

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

In the Matter of the Alleged Violations of Articles 27 and 71 of the Environmental Conservation Law (ECL) of the State of New York and Section 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

**ORDER OF
DISPOSITION**

- by -

DEC Case No.
R2-20130827-532

TILCON NEW YORK, INC.,

Respondent.

Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (John Nehila, Associate Regional Attorney, of counsel), for staff of the Department of Environmental Conservation
- Sullivan P.C. (Peter Sullivan of counsel), for respondent Tilcon New York, Inc.

Proceedings

The New York State Department of Environmental Conservation (DEC or Department) staff commenced this administrative enforcement proceeding by serving respondent Tilcon New York, Inc. (respondent) with a notice of hearing and complaint dated November 18, 2015, and an amended complaint, dated December 3, 2015. The amended complaint alleged four causes of action related to alleged violations of a September 16, 2014 order on consent at respondent's construction and demolition debris processing facility. Respondent served an answer to the amended complaint dated December 21, 2015 on Department staff.

The matter was assigned to me, and following three separate rulings on motions,¹ a hearing was scheduled for November 14, 2017. Prior to the hearing the parties advised me that

¹ See Matter of Oldcastle, Inc., Oldcastle Materials, Inc. and Tilcon New York, Inc., Ruling, dated February 29, 2016 (ruling on Department staff's motion to strike or clarify affirmative defenses); Matter of Oldcastle, Inc., Oldcastle Materials, Inc. and Tilcon New York, Inc., Ruling On Motion To Dismiss and To Compel Production, dated October 12, 2016 (dismissing the proceeding against Oldcastle Inc. and Oldcastle Materials, Inc.); and Matter of Tilcon New York, Inc., Ruling On Motion To Compel Production Of Documents, dated July 24, 2017.

the matter had been settled and provided me a fully executed copy of an order on consent, dated December 13, 2017, resolving all issues between the Department and respondent.

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 indicating that the order on consent resolves all issues between the parties.

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: December 18, 2017
Albany, New York