

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

In the Matter of the New York State Department
of Environmental Conservation Initiated Modification
to Solid Waste Management Facility Permit
(No. 4-3899-00006/00006)

**ORDER OF
DISPOSITION**

issued to

S.A. Dunn & Company, LLC,

Respondent/Permittee.

DEC Case No.
R4-2020-0601-79
Permit No.
4-3899-00006/00006

Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Anthony P. Luisi, Esq., of counsel), for staff of the Department of Environmental Conservation
- Michael Murphy, Esq., for respondent/permittee S.A. Dunn & Company, LLC

Proceedings

Respondent/permittee S.A. Dunn & Company, LLC (“respondent/permittee”) owns and operates a construction and demolition debris landfill and mine, commonly known as the Dunn Landfill, at 315 Partition Street Extension, Rensselaer, New York (the “Facility”). The Facility operates under a Part 360 Solid Waste Management and Article 23 Mined Land Reclamation Permit, No. 4-3899-00006/00006 (the “Permit”), issued by the New York State Department of Environmental Conservation (“DEC” or “Department”).

By Notice of Intent to Modify Permit dated March 23, 2020 (the “Notice”), Staff of the New York State Department of Environmental Conservation (“DEC” or “Department”) notified respondent/permittee of DEC’s intention, pursuant to Section 621.13(a)(4) and (5) of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”), to modify the Permit issued to respondent/permittee. The modification to the Permit would require, among other things, a new Special Condition 3 regarding hours of operation, a new Special Condition 4 regarding environmental monitoring services, and a new Special Condition 51 regarding dust control.

On May 22, 2020, respondent/permittee requested a hearing on proposed Special Conditions 3, 4, and 51, and consented to the other proposed modifications to the Permit, as identified in the Notice. Following respondent/permittee’s request for a hearing, DEC issued an

Order on Consent (the “Consent Order”) to respondent/permittee, Case No. R-4-2020-0312-41, dated May 29, 2020. The terms and conditions of the Consent Order mooted proposed Special Condition 51, and included a process to make potential adjustments to the hours of operation set forth in Special Condition 3. As a result, only one issue remained to be resolved in this proceeding: Special Condition 4 regarding environmental monitoring services.

A hearing referral dated May 27, 2020 was received by the Department’s Office of Hearings and Mediation Services (“OHMS”), and administrative law judge (“ALJ”) Maria E. Villa was assigned to the matter.

The parties agreed to attempt to resolve the matter through mediation, which was conducted by ALJ Michael S. Caruso of OHMS. On August 27, 2020, the parties notified ALJ Villa that an agreement had been reached, and provided an executed Stipulation of Settlement (the “Stipulation”).

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* Sections 622.18(c) and 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, the Stipulation has been received into the record, incorporating the agreement of the parties, and indicating that the Stipulation fully resolves all issues between the parties to this proceeding. Stipulation, ¶ 2. A modified permit is attached as Exhibit A to the Stipulation.

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: August 28, 2020
Albany, New York