

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

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In the Matter of the Application for a Mined Land Reclamation Permit Pursuant to Article 23 of the Environmental Conservation Law ("ECL"), for a Proposed Mine in the Town of Milan, Dutchess County,

**ORDER OF DISPOSITION**

DEC Permit  
Application No.  
3-1336-00049/00001

-by-

**RED WING PROPERTIES, INC.,**

Applicant.

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Appearances of Counsel:

- Bond, Schoeneck & King, PLLC (Kevin M. Bernstein of counsel), for applicant Red Wing Properties, Inc.
- Edward McTiernan, Deputy Commissioner and General Counsel (Jennifer L. Maglienti of counsel), for staff of the Department of Environmental Conservation
- Van DeWater and Van DeWater, LLP (James E. Nelson of counsel), for the Town of Milan
- Whiteman, Osterman & Hanna LLP (Todd M. Mathes of counsel), for the intervenor Milan Concerns

PROCEEDINGS

In May 2007, staff of the Department of Environmental Conservation (Department) referred the above referenced permit application to the Department's Office of Hearings and Mediation Service (OHMS) for the conduct of permit hearings pursuant to part 624 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR Part 624). An issues conference was convened on August 15 and 16, 2007, before Administrative Law Judge (ALJ) P. Nicholas Garlick. Closing briefs were received on November 2, 2007 and reply briefs were received on November 28, 2007. The ALJ released his Ruling on Issues and Party Status on February 29, 2008. The

Commissioner decided the parties' appeals from the issues ruling by Interim Decision dated May 19, 2010.

A conference call was convened with the parties on May 26, 2010 to discuss a schedule for providing supplemental information identified in the interim decision that was necessary before the adjudicatory hearing could convene. The applicant was required to provide information including a supplemental traffic study, a supplemental noise study, air quality calculations, and additional information related to visual impacts. The applicant indicated that this information would be forthcoming. By letter dated February 3, 2012 and email dated May 31, 2012, applicant requested additional time to consider proceeding with the application.

By letter dated March 25, 2013, I wrote to the applicant requesting an update on the matter and stating that if I did not receive a response within thirty days, I would consider the matter withdrawn. Since this letter, OHMS has received no further communications from the applicant concerning the project.

RULING AND ORDER OF DISPOSITION

Applicant Red Wing Properties, Inc. has failed to respond to the March 25, 2013, inquiry and has otherwise failed to prosecute this proceeding. Accordingly, IT IS HEREBY ORDERED THAT the application by Red Wing Properties, Inc. for a for a mined land reclamation permit for a proposed mine in the Town of Milan, Dutchess County is deemed withdrawn and the hearing record in the above referenced matter is closed based upon applicant's failure to prosecute (see State Administrative Procedure Act § 301[5]).

\_\_\_\_\_/s/\_\_\_\_\_  
P. Nicholas Garlick  
Administrative Law Judge

Dated: May 8, 2013  
Albany, New York