This summary action is authorized by Rule 4:52-1 (applications for preliminary injunctive relief), Rule 4:67-6 (actions to enforce final agency orders), Rule 4:70 and the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-11 (actions to recover statutory penalties), the Solid Waste Management Act,

N.J.S.A. 13:1E-9(b) (actions to enforce solid waste violations in Superior Court), and because this matter is appropriate for summary action within the court's discretion under Rule 4:67-1(b).

22. Venue is appropriate in Ocean County because this action arises out of violations that occurred in Plumsted Township and because Defendants reside in Ocean County.

#### **FACTUAL ALLEGATIONS**

**Russo has not complied with a final DEP order directing Russo to obtain water pollution discharge permits.**

**A. DEP's Prior Administrative Action**

23. In 2011, DEP issued Russo an Administrative Order for violating the Water Pollution Control Act by undertaking construction and industrial activities without pollution permits for associated stormwater discharges.

24. DEP's 2011 Administrative Order alleged that Russo had paved more than one acre with asphalt millings and buried 100,000 tons of waste soil on the Property. DEP alleged these were construction-related activities that require stormwater pollution discharge permits under DEP's Water Pollution Control Act rules.

25. DEP also alleged that Russo required an industrial water pollution discharge permit to use the Property as a storage yard for his solid waste company, including by storing

dozens of dumpsters and a wide array of industrial demolition and excavation equipment on the property.

26. DEP directed Russo to stop these construction-related and industrial activities, and to pay a civil administrative penalty.

27. Russo did not comply, and instead requested a hearing to contest the 2011 Administrative Order. The case was referred to the Office of Administrative Law.

28. In 2016, an Administrative Law Judge issued an Initial Decision that Russo violated the Water Pollution Control Act when he undertook these activities without pollution discharge permits.

29. On May 22, 2017, DEP issued its Final Decision adopting the Judge's factual findings and determination of liability.

30. Russo appealed the Final Decision to the Appellate Division, but then withdrew his appeal in December 2017 as part of a settlement agreement with DEP (discussed further below).

#### B. Defendants' Subsequent Actions

31. Despite the Final Decision and the settlement, in 2018 and 2019 Russo and Suzie Q. Farm continued the same regulated activities without applying for or obtaining any water pollution discharge permits.

32. Between April 6, 2018, and April 5, 2019, Russo and Suzie Q. Farm accepted 1,355 dump truck loads of fill dirt and 364 truckloads of topsoil for a total of 1,719 loads. These loads were accepted for processing and burial at the Property without a water pollution discharge permit.

33. Each load averaged between 20 and 25 tons per load, so Defendants accepted between 34,000 to 43,000 tons of soil in this one-year period alone.

34. In 2018 and 2019, Russo and Suzie Q. Farm also accepted approximately 300 dump truck loads of asphalt millings. Russo and Suzie Q. Farm have paved more than one acre with asphalt millings, and re-paved many more acres, without a water pollution discharge permit.

35. Russo Inc. continues to use the Property to store dumpsters, solid waste trailers, and related construction and demolition equipment such as front-end loaders, bulldozers, a road grader, excavators, and soil processing machines called trommel screeners, without an industrial water pollution discharge permit.

**Russo and Suzie Q. farm have not complied with the terms of a 2017 settlement with DEP.**

36. After litigating the 2011 Administrative Order to a Final Decision, Russo and Suzie Q. Farm settled four other administrative orders for numerous additional environmental



violations discovered on the Property between 1998 and 2012. These four additional orders were still pending as contested cases in the Office of Administrative Law at the time of the settlement.

37. Russo and Suzie Q. Farm also settled Russo's liability for unpaid civil administrative penalties, including the \$60,000 penalty in the 2011 Administrative Order, by agreeing to make payments to DEP on a payment plan.<sup>1</sup>

38. Russo, Suzie Q. Farm, and DEP signed an Administrative Consent Order on October 26, 2017, that obligated Russo and Suzie Q. Farm to apply for and obtain a water pollution discharge permit for all areas of the site not devoted to agriculture. The Administrative Consent Order became effective on December 2, 2017.

39. As part of this settlement, Russo withdrew his notice of appeal of the Final Decision. On December 6, 2017, the Appellate Division ordered the appeal dismissed with prejudice.

40. In the Administrative Consent Order, Russo and Suzie Q. Farm agreed that DEP would determine whether Russo and Suzie Q. Farm have obtained necessary approvals. They agreed that DEP can direct Russo and Suzie Q. Farm to cease all relevant operations without the requisite approvals.

---

<sup>1</sup> As of the date of this filing, Russo and Suzie Q. Farm do not owe any payments under the civil penalties payment schedule.

41. Russo and Suzie Q. Farm have not applied for or obtained any stormwater discharge permits despite the many non-farm uses of the Property.

42. Russo and Suzie Q. Farm agreed to file a deed notice for the Property stating that there are buried woodchips on the Property which may not be conducive to the growth of commercial crops or other vegetation, or considered stable or appropriate fill for construction and development activities.

43. Russo has not filed this deed notice, despite repeated reminders from DEP and notices of violation for non-compliance with the ACO.

**Defendants are operating an unpermitted solid waste facility.**

44. Russo claims to be a livestock farmer whose primary use of the Property is to raise and sell cattle and swine.

45. However, the primary use of the Property is industrial and commercial, not agricultural.

46. In the year between April 6, 2018, and April 5, 2019, Russo and Suzie Q. Farm accepted approximately 1,355 dump truck loads of fill dirt; 364 loads of topsoil; 444 loads of grass clippings; 302 loads of leaves; 300 loads of asphalt millings; 229 loads of woodchips; 234 loads of food waste; and 25 loads of crushed concrete.

47. Russo and Suzie Q. Farm charged at least \$300,800 in dumping fees for all the materials accepted to the Property in the 12 months ending April 5, 2019.

48. By contrast, Russo reported only \$25,000 in farm-related income for calendar year 2018.

49. Under DEP's recycling rules, food waste, grass clippings, woodchips, and leaves are defined as Class C recyclable materials. Acceptance and processing of these materials is highly regulated by DEP. See N.J.A.C. 7:26-1.1 et seq.

50. Russo charges to dispose of these materials by companies that would otherwise have to take these loads to a DEP-approved facility for disposal, undercutting facilities that are complying with state law.

51. Russo also charges other companies to dispose of unwanted fill dirt and topsoil, including from at least three recycling centers and a home construction company.

52. Russo claims to operate a commercial topsoil processing facility by blending composted animal bedding and manure with the thousands of dump truck loads of fill dirt, then selling or giving away blended topsoil to commercial firms.

53. Despite his claims, Russo is actually burying much of this material on the Property.

54. DEP site inspections in 2016, 2017, 2018, and 2019, as well as analysis of air photos, show that Russo has spread and buried these materials over different parts of the Property for many years, laying down layer after layer of different materials over a period of years and shifting uses.

55. Attached as Exhibit A is a key map of Russo's property with numbers corresponding to the location of DEP observations and evidence described in this Verified Complaint. References to [Map #] in this Complaint are to the locations shown in Exhibit A.

56. Russo's layering of different materials is most obvious on the Property east of the large L-shaped barn, in the area of [Map 2, 14, and 15]. In these areas Russo has created enormous mounds of material covering several acres and topped with bulldozed loads of woodchips, leaves, and grass clippings.

57. Russo also created a gigantic stockpile of fill dirt near the center of the property [Map 13].

58. Russo disposes of asphalt millings in several ways. DEP has observed asphalt millings buried or mixed into the soil in one of Russo's fields, on the west side of the Property near the Hopkins Lane entrance [Map 16].

59. Russo also disposes of asphalt millings by covering and re-covering paved areas on his Property with layer after layer of asphalt millings. In one area paved between 2016 and

2018, the asphalt millings appear to be at as much as five feet thick [Map 7].

60. In documents and statements to DEP, Russo admits burying asphalt millings and crushed concrete under layers of soil, then covering these areas with woodchips, leaves, and grass clippings.

61. Russo also testified during a hearing on October 4, 2016, in the consolidated tax appeals docketed as Sam Russo v. Plumsted Township, New Jersey Tax Court dockets 15983-12, 10713-13, and 10167-14, that his company, Russo Inc., hauled waste concrete to the Property, crushed this material, and buried it below roadways and paddocks in lieu of disposal at an approved solid waste facility.

62. Russo also admitted in his testimony at the same hearing that Russo Inc. has hauled tree parts like branches and stumps back to the Property in lieu of disposal at an approved solid waste facility.

63. Records provided to DEP by Russo and Suzie Q. Farm in 2019 appear to show that Russo Inc. also uses the property as a transfer station by hauling construction and demolition waste from its customers back to the Property for temporary storage before sending this waste to a permitted solid waste facility.

64. Defendants have no permits or approvals from DEP to operate a recycling center or a solid waste facility.

**Defendants paved or re-paved acres of the Property with asphalt millings without water pollution discharge permits.**

---

65. Russo and Suzie Q. Farm report accepting 300 loads of millings in the twelve-month period ending April 5, 2019. Asphalt millings are the ground-up asphalt produced when roads are re-paved.

66. Since 2016, Russo has covered more than an acre in thick layers of asphalt millings.

67. The first area is just over 1 acre large: a roadway between 50' and 90' wide and nearly 700' long between two fields [Map 7].

68. Russo paved this area with a thick layer of millings - estimated to be at least thigh-deep - from 2016 to 2018.

69. Russo cut down trees and covered less than an acre with millings at 29 Stoney Hill Road in 2017 [Map 1].

70. Russo repaved and widened the Hopkins Lane entrance driveway to the Property between 2016 and 2018, including cutting down some small ornamental trees that were planted along the driveway [Map 6].

71. Russo repaved large areas of the Property with additional layers of asphalt millings on the driveways leading from Stoney Hill Road [Map 23], and in the various staging, storage, and parking areas that were already paved with millings before 2016 [Map 3, 5, 11, 12].

**Russo Inc. continues to use the Property as a yard for its solid waste, demolition, and excavation equipment.**

72. The Property is the long-time yard and headquarters for Russo Inc., Sam Russo's demolition, site clearing, and solid waste hauling business.

73. At any given time, Russo Inc. stores dozens of roll-off dumpsters on the Property, as well as semi-tractor trailers, waste transfer trailers, shipping containers, shipping trailers, bulldozers, excavators, backhoes, front-end loaders, dump trucks, and trommel screeners (large pieces of industrial equipment used to sort and screen debris and soil).

74. DEP inspectors have seen RUSSO-branded dumpsters stored on the Property with waste materials inside.

75. Other commercial entities besides Russo Inc. operate from the Property and store trucks and equipment there.

76. During multiple inspections in 2018, DEP inspectors noted landscaping trucks, commercial zero-turn lawn mowers, trailers loaded with grass trimmers, mowers and leaf blowers, and about 10 Kubota and John Deere-style tractors parked in an area of Property across from 29 Stoney Hill Road [Map 11].

77. At least two other commercial firms - a landscaper and a trucking company - store trucks and other equipment at the Property.

78. Since as far back as 2009, a small-scale car restoration company has operated from one of the barns on the Property near [Map 6].

**Defendants' activities risk polluting ground and surface waters.**

---

79. Many of the materials Defendants are accepting, processing, and burying on the Property are known to cause water pollution unless properly handled and contained.

80. Runoff and leachate from large piles of grass clippings and leaves often contains high levels of nutrients such as phosphorus and nitrates, common water pollutants.

81. Stormwater from large woodchip piles can create a black liquid with a highly concentrated nutrient load and a biological oxygen demand and chemical oxygen demand greater than that of raw sewage in some instances.

82. Food waste can contain pathogenic organisms such as salmonella, which is why food waste should not be dumped on the ground or spread in fields and should be fully composted to reach temperatures between 130 degrees and 140 degrees Fahrenheit.

83. Livestock manure and soiled animal bedding can pose a direct threat to water resources from nutrient loading and from pathogens in feces if not properly composted and managed.



Ground water can be contaminated by nutrients and salts from manure storage areas and related runoff seeping into the ground.

84. Sediment in runoff from dirt piles and large soil disturbances causes water pollution from the phosphorus, nitrogen, metals, and organic compounds that are preferentially absorbed onto mineral or organic particles found in fine sediment. Course sediment clogs waterways and is harmful to aquatic animals.

85. On two occasions in 2018, DEP inspectors investigating a fish kill and vegetation die-off in a downstream pond traced odors and visual signs of the suspected pollutants to the Property.

86. On July 25, 2018, responding to a fish kill at a pond nearby, DEP traced odors of the suspected pollutant, a citrus-derived oil, from the pond and up a stream to Russo's Property.

87. Two days later, during a follow-up inspection, DEP inspectors saw a large, uncovered pile of food waste staged near a livestock pen, including many citrus rinds [Map 3].

88. Then, on September 10, 2018, DEP responded to the same pond for a report of a discharge of a vegetable oil-like product. The emulsified oil formed a brownish, mucky scum on the surface and banks of the pond.

89. DEP followed the odor and traces of the brown scum from the pond, up the stream, and back to the Property.

90. This time, the trail led to a concrete pipe at the edge of one of Russo's fields [Map 21]. The pipe was flowing when DEP found it, and there were traces of brown scummy material along the ditch from the pipe to the stream.

91. Looking for the pipe's source, DEP inspectors walked further into the Property to an asphalt millings-covered lot where dumpsters and other equipment were parked, and where Russo had installed at least three stormwater drains [Map 4].

92. During the same inspection, DEP photographed a second ditch discharging brown-tinged water into the stream near [Map 25], further up from the concrete pipe. The ditch at [Map 26], the inspectors confirmed, drains the area of the fill dirt pile at [Map 2 and 13].

93. Russo later provided a written farm plan and a hand-drawn map, both indicating that he drains stormwater from his property into the ground using four dry wells: deep pits filled with gravel.

94. Based on its investigations to date, DEP has determined there may be at least six different water pollution discharge points on the Property: the concrete pipe that empties to the stream; the ditch that drains the fill dirt area and which also discharges to the stream; and four dry wells discharging stormwater into the ground.

COUNT 1

**To enforce DEP's Administrative Order to cease regulated construction and industrial activities until Defendants obtain water pollution discharge permits.**

---

95. Plaintiff incorporates the foregoing paragraphs as if restated here in full.

96. The 2011 Administrative Order became a final agency order on the date of the Final Decision on May 22, 2017.

97. This final agency order requires Russo to obtain water pollution discharge permits for industrial and construction-related activities, and to cease the regulated activities and all discharges until such permits are obtained.

98. Defendants have not applied for any water pollution discharge permits.

99. Defendants did not cease - and they continue to undertake - the very same industrial and construction-related activities cited in the 2011 Administrative Order and the Final Decision.

100. DEP is entitled to relief for ongoing violations of its final agency order, including but not limited to:

- a. Preliminary and permanent injunctions prohibiting acceptance of fill dirt;
- b. Preliminary and permanent injunctions prohibiting any dirt or soil processing activities, including production of topsoil and deposition or burial of imported dirt or soil on the Property;

- c. Preliminary and permanent injunctions prohibiting acceptance and use of asphalt millings to pave or repave any part of the Property; and
- d. Preliminary and permanent injunctions prohibiting the storage of solid waste, solid waste containers and equipment, and excavation and demolition equipment on the Property.

**COUNT 2**

**To enforce DEP's settlement with Russo and Suzie Q. Farm.**

101. Plaintiff incorporates the foregoing paragraphs as if restated here in full.

102. By its terms and under N.J.A.C. 1:1-19.1(c) and (d), the Administrative Consent Order is a final agency order that is enforceable in Superior Court.

103. The Administrative Consent Order is also an enforceable contract for specific performance.

104. Paragraph 15 of the Administrative Consent Order requires Russo and Suzie Q. Farm to apply for and obtain stormwater discharge permits for portions of the Property not dedicated to agriculture.

105. Defendants have not applied for or obtained any stormwater discharge permits despite the many non-farm uses of the Property.

106. Paragraphs 18 and 20 require Russo and Suzie Q. Farm to maintain records of incoming and outgoing materials for 12 months including records of woodchips, leaves, grass clippings,

food waste, and manure, and of the amounts, dates, and location of animal waste (including bedding materials) deposited on the Property, and to make those records available to DEP on request.

107. On April 12, 2019, DEP requested production of responsive records under the Administrative Consent Order. To date, Defendants have not provided complete records of these materials for DEP's review.

108. Paragraph 21 requires Russo and Suzie Q. Farm to file a deed notice for the Property in the form attached to the Administrative Consent Order, by January 1, 2018.

109. Defendants have not filed the deed notice.

110. DEP is entitled to relief for specific performance of the requirements of the Administrative Consent Order including but not limited to:

- a. Preliminary and permanent injunctions prohibiting acceptance of fill dirt, woodchips, leaves, grass clippings, food waste, asphalt millings, and crushed concrete;
- b. Preliminary and permanent injunctions prohibiting any dirt or soil processing activities, including production of topsoil and deposition or burial of imported dirt or soil on the Property;
- c. Preliminary and permanent injunctions prohibiting acceptance and use of asphalt millings to pave or repave any part of the Property;
- d. Preliminary injunctive relief requiring Defendants to produce all records required to be maintained and provided to DEP under the Administrative Consent Order within ten days;

- e. An injunction requiring Defendants to file a deed notice in the form prescribed by the Administrative Consent Order; and
- f. Payment of stipulated penalties for noncompliance with the Administrative Consent Order.

**COUNT 3**

**To enforce ongoing violations of the Water Pollution Control Act for undertaking regulated activities and discharging pollutants without water pollution discharge permits.**

111. Plaintiff incorporates the foregoing paragraphs as if restated here in full.

112. Pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-6(a), and DEP's rules, N.J.A.C. 7:14A-2.1(d), it is unlawful for any person to discharge any pollutant except in conformity with a valid water pollution discharge permit issued by DEP.

113. Water pollution discharge permits are required for discharges from any facility "under the jurisdiction of the Solid Waste Management Act," N.J.A.C. 7:14A-2.4(b)(4), and for certain discharges of stormwater to surface and ground waters. N.J.A.C. 7:14A-2.4(b)(11); see generally N.J.A.C. 7:14A-24.

114. Defendants, without having first obtained a discharge permit, are operating a solid waste facility subject to regulation under the Solid Waste Management Act, in violation of N.J.A.C. 7:14A-2.1(d) and 2.4(b)(4).

115. No person may undertake any small construction activity that results in a land disturbance of between one and five acres without first obtaining a stormwater pollution discharge permit. N.J.A.C. 7:14A-1.2; N.J.A.C. 7:14A-24.2(a)(3).

116. Defendants, without having first obtained a small construction activity water pollution discharge permit, have undertaken construction-related activities by paving and repaving between one and five acres of the Property, and by importing and burying thousands of truckloads of fill dirt and topsoil, in violation of N.J.A.C. 7:14A-2.1(d) and N.J.A.C. 7:14A-24.2(a)(3).

117. No person may discharge pollutants to surface or ground water from any facility involved in the recycling of materials, including any facility engaged in the processing of recycled wood, yard trimmings, and soil blending, without first obtaining an industrial stormwater NJPDES permit. N.J.A.C. 7:14A-1.2; N.J.A.C. 7:14A-24.2(a)(2).

118. Defendants, without having first obtained an industrial water pollution discharge permit, are engaged in processing wood products, yard trimmings, and soil blending in violation of N.J.A.C. 7:14A-2.1(d) and N.J.A.C. 7:14A-24.2(a)(2).

119. No person may discharge pollutants to surface or ground water from an industrial facility required to obtain a stormwater discharge permit without first obtaining such permit. N.J.A.C. 7:14A-1.2; N.J.A.C. 7:14A-24.2(a)(2).

120. Defendants, without having first obtained an industrial water pollution discharge permit, have stored solid waste containers and excavation and demolition equipment, which are industrial activities that require a water pollution discharge permit, in violation of N.J.A.C. 7:14A-2.1(d) and N.J.A.C. 7:14A-24.2(a)(2).

121. Under N.J.S.A. 58:10A-10(c)(1), DEP is entitled to preliminary and permanent injunctive relief to prevent continuing unpermitted discharges, including:

- a. Preliminary and permanent injunctions prohibiting acceptance of fill dirt, woodchips, leaves, grass clippings, food waste, asphalt millings, and crushed concrete;
- b. Preliminary and permanent injunctions prohibiting any dirt or soil processing activities, including production of topsoil and deposition or burial of imported dirt or soil on the Property;
- c. Preliminary and permanent injunctions prohibiting acceptance and use of asphalt millings to pave or repave any part of the Property;
- d. Preliminary injunctive relief requiring Defendants to provide full access to DEP and/or individuals on behalf of DEP to conduct an inspection and sampling on the Property to investigate suspected water pollution discharges, to dye-test drains and catchments to determine outfalls, to inspect interior buildings for interior drains, along with any other sampling DEP deems reasonable and necessary; and



- e. Permanent injunctive relief requiring removal of all Class C recyclable materials from the Property to an approved Class C facility.

122. Under N.J.S.A. 58:10A-10(c) and (e), DEP is also entitled to non-injunctive relief for violations of the Water Pollution Control Act including:

- a. Assessment of civil penalties;
- b. Assessment of the actual amount of any economic benefits accruing to Defendants from the violations; and
- c. Assessment of the reasonable costs incurred by DEP to investigating these violations.

**COUNT 4**

**To enforce ongoing violations of the Solid Waste Management Act for operating a recycling center without DEP approval.**

---

123. Plaintiff incorporates the foregoing paragraphs as if restated here in full.

124. Grass clippings, leaves, wood chips, and brush (collectively called "yard trimmings" in DEP's rules) and source-separated food waste are regulated Class C recyclable materials. N.J.A.C. 7:26A-1.3.

125. A "recycling center" includes any facility that receives, stores, processes, or transfers Class C recyclable materials. N.J.A.C. 7:26A-1.3.

126. Pursuant to N.J.A.C. 7:26A-3.1(a), no recycling center shall receive, store, process or transfer any Class C recyclable material without DEP's prior written approval.

127. Any person who operates a recycling center for the receipt, storage, processing, or transfer of Class C recyclable material without prior written approval shall be considered to be operating an unlicensed solid waste facility and shall be subject to penalties and enforcement under the Solid Waste Management Act, N.J.S.A. 13:1E-9. N.J.A.C. 7:26A-3.1(b).

128. Defendants have received, stored, processed, and/or transferred large quantities of Class C materials, namely grass clippings, woodchips, leaves, and food waste without written approval from DEP to operate a recycling center.

129. Under N.J.S.A. 13:1E-9(d) and (f), DEP is entitled to injunctive and non-injunctive relief for violations of the Solid Waste Management Act, including:

- a. Preliminary and permanent injunctions prohibiting further receipt, storage, processing, or transfer of Class C recyclable materials on or to the Property;
- b. Preliminary injunctive relief to require Defendants to provide full access to DEP and/or individuals on behalf of DEP to conduct an inspection and sampling on the Property to investigate the extent and characteristics of stockpiled and buried regulated materials and solid waste anywhere on the Property, to inspect interior buildings for regulated solid waste activities, and to perform such other sampling DEP deems reasonable and necessary;
- c. Permanent injunctive relief requiring removal of all solid waste buried or placed on the Property to an approved solid waste facility;
- d. Assessment of civil penalties; and
- e. Assessment of the reasonable costs incurred by DEP to investigating these violations.

COUNT 5

**To enforce ongoing violations of the Solid Waste Management Act for operating an unpermitted solid waste facility.**

---

130. Plaintiff incorporates the foregoing paragraphs as if restated here in full.

131. Pursuant to N.J.A.C. 7:26-2.8(e), no person shall engage in the disposal of solid waste without obtaining approval to operate a solid waste facility.

132. Pursuant to N.J.A.C. 7:26-2.8(f), no person shall begin construction or operation of a solid waste facility without first obtaining a solid waste facility permit.

133. A solid waste facility is any system, site, equipment or building used for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste, but does not include recycling centers. N.J.A.C. 7:26-1.4 (defining "solid waste facility").

134. A transfer station is a solid waste facility at which solid waste is transferred from one solid waste vehicle to another for transportation to an off-site solid waste facility. N.J.A.C. 7:26-1.4 (defining "transfer station").

135. Construction and demolition waste includes waste building material and rubble resulting from construction, remodeling, repair, and demolition operations on houses,

commercial buildings, pavements, and other structures. N.J.A.C. 7:26-1.4 (defining "construction and demolition waste").

136. A material is a solid waste if it is disposed of by being discharged, deposited, injected, dumped, spilled, leaked, or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be discharged into ground or surface waters. N.J.A.C. 7:26-1.6(c).

137. Unprocessed recyclable materials, post-consumer materials, and used or abandoned materials that are or will be deposited on or in the lands of the State for any period exceeding six months, including by stockpiling, staging or storing, are solid waste and are subject to regulation under DEP's solid waste disposal rules. N.J.A.C. 7:26A-1.1(d).

138. Defendants engaged in disposal of solid waste when they accepted Class C materials without a recycling center approval, and where the materials were deposited on or in the ground at the Property for more than six months, in violation of N.J.A.C. 7:26-2.8(e).

139. Defendants engaged in disposal of solid waste when they charged other companies to dispose of fill dirt and soil, asphalt millings, and other waste material on the Property, and where Defendants discarded these materials, or accumulated and stored these materials in lieu of being discarded, or placed

these materials on the Property in a manner constituting disposal, without a permit in violation of N.J.A.C. 7:26-2.8(e).

140. Defendants operated an unpermitted solid waste facility at the Property by disposing of regulated Class C recyclable materials and other waste materials without a solid waste facility permit, in violation of N.J.A.C. 7:26-2.8(f).

141. Defendants operated an unpermitted solid waste facility by using the Property as a transfer station for loads of solid waste transported by Russo Inc. to the Property for storage or transfer to other solid waste containers, and where the solid waste was subsequently taken for disposal at another solid waste facility, in violation of N.J.A.C. 7:26-2.8(f).

142. Under N.J.S.A. 13:1E-9(d) and (f), DEP is entitled to injunctive and non-injunctive relief for violations of the Solid Waste Management Act, including:

- a. Preliminary and permanent injunctions prohibiting further receipt, storage, processing, or transfer of solid waste on or to the Property;
- b. Preliminary injunctive relief to require Defendants to provide full access to DEP and/or individuals on behalf of DEP to conduct an inspection and sampling on the Property to investigate the extent and characteristics of stockpiled and buried regulated materials and solid waste anywhere on the Property, to inspect interior buildings for regulated solid waste activities, and to perform such other sampling DEP deems reasonable and necessary;
- c. Permanent injunctive relief requiring removal of all solid waste buried or placed on the Property to an approved solid waste facility;

- d. Assessment of civil penalties; and
- e. Assessment of the reasonable costs incurred by DEP to investigating these violations.

**PRAYER FOR RELIEF**

WHEREFORE, pursuant to Rule 4:52-1, Plaintiff respectfully requests the following preliminary injunctive relief from all Defendants:

- a. Immediately cease accepting fill dirt, topsoil, food waste, woodchips, grass clippings, leaves, asphalt millings, and crushed concrete at the Property;
- b. Immediately stop all topsoil processing at the Property;
- c. Immediately stop all paving or repaving of any portion of the Property with asphalt millings or the like;
- d. Within ten days, provide DEP all records required to be maintained by the Administrative Consent Order, as requested by DEP on April 12, 2019;
- e. Within 30 days, provide access to DEP and/or individuals on behalf of DEP to conduct an inspection and sampling on the Property to investigate the extent and characteristics of stockpiled and buried regulated materials, to dye-test drains and catchments to determine outfalls, to inspect interior buildings for regulated solid waste activities and sample interior drains, along with any other sampling DEP deems reasonable and necessary. DEP reserves the right to request additional time to inspect and sample depending upon DEP's initial inspection and sampling of the Property.

WHEREFORE, Plaintiff respectfully requests that the Court issue a return date and briefing schedule for the summary action to follow the inspection and sampling at the Property.

WHEREFORE, pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-10(c)(1), and the Solid Waste Management Act,

N.J.S.A. 13:1E-9(d)(1), Plaintiff respectfully requests that the court enter a permanent injunction against Defendants to:

- a. Stop all deliveries of fill dirt, topsoil, food waste, woodchips, grass clippings, leaves, asphalt millings, and crushed concrete to the Property;
- b. Remove all recyclable materials and all solid waste buried or deposited on Property to an approved off-site solid waste facility; and
- c. File a deed notice for the Property in the form required by the Administrative Consent Order.

DEP reserves the right to request any other permanent injunctive relief following the results of the inspection and sampling at the Property.

WHEREFORE, Plaintiff respectfully requests that the court grant statutory penalties as the court deems just and proper pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-10(e), and the Solid Waste Management Act, N.J.S.A. 13:1E-9(f).

WHEREFORE, pursuant to N.J.S.A. 58:10A-10(c)(5), Plaintiff respectfully requests an assessment of actual economic benefits that Defendants have accrued as a result of noncompliance with the Water Pollution Control Act.

WHEREFORE, pursuant to Paragraph 30 the Administrative Consent Order, Plaintiff respectfully requests that the court grant stipulated penalties for Defendants' continued noncompliance with the terms of the settlement.

WHEREFORE, pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-10(c)(2), and the Solid Waste Management Act,

N.J.S.A. 13:1E-9(d)(2), Plaintiff respectfully requests that the court order Defendants to pay DEP's reasonable investigatory costs.

WHEREFORE, Plaintiff respectfully requests that the court order any additional relief that the court may deem just and equitable.

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: Aaron Love  
Aaron A. Love  
Deputy Attorney General

Counsel for Plaintiff  
New Jersey Department of  
Environmental Protection

Dated: August 5, 2019



**RULE 4:5-1 CERTIFICATION**

I am designated as Trial Counsel for Plaintiff DEP.

I certify, to the best of my information and belief, that the violations alleged above are not the subject of any other action pending in any court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated. I further certify that there is no other party who should be joined in this action at this time.

I certify that confidential personal identifiers have been redacted from the document now submitted to the court, and will be redacted from all document submitted in the future, in accordance with Rule 1:38-7(b).

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: Aaron A. Love  
Aaron A. Love  
Deputy Attorney General

Counsel for Plaintiff  
New Jersey Department of  
Environmental Protection

Dated: August 5, 2019

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Deputy Attorney General Aaron A. Love is designated as trial counsel for Plaintiff in this action.

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: Aaron Love  
Aaron A. Love  
Deputy Attorney General

Counsel for Plaintiff  
New Jersey Department of  
Environmental Protection

Dated: August 5, 2019

VERIFICATION

STEVEN M. HULSE, by way of verification, states that:

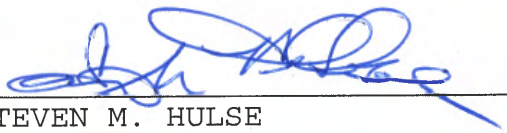
1. I am a State Investigator II employed by the New Jersey Division of Law and assigned to the Environmental Permitting and Counseling section.

2. I have personal knowledge of the factual allegations contained in Paragraphs 2-4, 12-19, 32-34, 46-52, 61-63, 65, 72, and 77 of the Verified Complaint, and I certify that these paragraphs are true and correct.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false I am subject to punishment.

Dated: \_\_\_\_\_

7-19-2019

  
\_\_\_\_\_  
STEVEN M. HULSE  
State Investigator II  
New Jersey Division of Law

VERIFICATION

BRYAN C. BARRETT, by way of verification, states that:

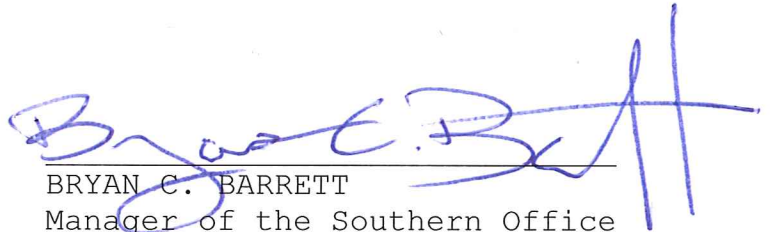
1. I am the Manager of the Southern Office of the Bureau of Water Compliance & Enforcement at the New Jersey Department of Environmental Protection.

2. I have personal knowledge of the factual allegations contained in Paragraphs 5-9, 23-31, 36-41, 66-68, 78-86, and 88-94 of the Verified Complaint, and I certify that these paragraphs are true and correct.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false I am subject to punishment.

Dated:

7/22/19



BRYAN C. BARRETT  
Manager of the Southern Office  
of the Bureau of Water  
Compliance & Enforcement,  
NJDEP

VERIFICATION

AARON ELLIOTT, by way of verification, states that:

1. I am an Environmental Specialist II employed by the New Jersey Department of Environmental Protection, Bureau of Solid Waste Compliance & Enforcement.

2. I have personal knowledge of the factual allegations contained in Paragraphs 5, 35, 42-45, 54-60, 64, 68-71, 73-76, and 87 of the Verified Complaint, and I certify that these paragraphs are true and correct.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false I am subject to punishment.

Dated: \_\_\_\_\_

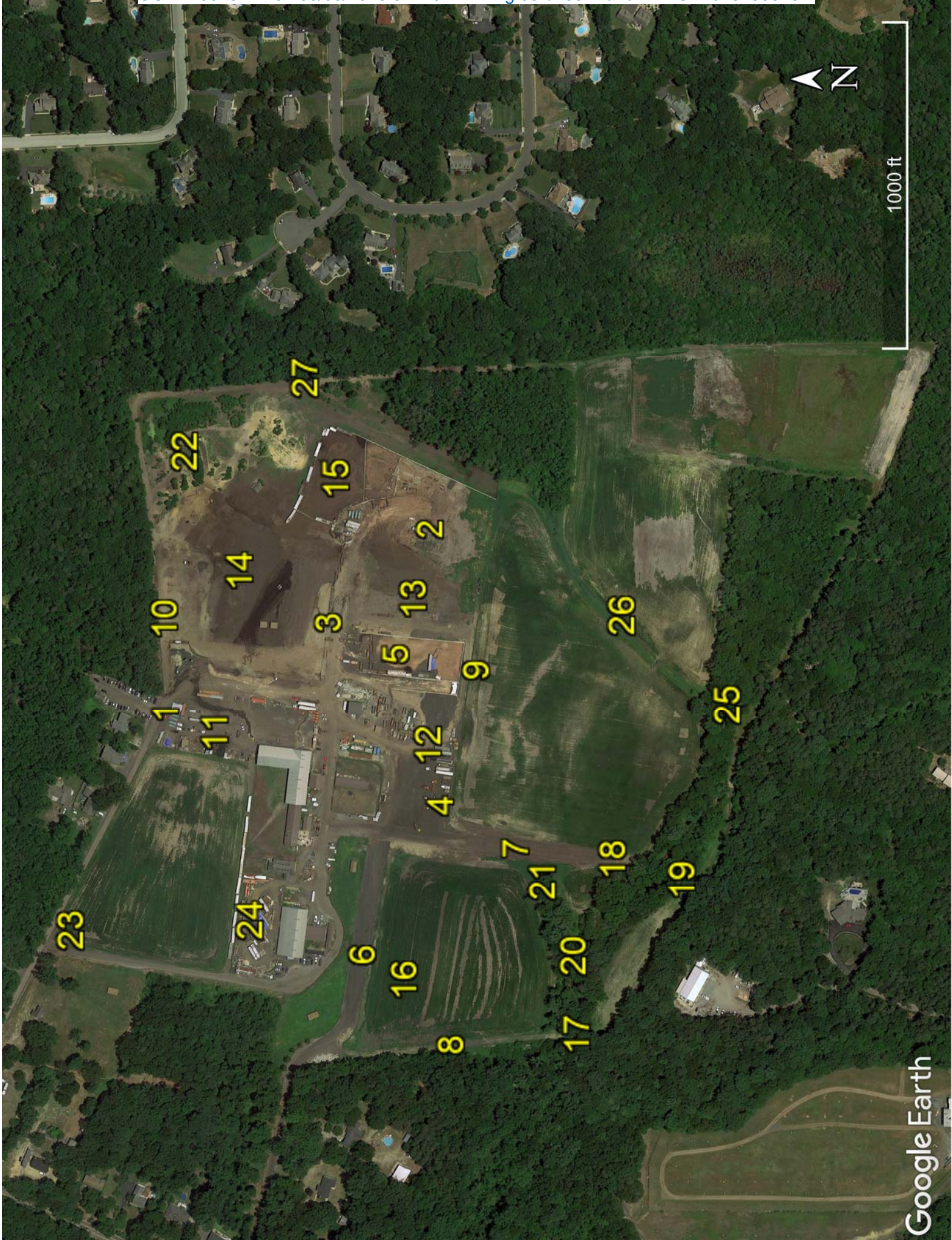
7-22-19



\_\_\_\_\_  
AARON ELLIOTT  
Environmental Specialist II  
NJDEP Bureau of Solid Waste  
Compliance & Enforcement

**Exhibit A**

Numbered Key Map of Russo Property



1000 ft