

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

RARITAN BAYKEEPER, INC. (d/b/a NY/NJ
BAYKEEPER); RIVERKEEPER, INC.;
CAROLL FORBES; and CRYSTAL ERVIN,
Plaintiffs,

v.

AMERICAN RECYCLING MANAGEMENT,
LLC; REGAL RECYCLING CO. INC.;
ROYAL CARTING COMPANY, INC.;
ROYAL WASTE SERVICES, INC.;
MICHAEL REALI; and PAUL REALI,
Defendants.

Case No. 1:21-cv-5211

**(PROPOSED)
CONSENT DECREE**

WHEREAS, Plaintiff Raritan Baykeeper, Inc., d/b/a NY/NJ Baykeeper (“Baykeeper”) is a not-for-profit environmental organization, organized under the laws of the State of New York, with its principal place of business in Hazlet, New Jersey.

WHEREAS, Plaintiff Riverkeeper, Inc. (“Riverkeeper”) is a not-for-profit environmental organization organized under the laws of the State of New York, with its principal place of business in Ossining, New York.

WHEREAS, Plaintiffs Carroll Forbes (“Forbes”) and Crystal Ervin (“Ervin”) are residents of Jamaica, Queens and members of Baykeeper and Riverkeeper.

WHEREAS, Defendant American Recycling Management, LLC (“ARM”) is a limited liability corporation incorporated under the laws of the State of New York.

WHEREAS, Defendant Christopher Hein has been voluntarily dismissed with prejudice from this action.

WHEREAS, ARM owns and operates a municipal solid waste (“MSW”) and construction and demolition (“C&D”) debris processing facility (“the American Facility”) located at 172-33 Douglas Avenue in Jamaica, Queens.

WHEREAS, Plaintiffs allege that the American Facility engages in industrial activities that fall under the Standard Industrial Classification (“SIC”) Code of 5093 and that therefore, any discharge of stormwater associated with activities at the American Facility requires coverage under the General Permit for the Discharge of Stormwater Associated with Industrial Activity

(“General Permit”) issued by the New York State Department of Environmental Conservation (“DEC”), Permit No. GP-0-17-004. ARM denies the allegation.

WHEREAS, Plaintiffs allege that, and ARM denies that, ARM engages in industrial activities at the American Facility in a manner that creates odor, dust, noise, and exposes pollution to the surrounding environment.

WHEREAS, ARM has prepared a Stormwater Pollution Prevention Plan (“SWPPP”) for the American Facility and has filed for coverage under the General Permit.

WHEREAS, ARM has developed a Storm Water Management Plans (“SWMP”) that describes the practices used at an additional property to avoid the possibility of stormwater pollution.

WHEREAS, Baykeeper and Riverkeeper sent a notice of intent to sue ARM (the “Notice Letter”) on July 19, 2021, alleging violations of 33 U.S.C. §§ 1311(a) and 1342 of the Clean Water Act (“CWA”).

WHEREAS, Plaintiffs filed this action on September 20, 2021, alleging violations of 33 U.S.C. §§ 1311 and 1342 of the CWA, alleging the operation of the American Facility creates a private nuisance and nuisance *per se*, and seeking declaratory and injunctive relief, civil penalties, and reasonable attorneys’ fees and costs.

WHEREAS, Plaintiffs alleged in their complaint (the “Complaint”) and in their earlier Notice Letter that ARM has violated and continues to violate CWA Section 33 U.S.C. §§ 1311 and 1342 by, *inter alia*, discharging polluted stormwater associated with industrial activity without coverage under the General Permit and by failing to comply with the conditions of the General Permit. ARM denies the allegations.

WHEREAS, Plaintiffs have entered and inspected the American Facility and the Parties, herein defined, have exchanged certain confidential information in furtherance of settlement.

WHEREAS, without any concession or admission by ARM that it has violated the CWA or created a private nuisance or nuisance *per se*, Plaintiffs and ARM (collectively, the “Parties”) agree that it is in their mutual interest to resolve this matter without the taking of evidence or findings of fact or law, and the Parties would like to avoid prolonged and costly litigation.

WHEREAS, this Consent Decree shall be submitted to the United States Department of Justice and the United States Environmental Protection Agency (“EPA”) for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c).

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by ARM of any of the facts or violations alleged in the Complaint, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

**IT IS HEREBY STIPULATED BETWEEN THE PARTIES AND ORDERED,
ADJUDGED AND DECREED BY THE COURT AS FOLLOWS:**

I. DEFINED TERMS

The defined terms set forth in the foregoing recitals are hereby incorporated into the body of this Consent Decree and are made a part hereof. Terms used in this Consent Decree that are defined in the CWA and its implementing regulations shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Consent Decree. In addition, the following terms used in this Consent Decree have the meaning set forth below:

1. Effective Date: the date upon which this Consent Decree is entered by the Court.
2. Term of this Decree: the period beginning on the Effective Date and ending five (5) years from the date of the Effective Date, unless some payment or affirmative duty is not completed, in which case the Decree extends until those obligations are completed, but solely for purposes of enforcing such obligation pursuant to the terms of this Decree.
3. American Facility: the real properties associated with the waste processing facility located at:

172-33 Douglas Avenue, Jamaica, NY 11433, situated on Tax Lots 56, 58, 59, 60, 62, 75, 76, 314, 315, and 316 of Block 10219 in Queens.
4. The Agencies: the EPA and DEC.
5. Plaintiffs: Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper); Riverkeeper, Inc.; Carol Forbes; and Crystal Ervin.
6. Plaintiffs' Expert: Paul Eisen or other qualified stormwater professional designated by Plaintiffs.
7. ARM's Expert: Milana Kononenko or other qualified stormwater professional designated by ARM.
8. SWPPP: Stormwater Pollution Prevention Plan.
9. SWMP: Stormwater Management Plan.

II. JURISDICTION AND VENUE

10. **Jurisdiction.** Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (CWA jurisdiction). The parties dispute whether supplemental jurisdiction over the private nuisance and nuisance *per se* claims exists pursuant to 28 U.S.C. § 1367(a), but have agreed to the terms set forth herein notwithstanding that dispute and in resolution thereof. Baykeeper and Riverkeeper have

complied with the statutory notice requirements under the CWA, 33 U.S.C. § 1365(a)(1), and the corresponding regulations at 40 C.F.R. § 135.2. An actual, justiciable controversy exists between Plaintiffs and ARM. The requested relief is proper under 28 U.S.C. §§ 2201, 2202, and 33 U.S.C. § 1365(a).

11. **Venue.** Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1) and 28 U.S.C. § 1391(b)(2), because the source of the violations complained of is located, and the acts and omissions giving rise to the claims occurred, within this judicial district.
12. **Consent.** For purposes of this Consent Decree, or any action to enforce this Consent Decree, ARM consents to the Court's jurisdiction over this Consent Decree and any such action over ARM. For purposes of this Consent Decree, ARM consents to venue in this judicial district.

III. STRUCTURAL POLLUTION CONTROL

A. Interim Structural Pollution Controls

13. ARM shall commit to the interim structural pollution controls as outlined in Exhibit A, attached. Such measures are for the purpose of limiting pollution exposure. Such interim structural pollution controls shall be in place until a renovated American Facility is fully operational according to the standards set forth in this Consent Decree.
14. All equipment and materials required for implementing the interim structural pollution controls and operational requirements shall be ordered within sixty (60) days of the Effective Date.
15. ARM shall exercise diligence in implementing and installing the interim structural pollution controls in a timely fashion without undue delay. Implementation or installation within thirty (30) days of possession of all the necessary materials and equipment shall be considered timely.
16. All of the measures identified in Exhibit A shall be fully implemented within three (3) months of the Effective Date.
17. Within twelve (12) months of the Effective Date, ARM shall provide Plaintiffs with a report documenting completion of each of the measures in Exhibit A (documentation will include photographs). The report may be included in a single document with the SWPPP and SWMP Implementation Report set forth in Section IV, below, and shall include:
 - a. A summary of the new air filters and C&D enclosure measures as installed;
 - b. Specifications for the new air filters;
 - c. Photographs;
 - d. A description of the maintenance and operating procedures, and copies of logs demonstrating that ARM is monitoring maintenance and operation;
 - e. Descriptions of any difficulties encountered in utilizing these new measures;

- f. A certification that ARM's Expert has visited the Facility in the month prior to submission of the Report;
- g. A certification that, during ARM's Expert's last visit, the air filtration and C&D enclosure measures were in good working order and are performing as expected.

B. Facility Renovation Project

18. **Creation of a fully enclosed renovated American Facility.** Subject to the contingencies enumerated below, ARM will renovate the American Facility, through construction, modification, and/or expansion, to create a fully enclosed structure/structures wherein all waste processing activities at the American Facility will occur. The renovated American Facility shall have and maintain the attributes as outlined in Exhibit B, attached.
19. **Design and Engineering Plans.** ARM shall provide Plaintiffs with current design and engineering plans for the Facility Renovation Project by 14 days following the Effective Date.
20. **Permits and Approvals.** ARM shall make initial submissions to DEC and the New York City Department of Sanitation ("DOS") in support of critical permits issued by those agencies no later than sixty (60) days following the Effective Date. For all other permits and approvals necessary for the Facility Renovation Project, ARM agrees to seek such permits and approvals with reasonable diligence. The following permits have been identified as necessary permits and approvals that must be obtained to complete the Facility Renovation Project. The Parties recognize that additional permits and approvals may prove necessary as the Facility Renovation Project advances.
- a. New York City Building Department Permit
 - b. New York City Fire Department Permit
 - c. New York City Department of Sanitation Permit
 - d. Plumbing Permit
 - e. Builders Pavement Permit
 - f. Stability of Excavation Permit
 - g. Demolition Permit
 - h. New York State DEC Part 360 Permit
 - i. New York City Department of Environmental Protection ("DEP") Permit for Dewatering
 - j. New York City DEP Permit for Backflow Prevention
 - k. LIRR Permit to tie into LIRR Rail
21. **Project Timeline.** Subject to obtaining necessary financing and all necessary permits, ARM shall pursue the Facility Renovation Project with reasonable diligence and according to the timeline outlined in Exhibit C. ARM shall make all reasonable effort to complete the Facility Renovation Project within 4 years of the Effective Date.

22. **Progress Reports.** Starting with an initial report six months from the Effective Date, ARM will provide a progress report to Plaintiffs every six months until the Facility Renovation Project is complete, and the American Facility becomes operational.
23. **Alternative Modifications.** If a necessary permit or approval, including but not limited to the permits and approvals identified in Section III(B)(21), is denied for a reason that cannot be rectified through a practicable project modification, if ARM is unable to obtain necessary financing with reasonable diligence, or if ARM chooses not to pursue the Facility Renovation Project as the result of a change in ownership, ARM will undertake modifications to the existing facility including full enclosure of the C&D building, and installation of high-speed doors to allow for closure between trucks. The existing facility will have upgraded air filters, as outlined in Exhibit A, Air Filtration and Odor Controls. ARM shall undertake these modifications prior to transferring ownership, if the American Facility is sold to new ownership that elects not to pursue the Facility Renovation Project. The specification of such modifications shall be discussed with Plaintiffs and Plaintiffs' Experts and be memorialized as a modification to this Consent Decree according to the procedures set forth in Section XI. ARM shall not abandon the Facility Renovation Project for reasons other than failure to secure necessary financing, denial of necessary approvals or due to a change in ownership.
24. **Rail.** All MSW leaving the American Facility by rail shall not be exposed to the air, in accordance with rail carrier requirements. All C&D waste leaving the American Facility by rail shall be covered with mesh, in accordance with rail carrier requirements. ARM shall export as much waste as practicable by rail to minimize export by trucks.

IV. OBTAINING COVERAGE UNDER THE GENERAL PERMIT

25. **SWPPP Implementation.** The current SWPPP for the American Facility is attached to this Consent Decree as Exhibit D. ARM will implement the attached SWPPP at the American Facility. A failure to adhere to the SWPPP is a violation of this Consent Decree. The SWPPP shall be fully implemented according to the schedule attached as Exhibit C. ARM shall provide Plaintiffs with an Implementation Report, prepared by ARM's Expert, attesting to implementation of measures required by the SWPPP within thirty (30) days of the date for full implementation of the SWPPP identified in the schedule attached as Exhibit C. The Implementation Report shall include:
- a. The SWPPP;
 - b. A certification that ARM's Expert has visited the American Facility in the month prior to submission of the Implementation Report;
 - c. A certification that, during ARM's Expert's last visit, all structural measures described in the SWPPP were in good working order, and all housekeeping measures appeared to be taking place.
26. **SWPPP Amendments.** During the Term of this Decree, ARM shall amend the SWPPP to reflect changes to operations upon completion of the renovated American Facility. Further, if the scope of construction requires ARM to obtain coverage under the DEC's General Permit for Stormwater Discharges from Construction Activity (the "Construction Permit"), ARM shall develop a SWPPP for coverage under that permit (a

“Construction SWPPP”). If ARM amends the current SWPPP for any reason including but not limited to the reasons enumerated in the General Permit, or if ARM develops a Construction SWPPP, ARM shall provide written notice to Plaintiffs within thirty (30) days of the amendment and shall provide Plaintiffs with such amendment or new SWPPP.

27. **SWMP Implementation.** The current SWMP for 172-26, 172-20 and 172-42 Douglas Avenue is attached to this Consent Decree as Exhibit E. ARM will implement the attached SWMP at these properties in compliance with the CWA. A failure to adhere to the SWMP is a violation of this Consent Decree. Notwithstanding the foregoing, ARM shall continue to observe the properties operating pursuant to a SWMP and may, at any time during the Term of this Decree, identify a discharge of stormwater associated with industrial activity that requires authorization under the General Permit. Provided that, within 30 days of identifying such a discharge or of Plaintiffs identifying such a discharge to ARM, ARM will notify Plaintiffs of the discharge and satisfy Plaintiffs that they have terminated the condition or filed a Notice of Intent to obtain General Permit coverage within thirty (30) days, Plaintiffs shall be precluded from seeking to enforce this Consent Decree or any CWA claim arising out of the identified discharge during the Term of this Decree. The SWMP shall be fully implemented according to the schedule attached as Exhibit C. ARM shall provide Plaintiffs with an Implementation Report, prepared by ARM’s Expert, attesting to implementation of measures required by the SWMP within thirty (30) days of the date for full implementation of the SWMP identified in the schedule attached as Exhibit C. This report shall include the items identified in the Implementation Report requirement for SWPPP Implementation in Section IV(26) above, and may be included with that report in a single document.
28. **Schedule of Compliance – Plaintiffs’ Covenant not to Sue.** The General Permit requires aspiring permittees to prepare and fully implement SWPPPs before they are eligible to seek coverage under the General Permit. In deference to practical considerations, the Consent Decree allows a period for ARM to complete all structural modifications outlined in the SWPPPs as set forth in the schedule attached as Exhibit C. Therefore, this Consent Decree requires ARM to seek permit coverage before fully implementing their SWPPP. Provided that the structural modifications described in the SWPPP are completed on schedule, Plaintiffs hereby covenant not to prosecute ARM’s failure to fully implement a SWPPP before seeking coverage under the General Permit and covenant not to challenge ARM’s status under the General Permit during this initial period until the SWPPP is fully implemented.
29. **Implemented Storm Water Controls.** ARM shall maintain in good working order all storm water collection and treatment systems currently installed or to be installed pursuant to this Consent Decree, including but not limited to existing housekeeping measures.

V. COMPLIANCE MONITORING

30. **Additional Monitoring.** In addition to the inspections, monitoring, and reporting required under the General Permit and set forth in the attached SWPPP, ARM agrees to

perform the following additional monitoring described herein during the first year of the Term of this Decree.

31. **Stormwater Sampling Frequency.** ARM will sample and analyze stormwater discharges from one qualifying storm event that results in discharge in each quarter for all applicable benchmarks and numeric effluent limitations. For the avoidance of doubt, failure to obtain a sample due to lack of stormwater discharge at an outfall identified in the SWPPP shall not be a violation of this Consent Decree.
32. **Results Sent to Plaintiffs.** ARM will send to Plaintiffs a copy of every inspection record made, every sampling result taken, and every BMP or training log produced in accordance with the SWPPP and the General Permit during the Term of this Decree once per calendar year, no later than February 1 of the following year or on the last day during which this Consent Decree is in effect, whichever is sooner, unless earlier reporting of an exceedance or violation is required pursuant to Section VII.
33. **Provision of Documents to Plaintiffs.** During the Term of this Decree, ARM shall provide Plaintiffs with copies of any documents or correspondence that are exchanged with any governmental agency, including but not limited to the Agencies, and that are related to industrial discharges of pollution from the American Facility to waterbodies or sewers, or CWA compliance regarding the American Facility. Documents exchanged with a government agency shall be provided to Plaintiffs once per calendar year, no later than February 1 of the following year or on the last day during which this Consent Decree is in effect, whichever is sooner, unless earlier reporting of an exceedance or violation is required pursuant to Section VII. This includes, but is not limited to:
 - a. Documents and correspondence related to SPDES/NPDES permit coverage at the American Facility;
 - b. Annual reports, including the Annual Certification Report required under the General Permit;
 - c. Monitoring or sampling data;
 - d. Revisions to the SWPPP and SWMP;
 - e. Data related to discharges of industrial wastewater or industrial stormwater to the sanitary sewer system, if any; and
 - f. Reports of spills or other incidents that result in discharge of pollutants to a waterbody or sewer.
34. **Inspections.** ARM agrees to grant site access to Plaintiffs' Expert to inspect the American Facility for compliance with the terms of this Consent Decree two times during the Term of this Decree. The first inspection shall occur between 12-18 months after submission of the Implementation Report by ARM's Expert. The purpose of this inspection shall be to ensure that ARM is implementing the measures required by this Consent Decree. The second inspection shall be at the completion of the Facility Renovation Project to verify the renovated American Facility is in compliance with the terms of this Consent Decree. In addition to these two inspections, ARM shall grant site access to Plaintiffs' Expert:
 - a. following a good faith notice of an alleged violation of the terms of the Consent Decree. Such notice shall also include the basis for Plaintiffs' belief; and

- b. not more than once annually (in years in which inspections are not separately provided for in this Paragraph) if, after reviewing the materials provided by ARM on an annual basis, and after submitting inquiries to ARM's Expert and providing sufficient time for a documentary response, Plaintiffs' Expert determines that an inspection is necessary to verify compliance with the Consent Decree.
35. Any request for site access and inspection will be accommodated within thirty (30) days of Plaintiffs' notice and shall be conducted only during the American Facility's normal business hours, at a mutually agreed upon time. ARM personnel, and/or experts and/or counsel acting on ARM's behalf, shall accompany Plaintiffs throughout the site visit. Plaintiffs' representatives may collect samples of stormwater discharges, and may also take measures of air quality, dust, odor, and noise, and may take photographs of the American Facility. Copies of all photographs, reports, field notes, laboratory analyses and other data collected or developed as a result of any Inspections pursuant to this paragraph shall be provided to ARM within five days of receipt by Plaintiffs. Should any noncompliance with the General Permit or the terms of this Consent Decree be identified by Plaintiffs' Expert, the Parties will follow the procedures outlined for corrective action in Section VII. Plaintiffs will provide ARM with copies of any such determinations of noncompliance within seven (7) business days of receipt of such information by Plaintiffs after the site visit. ARM does not through this process admit that the noncompliance alleged by Plaintiffs has occurred and ARM retains the right to contest any alleged violations through the dispute resolution procedures set forth in Section XII.

VI. COMMUNITY MEETINGS

36. ARM shall meet with Plaintiffs and community representatives up to three times per year during the term of this Consent Decree to discuss community concerns relating to the measures outlined in the Consent Decree. These meetings will occur upon the request of Plaintiffs, with reasonable advance notice, at a mutually agreed to time and place. Plaintiffs will be obligated to determine before requesting a meeting, the number of people wishing to attend. If the number of Plaintiffs' representatives and community representatives wishing to attend a meeting exceeds the very limited capacity at the American Facility, Plaintiffs will arrange for a meeting location that is mutually convenient at their own expense. Only the Parties' designated points of contact are authorized to convene a meeting. Should a Party's point of contact for the community meetings change, that Party shall provide notice to the other Party as soon as is feasible.
 - a. ARM's point of contact for community meetings is Dominic Susino, dsusino@americanrecyclingmgmt.com.
 - b. Plaintiffs' points of contact for community meetings are Carol Forbes, iammz.caroll@gmail.com and Sonya Chung, sochung@nylpi.org.

VII. EXCEEDANCES AND VIOLATIONS

37. **Corrective Action.** Where an effluent limitation or benchmark monitoring cutoff concentration is exceeded, ARM shall take responsive actions to improve storm water management practices, including re-evaluating structural and non-structural BMPs and considering additional BMPs aimed at reducing pollutant levels observed in samples. Within thirty (30) days of discovering such exceedance, ARM shall provide Plaintiffs with a Corrective Action Memorandum containing the following information:

- a. Identification of any constituent that experienced an exceedance;
- b. Explanation of the possible cause(s) and/or source(s) of the noncompliance; and
- c. Explanation of ARM's planned responsive actions.

ARM shall complete any responsive actions within twelve (12) weeks of discovery unless Plaintiffs concur to an extended timeline for completion, which concurrence shall not be unreasonably denied. Any concurrence or failure to object by Plaintiffs shall not be deemed to be an admission of the adequacy of such measures should they fail to bring the American Facility's stormwater into compliance with applicable water quality criteria.

VIII. PAYMENTS

38. **Environmental Benefit Payment ("EBP").** Without any admission or representation as to the purpose of the payment, ARM shall pay the sum of ten thousand dollars (\$10,000) to York College Foundation Environmental Health Science Program (the "EBP Recipient"), 94-20 Guy R. Brewer Blvd, Jamaica, New York 11451, for use on projects relating to the reduction, mitigation, and/or remediation of the effects of stormwater pollution or environmental restoration of, or other benefit to, the Jamaica Bay or New York Harbor watersheds. ARM has placed the payment in escrow with ARM's attorney and the funds will be transferred to the EBP Recipient within thirty (30) days of the Effective Date. ARM shall notify Plaintiffs when the payment is made. None of this payment shall be disbursed to Plaintiffs.

39. **Stipulated Additional EBP.** Should ARM fail to provide information or any required documentation to Plaintiffs by the deadlines required by this Consent Decree and have continued to fail to produce such information or documentation for 30 days after Plaintiffs have notified ARM, ARM shall make an additional payment of one-thousand dollars (\$1,000) for each missed deadline, which shall be the total amount payable for any and all documentation subject to the same deadline. Payments shall be made to the EBP Recipient via certified check by certified mail, or similar service with tracking. Payment of each additional amount shall be due forty-four (44) days following notification by Plaintiffs of a missed deadline. ARM shall concurrently notify Plaintiffs, in writing, each time a payment is made and provide a copy of each check and the tracking number. None of these payments shall be disbursed to Plaintiffs. Any payments Plaintiffs may allege are due under this provision shall be suspended during Dispute Resolution pursuant to Section XII with respect to an allegedly missed deadline that is the subject of a dispute.

40. Fees, Costs, and Expenses. ARM shall pay a sum of Forty-Seven Thousand Five Hundred dollars (\$47,500) as full and complete satisfaction of Plaintiffs' claims for attorneys' fees and costs incurred to date, including investigative and expert costs. The payment has been placed in escrow with ARM's attorney and will be sent to Super Law Group, LLC via certified mail, or similar service with tracking, within thirty (30) business days of the Effective Date. ARM shall concurrently notify Plaintiffs that payment has been sent and provide the tracking number, in writing. The check shall be payable to "Super Law Group, LLC Attorney Trust - IOLA". Payments will be deposited in Super Law Group's IOLA Trust Account. Neither ARM nor their counsel shall have any responsibility for ensuring the proper disposition of these funds after receipt by Super Law Group, LLC. ARM's counsel shall not serve as an escrow agent for the benefit of any intended recipient of these funds, including but not limited to Plaintiffs' Expert or other vendors, other than Super Law Group, LLC. Super Law Group, LLC shall bear sole responsibility for the disbursement of funds once received by it pursuant to this Consent Decree. For the avoidance of doubt, this shall be the total amount of costs and fees paid to Plaintiffs in connection with the Action or this Consent Decree other than as provided for in Paragraph 41 below. Plaintiffs shall not seek further compensation from the Court.

41. Compliance Oversight Fees and Costs. Plaintiffs will incur costs in order to monitor ARM's compliance with this Consent Decree, including but not limited to costs incurred by Plaintiffs or their counsel or consultants to conduct site inspections, collect or review water quality sampling data, review annual reports, and discuss with representatives of ARM any potential changes to compliance requirements, preparation and participation in mediation, and similar activities. To help defray these costs, ARM agrees to pay Plaintiffs' actual fees and costs in an amount not to exceed Twenty Thousand dollars (\$20,000). \$10,000 has been placed in escrow with ARM's attorney and will be transferred to Plaintiffs' attorneys, New York Lawyers for the Public Interest, within thirty (30) business days of the Effective Date. The check shall be payable to "New York Lawyers for the Public Interest, Inc." Payments will be deposited in New York Lawyers for the Public Interest, Inc. IOLA Trust Account. Plaintiffs or their attorneys shall present to ARM an invoice for any payment they propose to take from this sum to cover compliance oversight fees and costs, documenting the basis therefore in accordance with standard billing practices for attorneys and environmental consultants (e.g., itemizing time spent and describing the tasks undertaken). ARM shall have fourteen (14) days from receipt of any such invoice to object to the sum claimed. If ARM does not object, Plaintiffs' attorneys shall draw down the trust account to pay the proposed sum. If ARM objects, the Parties shall follow the Dispute Resolution Procedure set forth in Section XII. If compliance monitoring funds in escrow are depleted to less than \$2,500, American Defendants shall send an additional \$10,000. If the original \$10,000 payment is not fully utilized during the Term of this Decree, any remainder shall be donated to the EBP recipient identified above. Neither ARM nor its counsel shall have any responsibility for ensuring the proper disposition of these funds after receipt by NYLPI. ARM's counsel shall not serve as an escrow agent for the benefit of any intended recipient of these funds, including but not limited to Plaintiffs'

Expert or other vendors, other than NYLPI. NYLPI shall bear sole responsibility for the disbursement of funds once received by it pursuant to this Consent Decree.

IX. EFFECT OF DECREE

42. **Plaintiffs' Release of Liability.** Upon Court approval and entry of this Consent Decree, Plaintiffs covenant not to sue and release ARM (including their representatives, successors, assigns, agents, members, employees, officers, attorneys and consultants, including but not limited to Christopher Hein) from any and all claims, causes of action, or liability related to private nuisance, nuisance *per se*, and/or the CWA, for damages, penalties, fines, injunctive relief, or any other claim for relief:

- a. relating to or resulting from conditions allegedly creating a private nuisance or nuisance *per se* prior to the Effective Date (even if such conditions persist following compliance with the terms of this Consent Decree);
- b. relating to or resulting from alleged noncompliance with the CWA occurring prior to the Effective Date or during the Term of this Consent Decree; and
- c. any other claims relating to or resulting from allegations asserted or that could have been asserted in the Complaint.

For the avoidance of doubt, Plaintiffs release ARM from any claim that structural measures or practices provided for in the SWPPP or SWMP or agreed to pursuant to this Consent Decree are insufficient to prevent nuisances from the American Facility. However, Plaintiffs do not release future nuisance claims arising out of material changes to the conditions or operations at the American Facility that are not expressly contemplated by this Consent Decree. This paragraph does not constitute a waiver or release of any claims relating to the enforcement of this Consent Decree. This release shall survive the term of the Consent Decree.

43. **Reservation.** Plaintiffs do not waive their right to bring a future action for injunctive or declaratory relief, penalties, and attorneys' fees and costs based on unpermitted stormwater discharges or other CWA violations that occur after the Term of this Decree.

44. **Defendants' Releases of Liability.** ARM releases and discharges Plaintiffs and their representatives, assigns, agents, employees, officers, attorneys and consultants, including those who have held positions in the past, from any and all claims, liability, demands, penalties, costs, and causes of action of every nature which concern or are connected with this action. This release shall survive the term of the Consent Decree. This release does not extend to claims, not known or foreseen as of the date of execution of this Consent Decree, based on future negligence or willful conduct of Plaintiffs or their consultants, for example in conducting inspections or sounding in defamation.

45. **Compliance with Law.** Plaintiffs do not by consent to the Consent Decree warrant or aver in any manner that ARM's compliance with this Consent Decree shall constitute or result in compliance with federal or state law or regulation. Nothing in this Consent

Decree shall be construed to affect or limit in any way the obligations of ARM to comply with all federal, state, and local laws and regulations governing any activity required by this Consent Decree.

46. **Impossibility of Performance.** Where implementation of the actions set forth in this Consent Decree within the agreed deadlines becomes impossible, despite the timely good faith efforts of the Parties, the Party who is unable to comply shall notify the others in writing within thirty (30) days of the date that the failure becomes apparent and shall describe the reason for the non-performance. The Parties agree to meet and confer in good faith concerning the non-performance and, where the Parties concur that performance was or is impossible, despite the timely good faith efforts of one of the Parties, new performance deadlines shall be established. If the Parties cannot timely agree upon the terms of such a stipulation, either shall have the right to seek intervention of the Court.

X. FEDERAL REVIEW OF DECREE

47. **Review by United States.** The Parties recognize that, pursuant to 33 U.S.C. §1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the Attorney General of the United States and the Administrator of the EPA. Therefore, upon signing of this Consent Decree by the Parties, Plaintiffs shall serve copies of this Consent Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. §135.5. If for any reason the United States should decline to approve this Consent Decree in the form presented, the Parties agree to continue negotiations in good faith to cure any objection to entry of this Consent Decree raised by the United States.
48. **Entry of Order.** Upon the expiration of the forty-five-day review period provided by 33 U.S.C. §1365(c)(3), the Parties shall move the Court for entry of this Consent Decree. Plaintiffs shall prepare the motion for review by counsel for ARM. This Consent Decree shall take effect on the date it is entered by this Court and shall terminate five (5) years from when it is entered by the Court. If for any reason the Court should decline to approve this Consent Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Consent Decree.

XI. MODIFICATION AND ENFORCEMENT OF DECREE

49. **Modification in Writing.** This Consent Decree may be modified only upon written consent of the Parties and the approval of the Court.
50. **Continuing Jurisdiction of the Court.** The United States District Court for the Eastern District of New York shall retain and shall have jurisdiction over the Parties to this Consent Decree for the resolution of any disputes that may arise under this Consent Decree. This Court shall also allow this action to be reopened for the purpose of enabling the Parties to this Consent Decree to apply to the Court for any further order

that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Consent Decree.

XII. DISPUTE RESOLUTION PROCEDURE

51. **Meet and Confer.** Any disputes with respect to any of the provisions of this Consent Decree shall be, in the first instance, the subject of good faith informal negotiations between the Parties affected by the dispute to attempt to resolve such dispute.
52. **Motion.** If a dispute between the Parties cannot be resolved by informal negotiations, a Party may file a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The other Party shall have 30 days to respond to the motion and propose an alternate resolution.
53. **Notice.** Following the failure of informal negotiations, the moving Party shall provide the other Party with three business days' written notice prior to initiating court proceedings to enforce this Consent Decree.
54. **Fee Awards.** In resolving any dispute arising from this Consent Decree, the Court shall have discretion to award attorneys' fees and costs to the prevailing party. The relevant provisions of the CWA and Rule 11 of the Federal Rules of Civil Procedure shall govern the allocation of fees and costs in connection with the resolution of any disputes before the Court.

XIII. MISCELLANEOUS PROVISIONS

55. **Entire Agreement.** This Consent Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements, and understandings, whether oral or written, among the Parties.
56. **Notices.** Any notice, demand, copies of documents, or other communications required to be made under the provisions of this Consent Decree (collectively, "Notices") by any Party hereto shall be effective only if in writing. Notices shall be directed to the Parties at their respective addresses set forth below. Notices given in the foregoing manner shall be deemed given: (a) if delivered by courier, when actually received or refused by the addressee; (b) if mailed, on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of three (3) business days after the date of mailing, whichever first occurs; or (c) if e-mailed, when acknowledged by the addressee. Each Party shall promptly notify the other Party of any change in this contact information, including but not limited to a change in representation.

Notices for Plaintiffs shall be sent to:

Edan Rotenberg
edan@superlawgroup.com
Julia Muench
julia@superlawgroup.com
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, NY 10038

Sonya Chung
sochung@nylpi.org
McGregor Smyth
Msmyth@nylpi.org
New York Lawyers for the Public
Interest
151 West 30th Street, 11th Floor
New York, NY 10001

Notices sent to the individuals listed
above at the addresses listed above
shall be deemed as notice to Plaintiffs.

Notice for ARM shall be sent to:

Elizabeth Knauer
eknauer@sprlaw.com
Sive, Paget & Riesel, PC
560 Lexington Ave.
New York, NY 10022

Christopher Hein
American Recycling Management, LLC
172-33 Douglas Avenue
Jamaica, NY 11433

Notices sent to the individuals listed above at
the addresses listed above shall be deemed as
notice to ARM.

57. **Authorization.** Each person signing this Consent Decree represents and warrants that s/he has been duly authorized to enter into this Consent Decree by the Party on whose behalf it is indicated that the person is signing.
58. **Successors and Assigns.** This Consent Decree shall be binding upon and inure to the benefit of the Parties and their respective representatives, heirs, executors, administrators, successors, officers, directors, agents, attorneys, employees and permitted assigns.
59. **Transfer of Ownership.** ARM shall notify Plaintiffs prior to any transfer of ownership or control of the American Facility to a non-Party. ARM agrees that as a condition of transfer of ownership or control of the American Facility, the new owner or operator shall be informed in writing of this Consent Decree and of its requirements to comply with the Consent Decree.
60. **Interpretation.** The provisions contained herein shall not be construed in favor of or against any Party because that party or its counsel drafted this Consent Decree but shall be construed as if all Parties prepared this Consent Decree, and any rules of construction to the contrary are hereby specifically waived. The terms of this Consent Decree were negotiated at arm's length by the Parties hereto. The language in all parts of this Consent Decree shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the General Permit, CWA or specifically herein.

61. **Headings.** The section and paragraph headings contained in this Consent Decree are for reference purposes only and shall not affect in any way the meaning or interpretation of this Consent Decree.
62. **Counterparts.** This Consent Decree may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Consent Decree. Telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed counterparts of this Consent Decree. Copies of the original Consent Decree, whether transmitted by facsimile or other means, shall be effective.
63. **Severability.** In the event that any of the provisions of this Consent Decree are held by a court to be unenforceable following the Effective Date, the validity of the enforceable provisions shall not be adversely affected.
64. **Changes to the General Permit.** ARM will comply fully with the General Permit and any permit modification, individual permit, or General Permit reissuance applicable to the American Facility during the Term of this Decree. If new or revised benchmark monitoring cutoff concentrations or effluent limitations (numeric or non-numeric) become applicable, compliance with them is required.

XIV. EXHIBITS

65. The following exhibits are attached to this Consent Decree and made a part hereof:
- a. Exhibit A: Interim Structural Pollution Control
 - b. Exhibit B: Renovated American Facility Attributes
 - c. Exhibit C: Schedule
 - d. Exhibit D: Stormwater Pollution Prevention Plan
 - e. Exhibit E: Stormwater Management Plan

Dated: _____

American Recycling Management, LLC

By: Christopher Hein
Title:


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Dated: 12/20/22

American Recycling Management, LLC



By: Christopher Hein
Title: Member

Dated: 20 December 2022

Raritan Baykeeper, Inc.



By: Michele Langa
Title: Staff Attorney

Dated: _____

Riverkeeper, Inc.

By: Michael Dulong
Title:

Dated: _____

Carroll Forbes

By: Carroll Forbes
Title:

Dated: _____

Crystal Ervin

By: Crystal Ervin
Title:

ENTERED and DATED this ___ day of _____, 2022

Honorable Brian M. Cogan
United States District Judge

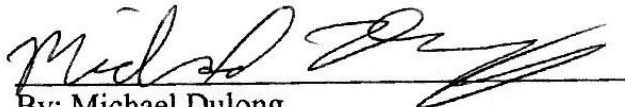
Dated: _____

Raritan Baykeeper, Inc.

By: Michele Langa
Title:

Dated: December 13, 2022

Riverkeeper, Inc.



By: Michael Dulong
Title: *Interim Legal Program Director*

Dated: _____

Caroll Forbes

By: Caroll Forbes
Title:

Dated: _____

Crystal Ervin

By: Crystal Ervin
Title:

ENTERED and DATED this ___ day of _____, 2022

Honorable Brian M. Cogan
United States District Judge

Dated: _____

Raritan Baykeeper, Inc.

By: Michele Langa

Title:

Dated: _____

Riverkeeper, Inc.

By: Michael Dulong

Title:

Dated: 12/21/2022

Carroll Forbes

P.P.

By: Carroll Forbes

Title:

Dated: 12/21/2022

Crystal Ervin

P.P.

By: Crystal Ervin

Title:

ENTERED and DATED this ____ day of _____, 2022

Honorable Brian M. Cogan
United States District Judge

EXHIBIT A:
INTERIM STRUCTURAL POLLUTION CONTROL

1. **Air Filtration and Odor Control.** ARM will install air filters that are designed for the removal of particulate matter and malodorous by-products in accordance with 16 RCNY § 4-16 in the existing MSW/PSW building. If a product is identified that will also allow for sufficient air exchange as required pursuant to that section, ARM shall install filters achieving control of fine and coarse particulate as well as carbon filtration. Plaintiffs and ARM will work together to identify an acceptable product. ARM shall maintain a schedule for maintenance of the air filtration and odor control system, including but not limited to filter replacements as recommended by the manufacturer.

2. **Temporary Enclosure for C&D Building.** ARM will install canvas to cover the large openings in the C&D building. The cover for the opening through which trucks enter and exit will be kept open from 6:00AM to 6:00PM. Between 6:00PM to 6:00AM, the cover shall remain closed except for the minimum amount of time required for a truck to enter or exit.

EXHIBIT B:
RENOVATED AMERICAN FACILITY ATTRIBUTES

1. **Fully Enclosed Waste Processing Operations.** The renovated American Facility shall have sufficient interior space for all waste processing, including loading and unloading of uncontainerized material.
2. **High-Speed Doors.** The renovated American Facility shall be equipped with and utilize high-speed doors that open by a remote control/button to be operated by the American Facility staff when admitting trucks. The doors shall be closed at all times except to allow vehicles to enter and exit.
3. **Air Ventilation.** All air exchanged between the renovated American Facility building/buildings and the outdoors shall be filtered through air filters that are designed for the removal of particulate matter and malodorous by-products in accordance with 16 RCNY § 4-16 in the MSW portion of the facility. An objective of the air ventilation modifications shall be to minimize malodorous air escaping from the American Facility when the American Facility doors are open. If a product is identified that will also allow for sufficient air exchange as required pursuant to that section, ARM shall install filters achieving control of fine and coarse particulate as well as carbon filtration. Plaintiffs and ARM will work together to identify an acceptable product. ARM shall maintain a schedule for maintenance of the air filtration and odor control system, including but not limited to filter replacements as recommended by the manufacturer. The air ventilation system shall comply with 16 RCNY § 4-16 and/or otherwise be approved by DSNY.
4. **Odor Control.** The renovated American Facility shall be equipped with an odor control misting system installed within the building where MSW/PSW is processed and continually in use when odor generating waste is present. This misting system will utilize an environmentally friendly and scientifically proven odor eliminating and/or neutralizing agent.

EXHIBIT C: SCHEDULE

Requirement	Section	Deadline
Provide design and engineering plans	III	14 days following Effective Date*
Initial submissions to DEC and DOS in support of critical permits issued by those agencies	III	60 days following Effective Date
Payments	VIII	Effective Date + 30 days
Order all required materials and equipment for implementing Interim Structural Pollution Controls	III	Effective Date + 60 days
Implement and install all Interim Structural Pollution Controls	III	Timely, within 30 days of possession of all necessary materials and equipment; not later than Effective Date + 3 months
Conduct sampling of stormwater discharges	V	Quarterly for first year of term, thereafter in accordance with General Permit
Provide Plaintiffs with progress report on Facility Renovation Project	III	Every 6 months, starting with 6 months from Effective Date
Seek all other permits and approvals necessary for the Facility Renovation Project	III	With reasonable diligence
End of implementation period for SWPPP and SWMP	III & IV	Effective Date + 6 months
Provide Plaintiffs with “Implementation Report(s)” documenting full implementation of Interim Structural Pollution Controls, SWPPP and SWMP	III & IV	Effective Date + 12 months
Provide copies of inspection reports and sampling results to Plaintiffs	V	Feb. 1 annually
Provide Plaintiffs with copies of relevant correspondence with government agencies	V	Feb. 1 annually
Provide Plaintiffs with amendments to SWPPP or new Construction SWPPP	IV	Within 30 days
Provide Plaintiffs with Corrective Action Memorandum for any exceedance	VII	Within 30 days of learning of exceedance
Complete all corrective actions responding to exceedance, and provide proof to Plaintiffs	VII	Within 12 weeks of learning of exceedance
Complete Facility Renovation Project or alternative measures	III	With reasonable diligence; not later than Effective Date + 4 years

The above obligations and deadlines continue throughout the Term of this Decree	I	Effective Date + 5 years
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*The Effective Date is the date this Consent Decree was entered by the Court.