

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 4

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Curt Taylor
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Document transmitted electronically

RE: **Notice of Incomplete Application**
S.A. Dunn Mine and C&D Facility
DEC #4-3899-00006
Part 360 Permit Renewal and Modification
MLR Permit Renewal and Modification

Curt Taylor,

On January 14, 2022, the Department received applications to renew and modify the Part 360 Solid Waste permit and Mined Land Reclamation permit for the above-referenced facility. Upon review of the submitted materials the Department determined that the applications were incomplete, and a Notice of Incomplete Application (NOIA) was issued to the facility on January 28, 2022. The facility resubmitted materials in response to the NOIA on March 16, 2022. The Department finds the applications to be incomplete, and the following items must be addressed:

Climate Leadership and Community Protection Act

The New York State Climate Leadership and Community Protection Act (CLCPA) (Chapter 106 of the Laws of 2019) directs state agencies to determine if the decisions they make are consistent with the statewide greenhouse gas (GHG) emission limits established by CLCPA in Article 75 of the New York State Environmental Conservation Law (ECL) Article 75, which require statewide reduction in GHG emissions from 1990 levels of 40% by 2030 and 85% by 2050. This includes determining if permitting decisions are consistent with or would interfere with the attainment of the statewide GHG emission limits. The facility's pending applications are subject to this review. The Department cannot issue permits for continued operation at this facility without first verifying compliance with the requirements of CLCPA Section 7.

Section 7(2)

To address Section 7(2) of CLCPA, please identify sources of GHG emissions resulting from the projected lifetime operations of this facility and calculate the GHG and carbon dioxide equivalent emissions for the facility using the 20-year global warming potentials found in 6 NYCRR Part 496.5. Discussion will include a Life Cycle Assessment (LCA) of the direct and indirect GHG and climate effects of the existing facility, including any upstream and downstream emissions. Identified sources will include direct and indirect GHG emissions, including GHG emissions from methane escape from landfill processes, the transportation and disposal of wastes, and GHG emissions from on-site heavy equipment use and from heavy-duty motor vehicle trips to and from the facility. If necessary, discuss whether these emissions will be mitigated or reduced consistent with the goals of CLCPA. If there are no feasible ways to reduce GHGs, please provide supporting information in the evaluation.

CLCPA Section 7(2) requires the Department, as applicable, to answer three questions when issuing permits or making other administrative decisions:

- 1) Is the action under review consistent with the attainment of the statewide GHG emission limits for 2030 and 2050?
- 2) If the action is not consistent with the CLCPA, is the action justified?
- 3) If the action is justified but it is not consistent with the CLCPA, what alternatives or mitigation measures will be implemented to address the inconsistency?

1) Consistency with CLCPA Statewide Emission Limits

As the renewal applications reflect a continuation of current practices, it is noted that the facility meets emission standards in effect prior to CLCPA. The CLCPA Climate Action Council recognized waste disposal facilities as a necessary focus of further inquiry for achieving the emission limits and required the creation of a Waste Advisory Panel to develop recommendations for addressing landfill emissions. Please provide an evaluation of the release of direct GHG emissions from operational lifetime activities at the facility itself and a description of how these emissions are quantified (monitored or modeled). Please provide a separate evaluation of GHG emissions resulting from the transport of materials to and from the facility, and whether current transportation methods are in alignment with the 2040 and 2050 statewide GHG emission limits.

2) Justification

In the event of inconsistency or interference with the statewide GHG emission limits under the CLCPA, the facility must provide a sufficient basis for the Department to justify issuance of the renewal permits. It has been noted in previous submissions with respect to this facility that if C&D waste could not be delivered to this facility, the waste may be diverted to other landfills. These points may be considered by the Department when deciding whether the proposed permitting action is justified, however, these points are not by nature a determining factor in whether the proposed permitting actions are consistent with the requirements of CLCPA. If justification is required, the narrative will discuss the purpose, need, and public benefit of the proposed permitting action, including both social and economic benefits, including in reference to this facility's present location. A map detailing the facility location relative to source material and end-user locations, and proximity of other similar solid waste management facilities should be included. Consideration of consistency with adopted policies and plans as set forth within local and regional ordinances, land use plans, and community development plans should be included.

3) Mitigation Measures

If the proposed permitting action is inconsistent or will interfere with the statewide GHG emission limits under CLCPA but is nonetheless determined to be justified, then additional information will be required for the Department to consider appropriate alternatives or GHG mitigation measures. For the purposes of the current review and for information purposes only, potential measures may include, but are not limited to, the following illustrative examples:

- Evaluation and introduction of intermediate waste processing methods, such as separating and treating methane-generating wastes using a co-located anaerobic digester or composting facility at the site or using similar technologies at another facility.
- Assessment and implementation of additional emissions monitoring, including additional methods for periodic inspection of fugitive methane sources in the gas collection and control system and across the facility to identify and repair leaks.
- Adoption of new approaches for reducing GHG emissions from offsite transport of materials such as contracting with companies that utilize electric or low-emission vehicles.
- Adoption of new approaches for reducing GHG emissions from onsite vehicle usage by upgrading to a fleet that operates on renewable energy sources.
- Consolidation of loads to and from the facility in order to reduce the number of trucks entering and exiting on a daily basis.

Section 7(3)

Section 7(3) of CLCPA requires that, in considering and issuing permits, all state agencies shall not disproportionately burden disadvantaged communities and shall prioritize reductions of GHG emissions and co-pollutants in disadvantaged communities. The Climate Act, at ECL § 75-0101(5), defines the term “disadvantaged communities” as “communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to section 75-0111 of this article.” Co-pollutants are defined as hazardous air pollutants (HAPs) that are emitted by GHG sources. This facility is located in a disadvantaged community pursuant to the draft NYS Disadvantaged Communities Mapper <https://climate.ny.gov/Our-Climate-Act/Disadvantaged-Communities-Criteria/Disadvantaged-Communities-Map>.

As such, the Department requires that GHG and co-pollutant emissions, including fuel combustion and the resulting exhaust from diesel trucks and other large vehicles, be evaluated relevant to potential burden on the mapped disadvantaged community census tracts near the facility. As a condition to DEC’s determination of completeness of the applications, this facility is required to provide a Disproportionate Burden Analysis of GHG and co-pollutant emissions from each source associated with facility operations, including heavy-duty motor vehicle sources, and evaluate whether the facility disproportionately burdens the disadvantaged community and to determine whether, and to what extent, reductions of co-pollutants beyond current regulatory and permit standards and conditions are necessary and appropriate.

The Disproportionate Burden Analysis will consider the facility’s current and historic operations and the relevant socio-economic demographics and related information regarding the community. The analysis will include, but not be limited to, evaluation of short-term and long-term exposure to GHG emissions and co-pollutants, as well as potential cumulative burden from exposure. Given the proximity of this facility to the City of Rensselaer public school campus, the analysis will consider evaluation of exposure on children as well as adults. If burdens are identified, specify whether the identified burdens are disproportionate in relation to comparable communities that are not identified as disadvantaged on the draft NYS Disadvantaged Communities Mapper.

6 NYCRR Part 450 Noise from Heavy Motor Vehicles –

DEC regulations at 6 NYCRR Parts 450 through 454 provide the allowable noise levels for certain motor vehicles. The facility must demonstrate compliance with all applicable rules and regulations, including 6 NYCRR Part 450 Noise from Heavy Motor Vehicles.

Part 450 requirements apply to the motor vehicle traffic ingress and egress from the facility via Partition Street and Partition Street Extension. Sound level measurements from motor vehicle noise emissions must be taken by trained personnel, pursuant to Part 450.5, and the resulting noise analysis must include raw data as well as discussion of data in terms of relevance to the local environmental justice community. The noise analysis will include, but is not limited to, measurements related to specific community concerns including noise from trucks traveling downhill on Partition Street and engaging exhaust brakes when slowing to comply with speed limits and stop signs, early-morning deliveries, idling, and revving of diesel engines to climb the Partition Street Extension incline, to the extent applicable. A discussion of applicable local noise ordinances and regulations must be included in the noise analysis. Sound level measurements must comply with allowable noise levels as detailed in Part 450.

Environmental Justice Public Participation Plan (PPP)-

Please update the stakeholder list to include the Sierra Club-Hudson Mohawk Group, per their request dated March 18, 2022.

Section 3b of the NOIA dated January 28, 2022 states “Please update the Public Participation Plan with a map of the one-mile radius and truck route residents and businesses to which the mailers will be distributed.” In the resubmitted draft PPP, Appendix D Figure 2 contains the updated map to show the truck routes which will help determine where mailers will be distributed. Please update this map to more clearly define where the truck routes are located so the average stakeholder or member of the public who is interested in learning more will be able to easily distinguish which roads will see increased traffic and which will not.

Please also update the draft PPP to include a section on established procedures for the public to report a complaint against the facility. The steps to report a complaint and the steps to contact the facility with a question or comment about the permitting process should be clearly defined as separate processes.

Permit Modification for MSE Berm-

Please specify whether any processing equipment, beyond what is already approved in the current Mined Land Reclamation permit, will need to be brought on-site in aid of constructing the proposed mechanically stabilized earthen (MSE) berm.

Noise Analysis

ECL Article 23, Title 27, Mined Land Reclamation Law, requires applicants for permits to prepare and submit a mined land use plan to the Department for approval. The provisions to be incorporated in a Mined Land Use Plan, as specified in 6 NYCRR Section 422.2, include the control of noise as a component of the plan. Additionally, the solid waste regulations at 6 NYCRR Subdivision 360-1.14(p), establish A-weighted decibel levels that are not to be exceeded at the property line of a facility.

The January 2022 Mined Land Use Plan Part 2.3.1 addresses noise control as related to construction of the MSE berm in a generic manner, as does Section 1.5 of the Full Environmental Assessment Form. Although noise impacts from ongoing operations at the site were previously reviewed by the Department under the New York State Environmental Quality Review Act, the potential for noise from newly proposed activities relating to modification to the Part 360 and Mined Land permits for construction of the MSE berm must be evaluated. A discussion of the applicable local noise ordinances and regulations must be included in the noise assessment. Please note that this noise analysis differs from the requested analysis of heavy truck traffic under Part 450.

A noise assessment must be prepared in accordance with the Department guidance document “Assessing and Mitigating Noise Impacts, rev.2001” for activities associated with the proposed modification of the Part 360 and Mined Land Reclamation permits. This document is accessible on the Department website: [Assessing and Mitigating Noise Impacts \(ny.gov\)](#).

Dust

The Department approved the facility’s revised Dust Control Plan (revision date November 2021) on March 7, 2022. The appropriate application documents must be updated to include reference to the approved November 2021 Dust Control Plan.

Traffic

Please describe how the construction of the MSE berm will affect traffic patterns at the facility. Please confirm that internal haul roads will be used for construction of the berm, and no additional traffic outside of the property boundary will result from the proposal.

The Solid Waste and Mined Land Reclamation permit applications will remain in an incomplete status per Uniform Procedures Act, 6 NYCRR Part 621, until after the first Environmental Justice Public Participation Meeting has been held and all Department comments have been addressed.

Please feel free to contact me at kate.kornak@dec.ny.gov with questions.

Sincerely,



Kate Kornak
Regional Permit Administrator

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