

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

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In the Matter of the New York State  
Department of Environmental Conservation  
Hazardous Waste Management Facility  
Renewal Permit, Issued Pursuant to  
Article 27 of the Environmental  
Conservation Law (ECL) and Part 373 of  
Title 6 of the Official Compilation of  
Codes, Rules and Regulations of the State  
of New York (6 NYCRR),

- to -

**MPM SILICONES, L.L.C.**  
260 Hudson River Road  
Waterford, New York

Permittee.

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**SUMMARY REPORT AND  
ORDER OF  
DISPOSITION**

DEC Permit  
Application ID No.  
5-4154-00002/00357  
EPA ID No.  
NYD002080034

Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Benjamin Conlon of counsel), for staff of the Department of Environmental Conservation
- Whiteman Osterman & Hanna, LLP (Scott N. Fein of counsel), for permittee MPM Silicones, L.L.C. (MPM)

**Proceedings**

MPM applied to the Department of Environmental Conservation (DEC or Department) to renew its 6 NYCRR part 373 hazardous waste management facility permit. A notice of complete application was published in the DEC's *Environmental Notice Bulletin (ENB)* on September 3, 2014 and in local newspapers during the week of September 1, 2014.<sup>1</sup> A legislative hearing was held on October 8,

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<sup>1</sup> See *ENB* notice at [http://www.dec.ny.gov/enb/20140903\\_not5.html](http://www.dec.ny.gov/enb/20140903_not5.html). The *ENB* notice included staff's determination that pursuant to article 8 of the ECL and 6 NYCRR part 617, the proposed modifications associated with permit renewal constituted an "Unlisted Action," and that the modifications would not have a significant effect on the environment. Staff issued a negative declaration.

2014 at the Waterford Town Hall, and written comments on the draft renewal permit were received through October 20, 2014.

DEC staff revised the draft renewal permit in response to comments received and issued the final permit on April 2, 2015. MPM requested a hearing on the permit on May 1, 2015 pursuant to 6 NYCRR 621.11(g). MPM included a list of issues concerning the modified renewal permit with its request for hearing.

Pursuant to a notice dated June 30, 2015, and published in the *ENB* on July 8, 2015, in local papers during the week of July 13, 2015, and announced on local radio on July 17, 2015, a public statement hearing was held before me at the Waterford Town Hall, 65 Broad Street, Waterford, New York on August 25, 2015 at 1:00 p.m.<sup>2</sup> The notice also stated that written comments must be received by September 1, 2015 and petitions for party status must be received by 3:00 p.m., September 11, 2015. No members of the public appeared at the public statement hearing, and I received no written comments or petitions for party status.

No issues conference was scheduled as Department staff and MPM Silicones, L.L.C. were the only parties, and resolved all issues raised in MPM's request for hearing except two issues that remained for adjudication. On November 11, 2015, a notice of adjudicatory hearing was published in the *ENB*.<sup>3</sup> The adjudicatory hearing was scheduled to begin on December 14, 2015 at 9:00 a.m. at the Waterford Town Hall, 65 Broad Street, Waterford, New York. On December 7, 2015, Department staff and MPM advised me that they had resolved the remaining two issues and that MPM was withdrawing its request for a hearing. Accordingly, on December 8, 2015 I caused a notice of cancellation of the adjudicatory hearing to be published in the *ENB*, and directed MPM to post the notice at the Waterford Town Hall.<sup>4</sup>

## **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 624.13[d]). Where the parties' agreement resolves all issues, such as the case here, the agreement must be incorporated into a draft permit and accepted by all parties. The draft permit must then be submitted to the administrative law judge to be included in the

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<sup>2</sup> See *ENB* notice at <http://www.dec.ny.gov/enb/102536.html>.

<sup>3</sup> See *ENB* notice at <http://www.dec.ny.gov/enb/103979.html>.

<sup>4</sup> See *ENB* notice at <http://www.dec.ny.gov/enb/104308.html>.

hearing record, along with written statements, signed by the parties or their representatives, stating that the draft permit 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, I have received into the record a modified draft Hazardous Waste Facility Management Renewal Permit incorporating the agreement of the parties together with signed statements from the parties indicating that the revised permit resolves all issues between the parties.

**Order of Disposition**

ACCORDINGLY, IT IS HEREBY ORDERED that the hearing record in this proceeding is closed, and the matter is remanded to Department staff for final processing of the modified draft permit in accordance with the agreement of the parties.

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/s/  
Michael S. Caruso  
Administrative Law Judge

Dated: December 21, 2015  
Albany, New York