

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Articles 15, 17, 19, 25 and 27 of the Environmental Conservation Law (ECL) of the State of New York, Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Parts 215, 360, 608 and 661, and Article 12 of the Navigation Law

- by -

EDKINS SCRAP METAL CORP., EDKINS AUTO SALES, INC., 2319 RICHMOND TERRACE CORP., BENEDETTO DICOSTANZO, MARIA DICOSTANZO, and HELENE IACONO,

Respondents.

ORDER OF DISPOSITION
DEC Case No.
R2-20131206-527

Appearances of Counsel:

-- Thomas Berkman, Deputy Commissioner and General Counsel (Udo Drescher, Assistant Regional Attorney, of counsel), for staff of the Department of Environmental Conservation

-- Kenneth Lee Raisch, Esq., for respondents

Proceedings

The New York State Department of Environmental Conservation (Department) staff commenced this administrative enforcement proceeding by serving respondents Edkins Scrap Metal Corp., Edkins Auto Sales, Inc., 2319 Richmond Terrace Corp., Benedetto DiCostanzo, Maria DiCostanzo and Helene Iacono (respondents) with a notice of motion for order without hearing in lieu of complaint, dated August 25, 2014. The motion alleged nine causes of action related to alleged violations of ECL articles 15, 17, 19, 25 and 27, 6 NYCRR parts 215, 360, 608 and 661 and Navigation Law article 12 on six parcels of land owned or operated by respondents located in Staten Island, Richmond County, New York. Respondents opposed the motion and cross-moved to dismiss the motion. Department staff cross-moved to dismiss respondents' affirmative defenses.

The matter was assigned to me, and following two separate rulings,¹ a hearing was scheduled for July 17, 2017. Prior to the hearing, the parties advised me that respondents had executed an admission of liability, dated July 7, 2017, which in addition to admitting liability on every cause of action, represented that respondents would execute an order on consent. Respondents, however, failed to execute the order on consent presented by staff. After repeated

¹ See *Matter of Edkins Scrap Metal Corp.*, Ruling, dated March 10, 2015; and *Matter of Edkins Scrap Metal Corp.*, Ruling on Motion to Compel Disclosure, dated May 23, 2017.

attempts to obtain respondents' promised execution of the order on consent, Department staff served a motion for summary order, dated September 5, 2018, on respondents. After repeated extensions to do so, respondents did not oppose staff's motion.

On April 8, 2019, I submitted a summary report and proposed order for the Commissioner's consideration. On April 10, 2019, Department staff advised me that staff was pursuing settlement of the matter with respondents and a prospective purchaser of the site. I advised the parties that the matter had been docketed for the Commissioner's consideration, but that the Office of Hearings and Mediation Services would place an administrative hold on the matter in contemplation of the parties reaching a settlement. Over the course of two years the parties continued to work toward resolution of this matter, providing me with timely updates regarding their progress and requesting extensions, as needed.

The parties have provided me with copies of a fully executed order on consent, dated January 26, 2021 and stipulation dated January 28, 2021, resolving all issues between the Department and respondents in the above-captioned matter.

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* 6 NYCRR 622.18[c]). Where the parties' agreement resolves all remaining issues, such as the case here, the agreement must be incorporated into a written stipulation and accepted by all parties. The stipulation 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 stipulation resolves 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, I have received into the record a signed order on consent incorporating the agreement of the parties and a stipulation resolving all issues between the parties in the above captioned matter.

Order of Disposition

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

_____/s/_____
Michael S. Caruso
Administrative Law Judge

Dated: January 29, 2021
Albany, New York