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Office of Proceedings
April 4, 2023
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Public Record

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36575

**TOWNLINE RAIL TERMINAL, LLC
– CONSTRUCTION AND OPERATION OF A LINE OF RAILROAD –
IN SUFFOLK COUNTY, NY**

**VERIFIED MOTION TO DISMISS PETITION FOR EXEMPTION UNDER 49 U.S.C.
§10502 FROM THE REQUIREMENTS OF 49 U.S.C. § 10901**

Townline Association, Inc. (the “Association”),¹ Richard & Carol DiGrandi from Commack, NY, Keith & Patricia Macartney from Northport, NY, and Brian & Keegan Harris from Kings Park, NY² respectfully move the Surface Transportation Board (“STB” or “Board”) to dismiss the above-captioned Petition for Exemption (“Petition”) from the prior approval requirements of 49 U.S.C. §10901 to construct approximately 5,000 feet of new rail line in Smithtown, NY (the “Proposed Line”), filed by Townline Rail Terminal, LLC (“Townline”), an affiliate of CarlsonCorp, Inc. (“CarlsonCorp”). First, the Association moves to dismiss the Petition because the Proposed Line clearly does not involve “transportation by a rail carrier” but is only a project for a shipper, a private transload facility solely on the CarlsonCorp property, that is not within the jurisdiction of the STB. Secondly, if the Board finds the project is subject to its jurisdiction, the Association alternatively moves to dismiss this Petition because this proceeding is clearly not appropriate for the exemption process due to the strong local

¹ The Association is composed of numerous local citizens who either live or own a house near the rail construction project at issue here. Supporters of the Association live in Kings Park (where the project is located) and in Fort Salonga, East Northport, Northport, and Commack, which are hamlets or towns in Suffolk County, NY on Long Island. Kings Park is in the Town of Smithtown, NY. Northport and East Northport are in the Town of Huntington, NY. Commack and Fort Salonga are in the Towns of Huntington and Smithtown, NY. The purpose of the Association is to prevent the construction of the rail construction project due to its adverse impact on the supporters’ neighborhoods, homes, and families for environmental, safety, and quality of life reasons.

² The DiGrandis’, Macartneys’, and Harris’ each own homes near the rail construction project at issue here and will be adversely affected by it.

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opposition, complex environmental issues surrounding a solid waste rail transfer facility on top of a sole source aquifer, and unaddressed financial questions. Instead, Townline should have submitted its request for construction authority by application.

BACKGROUND

In this proceeding, Townline seeks to construct and operate the Proposed Line in Smithtown, Suffolk County, NY, parallel to the Long Island Railroad (“LIRR”) Port Jefferson Line. The Proposed Line is immediately adjacent to the Port Jefferson Line on the CarlsonCorp property. The New York & Atlantic Railway (“NYAR”) operates freight service on the Port Jefferson Line and has entered into an agreement with CarlsonCorp on behalf of LIRR to install a new switch connecting the Proposed Line to the Port Jefferson Line. Townline seeks to construct the Proposed Line on the northern most portion of CarlsonCorp’s 82-acre parcel that will run along the boundary line with the Port Jefferson Line. Townline will acquire from its affiliate, CarlsonCorp, the necessary real property rights to exercise the construction and operation authority it seeks in this proceeding.

By filing this Petition, Townline is seeking to become a rail carrier. It proposes to operate the Proposed Line on its own property (through CarlsonCorp) essentially to serve itself as a solid waste transfer facility shipper. CarlsonCorp currently operates on contiguous property a New York State Department of Environmental Conservation (“NYDEC”) permitted waste transfer facility for the recycling and processing of recognizable uncontaminated concrete, asphalt pavement, rock, brick, and soil, woody yard waste, un-adulterated wood, yard waste, and horse manure. The Proposed Line would serve a new rail transloading facility that CarlsonCorp would construct on its property at this same location. The construction and operation of the CarlsonCorp transloading facility will be subject to state and local regulation.

Townline claims it seeks to construct and operate the Proposed Line to serve a pending need for the transportation of construction and demolition debris (“C&D”) and potentially incinerator ash off of Long Island. Townline claims this is a pressing near-term need because the Brookhaven Landfill, a public landfill on Long Island that accepts C&D, is scheduled to close in 2024. Once operational, Townline intends to immediately serve the CarlsonCorp transloading facility, transporting C&D. Townline also states it sees potential to provide rail service for Covanta Energy to ship incinerator ash. Covanta Energy is a local waste-to-energy facility that neighbors the property on which the Proposed Line may be constructed. Covanta Energy currently utilizes CarlsonCorp to truck incinerator ash, a byproduct of its operations, to the nearby Brookhaven Landfill.³ However, it is evident that this proposed service is simply an ordinary transload operation being served by NYAC and not a rail operation extending into new territory. The picture of the planned construction project alone demonstrates the true nature of the project as a private rail transload operation for CarlsonCorp’s customers.⁴

While Townline claims there is a pressing need for this C&D transfer facility and rail operation due to the upcoming closure of the Brookhaven Landfill, this unsupported proclamation is inaccurate at best. There are already three other private rail waste transfer stations — in Yaphank, Brentwood, and Medford — in various stages of approval and

³ Other nearby customers that Townline claims that it can potentially serve are Kings Park Ready Mix Corp (“KPRM”), Kings Park Materials (“KPM”), and Pelkowski Precast concrete. In their respective support letters, KPRM states that it currently utilizes trucks to receive cement powder, sand, and gravel and to ship concrete to customers. And KPM says that it receives aggregates via trucks.

⁴ See *B. Willis, C.P.A., Inc. – Pet. for Dec. Order*, FD 34013, slip op. at (STB served Oct 3, 2001) “(In other words, there is a category of rail operations that falls outside the Board’s statutory jurisdiction. It consists of private tracks, typically built and maintained by a shipper (or for a shipper at the shipper’s expense) and operated by the shipper (or its contractor) to serve only that shipper, moving the shipper’s own goods, so that there is no “holding out” to serve other shippers for compensation. Private tracks constitute a narrow, limited category of rail operations. But as long as rail track is constructed and operated in a manner that does not constitute common carriage, rail track can be built and operated in private status not subject to the Board’s jurisdiction.”)

development to haul waste off of Long Island by rail.⁵ (See maps, attached hereto attached hereto as Exhibit C, of these three facilities and the one at issue.) Moreover, Covanta Energy has certainly not committed to moving incinerator ash by rail on the Proposed Line.⁶

With respect to the Proposed Line itself, Townline proposes to construct approximately 5000 feet of new railroad line extending east from the switch off of the LIRR Port Jefferson Line that NYAR operates over for the handling of freight. Townline will also construct switching track and sidetrack. The Proposed Line is shown on the map provided as Exhibit A in the Petition and will be located in Smithtown, Suffolk County, NY. Townline also seeks operating authority to operate the new rail line once it is constructed. Once approved, Townline's Proposed Line intends to serve a truck-rail transloading facility that Townline's affiliated entity, CarlsonCorp, will build. CarlsonCorp states that it will also offer transload services to other local customers. Townline anticipates an initial operation of one-train per day 5-days a week to utilize the Proposed Line. NYAR will drop off and pick up rail cars near the switch on the Proposed Line that connects to the Port Jefferson Line. Townline will then move the railcars on the Proposed Line within the confines of this transload facility.

Moreover, attached to the Petition are four support letters in favor of the construction project, including from KPM and KPRM. However, immediately after the Petition was filed by Townline and the community became aware of this proposal, an avalanche of letters in opposition to the construction project was filed at the STB by nearby residents and community associations. Approximately, 140 letters have already been submitted to the Board in opposition

⁵ See Peconic Environmental Services Rail Waste Transfer Facility Permit in Medford, NY (attached hereto as Exhibit A); Omni Brentwood Rail Transfer Facility Permit (attached hereto as Exhibit B); *Brookhaven Rail—Constr. & Operation Exemption—in Suffolk Cnty., N.Y.*, FD 36398 et al., slip op. at 5 (STB served Oct. 23, 2020) (Yaphank land-use exemption proceeding changed to application process).

⁶ See March 31, 2023, email from Covanta (attached hereto as Exhibit D).

to the Petition, as well as a petition against the project signed by over 2800 people in the surrounding area. Generally, the letters provide that the proposal fails to show that the train yard and solid waste transfer facility will be only 500 feet from established residential neighborhoods in Kings Park and in very close proximity to residential homes in Fort Salonga, East Northport, Northport, and Commack, all of which tightly border the construction project area. They also accurately point out that the proposal fails to show that there are several schools, playgrounds, and a nursing home near the proposed rail yard. In addition, they identify that the proposal fails to show the surrounding area includes a federally classified deep recharge area for a sole source aquifer.⁷

The surrounding communities were never advised by local, state, or federal officials that this rail project was under consideration. The Town of Smithtown Supervisor, Edward Wehrheim, the town board, and Suffolk County Legislator Robert Trotta are in favor of this proposal. The latter, in his support letter, stated there has been no organized opposition. That is because the members of the surrounding communities were generally unaware of this proposal, and now that the community is aware of the project, there is clearly strong opposition to it. This onslaught of opposition demonstrates how controversial this project is and how strongly the local community feels about the negative impact it will have on their neighborhoods.

ARGUMENT

1. The Board Does Not Have Jurisdiction over this Rail Transload Construction Project.

Based on the facts presented by Townline, the Board should find that this construction project will not result in a rail carrier nor an agent of a rail carrier, nor will its operations be

⁷ Sole Source Aquifers are designated as the sole or main source of drinking water for a community by the US Environmental Protection Agency under provisions of the Federal Safe Drinking Water Act.

under the control of a rail carrier. The Board has jurisdiction over “transportation by rail carrier.” 49 U.S.C. § 10501(a). To come within the Board’s jurisdiction, an activity must be both “transportation” and “by rail carrier” under § 10501. The statute defines “transportation” expansively to encompass any property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, and services related to that movement, including receipt, delivery, transfer in transit, storage, handling, and interchange of passengers and property. 49 U.S.C. § 10102(9). Further, a “rail carrier” is defined as a “person providing **common carrier** railroad transportation for compensation.” 49 U.S.C § 10102(5) (emphasis added).⁸ And “railroad” is defined broadly to include a switch, spur, track, terminal, terminal facility, freight depot, yard, and ground, used or necessary for transportation. 49 U.S.C. § 10102(6).⁹ Whether a particular activity is considered part of transportation by rail carrier under § 10501 is a case-by-case, fact specific determination. *See, e.g., Padgett v. STB*, 804 F.3d 103, 108 (1st Cir. 2015). All of the facts here demonstrate that the Proposed Line is not part of transportation by a rail carrier.

The Interstate Commerce Commission (ICC), the Board’s predecessor, developed standards to determine whether terminal-type companies, like Townline, are themselves rail carriers. *See Lone Star Steel Co. v. McGee*, 380 F.2d 640, 647 (5th Cir. 1967) (*Lone Star*); *Assoc.*

⁸ The Board has stated that a common carrier is one that “holds itself out to the general public as engaged in the business of transporting persons or property from place to place for compensation.” *Am. Orient Express Ry. v. STB*, 484 F.3d 554, 557 (D.C. Cir. 2007); *Wis. Cent. Ltd. v. STB*, 112 F.3d 881, 884 (7th Cir. 1997). A rail carrier has a common carrier obligation to provide service upon reasonable request. 49 U.S.C. § 11101.

⁹ 49 U.S.C. § 10102(9) defines “transportation” to include “(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and (B) services related to that movement, including, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.” A “rail carrier” is defined to be a “person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation.” 49 U.S.C § 10102(5). And § 10102(6) provides that a “railroad” includes “(A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad; (B) the road used by a rail carrier and owned by it or operated under an agreement; and (C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.”

of P&C Dock Longshoremen v. The Pitts. & Conneaut, 8 I.C.C.2d 280, 290-95 (1992) (*P&C Dock*). The Board's jurisdiction extends to the rail-related activities that take place at transloading facilities only if the activities are performed by a rail carrier or the rail carrier holds out its own service through the third party as an agent or exerts control over the third-party's operations. *Compare Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 640, 642 (2nd Cir. 2005) (transloading and temporary storage of bulk salt, cement and non-bulk foods by a rail carrier preempted) and *Lone Star* and *P&C Dock* (so long as the questioned service is part of the total rail common carrier service that is publicly offered, then the agent providing it for the offering railroad is deemed to hold itself out to the public) *with Town of Milford, MA—Petition for Declaratory Order*, FD 34444 (STB served Aug. 12, 2004) (Board lacked jurisdiction over noncarrier operating a rail yard where it transloaded steel pursuant to an agreement with the carrier but the transloading services were not being offered as part of common carrier services offered to the public) and *Hi Tech Trans, LLC – Pet. for Dec. Order – Newark, NJ*, 34192 (Sub-No. 1) (STB served Aug. 14, 2003) (no STB jurisdiction over truck-to-truck transloading prior to commodities being delivered to rail) and *Louisville and Jefferson Cty. Riverport Auth.*, FD 34643 (STB served Oct. 22, 2021) (no STB jurisdiction over port operator performing rail transload services who did not hold itself out to provide common carrier services by rail for compensation by offering or setting rates or service terms for any rail shippers or entering into any interchange agreements with linehaul railroads but instead, provided contractual switching and transloading services.)

Townline's proposed transloading activities obviously fall within the statutory definition of transportation as Townline apparently will provide, among other things, railroad switching services to move waste around the transload facility on this proposed rail infrastructure—which

supposedly will include the receipt, transfer, and handling of property. But, as noted above, for such transloading activities to come under the Board's jurisdiction, they must be offered by a rail carrier, either directly or through its agent, or a rail carrier must exert control over a third-party's operations. (*Id.*)

However, on this record, CarlsonCorp or Townline cannot be a rail carrier. The evidence here fails to establish that either entity would provide common carrier transportation on the transload facility track proposed to be built here. Specifically, while Townline claims it will hold itself out to provide common carrier services by rail for compensation, there is nothing in the record demonstrating that Townline will be involved in offering or setting rates or service terms for any rail shippers that transload at this facility, or that it has entered into an interchange agreement with NYAR. Instead, the evidence of record indicates that Townline will provide switching and transloading services as part of the CarlsonCorp transload operation.

Moreover, Townline would not be "engaged in the business of transporting persons or property from place to place for compensation" as it is only operating in one place – at the CarlsonCorp solid waste transfer facility. *Am. Orient Express Ry.*, 484 F.3d at 557; *Wis. Cent. Ltd.*, 112 F.3d at 884. Indeed, it cannot be found to be entering new territory as it is only serving itself at this one location served by NYAR.

The Board should find that these services do not rise to the level of holding out or providing common carrier service by rail for compensation that would fall within the Board's jurisdiction as it did in *Town of Milford*, *Hi Tech* and *Louisville*, *supra*. See 49 U.S.C. § 10102(5) ("‘rail carrier’ means a person providing common carrier railroad transportation for compensation.") CarlsonCorp/Townline would only be offering transloading services to its customers directly. It will have direct contracts with customers—most of which are not located

within the CarlsonCorp facility— for loading or unloading a railcar that is placed on these proposed tracks by NYAR. The Board has found that it lacks jurisdiction over the activities of a noncarrier transloader offering its own services directly to customers. *See Town of Babylon and Pinelawn Cemetery*, FD 35057, slip op. at 5 (STB served Feb. 1, 2008). Based on the evidence in this case as presented in the Petition, Townline has failed to demonstrate that it will be a rail carrier or that it is performing transportation-related activities on behalf of any rail carrier servicing the transload facility.

“In fact, many shippers that own and operate locomotives and transloading facilities are not considered to be rail carriers under the statute.” *Town of Milford*, slip op. at 3. This case is clearly more like *Town of Milford*, *Hi Tech*, *Louisville*, and *Town of Babylon*, involving transload facilities that have rail services too as part of their transload services for their customers. Therefore, the Board should dismiss this Petition as it does not have jurisdiction over the Proposed Line.

2. This Proceeding Is Not Appropriate for the Exemption Process.

If the Board finds it has jurisdiction over the Proposed Line, the Association urges the Board to dismiss the Petition and require Townline to file a construction application under 49 CFR § 1150, as this matter has already resulted in significant opposition from the local community, involves sensitive solid waste transfer facility environmental issues, and raises a question about the financial capability of Townline to construct such a significant project when other similar projects are already in progress on Long Island.¹⁰

Based on the numerous filings herein involving thousands of community members, the

¹⁰ While the Association does not believe this Petition is properly before the Board as discussed in the prior section, the Application process would clarify many of the factual “rail carrier” questions regarding this jurisdictional issue if necessary.

Board is now well aware of the substantial public opposition to the Proposed Line that has materialized since the Petition was filed by Townline. The Board has granted exemptions from section 10901 in construction cases in appropriate proceedings, wherein it has preliminarily found that the proposed construction satisfied the exemption criteria of section 10505, but withheld a final grant of the authority to build the line pending the completion of the analysis of the environmental impact of the construction. The Board has explained that procedure works well in noncontroversial construction cases. But the Board does not normally employ it in cases where significant opposition has been expressed to the proposed project. In controversial cases, the filing party typically is required to submit a formal application. *See Construction and Operation—Indiana & Ohio Ry, Co.*, 9 I.C.C.2d 783 (1993) and *Tongue River Railroad Company—Application*, Finance Docket No. 30186 (Sub-No. 2). Given the massive opposition that has been presented in this proceeding, the Board should be able to assume, as it must in exemption cases, that regulation is not necessary to carry out the national rail transportation policy. *See, e.g.*, 49 U.S.C. 10101a(3), (4), and (8). That simply is not the case here where there is strong opposition and a substantial dispute about the jurisdiction of the Board over the project as discussed. The application process would provide the proper vetting for such a project, especially one that involves an inherently controversial solid waste transfer facility.¹¹

Moreover, the Association has serious questions surrounding the financial feasibility of the proposed rail project, namely the lack of need for this transload facility in this area and the

¹¹ *See, e.g.*, the Clean Railroads Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848, (CRA) amended 49 U.S.C. § 10501(c)(2) (restricts the jurisdiction of the STB over solid waste rail transfer facilities. The CRA also added three new statutory provisions—49 U.S.C. §§ 10908-10910—that address the Board’s regulation of such facilities, which is now limited to issuance of “land-use-exemption permits” in certain circumstances. Under the CRA, a solid waste rail transfer facility must comply with all applicable federal and state requirements respecting the prevention and abatement of pollution, the protection and restoration of the environment, and the protection of public health and safety, in the same manner as any similar solid waste management facility not owned or operated by or on behalf of a rail carrier, except for laws affecting the siting of the facility that are covered by the land-use exemption permit.

funding sources for what appears to be a high dollar undertaking. An application here would provide the Board with additional information pertaining to the financial condition of Townline/CarlsonCorp and the financial feasibility of the Proposed Line that would assist the Board in considering the transportation merits of the project. *See Tongue River R.R. Company – Construction and Operation – Western Alignment*, FD 30186 (Sub-No. 3), slip op. at 14 (STB served Oct. 9, 2007) (noting that such information serves to protect “affected communities from needless disruptions and environmental impacts if the applicant were to start construction but not be able to complete the project and provide the proposed service”); *Ozark Mountain R.R.— Constr. Exemption*, FD 32204 (ICC served Dec. 15, 1994); *see also Great Lakes Basin Transp., Inc.— Rail Constr. & Operation—in Rock Cty., Wis.*, FD 35952, slip op. at 4 (STB served Aug. 31, 2017); *Tex. Cent. R.R. & Infrastructure—Pet. for Exemption—Passenger Rail Line Between Dallas & Houston, Tex.*, FD 36025, slip op. at 4 (STB served July 16, 2020). While the Board has previously considered rail projects through the exemption process and recognizes the role financial institutions play in determining whether a rail construction project is ultimately funded, scrutiny under the application process here is appropriate given the location of the project, the questions about costs and funding sources, the substantial public interest, and the potential impact on numerous local landowners. *See, e.g., Ozark Mountain R.R.*, slip op. at 4-5 (finding that construction of a highly controversial passenger excursion train warranted the greater scrutiny afforded by an application). For these reasons, the Board should find that requiring the additional information on the financial feasibility of the project that is required in an application is necessary here to carry out the rail transportation policy of 49 U.S.C. § 10101. *See* 49 U.S.C §§ 10502, 10101(4), 10101(5).

Having received many filings raising serious concerns about the impact of this project on the people who live in the area, this information indicates that the application process, rather than the exemption process, is the more appropriate vehicle for the Board to use in considering whether to approve the proposed construction and operation. *See Ozark Mountain R.R.*, FD 32204. Under the application process, Townline would have to demonstrate that the proposed construction and operation is consistent with the public convenience and necessity. This process would require Townline to submit evidence required by 49 CFR 1150, Subpart A. The information would include Townline's organizational structure, the terms and conditions of any agreements, traffic projections, construction schedule, operating plan, financial data, and environmental information. Given the serious concerns raised by the Association and others about the need for this project and its impact on the community, this information is necessary to ascertain if Townline should be able to commence such a disruptive project.

CONCLUSION

Based on the foregoing discussion, the Board should dismiss this Petition for Exemption because the construction project does not fall within the jurisdiction of the Board as Townline would not be a rail carrier under these circumstances. Even if the Board finds jurisdiction here, it should dismiss the Petition due to the strong local opposition to the Proposed Line and the questions about the financial feasibility of the project and require it to file an application.

Respectfully submitted,

/s/ Daniel R. Elliott

Daniel R. Elliott
GKG Law, P.C.
1055 Thomas Jefferson St., NW
Suite 620
Washington, DC 20007
(202) 342-5248
delliott@gkglaw.com

Attorney for Townline Association

Dated: April 4, 2023

Certificate of Service

I certify that I have on this 4th day of April 2023, served by email copies of the foregoing document on all parties of record.

/s/ Daniel R Elliott
Daniel R. Elliott

VERIFICATION

I, Linda Henninger, Co-President of Townline Association, Inc., declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to make this Verification on behalf of Townline Association, Inc., for this Motion to Dismiss. Executed on April 4, 2023.

A handwritten signature in black ink that reads "Linda Henninger". The signature is written in a cursive, flowing style.

Linda Henninger

EXHIBIT A

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 1

SUNY @ Stony Brook, 50 Circle Road, Stony Brook, NY 11790

P: (631) 444-0365 | F: (631) 444-0360

www.dec.ny.gov

February 15, 2023

Peconic Environmental Services Corp
71 Peconic Avenue
PO Box 526
Medford, NY 11763-0526

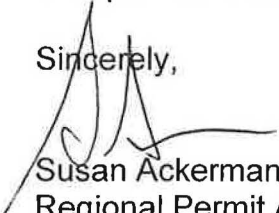
**Re: Peconic Environmental Services Rail Transfer Station
100 Peconic Avenue, Medford, NY
Solid Waste Management Permit
DEC ID: 1-4722-07052/00001**

Dear Permittee:

In conformance with the requirements of the State Uniform Procedures Act (Article 70, ECL) and its implementing regulations (6NYCRR, Part 621) we are enclosing your permit identified above. Please carefully read all permit conditions contained in the permit carefully to ensure compliance during the term of the permit. If you are unable to comply with any conditions, please contact us at the above address.

This permit must be kept available on the premises of the facility at all times.

Sincerely,



Susan Ackerman
Regional Permit Administrator
Enc.

Cc: DMM
H2M



Department of
Environmental
Conservation



PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:

GERSHOW RECYCLING CORP

71 PECONIC AVE
PO BOX 526
MEDFORD, NY 11763-0526
(631) 289-6188

Facility:

PECONIC ENVIRONMENTAL SERVICES
PROPERTY

100 PECONIC AVE|SCTM# 200-736-2-8.3
MEDFORD, NY 11763

PECONIC ENVIRONMENTAL SERVICES
CORP

71 PECONIC AVE
PO BOX 526
MEDFORD, NY 11763-0526
(631) 289-6188

Facility Application Contact:

H2M CORP
538 BROAD HOLLOW RD FL 4E
MELVILLE, NY 11747
(631) 756-8000

Facility Location: in BROOKHAVEN in SUFFOLK COUNTY

Facility Principal Reference Point: NYTM-E: 670.244 NYTM-N: 4520.512
Latitude: 40°49'04.7" Longitude: 72°58'52.8"

Authorized Activity: Construct and operate a solid waste management facility authorized to receive and process up to 1,938 tons per day of construction and demolition debris and auto recycling residue based on a 6 day calendar week average.

Solid Waste Management Activity No(s):

Construction and Demolition Debris Handling and Recovery Facility	- 52CP0328
Transfer Facility	- 52TP0328



Permit Authorizations

Solid Waste Management - Under Article 27, Title 7

Permit ID 1-4722-07052/00001

New Permit

Effective Date: 2/15/2023

Expiration Date: 2/14/2028

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: SUSAN ACKERMAN, Regional Permit Administrator

Address: NYSDEC Region 1 Headquarters
SUNY @ Stony Brook 50 Circle Rd
Stony Brook, NY 11790 -3409

Authorized Signature: _____

Date 2/15/2023

Distribution List

H2M CORP
Joe Cline
Materials Management
Susan Ackerman

Permit Components

SOLID WASTE MANAGEMENT PERMIT CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

SOLID WASTE MANAGEMENT PERMIT CONDITIONS

1. Conformance With Plans All activities authorized by this permit must be in strict conformance with the permit application, plans and materials prepared by the permittee or permittee's consultant on the date specified in Permit Condition No. 2.



2. Terms of Operation, Approval for Changes The facility shall be operated in conformance with:

- a. Terms and conditions of this permit;
- b. 6 NYCRR Part 360 Series Solid Waste Management Facilities regulations;
- c. The approved Engineering Report dated September 2021, Facility Manual, and related documents, dated June 2022.

Any revision to the above approved documents identified in item (c) of this condition or to the operations at this site requires prior written approval from the Department. If these documents conflict with any condition of this permit, the permit condition shall prevail. Furthermore, the permittee must comply with a permit condition that is more stringent than a regulatory requirement.

The permittee shall not add a facility component that would otherwise qualify as an exempt or registered facility, unless the permittee first receives a modified permit to incorporate the additional component of the operation.

3. Pre-Operational Requirements The permittee must comply with the following prior to operation of the facility:

- a. Provide notification to the Department of the anticipated construction start date at least one week prior to commencement of construction.
- b. Demonstrate compliance with 6 NYCRR Part 360.16(j) which requires construction to be supervised by an individual licensed to practice engineering in the State of New York, and certification by the engineer that all construction is in accordance with the terms of this permit.
- c. Provide a copy of the certificate of occupancy issued by the Town of Brookhaven for the facility.
- d. At least 60 days prior to the initial receipt of waste, financial assurance must be established as outlined in the conditions of this permit.
- e. Receive approval from the Department to commence operations.

4. Authorized Activity The permittee is authorized to receive and process up to 1,938 tons per day of construction and demolition (C&D) debris and auto recycling residue. The throughput is based on a 6 day calendar week average.

5. Unacceptable Wastes The permittee is prohibited from accepting friable asbestos-containing waste, ash residue, radioactive waste, hazardous waste, industrial waste, regulated medical waste, liquid waste, septage, sewage sludge, yard trimmings, tree debris, municipal solid waste (MSW), and any other waste not specifically authorized for receipt.



6. Waste Handling The permittee shall comply with the following requirements:

- a. All activities, including but not limited to loading, unloading, sorting, processing, and storage, shall be performed inside the enclosed building. This does not include recyclables placed in roll-off containers outside of the building.
- b. The permittee must ensure vehicles related to the facility operations do not queue on off-site roadways.
- c. The permittee must ensure all vehicles transporting waste to the facility are adequately covered or containerized to prevent littering of roadways approaching the site, and ensure the trucks are not uncovered prior to entering the facility. Furthermore, the permittee must ensure vehicles do not track waste, leachate, and other materials from the facility onto off-site roadways.
- d. Throughout the workday, the permittee must inspect conditions of on-site roads and off-site roads adjacent to the facility for litter, and take appropriate measures as necessary to remove the litter from these areas.
- e. At the end of each workday the facility and tipping areas shall be cleaned of any solid waste. All overnight storage of solid waste shall be in its respective storage area.
- f. C&D debris shall not remain at the facility for more than 30 days. Recovered non-putrescible recyclables shall not be at the facility for more than 60 days.
- g. The permittee must ensure the first 50 feet adjacent to the tipping doors, the designated "tipping area" remains free of waste.
- h. The permittee shall strictly comply with the terms, conditions and equipment specifications of the rail carrier tariff applicable to the waste commodities shipped from the facility. The permittee shall notify the Department as to: (i) the terms, conditions and equipment specifications of the tariff pursuant to which the permittee will operate, (ii) any amendments or changes made to the rail tariff, (iii) any request or application made by the permittee to seek change in or relief from the applicable rail tariff; and (iv) any change in, or relief granted from the rail tariff.

The permittee shall ensure that rail cars used for the shipment of solid waste shall be handled in accordance with the applicable rail carrier tariff applicable to the commodity in effect at the time of transport, loaded and covered in a manner that effectively prevents leakage and controls odors both during transportation and while waiting for shipment outside on the rail spur to prevent conditions that constitute a nuisance or hazard to health, safety or property.



7. Manage of Leachate The permittee shall manage leachate according to the following requirements:

- a. Permittee is not required to direct leachate either to an enclosed storage tank or to a sanitary sewer system as described in 362-3.5(c).
- b. Pursuant to 360.19(d)(5), all floors and working areas shall be adequately drained, properly maintained, and standing water shall be minimized. Adequate drainage shall be accomplished through construction of the building floor with its finished surface pitched towards the center region of the tipping floor. Proper maintenance with respect to drainage includes but is not limited to repair of any damage or cracks to the floor, any activities needed to maintain the pitch of the floor toward its center, and cleaning of the tipping floor at the end of each operating day.
- c. All leachate, including but not limited to drainage and wash waters, that is not absorbed within the solid waste will be collected using absorbent pads or booms which will then be disposed of with the outgoing solid waste.
- d. All solid waste transferred from the facility for disposal must exhibit no free liquids and must meet the requirements of the intended disposal facility with respect to maximum moisture content of the waste.
- e. Permittee must propose and receive the Department's approval for the means and methods for the management of any leachate-generating activity that cannot be managed in accordance with (b) and (c) of this permit condition, prior to conducting such activity.

8. Maximum Quantity Onsite The permittee shall not exceed the following quantities onsite:

- a. 8,000 cubic yards of processed and unprocessed C&D debris.
- b. 80 cubic yards of recovered recyclables.

9. Hours of Operation Hours of operation shall not conflict with any local laws or ordinances. The permittee may receive waste between 6:00 AM and 7:00PM, Monday through Saturday. No operations of any kind are permitted on Sunday. These hours and days do not include the movement of railcars.

10. Signs The permittee shall post signs showing hours of operation, and indicating that MSW, asbestos waste, radioactive waste, hazardous waste, industrial waste, liquid waste and regulated medical waste are prohibited from being accepted at the facility. The signs shall be located so that they are visible to any vehicles and/or person approaching the facility.



11. Waste Control An attendant shall be on duty during all hours of operation. The attendant shall inspect all vehicles entering the facility, rejecting any loads containing unauthorized material.

12. Control of Nuisance Conditions Odors, dust, insects, vectors, noise, blowing litter and other potential nuisances shall be adequately controlled at all times. The permittee shall immediately implement any controls required by the Department including cessation of facility operations.

The permittee must ensure that an extermination service visits the facility at a minimum of one time each month to ensure vectors are controlled.

13. Fire Protection and Detection The permittee shall maintain fire protection and detection equipment in accordance with local laws and ordinances.

14. Cessation of Operations The permittee must notify the Department immediately of any event which causes an unscheduled facility shutdown that exceeds 24 hours, as well as indicate the proposed waste management activities. A written report must be submitted to the Department within 7 days of the event.

15. Ultimate Disposal of Waste All solid waste passing through the facility must be ultimately disposed of at a facility authorized by the Department if located in New York State, or by the appropriate governmental agency or agencies if in other states, territories, or nations.

16. Unauthorized Waste In the event that any hazardous waste, medical waste, or other regulated waste not allowed under this permit is accepted at the facility, the unauthorized waste shall be contained and properly secured immediately. The permittee shall notify the Department and the Suffolk County Department of Health Services within 24 hours of the event. The waste material shall be removed by a waste transporter authorized under 6 NYCRR Part 364 to transport such waste. A written report shall be submitted to the Department within 7 days of the event.

17. Small Spill Containment The facility shall keep available at the site equipment and materials necessary to contain small quantities of chemicals or spills. These materials shall be stored in well identified accessible storage areas. As a minimum, the following must be available at all times:

4 - 55 gallon drums with covers and securing rings

400 lbs. absorbent material (e.g. Speedi-Dri)

50 lbs. Boric Acid

50 lbs. Sodium Bicarbonate

Assorted brooms, shovels, gloves, masks, and other protective gear



18. Maintenance and Repair of Facility The permittee shall adequately maintain and make repairs to the facility as necessary. This includes any part of the facility, such as doors to buildings; odor and dust controls and equipment; punctures, holes, or other damage to buildings; minimizing the ponding of stormwater; and concrete and/ or asphalt pavement that becomes damaged or worn.

The permittee shall undertake all repairs immediately and have all work completed within one week. Repairs related to dust or odor controls must be completed within 24 hours. If the permittee is unable to complete repairs within the specified time outlined by this condition, the permittee shall provide an acceptable schedule to the Department which shall include a description of the work to be completed and any controls that will be implemented to ensure the facility remains in compliance with this permit, including the cessation of all or part of the facility operations.

19. Recordkeeping Requirements The permittee shall maintain the following records at the facility for a minimum of 7 years from the date of creation and be available immediately to the Department upon request:

- a. Daily log of solid waste received and transported from the facility which includes:
 - i. Type, quantity, date received, planning unit and origin where the waste was generated.
 - ii. Quantity and destination of all recyclables.
 - iii. Quantity and destination of all non-recyclables and residuals transported for disposal.
- b. All weight tickets, hauling receipts, disposal receipts, invoices, tracking documents, etc. to support entries made into the daily log. Tracking documents or manifests, and other relevant records regarding rail car transportation shall clearly reflect the content of each rail car, such as C&D debris.
- c. Documentation of monthly inspections and services performed by an extermination service.

20. Reporting Requirements The permittee shall submit the annual report to the Region 1 Office located at the New York State Department of Environmental Conservation, Division of Materials Management, 50 Circle Road, SUNY @ Stony Brook, NY 11790 or via email to SWMFAnnualReportR1@dec.ny.gov, and a copy sent to SWMFannualreport@dec.ny.gov. The report must be submitted no later than March 1 following each year of operation on forms prescribed by or acceptable to the Department.

21. Financial Assurance The permittee shall maintain the financial assurance in the amount of at least \$855,000. Each year thereafter, the permittee must submit for review and approval adjusted closure costs estimates, including supporting justification to account for inflation and changes in facility conditions, and increase the amount once approved by the Department. The Department reserves the right to adjust the amount of the financial assurance in the future to account for increases in closure costs, and for non-compliance with any conditions of this permit and any requirement of 6 NYCRR Part 360.

In the event that the permittee fails to maintain financial assurance as required by this permit, the permittee must immediately cease accepting solid waste until financial assurance acceptable to the Department is in place. Within 10 days from the cessation of the required financial assurance, the permittee shall have all solid waste, including recovered recyclables, removed from the facility and the facility shall be in "broom clean" condition.



22. Environmental Monitor The environmental monitor shall be funded in accordance with the following:

- a. The permittee shall fund environmental monitoring services to be performed by or on behalf of the Department. These monitoring services will include, but not be limited to, the scope of work in an annual environmental monitoring work plan which is incorporated by reference and enforceable under this permit.
- b. The permittee shall provide to the Department on an annual basis the funds necessary to support the activities set forth in the annual environmental monitoring work plan. The sum to be provided will be based on the annual budgeted amount and is subject to annual revision. Subsequent annual payments shall be made for the duration of this permit or until the environmental monitoring services are no longer necessary, whichever comes first.
- c. The permittee shall be billed annually, prior to the start of each State Fiscal Year (SFY) (April 1). If this permit is to first become effective subsequent to April 1, the initial bill will be for an amount sufficient to meet the anticipated cost of the environmental monitoring services through the end of the current SFY.
- d. The Department may revise the required annual bill on an annual basis to include all of the Department's estimated costs associated with the environmental monitoring services. The annual revision may take into account such factors as inflation, salary increases, changes in the fringe benefits rate, changes in operating hours and procedures, changes in non-personal service costs (including travel, training, sampling and analytical, and equipment costs, etc.), an increase or decrease in the level of environmental monitoring services necessary, and an increase or decrease in the number of environmental monitors. Upon written request by the permittee, the Department shall provide the permittee with a written explanation of the basis for any revisions.
- e. Prior to making its annual payment, the permittee will receive, and have an opportunity to review and request adjustment to, an annual environmental monitoring work plan that the Department will undertake during the year. The Department will provide a final annual work plan that the Department will undertake during the year.
- f. Payments are to be made in advance of the period in which they will be expended and shall be made in full within 30 days of receiving a bill from the Department. The bill from the Department to the permittee will provide information regarding to whom payments should be made payable and the address to which payments should be sent.
- g. Failure to make the required payments shall be a violation of this permit. The Department reserves all rights to take appropriate action to enforce the above payment provisions.
- h. The environmental monitor shall, when present at any of the permittee's facilities, abide by all of the permittee's health and safety and operational requirements and policies, if such requirements and policies exist and provided they are not inconsistent with Department policies and labor management contracts, and further provided, however, that this shall not be construed as limiting the environmental monitor's powers as otherwise provided for by law and shall not result in the environmental monitor



being afforded less protection than otherwise provided to the environmental monitor by State and Federal health and safety requirements.

- i. The environmental monitor shall receive from the permittee all general and site-specific safety training which is normally given to new facility/site employees for all areas of the facility or site. This training will be a supplement to the health and safety training that the environmental monitor routinely receives from the Department.
- j. The permittee shall immediately furnish to the environmental monitor any facility/site health and safety and operational requirements and policies. Within five (5) days of any revision to the facility/site health and safety and operational requirements and policies, the permittee shall furnish to the environmental monitor the health and safety and operational requirements and policies.
- k. The environmental monitor shall be permitted to use environmental monitoring and data collection devices (e.g., photo ionization detectors, cameras, video recording devices, computers, cell phones, etc.) deemed necessary by the Department to evaluate and document observed conditions. The permittee may request the data and images collected from areas where confidentiality is a concern be considered confidential information if appropriate. Copies of the data or images collected from areas where confidentiality has been determined to be a concern shall be provided to the permittee.
- l. It will remain the responsibility of the permittee to contact the Spill Hotline or any Division within the Department regarding any required notification of any spill, release, exceedances etc. Notification to the environmental monitor will not be considered sufficient to replace any required notifications.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:
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1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this



permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
NYSDEC Region 1 Headquarters
SUNY @ Stony Brook|50 Circle Rd
Stony Brook, NY11790 -3409

4. Submission of Renewal Application The permittee must submit a renewal application at least 180 days before permit expiration for the following permit authorizations: Solid Waste Management.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.



NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

EXHIBIT B

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 1

SUNY @ Stony Brook, 50 Circle Road, Stony Brook, NY 11790

P: (631) 444-0365 | F: (631) 444-0360

www.dec.ny.gov

October 6, 2022

Via email only:

Omni Recycling of Brentwood LLC
c/o 390 North Broadway Suite 220
Jericho, NY 11753

**RE: DEC Application# 1-4728-04004/00003
Omni Brentwood Rail Transfer (OBRT), 80 Emjay Blvd., Brentwood
Minor Modification: Updated Engineering Report, Facility Manual and
Related Documents**

Dear Permittee:

In conformance with the requirements of the State Uniform Procedures Act (Article 70, ECL) and its implementing regulations (6NYCRR, Part 621) we are enclosing your modified permit identified above.

Please carefully read all permit conditions carefully to ensure compliance during the term of the permit. If you are unable to comply with any conditions, please contact us at the above address.

This permit must be kept available on the premises of the facility at all times.

Sincerely,



Kevin Kispert
Environmental Analyst II

Enclosures

KAK/file

Via email:

Kings & Queens Transload LLC
Town of Islip, Dept. Planning & Development
Suffolk County DHS – Waste Water Management
NYSDEC Review Team





PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:

OMNI RECYCLING OF BRENTWOOD LLC
C/O 390 N BROADWAY STE 220
JERICHO, NY 11753
(631) 968-4100

Facility:

OMNI BRENTWOOD RAIL TRANSFER
80 EMJAY BLVD|SCTM# 500-134-2-3
BRENTWOOD, NY 11717

KINGS & QUEENS TRANSLOAD LLC
390 N BROADWAY
JERICHO, NY 11753
(516) 680-4382

Facility Application Contact:

ESHWAR KOSURI
KOSURI ENGINEERING & CONSULTING INC
31 KNOLLS DR
NEW HYDE PARK, NY 11040
(516) 365-7400

Facility Location: in ISLIP in SUFFOLK COUNTY

Facility Principal Reference Point: NYTM-E: 645.378 NYTM-N: 4515.694
Latitude: 40°46'45.8" Longitude: 73°16'37.8"

Authorized Activity: Operate a solid waste management facility authorized to receive and process up to 1500 tons per day of construction and demolition debris and 800 tons per day of baled municipal solid waste. All throughputs are based on a one-week average. All facility activities shall be performed in the building.

Modification #1: Incorporate updated Engineering Report, Facility Manual, and related documents to reflect as-built site conditions and related operational changes.

Solid Waste Management Activity No(s):

Construction and Demolition Debris Handling and Recovery Facility	- 52CP0326
Transfer Facility	- 52TP0326



Permit Authorizations

Solid Waste Management - Under Article 27, Title 7

Permit ID 1-4728-04004/00003

New Permit

Effective Date: 4/26/2021

Expiration Date: 4/25/2026

Modification # 1

Effective Date: 10/6/2022

Expiration Date: 4/25/2026

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: KEVIN A KISPRT, Deputy Permit Administrator

Address: NYSDEC Region 1 Headquarters
SUNY @ Stony Brook|50 Circle Rd
Stony Brook, NY 11790 -3409

Authorized Signature: _____

Date 10/6/2022

Distribution List

ESHWAR KOSURI
Materials Management
KEVIN A KISPRT

Permit Components

SOLID WASTE MANAGEMENT PERMIT CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

SOLID WASTE MANAGEMENT PERMIT CONDITIONS

1. Conformance With Plans All activities authorized by this permit must be in strict conformance with the permit application, plans and materials prepared by the permittee or permittee's consultant on the date specified in Permit Condition No. 2.



2. Terms of Operation, Approval for Changes The facility shall be operated in conformance with:

- a. Terms and conditions of this permit;
- b. Current 6 NYCRR Part 360 Series Solid Waste Management Facilities regulations, or any revisions hereafter promulgated;
- c. The approved Engineering Report, Facility Manual, and related documents, dated September 29, 2022 and related documents prepared by Kosuri Engineering & Consulting P.C.

Any revision to the above approved documents identified in item (c) of this condition or to the operations at this site requires prior written approval from the Department. The permittee shall not add a facility component that would otherwise qualify as an exempt or registered facility, unless the permittee first receives a modified permit to incorporate the additional component of the operation.

If any of the above documents conflict with any condition of this permit, the permit condition shall prevail.

3. Pre-Operational Requirements The permittee must comply with the following prior to operation of the facility:

- a. Provide notification to the Department of the anticipated construction start date at least one week prior to commencement of construction.
- b. Demonstrate compliance with 6 NYCRR Part 360.16(j) which requires construction to be supervised by an individual licensed to practice engineering in the State of New York, and certification by the engineer that all construction is in accordance with the terms of this permit.
- c. Provide a copy of the certificate of occupancy issued by the Town of Islip for the facility.
- d. Establish financial assurance as outlined in the conditions of this permit.
- e. Receive approval from the Department to commence operations.

4. Authorized Activity The permittee is authorized to receive and process up to 1,500 tons per day of construction and demolition (C&D) debris with no more than 300 tons per day received as direct haul to the facility and the remainder from other permitted C&D debris handling and recovery facilities; and to receive and transfer up to 800 tons per day of bagged or wrapped baled municipal solid waste (MSW) from other permitted waste management facilities. All throughputs are based on a one-week average.

5. Unacceptable Wastes The permittee is prohibited from accepting asbestos waste, ash residue, radioactive waste, hazardous waste, industrial waste, regulated medical waste, liquid waste, septage, sewage sludge, yard trimmings, tree debris, and loose or unbaled MSW.

6. Waste Handling The permittee shall comply with the following requirements:

- a. All activities, including but not limited to loading, unloading, sorting, processing, and storage, shall be performed inside the enclosed building. MSW bales must be placed directly into railcars from the delivery vehicle.



- b. The permittee must ensure vehicles related to the facility operations do not queue on off-site roadways.
- c. The permittee must ensure all vehicles transporting waste to the facility are adequately covered or containerized to prevent littering of roadways approaching the site, and ensure the trucks are not uncovered prior to entering the facility. Furthermore, the permittee must ensure vehicles do not track waste, leachate, and other materials from the facility onto off-site roadways.
- d. Throughout the workday, the permittee must inspect conditions of on-site roads and off-site roads adjacent to the facility for litter, and take appropriate measures as necessary to remove the litter from these areas. This must include, as necessary, sweeping Emjay Boulevard and Suffolk Avenue between Emjay Boulevard and 5th Avenue/ Wicks Road using a mechanical sweeper.
- e. At the end of each workday the facility and tipping areas shall be cleaned of any solid waste. All overnight storage of solid waste shall be in its respective storage area.
- f. C&D debris shall not remain at the facility for more than 30 days. Recovered non-putrescible recyclables shall not be at the facility for more than 60 days. MSW bales are limited to being contained in railcars once removed from a trailer.
- g. The permittee must ensure the first 50 feet adjacent to the tipping doors, the designated “tipping area” remains free of waste.
- h. The permittee shall strictly comply with the terms, conditions and equipment specifications of the rail carrier tariff applicable to the waste commodities shipped from the facility. The permittee shall notify the Department as to: (i) the terms, conditions and equipment specifications of the tariff pursuant to which the permittee will operate, (ii) any amendments or changes made to the rail tariff, (iii) any request or application made by the permittee to seek change in or relief from the applicable rail tariff; and (iv) any change in, or relief granted from the rail tariff.

The permittee shall ensure that rail cars used for the shipment of baled MSW and C&D debris shall be handled in accordance with the applicable rail carrier tariff applicable to the commodity in effect at the time of transport, loaded and covered in a manner that effectively prevents leakage and controls odors both during transportation and while waiting for shipment outside on the rail spur to prevent conditions that constitute a nuisance or hazard to health, safety or property.

7. Maximum Quantity Onsite The permittee shall not exceed the following quantities onsite:

- a. 8,000 cubic yards of processed and unprocessed C&D debris.
- b. 80 cubic yards of recovered recyclables.

8. Hours of Operation Hours of operation shall not conflict with any local laws or ordinances. The permittee shall limit the receipt of any waste from 6:00 AM to 6:00 PM on Monday through Friday, and from 6:00 AM to 2:00 PM on Saturday. No operations of any kind are permitted on Sunday.



9. Signs The permittee shall post signs showing hours of operation, and indicating that asbestos waste, radioactive waste, hazardous waste, industrial waste, liquid waste and regulated medical waste are prohibited from being accepted at the facility. The signs shall be located so that they are visible to any vehicles and/or person approaching the facility.

10. Waste Control An attendant shall be on duty during all hours of operation. The attendant shall inspect all vehicles entering the facility, rejecting any loads containing unauthorized material.

11. Control of Nuisance Conditions Odors, dust, insects, vectors, noise, blowing litter and other potential nuisances shall be adequately controlled at all times. The permittee shall immediately implement any controls required by the Department including cessation of facility operations.

The permittee must ensure that an extermination service visits the facility at a minimum of one time each month to ensure vectors are controlled.

12. Fire Protection and Detection The permittee shall maintain fire protection and detection equipment in accordance with local laws and ordinances.

13. Cessation of Operations The permittee shall verbally notify the Department within 18 hours of any occurrence of any event which causes the facility to cease operation for a period of 48 hours or more. Such an event would include a fire, spill, equipment breakdown, or similar event. A written report shall be submitted to the Department within 7 days of the event.

14. Ultimate Disposal of Waste All solid waste passing through the facility must be ultimately disposed of at a facility authorized by the Department if located in New York State, or by the appropriate governmental agency or agencies if in other states, territories, or nations.

15. Unauthorized Waste In the event that any hazardous waste, medical waste, or other regulated waste not allowed under this permit is accepted at the facility, the unauthorized waste shall be contained and properly secured immediately. The permittee shall notify the Department and the Suffolk County Department of Health Services within 24 hours of the event. The waste material shall be removed by a waste transporter authorized under 6 NYCRR Part 364 to transport such waste. A written report shall be submitted to the Department within 7 days of the event.

16. Small Spill Containment The facility shall keep available at the site equipment and materials necessary to contain small quantities of chemicals or spills. These materials shall be stored in well identified accessible storage areas. As a minimum, the following must be available at all times:

- 4 - 55 gallon drums with covers and securing rings
- 400 lbs. absorbent material (e.g. Speedi-Dri)
- 50 lbs. Boric Acid
- 50 lbs. Sodium Bicarbonate
- Assorted brooms, shovels, gloves, masks, and other protective gear



17. Maintenance and Repair of Facility The permittee shall adequately maintain and make repairs to the facility as necessary. This includes any part of the facility, such as doors to buildings; odor and dust controls and equipment; punctures, holes, or other damage to buildings; minimizing the ponding of stormwater; and concrete and/ or asphalt pavement that becomes damaged or worn.

The permittee shall undertake all repairs immediately and have all work completed within one week. Repairs related to dust or odor controls must be completed within 24 hours. If the permittee is unable to complete repairs within the specified time outlined by this condition, the permittee shall provide an acceptable schedule to the Department which shall include a description of the work to be completed and any controls that will be implemented to ensure the facility remains in compliance with this permit, including the cessation of all or part of the facility operations.

18. Recordkeeping Requirements The permittee shall maintain the following records at the facility for a minimum of 7 years from the date of creation and be available immediately to the Department upon request:

- a. Daily log of solid waste received and transported from the facility which includes:
 - i. Type, quantity, and origin of the solid waste received.
 - ii. Quantity and destination of all recyclables.
 - iii. Quantity and destination of all non-recyclables and residuals transported for disposal.
- b. All weight tickets, hauling receipts, disposal receipts, invoices, tracking documents, etc. to support entries made into the daily log. Tracking documents or manifests, and other relevant records regarding rail car transportation shall clearly reflect the content of each rail car, such as C&D debris or baled MSW.
- c. Documentation of monthly inspections and services performed by an extermination service.

19. Reporting Requirements The permittee shall submit the original copy of the annual report to the Region 1 Office located at the New York State Department of Environmental Conservation, Division of Materials Management, 50 Circle Road, SUNY @ Stony Brook, NY 11790, and a copy to the Central Office at New York State Department of Environmental Conservation, Division of Materials Management, Bureau of Permitting and Planning, 625 Broadway, 9th Floor, Albany, NY 12233-7253. The report must be submitted no later than March 1 following each year of operation on forms prescribed by or acceptable to the Department.

20. Financial Assurance The permittee shall maintain the financial assurance in the amount of \$824,000. The Department reserves the right to adjust the amount of the financial assurance in the future to account for increases in closure costs, and for non-compliance with any conditions of this permit and any requirement of 6 NYCRR Part 360.

In the event that the permittee fails to maintain financial assurance as required by this permit, the permittee must immediately cease accepting solid waste until financial assurance acceptable to the Department is in place. Within 10 days from the cessation of the required financial assurance, the permittee shall have all solid waste, including recovered recyclables, removed from the facility and the facility shall be in "broom clean" condition.



21. Environmental Monitor The environmental monitor shall be funded in accordance with the following:

- a. The permittee shall fund environmental monitoring services to be performed by or on behalf of the Department. These monitoring services will include, but not be limited to, the scope of work in an annual environmental monitoring work plan which is incorporated by reference and enforceable under this permit.
- b. The permittee shall provide to the Department on an annual basis the funds necessary to support the activities set forth in the annual environmental monitoring work plan. The sum to be provided will be based on the annual budgeted amount and is subject to annual revision. Subsequent annual payments shall be made for the duration of this permit or until the environmental monitoring services are no longer necessary, whichever comes first.
- c. The permittee shall be billed annually, prior to the start of each State Fiscal Year (SFY) (April 1). If this permit is to first become effective subsequent to April 1, the initial bill will be for an amount sufficient to meet the anticipated cost of the environmental monitoring services through the end of the current SFY.
- d. The Department may revise the required annual bill on an annual basis to include all of the Department's estimated costs associated with the environmental monitoring services. The annual revision may take into account such factors as inflation, salary increases, changes in the fringe benefits rate, changes in operating hours and procedures, changes in non-personal service costs (including travel, training, sampling and analytical, and equipment costs, etc.), an increase or decrease in the level of environmental monitoring services necessary, and an increase or decrease in the number of environmental monitors. Upon written request by the permittee, the Department shall provide the permittee with a written explanation of the basis for any revisions.
- e. Prior to making its annual payment, the permittee will receive, and have an opportunity to review and request adjustment to, an annual environmental monitoring work plan that the Department will undertake during the year. The Department will provide a final annual work plan that the Department will undertake during the year.
- f. Payments are to be made in advance of the period in which they will be expended and shall be made in full within 30 days of receiving a bill from the Department. The bill from the Department to the permittee will provide information regarding to whom payments should be made payable and the address to which payments should be sent.
- g. Failure to make the required payments shall be a violation of this permit. The Department reserves all rights to take appropriate action to enforce the above payment provisions.



h. The environmental monitor shall, when present at any of the permittee's facilities, abide by all of the permittee's health and safety and operational requirements and policies, if such requirements and policies exist and provided they are not inconsistent with Department policies and labor management contracts, and further provided, however, that this shall not be construed as limiting the environmental monitor's powers as otherwise provided for by law and shall not result in the environmental monitor being afforded less protection than otherwise provided to the environmental monitor by State and Federal health and safety requirements.

i. The environmental monitor shall receive from the permittee all general and site-specific safety training which is normally given to new facility/site employees for all areas of the facility or site. This training will be a supplement to the health and safety training that the environmental monitor routinely receives from the Department.

j. The permittee shall immediately furnish to the environmental monitor any facility/site health and safety and operational requirements and policies. Within five (5) days of any revision to the facility/site health and safety and operational requirements and policies, the permittee shall furnish to the environmental monitor the health and safety and operational requirements and policies.

k. The environmental monitor shall be permitted to use environmental monitoring and data collection devices (e.g., photo ionization detectors, cameras, video recording devices, computers, cell phones, etc.) deemed necessary by the Department to evaluate and document observed conditions. The permittee may request the data and images collected from areas where confidentiality is a concern be considered confidential information if appropriate. Copies of the data or images collected from areas where confidentiality has been determined to be a concern shall be provided to the permittee.

l. It will remain the responsibility of the permittee to contact the Spill Hotline or any Division within the Department regarding any required notification of any spill, release, exceedances etc. Notification to the environmental monitor will not be considered sufficient to replace any required notifications.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:
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1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.



2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
NYSDEC Region 1 Headquarters
SUNY @ Stony Brook|50 Circle Rd
Stony Brook, NY11790 -3409

4. Submission of Renewal Application The permittee must submit a renewal application at least 180 days before permit expiration for the following permit authorizations: Solid Waste Management.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.



NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

EXHIBIT C



85 Old Northport Rd, Kings Park, NY 11754



100 Peconic Ave, Medford, NY 11763



350 Horseblock Road, Yaphank, NY 11980



80 Emjay Blvd, Brentwood, NY 11717



EXHIBIT D

From: "Aerne,Brian" <BAerne@covanta.com>
Date: March 31, 2023 at 4:14:51 PM EDT
To: L Allocco <kpnotebook@aol.com>
Subject: Covanta Huntington Tour

Good Afternoon Linda:

Thank you again for coming in for a tour of the Covanta Huntington facility. As we mentioned during the tour, and consistent with our statement in the August 16, 2022 Newsday article about the rail project, Covanta continues to explore options and has not finalized plans regarding how we will handle the ash from our Long Island facilities following the closure of the Brookhaven Landfill.

Feel free to reach out with any questions.

Thank you,
Brian

Brian Aerne
New York Regional Environmental Manager



Covanta Huntington, LLC
99 Town Line Rd
East Northport, NY 11731
Office: 631-754-1100, x4295
Cell: 516-312-3606
Email: baerne@covanta.com
covanta.com