

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ULSTER

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STATE OF NEW YORK and NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION,

Plaintiffs,

**SUMMONS**

-v-

Index No.

JOSEPH KAROLYS, Individually and Doing Business  
as J. KAROLYS + SON, and RACHEL KAROLYS,

Defendants.

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**YOU ARE HEREBY SUMMONED** and required to serve upon the attorney for the plaintiffs State of New York and New York State Department of Environmental Conservation (collectively, the “State”) at the address below an answer to the complaint in this action within twenty (20) days after the service of this summons and complaint, exclusive of the day of service (or within thirty [30] days after service is complete if this summons and complaint is not personally delivered to you within the State of New York). In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Pursuant to New York CPLR 503(a), venue for this action is Ulster County, New York because defendants reside and/or do business in Ulster County, and because the violations alleged in the complaint occurred and are occurring in Ulster County.

Dated: June 24, 2020

LETITIA JAMES  
Attorney General of the  
State of New York  
*Attorney for Plaintiffs*

By: /s/ Brendan McGrath  
MORGAN COSTELLO  
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General  
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To: Joseph Karolys  
1446 State Route 212,  
Saugerties, NY 12477

Rachel Karolys  
1446 State Route 212,  
Saugerties, NY 12477

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ULSTER

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STATE OF NEW YORK and NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION,

Plaintiffs,

-v-

**VERIFIED  
COMPLAINT**

JOSEPH KAROLYS, Individually and Doing Business  
as J. KAROLYS + SON, and RACHEL KAROLYS,

Index No.

Defendants.

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Plaintiffs the State of New York and the New York State Department of Environmental Conservation (DEC) (collectively, the State), by their attorney, Letitia James, Attorney General of the State of New York, allege upon information and belief as follows:

**NATURE OF THIS ACTION**

1. The State brings this action against Joseph Karolys (Karolys) and Rachel Karolys to address violations of New York’s solid waste management and water pollution control laws at one property jointly owned by Karolys and Rachel Karolys and operated by Karolys, another property owned and operated by Karolys, and a third property owned by Rachel Karolys and operated by Karolys, all in the Town of Saugerties, Ulster County., At each of these sites, Karolys or Karolys and Rachel Karolys accepted and disposed of solid waste, and commenced construction activities without water pollution control permits. The properties are located at 1446 State Route 212 (Route 212 site), 90 Goat Hill Road (Goat Hill site), and 33/43 Fel Qui Road (Fel Qui site).

2. The Route 212 site is authorized by DEC to accept specified solid waste, but Karolys violated the terms of the DEC-issued registration by accepting and disposing of unauthorized solid waste, and by exceeding the volume of waste storage permissible under the

registration. When DEC sought compliance at this site, rather than comply, Karolys expanded the unlawful activities by transporting significant quantities of waste from the Route 212 site to the Goat Hill and Fel Qui sites, which are not authorized to accept any solid waste, giving rise to additional violations of New York's solid waste management laws and regulations.

3. The construction activities, namely the operation of the solid waste storage and disposal facilities at the three sites, were undertaken without first obtaining the requisite permit coverage under the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-0-15-002), and without implementing the erosion and sediment controls that the permit requires in order to protect the waters of the State from pollution, in violation of Environmental Conservation Law (ECL) Article 17.

4. In or about January 2019, the Town of Saugerties issued a stop work order to Karolys. Karolys challenged the order in a proceeding pursuant to Article 78 of the Civil Procedure Law and Rules in the Supreme Court, Ulster County. During the pendency of the proceeding, the Court issued a Temporary Restraining Order (TRO) against the Town preventing it from enforcing the stop work order. By decision and order dated December 6, 2019, the Honorable Richard Mott vacated the TRO on the Town's stop work order and concluded the Article 78 proceeding because no further justiciable controversy remained on Karolys' petition. See *Karolys v. Weeks et al.*, Sup Ct, Ulster Cnty, Dec. 6, 2019, Mott, J., index No. 19-0431.

5. Defendants' ECL violations, however, are ongoing and continue unabated, despite the State's efforts to resolve them through an administrative consent order. The State therefore brings this action seeking injunctive relief to protect public health, welfare, and the environment, and statutory penalties for defendants' violations of the ECL.

**JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to ECL §§ 71-2703, 71-1929, and 71-4003, and Judiciary Law § 140-b.

7. Pursuant to CPLR § 503 (a), venue lies in Ulster County because the defendants reside in Ulster County, plaintiff DEC maintains a regional office in Ulster County, and events giving rise to the claims herein occurred in Ulster County.

**THE PARTIES**

8. Plaintiff State of New York is a body politic and sovereign entity that brings this action on behalf of itself and, as *parens patriae*, on behalf of all residents and citizens of the State.

9. Plaintiff DEC is an executive department of the State of New York charged with enforcing the ECL and regulations promulgated pursuant to the ECL.

10. Defendant Joseph Karolys is a resident of the State of New York with an address of 1446 State Route 212, Saugerties, New York 12477.

11. Defendant Rachel Karolys is a resident of the State of New York with an address of 1446 State Route 212, Saugerties, New York 12477.

12. Joseph Karolys and Rachel Karolys own the Route 212 site, having acquired it by deed dated June 24, 2013.

13. Rachel Karolys owns the Goat Hill site, having acquired it by deed dated December 6, 2005.

14. Joseph Karolys owns the Fel Qui site, having acquired it by deed dated October 28, 2009.

15. Upon information and belief, Karolys is doing business as J. Karolys + Son. The company is not a registered business entity with the New York State Department of State,

Division of Corporations.

## **LEGAL BACKGROUND**

### **I. Solid Waste Management – Regulation of Construction Waste**

16. The New York State Legislature has granted DEC the authority and responsibility to develop a comprehensive program governing the construction, operation, and closure of solid waste management facilities under Article 27, Title 7 of the ECL, in order to prevent or avoid adverse environmental impacts such as water pollution, air pollution, dust, litter, pest infestation, and other conditions detrimental to the public health, safety, and welfare (*see* ECL §§ 27-0703 and 27-0707). Pursuant to that authority, DEC has promulgated regulations governing the management and disposal of solid waste at Title 6, Part 360 *et seq.* of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) (Part 360).<sup>1</sup>

17. Solid waste is defined broadly to include all materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owner at the time of such discard or rejection (*see* ECL § 27-0701).

18. Solid waste management refers to the transportation, storage, processing, recovery and disposal of solid waste (*see* ECL § 27-0701 [3]). A solid waste management facility is defined as any facility employed beyond the initial solid waste collection process, including, but not limited to, transfer stations, bailing stations, rail haul or barge haul facilities, processing systems, including resource recovery facilities or other facilities for reducing solid waste volume,

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<sup>1</sup> On September 5, 2017, DEC adopted comprehensive revisions of the solid waste regulations at 6 NYCRR Part 360 *et seq.* Those revisions became effective on November 4, 2017. The revisions included a transition rule at 6 NYCRR 360.4. The transition rule provides a compliance deadline of May 3, 2018 (*see* 6 NYCRR 360.4 [a]). Because some of the conduct alleged in this complaint occurred before May 3, 2018, the complaint references violations under both the former and the revised solid waste regulations.

sanitary landfills, facilities for the disposal of construction and demolition debris, plants and facilities for compacting, composting or pyrolyzation of solid wastes, incinerators and other solid waste disposal, reduction or conversion facilities (*see* ECL § 27-0701 [2]).

19. Pursuant to ECL § 27-0707 (1), solid waste management facilities require a permit. However, under DEC's solid waste regulations certain facilities may be eligible for a registration rather than a permit (*see* 6 NYCRR 360.15 [a][1]). Whether a facility requires a permit as opposed to a registration generally depends on the type and volume of waste to be handled at the facility (*see, e.g.*, 6 NYCRR 361-5.2).

**A. Prohibited Activities**

20. Construction and demolition (C&D) debris is one type of solid waste, the management of which is unlawful except at authorized facilities or locations or at exempt facilities (*see* 6 NYCRR 360.2 [b][61]; 6 NYCRR 360.9 [a][1]). Facilities that process and separate C&D debris in order to extract reusable materials are referred to, under Part 360, as C&D debris handling and recovery facilities (C&D facilities) (6 NYCRR 360.2 [b][62]). As mentioned above, DEC regulates such facilities through either a registration or permit issued under Part 360 (*see* ECL § 27-0707 [1]; 6 NYCRR § 360.15 [a][1]).

21. A person must not construct or operate a non-exempt solid waste management facility such as a C&D facility, or any phase of it, except in accordance with a registration or a permit issued by the DEC<sup>2</sup> (*see* 6 NYCRR 360.9 [a][1]).

22. Pursuant to 6 NYCRR 360.9 (b)(1), a person must not allow the management of solid waste on land under their ownership, custody, or control in violation of any provision of

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<sup>2</sup> 6 NYCRR 360-1.7 (a)(1)(i) (1994) of the former regulations provided that “no person shall construct or operate a solid waste management facility except in accordance with a valid permit issued by DEC.”

Part 360, the ECL, or any permit or registration issued pursuant to Part 360.

23. A landfill is a solid waste management facility where solid waste is intentionally placed and intended to remain (*see* 6 NYCRR 360.2 [152]).

24. A person must not construct or operate any solid waste management facility, including a C&D facility, in violation of any provision of their registration, Part 360, or the ECL (*see* 6 NYCRR 360.9 [b][2]).

25. A person must not dispose of waste except at (i) a disposal facility exempt from the requirements of 6 NYCRR Parts 360 or 363; or (ii) a disposal facility authorized by DEC to accept the waste<sup>3</sup> (*see* 6 NYCRR 360.9 [b][3]).

26. A person must not accept waste except at a facility authorized to accept the waste pursuant to Part 360 (*see* 6 NYCRR 360.9 [b][5]).

27. A person must not act as a broker or otherwise arrange for the disposal of waste at a facility unless the facility is exempt from the requirements of 6 NYCRR Parts 360, 361, 362, or 365, or authorized to operate through a registration or permit issued pursuant to 6 NYCRR Parts 360, 361, 362, or 365 (6 NYCRR 360.9 [b][6]).

#### **B. Transporting Construction Waste**

28. A transporter is “a person engaged in the off-site transportation of waste by means of air, highway, or water conveyance” (6 NYCRR 360.2 [b][279]).

29. Transporting waste in New York State is regulated by DEC pursuant to 6 NYCRR Part 364.

30. C&D debris generated or transported by an industrial or commercial business is a

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<sup>3</sup> This provision was previously found in substantially the same form at 6 NYCRR 360-1.5 (a) (1994).



regulated waste (6 NYCRR 364-1.2 [e][10]).

31. A person who transports more than 10 cubic yards of C&D debris in a single shipment must have a DEC-issued Part 364 registration (*see* 6 NYCRR 364-3.2 [b] and 364-3.1 [c]).

32. Transporters must bring solid waste to a facility authorized to accept the waste pursuant to the requirements of the ECL and applicable regulations or be exempt under the ECL and its implementing regulations (*see* 6 NYCRR 364-3.3 [e]).

**C. Operating Requirements for Solid Waste Management Facilities**<sup>4</sup>

33. The owner or operator of a solid waste facility must prevent waste from being deposited in or entering surface waters or groundwater (6 NYCRR 360.19 [b][1]).<sup>5</sup>

34. An owner or operator must operate the facility in a manner that minimizes the generation of leachate<sup>6</sup> and that does not allow any leachate to enter surface waters or

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<sup>4</sup> Because the Route 212 site received its solid waste management facility registration before November 4, 2017, defendants must comply with the conditions in that registration, including the operating requirements contained in the old regulations unless and until the facility is re-registered under the new regulations (*see* 6 NYCRR 360.4 [b][2]). As a result, this complaint cites violations of the old regulations as they relate to operating requirements at the Route 212 site. The deadline in 6 NYCRR 360.4 (b)(2) for C&D facilities to re-register has been extended to May 3, 2021 by a DEC enforcement discretion letter dated September 19, 2019, available at [https://www.dec.ny.gov/docs/materials\\_minerals\\_pdf/edsept2019cdd.pdf](https://www.dec.ny.gov/docs/materials_minerals_pdf/edsept2019cdd.pdf).

<sup>5</sup> Operator means the person responsible for the overall operation of a solid waste management facility, with the authority to make and implement decisions, whose actions or failure to act may result in noncompliance with any requirement of DEC's regulations or of any DEC-approved operating condition pertaining to that facility (6 NYCRR 360.2 [b][186]). Owner means a person who owns a solid waste management facility (6 NYCRR 360.2 [b][190]).

<sup>6</sup> Leachate means any solid waste in the form of a liquid, including any suspended compounds, that results from contact with waste (6 NYCRR 360.2 [b][157]).

groundwater except under authority of a SPDES permit (6 NYCRR 360.19 [b][2]).<sup>7</sup>

35. An owner or operator must institute a control program to assure that only solid waste authorized by DEC to be treated, disposed of, or transferred at the facility is being treated, disposed of, or transferred at that facility (6 NYCRR 360.19 [c][1]).<sup>8</sup>

36. An owner or operator must retain records of all unauthorized solid waste accepted at the facility, identifying the waste and its final disposition (6 NYCRR 360.19 [c][4][i]).<sup>9</sup>

37. An owner or operator must maintain daily records of facility monitoring, which must account for all materials handled at the facility (6 NYCRR 360.19 [k][2][i]).

38. An owner or operator must maintain at the facility and make readily available inspection for a period of seven years from the date of the record was created, daily logs of wastes received and routine inspection records logs (6 NYCRR 360.19 [k][2][ii])<sup>10</sup>.

39. Solid waste at a facility must be confined to an area that can be effectively maintained, operated, and controlled (6 NYCRR 360.19 [f]).<sup>11</sup>

40. Dust must be effectively controlled so that it does not constitute a nuisance or

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<sup>7</sup> 6 NYCRR 360-1.14 (b)(2) (1994) provided in pertinent part that all solid waste management facilities must be constructed, operated, and closed in a manner that minimizes the generation of leachate that must be disposed of and prevent the migration of leachate into surface and groundwaters; and leachate must not be allowed to drain or discharge into surface water except pursuant to a SPDES permit.

<sup>8</sup> This provision was previously found in substantially the same form at 6 NYCRR 360-1.14 (e)(1) (1994).

<sup>9</sup> This provision was previously found in substantially the same form at 6 NYCRR 360-1.14 (i)(1) (1994).

<sup>10</sup> This provision was previously found in substantially the same form at 6 NYCRR 360-1.14 (i)(2) (1994).

<sup>11</sup> This provision was previously found in substantially the same form at 6 NYCRR 360-1.14 (j) (1994).

hazard to health, safety, or property (6 NYCRR 360.19 [g]).<sup>12</sup>

**D. Solid Waste Enforcement**

41. Pursuant to ECL § 71-2727 (2), the Attorney General, on her own initiative, or at the request of the DEC Commissioner, may initiate any appropriate action or proceeding to enforce any provision of Article 27 or 71, or any implementing rule or regulation.

42. Pursuant to ECL § 71-2703 (1)(a), any person who violates any of the provisions of, or who fails to perform any duty imposed by Title 3 or 7 of ECL Article 27, or any implementing rule or regulation, or any term or condition of any certificate or permit issued thereunder, shall be liable for a civil penalty not to exceed \$7,500 for each such violation and an additional penalty of not more than \$1,500 for each day during which such violation continues, which may be imposed by the court in any action or proceeding pursuant to ECL § 71-2727. The statute further provides that such person may be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended, or a pending renewal application denied.

43. Pursuant to ECL § 71-2703 (1)(b)(ii), any person who violates any of the provisions of, or who fails to perform any duty imposed by Title 3 or 7 of ECL Article 27, or any implementing rule or regulation, or any term or condition of any certificate or permit issued thereunder and thereby causes the release of more than ten cubic yards of solid waste into the environment, shall be liable for a civil penalty not to exceed \$22,500 for each such violation and an additional penalty of not more than \$22,500 for each day during which such violation continues, which may be imposed by the court in any action or proceeding pursuant to ECL § 71-

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<sup>12</sup> This provision was previously found in substantially the same form at 6 NYCRR 360-1.14 (k) (1994).

2727. Further, such person may be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended, or a pending renewal application denied.

44. Pursuant to ECL § 71-2703 (3), any person who violates any of the provisions of, or who fails to perform any duty imposed by Title 7 of ECL Article 27, with regard to the construction and operation of facilities for the disposal of C&D debris or any implementing rule or regulation, or any term or condition of any certificate or permit issued thereunder, shall be liable for a civil penalty not to exceed \$15,000 and each day of such deposition shall constitute a separate violation and such civil penalty is in addition to any other fines or penalties which may be applied pursuant to the ECL.

## II. Water Pollution Control and Enforcement

45. Article 17 of the ECL prohibits the use of an outlet or point source that discharges pollutants to the surface or groundwater of the State without a water pollution control permit – known as a State Pollutant Discharge Elimination System (SPDES) permit, or in violation of the conditions provided in a SPDES permit. ECL §§ 17-0505 and 17-0807. While many SPDES permits are specifically written and issued by DEC for individual point sources, such as sewage treatment plants or factories, DEC, for ease of regulatory compliance and cost savings, has promulgated “general permits” that cover certain types of activities that tend to generate similar discharges that can be addressed by similar types of pollution controls.

46. DEC’s SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-15-002) (the SPDES General Permit) authorizes stormwater discharges from eligible construction activities (*see* SPDES General Permit, Part I.A).<sup>13</sup>

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<sup>13</sup> Available at [https://www.dec.ny.gov/docs/water\\_pdf/gp015002.pdf](https://www.dec.ny.gov/docs/water_pdf/gp015002.pdf).

47. An owner or operator of a site with construction activity must obtain coverage under the SPDES General Permit prior to commencing construction activity resulting in soil disturbances of one or more acre, including disturbances of less than one acre that are part of a larger common plan of development or sale that will ultimately disturb one or more acre of land (*see* SPDES General Permit, Preface and Part I.A.1).

48. New York's SPDES General Permit defines "construction activity(ies)" as any clearing, grading, excavation, filling, demolition or stockpiling activities that result in soil disturbance (*see* SPDES General Permit, Appendix A; *see also* 40 CFR Part 122.26 [b][14][x] and [b][15][i – ii] [defining certain construction activities as point sources subject to permitting requirements]).

49. Before commencing construction activities, the owner or operator undertaking the construction activity must file a "notice of intent" (NOI) with DEC to obtain permit coverage under the SPDES General Permit and prepare a Stormwater Pollution Prevention Plan (SWPPP). That SWPPP must comply with DEC's technical standards for erosion and sediment control during construction, and post-construction water quantity and quality controls (*see* SPDES General Permit, Part II.A).

50. Pursuant to ECL § 71-1929 (1), any person who violates any of the provisions of or who fails to perform any duty imposed by ECL Article 17, or the rules, regulations, orders or determinations of the DEC Commissioner promulgated thereunder, or the terms of any permit issued thereunder, is liable for a penalty of up to \$37,500 per day for each violation, and in addition, such person may be enjoined from continuing such violation. The statute further provides that the penalties shall be recoverable in an action brought by the Attorney General. ECL § 71-1929(3).

51. Pursuant to ECL § 71-1931, the Attorney General may bring an action for an injunction against any person violating any of the provisions of ECL Article 17, or any implementing rule or regulation.

### **FACTUAL ALLEGATIONS**

#### **A. DEC Registration of the Route 212 Site**

52. On or about July 12, 2016, DEC staff inspected the Route 212 site in response to complaints about solid waste at the property. During the inspection, staff observed the operation of a solid waste management facility without any authorization from the DEC. Pursuant to ECL § 27-0707 (1), solid waste management facilities, such as C&D facilities, require a permit. However, under DEC's solid waste regulations, certain C&D facilities are eligible for registration with DEC rather than a permit. See 6 NYCRR 360.15(a)(1). The requirements necessary to obtain a registration are easier to meet than are the requirements necessary to obtain a permit, and a registration contains fewer operating requirements than does a permit. Whether a facility requires a permit as opposed to a registration generally depends on the type and volume of waste to be handled at the facility. DEC staff informed Karolys that if he wished to operate a solid waste management facility at the Route 212 site, he would need to apply for a permit or registration from DEC.

53. On or about July 15, 2016, DEC received from Karolys an application for a registration to operate a solid waste management facility at the Route 212 site.<sup>14</sup>

54. On the application, Mr. Karolys indicated that he planned to operate a C&D

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<sup>14</sup> Under former Part 360 regulations in effect at that time, facilities accepting only recognizable, uncontaminated concrete and other masonry waste, asphalt pavement, brick, soil and rock, and uncontaminated, unadulterated wood were eligible for a registration rather than a permit (*see* 6 NYCRR 360-16.1 [d][1][i] & [ii] [1994]).

facility and that the facility would accept and store up to 1,250 cubic yards of uncontaminated soil, rock, concrete, brick, and block asphalt at the Route 212 site. Mr. Karolys also represented on the application that his hours of operation would be from 7:00 AM to 3:00 PM, Monday thru Saturday, and that the Route 212 site would accept the specified materials only from within Ulster and Dutchess counties.

55. On July 29, 2016, DEC issued a registration to Karolys and J. Karolys + Son, authorizing the management of the types of C&D debris originating from Ulster and Dutchess counties, up to the volume specified on the application.

56. At the time and continuing to the present, DEC has not received any application to operate a solid waste management facility at either the Goat Hill or Fel Qui sites, and DEC has not authorized in any way the activities at those sites. DEC also has not received any application to expand the solid waste management activities at the Route 212 site, and DEC has not issued any such revised registration or permit.

**B. 2016 Violations Documented at Route 212 and Goat Hill Sites**

57. During an inspection of the Route 212 site on November 28, 2016, DEC staff discovered violations of the registration issued for the site, and DEC's Part 360 regulations.

DEC observed:

- a. A large pile of solid waste, including C&D debris not authorized by the registration -- plastic, ceramic tiles, dimensional lumber, fabric, and paper;
- b. that access to the site was not adequately controlled by fencing, gates, natural barriers, or other suitable means; and
- c. that the facility did not maintain any daily monitoring records accounting for all materials handled at the facility.

58. DEC documented those violations in a Notice of Violation (NOV) dated November 29, 2016, which directed Karolys to correct the violations by January 15, 2017. DEC

staff inspected the Route 212 site before and after the January 15, 2017 deadline, and observed that the violations were not corrected.

59. On November 28, 2016, DEC staff also observed that solid waste had been disposed of at the Goat Hill site. DEC staff issued citation BE8709735 to Karolys for operating a solid waste management facility without a permit. Karolys was found guilty of violating 6 NYCRR 360-1.7 (a)(1) on July 17, 2017 by the Saugerties Town Court, Criminal Part, and was fined \$1,500.<sup>15</sup>

**C. 2017 Violations Documented at Route 212, Goat Hill, and Fel Qui Sites**

60. On May 15, 2017, DEC staff observed that the violations documented at the Route 212 and Goat Hill sites in November 2016 remained uncorrected. Specifically, at the Route 212 site, DEC observed that the large pile of unauthorized solid waste had not been removed. At the Goat Hill site, DEC observed that the disposal of additional solid waste had occurred. DEC issued an NOV, dated May 19, 2017, for both sites, documenting:

- a. operation of a solid waste management facility without a permit at the Route 212 site (because the unauthorized solid waste remained on-site);
- b. unlawful disposal of solid waste at the Goat Hill site; and
- c. operation a solid waste management facility without a permit at the Goat Hill site.

61. On August 28, 2017, DEC staff observed that solid waste also had been disposed of at the Fel Qui site. On September 13, 2017, DEC issued citation BF3577674 to Karolys for operating a solid waste management facility at the Fel Qui site without a permit. Karolys was found guilty of violating 6 NYCRR 360-1.7 (a)(1) on December 13, 2018 by the Saugerties

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<sup>15</sup> See footnote 1.



Town Court, Criminal Part, and was fined \$1,500.<sup>16</sup>

**D. 2018 Violations Documented at Route 212 and Goat Hill Sites**

62. On June 5, 2018, DEC observed solid waste at the Route 212 site not authorized by the registration. That same day, DEC issued citation BF4091312 to Karolys for operating a solid waste management facility without a permit.

63. On August 17, 2018, DEC staff observed Karolys and an apparent J. Karolys + Son employee transport four dump truck loads of C&D debris to the Goat Hill site, and dispose of the material at the site.

64. On August 19, 2018, DEC staff observed Karolys and an apparent J. Karolys + Son employee transport three dump truck loads of C&D debris to the Goat Hill site, and dispose of the material at the site.

65. On October 19, 2018, DEC staff also observed an apparent J. Karolys + Son employee transport three dump truck loads of C&D debris from the Route 212 site to the Goat Hill site, and dispose of the material at the site.

**E. 2019 Violations Documented at Route 212, Goat Hill and Fel Qui Sites**

66. On January 11, 2019, DEC staff observed an apparent J. Karolys + Son employee transport one dump truck load of C&D debris to the Fel Qui site, and dispose of the material at the site.

67. On March 14, 2019, DEC staff attempted to inspect the Route 212 site, but Karolys did not allow DEC staff to complete their inspection.

68. On April 12, 2019, defendants informed DEC - through counsel - that they would not allow DEC staff to inspect the Route 212, Goat Hill, or Fel Qui sites without a warrant.

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<sup>16</sup> See footnote 1.

69. On May 14, 2019, DEC obtained an administrative access warrant for all three sites from the New York State Supreme Court, Ulster County.

70. On May 15, 2019, DEC staff observed Karolys transport two dump truck loads of C&D debris to the Goat Hill site, and dispose of the material at the site.

71. On May 17, 2019, DEC staff executed the administrative access warrant at all three sites.

72. On May 17, 2019, DEC staff inspected the Route 212 site and observed numerous violations, including:

- a. Solid waste at the site not authorized by its registration;
- b. Processing of solid waste not authorized by its registration;
- c. More solid waste by volume than authorized by its registration;
- d. Failure to operate the site in a manner to minimize the generation of leachate;
- e. Failure adequately to control access to the site;
- f. Failure to institute a control program for unauthorized solid waste at the site;
- g. Failure to have available records of unauthorized solid waste at the site;
- h. Failure to have available any records of self-inspections;
- i. Failure to adequately confine the solid waste at the site;
- j. Failure to effectively control for dust at the site; and
- k. Failure to have available any daily monitoring records.

73. DEC staff estimated that approximately 1,500 cubic yards of material was present at the Route 212 site, which exceeded the 1,250 cubic yard maximum authorized by Karolys' registration for the Route 212 site. Additionally, chemical analysis of samples taken from the

Route 212 site indicated the presence of lead, mercury, benzo(A)anthracene, benzo(A)pyrene, benzo(B)fluoranthene, benzo(K)fluoranthene, chrysene, and ideno(1,2,3-C,D)pyrene.

74. Karolys was notified of these violations in an NOV dated July 1, 2019.

75. In addition, DEC staff found evidence that solid waste received at the Route 212 site was from counties other than Ulster and Dutchess counties. Specifically, DEC staff observed documentation that many loads were from the New York City metropolitan area, in violation of the origin condition in Karolys' registration for that site.

76. During the May 17, 2019 investigation, DEC staff also inspected the Goat Hill site and observed approximately 40,000 cubic yards of solid waste, including rock, asphalt, coal, ash, slag, brick, concrete, glass, and an unrecognizable component. Chemical analysis of samples taken from the Goat Hill site indicated the presence of lead. The July 1, 2019 NOV documented the following violations for the Goat Hill site:

- a. Operating a solid waste management facility without a permit;
- b. Allowing the management of solid waste in violation of 6 NYCRR Part 360 at the site;
- c. Unlawful disposal of solid waste at the site;
- d. Arranging for the unlawful disposal of solid waste at the site; and
- e. Failure to operate the site in a manner to minimize the generation of leachate.

77. During the May 17, 2019 inspection of the Fel Qui site, DEC staff observed approximately 15,000 cubic yards of solid waste, including rock, concrete, coal, ash, slag, brick, plaster, glass, and an unrecognizable component. Chemical analysis of samples taken at the Fel Qui site indicated the presence of lead, zinc, mercury, Gamma BHC (Lindane), Dichlorodiphenyldichloroethylene (DDE), Dichlorodiphenyltrichloroethane (DDT),

benzo(A)anthracene, benzo(A)pyrene, benzo(B)fluoranthene, benzo(K)fluoranthene, chrysene, Dibenz(A,H)Anthracene and ideno(1,2,3-C,D)pyrene. The July 1, 2019 NOV documented the following violations for the Fel Qui site:

- a. Operating a solid waste management facility without a permit;
- b. Allowing the management of solid waste in violation of 6 NYCRR Part 360 at the site;
- c. Unlawful disposal of solid waste at the site;
- d. Arranging for the unlawful disposal of solid waste at the site;
- e. Failure to prevent waste from entering surface water; and
- f. Failure to operate the site in a manner to minimize the generation of leachate.

78. The July 1, 2019 NOV directed Karolys “to immediately begin removing all solid waste from the properties and dispos[e] of such waste at a Department permitted solid waste management facility authorized to take such waste.”

79. The following day, DEC issued a second NOV for violations of ECL Article 17 at all three sites (July 2, 2019 SPDES NOV). During the May 17, 2019 inspection, staff observed soil disturbances greater than one acre, at all three sites. A review of agency records later confirmed that none of the sites had water pollution control permit coverage under the SPDES General Permit for the construction activities at those sites.

80. The July 2, 2019 SPDES NOV additionally provided:

“Pursuant to the SPDES GP-0-15-002, the Department orders you to stop all earth disturbing activities, excluding those necessary to install or maintain erosion and sediment control measures. This Stop Work Order shall remain in effect until the Department notifies you in writing that it has been terminated.”

81. Defendants did not comply with the directives in the July 1, 2019 NOV or the stop work order contained in the July 2, 2019 SPDES NOV.

82. On July 8, 2019, DEC staff observed an apparent J. Karolys + Son employee transport one dump truck load of C&D debris from the Route 212 site to the Fel Qui site, and dispose of the material at the site.

83. On August 9, 2019, DEC staff observed an apparent J. Karolys + Son employee transport five dump truck loads of C&D debris to the Goat Hill site, and dispose of the material at the site.

84. To date, unauthorized solid waste remains at the three sites, requisite erosion and sediment control measures have not been implemented, and SPDES water pollution control permit coverage for any of the sites has not been obtained.

### **FIRST CAUSE OF ACTION**

#### **VIOLATION OF ECL ARTICLE 27 AND PART 360 REGULATIONS AT THE ROUTE 212 SITE**

85. Plaintiffs restate every allegation contained in paragraphs 1-84 as if set forth fully in this paragraph.

86. As set forth above, violations of numerous solid waste regulations promulgated pursuant to Title 7 of ECL Article 27 have occurred at the Route 212 site.

87. Karolys failed and continues to fail to operate the C&D facility at the site in accordance with its registration by accepting and processing waste not authorized by the registration, in violation of 6 NYCRR 360.9 (a)(1), 6 NYCRR 360.9 (b)(2) and/or 6 NYCRR 360-1.7 (a)(1)(i) (1994).

88. Karolys failed and continues to fail to operate the C&D facility in accordance with its registration by exceeding the volume of solid waste authorized by the registration, in violation of 6 NYCRR 360.9 (a)(1), 6 NYCRR 360.9 (b)(2) and/or 6 NYCRR 360-1.7 (a)(1)(i) (1994).

89. By allowing the management of solid waste on land under their control, ownership, or custody in violation of 6 NYCRR Part 360 and the ECL, Karolys and Rachel Karolys are in violation of 6 NYCRR 360.9 (b)(1).
90. By failing to operate the site in a manner to minimize the generation of leachate, Karolys violated and is in violation of 6 NYCRR 360-1.14 (b)(2) (1994).
91. By failing to adequately control access to the site, Karolys violated 6 NYCRR 360-1.14 (d) (1994).
92. By failing to institute a control program for unauthorized solid waste at the site, Karolys and Rachel Karolys violated 6 NYCRR 360-1.14 (e)(1) (1994).
93. By failing to maintain and make available records identifying all unauthorized solid waste accepted at the site, Karolys and Rachel Karolys violated 6 NYCRR 360-1.14 (i)(1) (1994).
94. By failing to maintain and make available self-inspection records for the site, Karolys and Rachel Karolys violated 6 NYCRR 360-1.14 (i)(2) (1994).
95. By not adequately confining the solid waste at the Route 212 site to an area that can be effectively controlled, maintained and operated, Karolys violated 6 NYCRR 360-1.14 (j) (1994).
96. By not effectively controlling for dust at the Route 212 site so that it does not constitute a nuisance or hazard to health, safety, or property, Karolys and Rachel Karolys violated 6 NYCRR 360-1.14 (k) (1994).
97. By not having any daily monitoring records and inspection logs available for the Route 212 site, Karolys and Rachel Karolys violated 6 NYCRR 360-1.14 (i)(2) (1994).
98. Pursuant to ECL § 71-2703 (1)(a), the State is entitled to: (1) a civil penalty not to

exceed \$7,500 for each of the above listed violations, (2) an additional penalty of not more than \$1,500 for each day during which each of the violations continue, and (3) an order directing defendants to remove all unauthorized waste from the site.

99. Pursuant to ECL § 71-2703 (1)(b)(ii), for each violation alleged above that caused the release of more than ten cubic yards of solid waste into the environment, the State is entitled to a civil penalty not to exceed \$22,500 for each such violation, and an additional penalty of not more than \$22,500 for each day during which the violation has continued.

100. Pursuant to ECL § 71-2703 (3), the State is entitled additional civil penalties not to exceed \$15,000 for each violation alleged above.

### **SECOND CAUSE OF ACTION**

#### **VIOLATION OF ECL ARTICLE 27 AND PART 360 REGULATIONS AT THE GOAT HILL SITE**

101. Plaintiffs restate every allegation contained in paragraphs 1-84 as if set forth fully in this paragraph.

102. By arranging for the unlawful disposal of solid waste at the Goat Hill site, Karolys violated 6 NYCRR 360.9 (b)(6).

103. By unlawfully disposing of solid waste at the Goat Hill site on May 19, 2017, August 17, 2018, August 19, 2018, October 19, 2018, May 15, 2019, May 17, 2019, and August 9, 2019, Karolys violated 6 NYCRR 360.9 (b)(3) and/or 6 NYCRR 360-1.5 (a) (1994).

104. By transporting more than 10 cubic yards of C&D debris to the Goat Hill site without a Part 364 registration on August 17, 2018, August 19, 2018, October 19, 2018, May 15, 2019, and August 9, 2019, Karolys violated 6 NYCRR 364-3.2 (b) and 6 NYCRR 364-3.3 (e).

105. By accepting and otherwise allowing the management of unauthorized solid waste at the Goat Hill site, a property under their ownership, custody, and control, Karolys and Rachel

Karolys violated 6 NYCRR 360.9 (b)(1)(i) and/or 6 NYCRR 360.9 (b)(5).

106. Karolys' activities at the Goat Hill site constitute operation of a solid waste management facility without a permit issued by DEC, in violation of 6 NYCRR 360.9 (a)(1) and/or 6 NYCRR 360-1.7 (a)(1)(i) (1994).

107. By not operating the Goat Hill site in a manner to minimize the generation of leachate, Karolys and Rachel Karolys violated and is in violation of 6 NYCRR 360.19 (b)(2).

108. Pursuant to ECL § 71-2703 (1)(a), the State is entitled to: (1) a civil penalty not to exceed \$7,500 for each of the above listed violations, (2) an additional penalty of not more than \$1,500 for each day during which each of the violations continue, and (3) an order directing Karolys and Rachel Karolys to remove all unauthorized waste from the site.

109. Pursuant to ECL § 71-2703 (1)(b)(ii), for each violation alleged above that caused the release of more than ten cubic yards of solid waste into the environment, the State is entitled to a civil penalty not to exceed \$22,500 for each such violation, and an additional penalty of not more than \$22,500 for each day during which the violation has continued.

110. Pursuant to ECL § 71-2703 (3), the State is entitled additional civil penalties not to exceed \$15,000 for each violation alleged above.

**THIRD CAUSE OF ACTION**

**VIOLATION OF ECL ARTICLE 27 AND PART 360 REGULATIONS  
AT THE FEL QUI SITE**

111. Plaintiffs restate every allegation contained in paragraphs 1-84 as if set forth fully in this paragraph.

112. By arranging for the unlawful disposal of solid waste at the Fel Qui site, Karolys violated 6 NYCRR 360.9 (b)(6).

113. By unlawfully disposing of solid waste at the Fel Qui site on January 11, 2019,



May 17, 2019, and July 8, 2019, Karolys violated 6 NYCRR 360.9 (b)(3).

114. By transporting more than 10 cubic yards of C&D debris to the Fel Qui site without a Part 364 registration on January 11, 2019, and July 8, 2019, Karolys violated 6 NYCRR 364-3.2 (b) and 6 NYCRR 364-3.3 (e).

115. By accepting and otherwise allowing the management of unauthorized solid waste at the Fel Qui site, a property under his ownership, custody, and control, Karolys violated 6 NYCRR 360.9 (b)(1)(i) and/or 6 NYCRR 360.9 (b)(5).

116. Karolys' activities at the Fel Qui site constitute operation of a solid waste management facility without a permit issued by DEC, in violation of 6 NYCRR 360.9 (a)(1) and/or 6 NYCRR 360-1.7 (a)(1)(i) (1994).

117. By not preventing solid waste from the Fel Qui site from entering surface waters, Karolys violated 6 NYCRR 360.19 (b)(1).

118. By not operating the Fel Qui site in a manner to minimize the generation of leachate, Karolys violated and is in violation of 6 NYCRR 360.19 (b)(2).

119. Pursuant to ECL § 71-2703 (1)(a), the State is entitled to: (1) a civil penalty not to exceed \$7,500 for each of the above listed violations, (2) an additional penalty of not more than \$1,500 for each day during which each of the violations continue, and (3) an order directing Karolys to remove all unauthorized waste from the site.

120. Pursuant to ECL § 71-2703 (1)(b)(ii), for each violation alleged above that caused the release of more than ten cubic yards of solid waste into the environment, the State is entitled to a civil penalty not to exceed \$22,500 for each such violation, and an additional penalty of not more than \$22,500 for each day during which the violation has continued.

121. Pursuant to ECL § 71-2703 (3), the State is entitled additional civil penalties not

to exceed \$15,000 for each violation alleged above.

**FOURTH CAUSE OF ACTION**

**VIOLATION OF ECL ARTICLE 17 AT  
ROUTE 212, GOAT HILL, AND FEL QUI SITES**

122. Plaintiffs restate every allegation contained in paragraphs 1-84 as if set forth fully in this paragraph.

123. Karolys engaged in construction activities at all three sites as that term is defined in New York's SPDES General Permit. Karolys is an owner or operator of the construction activities at the three sites as defined in New York's SPDES General Permit, and Rachel Karolys is an owner or operator at the Route 212 and Goat Hill sites.

124. By commencing construction activities at the Route 212 site before obtaining permit coverage under the SPDES General Permit, Karolys and Rachel Karolys violated ECL § 17-0505.

125. By commencing construction activities at the Goat Hill site before obtaining permit coverage under the SPDES General Permit, Karolys and Rachel Karolys violated ECL § 17-0505.

126. By commencing construction activities at the Fel Qui site before obtaining permit coverage under the SPDES General Permit, Karolys violated ECL § 17-0505.

127. Pursuant to ECL § 71-1929(1) the State is entitled to a civil penalty not to exceed \$37,500 per day for each violation.

**WHEREFORE**, the State respectfully requests that this Court enter judgment against the defendants as follows:

- A. On the First, Second, and Third Causes of Action: finding Karolys liable for violating ECL Article 27 and corresponding regulations at the Route 212, Goat

Hill, and Fel Qui sites, and finding Rachel Karolys liable for violating ECL Article 27 at the Route 212 site and Goat Hill site; assessing against defendants a statutory civil penalty, pursuant to ECL § 71-2703 (1)(a), of up to \$7,500 for each violation at each site and an additional penalty not more than \$1,500 for each day during which each violation at each continued; assessing against defendants a statutory civil penalty, pursuant to ECL § 71-2703 (1)(b)(ii), of up to \$22,500 for each violation at each site that caused the release of more than 10 cubic yards of solid waste into the environment, and an additional penalty up to \$22,500 for each day during which each such violation at each site continued; assessing against defendants an additional statutory civil penalty, pursuant to ECL§ 71-2703 (3), of up to \$15,000 for each violation; ordering Karolys to stop disposing of and/or accepting solid waste at the Route 212 site, Goat Hill site, and Fel Qui Site, and ordering Rachel Karolys to stop accepting solid waste at the Route 212 site and Goat Hill site; ordering Karolys to remove all solid waste from the Route 212 site, Goat Hill site, and Fel Qui site, and ordering Rachel Karolys to remove all solid waste from the Route 212 site and Goat Hill site, and ordering defendants to lawfully dispose of such waste at a DEC-approved solid waste management facility, with at least five days' written notice to the DEC; and ordering Karolys to provide complete and accurate tracking forms and receipts for each load of solid waste removed from the Route 212 site, Goat Hill site, and Fel Qui site, and ordering Rachel Karolys to provide complete and accurate tracking forms and receipts for each load of solid waste removed from the Route 212 site and Goat Hill site.

- B. On the Fourth Cause of Action, finding Karolys liable for violating ECL Article 17 at the Route 212, Goat Hill, and Fel Qui sites, and finding Rachel Karolys liable for violating ECL Article 17 at the Route 212 site and Goat Hill site; assessing against defendants a statutory civil penalty, pursuant to ECL § 71-1929 (1), of \$37,500 per day for each violation; ordering defendants to prepare a SWPPP and submit to DEC for approval; and ordering Karolys to stop all earth disturbing activities at the Route 212 site, Goat Hill site, and Fel Qui site other than those activities necessary to install or maintain erosion and sediment control measures pursuant to the approved SWPPP or to comply with the court's order, and ordering Rachel Karolys to stop all earth disturbing activities at the Route 212 site and Goat Hill site other than those activities necessary to install or maintain erosion and sediment control measures pursuant to the approved SWPPP or to comply with the court's order.
- C. Finding that Karolys' pattern of noncompliance makes him unsuitable to own or operate a solid waste management facility; and revoking his registration to operate a solid waste management facility at the Route 212 site, pursuant to the State's authority at ECL §§ 71-2727 (2), 71-2703 (1)(a), and 71-2703 (1)(b)(ii).
- D. Ordering such other and further relief as the Court deems just and appropriate, together with costs and disbursements.

Dated: Albany, New York  
June 24, 2020

LETITIA JAMES  
Attorney General of the  
State of New York  
Attorney for Plaintiffs

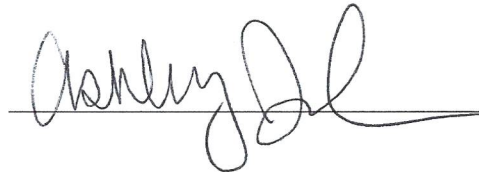
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**VERIFICATION**

Ashley Johnson, an employee of plaintiff New York Department of Environmental Conservation (DEC), affirms under penalties of perjury and says:

I am an Assistant Regional Attorney in Region 3 of the DEC, which covers, among other counties, Ulster County. I have read the foregoing Verified Complaint. The Verified Complaint is true to my knowledge, except as to matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The sources of my information are my own personal knowledge and investigation, my review of DEC files, and my communications with other DEC and New York State personnel who have investigated the defendants and the properties in connection with the allegations contained in this Verified Complaint.

Dated: New Paltz, New York  
June 24, 2020



Sworn to before me this  
24<sup>th</sup> day of June, 2020

Carol B. Krebs  
Notary Public

**CAROL B. KREBS**  
Notary Public, State of New York  
No. 02KR6209635  
Qualified in Ulster County  
Commission Expires 07/27/2021