

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

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In the Matter of the Alleged Violations of Article 24 of the New York State Environmental Conservation Law (ECL) and Title 6 Part 663 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

- by -

**ORDER OF  
DISPOSITION**  
DEC Case No.  
R8-2018-0621-66

**HIEU LUONG and HIEN THI LUONG,**

Respondents.

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Appearances of Counsel:

- Thomas Berkman, Deputy Commissioner and General Counsel (Dusty Renee Tinsley, Assistant Regional Attorney, of counsel), for staff of the Department of Environmental Conservation
  
- Henry S. Stewart, Esq. for respondents

**Proceedings**

The New York State Department of Environmental Conservation (DEC or Department) staff commenced this administrative enforcement proceeding by serving respondents Hieu Luong and Hien Thi Luong (respondents) with an amended notice of hearing and complaint dated February 25, 2019. The amended complaint alleged three causes of action related to alleged violations of 6 NYCRR part 663 for depositing fill, grading and clear-cutting trees in a regulated freshwater wetland and adjacent area. Respondents served and filed a verified answer to the amended complaint, dated April 22, 2019.

The matter was assigned to me, and following two separate rulings on motions,<sup>1</sup> a hearing was scheduled for July 14, 2020. Prior to the hearing, the parties advised me that the matter had been settled and provided me a fully executed copy of an order on consent, dated July 14, 2020, resolving all issues between the Department and respondents in the above captioned matter.

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<sup>1</sup> See *Matter of Hieu Luong and Hien Thi Luong*, Ruling on Motion to Amend the Notice of Hearing and Complaint, dated February 11, 2019; and *Matter of Hieu Luong and Hien Thi Luong*, Ruling on Motion to Dismiss Affirmative Defenses, dated August 29, 2019.

## **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 statements indicating that the order on consent resolves all issues between the parties in the above captioned matter.<sup>2</sup>

## **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: July 28, 2020  
Albany, New York

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<sup>2</sup> The parties' statements also concur that the order on consent in this proceeding does not address or resolve any violations found, penalties assessed, or restoration activities ordered and set forth in the *Matter of Hieu Luong*, Order of the Commissioner, September 24, 2018 (DEC Case No. R8-2016-1020-97).