

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the New York State Department
of Environmental Conservation Initiated Modification
of the Mined Land Reclamation Permit

issued to

**RAYMOND DEMERS
d/b/a The Nicholas F. Domain
Sand & Gravel Company,**

Permittee.

**SUMMARY REPORT
AND ORDER OF
DISPOSITION**

DEC File/Permit No.
3-1326-00092/00003

Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Lara Quintiliani Olivieri, Esq., of counsel), for staff of the Department of Environmental Conservation
- George J. Calcagnini, Esq., for permittee Raymond Demers d/b/a/ The Nicholas F. Domain Sand & Gravel Company

Proceedings

By a permit renewal issued on May 26, 2017, the Department of Environmental Conservation (“DEC” or “Department”) authorized Nicholas F. Domain Sand & Gravel Company (“permittee”) to conduct mining and post-mining reclamation activities at the project location west of NYS Route 22 and south of West Duncan Hill Road, Dover Plains, Dutchess County, New York. A Notice of Intent to Modify a Permit was issued on July 16, 2018. On July 30, 2018, permittee requested a hearing on the proposed modification.

A combined notice of public legislative hearing, issues conference, and adjudicatory hearing was published in the Department's *Environmental Notice Bulletin* (“ENB”) on August 22, 2018, and in the *Poughkeepsie Journal* on August 28, 2018.¹ The Notice set a deadline of 4:00 p.m. on Monday, September 24, 2018 for receipt of petitions for party status. No petitions for party status were submitted by the deadline, and no late-filed petitions were received.

¹ See ENB notice at <http://www.dec.ny.gov/enb/114450.html>.

The hearing began as scheduled at 9:00 a.m. at the Town of Dover Town Hall, 126 East Duncan Hill Road, Dover Plains, New York. No members of the public appeared at the public statement hearing. Following the public statement hearing, the issues conference took place, followed by the adjudicatory hearing. The parties submitted post-hearing briefs and reply briefs.

A related matter was the subject of a lawsuit in Dutchess County Supreme Court (*Rita Judson v. Ray Demers a/k/a Raymond Demers d/b/a Domain Sand & Gravel Company a/k/a The Nicholas F. Domain Sand & Gravel Company, R&J Materials LLC*, Index No. 51580-18). By e-mail dated June 17, 2019, counsel for permittee advised the administrative law judge that the parties had reached a settlement in the Dutchess County Supreme Court litigation. Counsel provided a copy of the Stipulation of Settlement (“Stipulation”), and requested that the administrative proceeding be discontinued, as the settlement in Supreme Court had resolved the issues in this matter.

The Stipulation of Settlement states, at Paragraph 10, that

[u]pon the full execution of this stipulation the plaintiff shall notify the DEC in writing that she has consented to the defendants’ mining permit application to extend the permit to May 25, 2022. Plaintiff shall further advise the DEC that her consent should be accepted retroactive to the date of the application, to wit December 6, 2016, and that the signature of Duncan Hill LLC by Christopher Vincent should be accepted as written consent on her individual behalf also.

The administrative law judge directed that, once the notification referenced in the Stipulation was received by the Department, the parties were to provide statements indicating that all permit-related matters had been resolved. On September 27, 2019, Department Staff received the notification referenced in the Stipulation. On September 29 and October 1, 2019, the parties notified the administrative law judge that the permit modification matter had been resolved.

Discussion

A stipulation executed by all the parties to the proceeding resolving any or all issues removes those issues from further consideration in the hearing (*see* Section 624.13(d) of 6 NYCRR). Where the parties’ agreement resolves all issues, such as the case here, the agreement must be reduced to writing and accepted by all parties. The written agreement must then be submitted to the administrative law judge to be included in the hearing record, along with written statements, signed by the parties or their representatives, stating that the agreement and any conditions resolve all issues between the parties (*see* DEC Organization and Delegation Memorandum 94-13, *Effect of Stipulations on Decision-Making in Permit and Enforcement Hearings*, May 5, 1994, at 2).

In this proceeding, a Stipulation of Settlement (Stipulation) has been received into the record, incorporating the agreement of the parties, as well as statements from the parties indicating that all permit-related matters have been resolved.

Order of Disposition

ACCORDINGLY, IT IS HEREBY ORDERED that the hearing record in this proceeding is closed.

_____/s/
Maria E. Villa
Administrative Law Judge

Dated: October 1, 2019
Albany, New York