

September 8, 2022

Kate Kornak  
Deputy Regional Permit Administrator  
New York State Department of Environmental Conservation  
Division of Environmental Permits, Region 4  
1130 North Westcott Road  
Schenectady, New York 12306-2014

Subject: Supplemental Response to March 30, 2022 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

Dear Ms. Kornak:

Civil & Environmental Engineering, Land Survey, and Landscape Architects, PLLC (CEE) and S.A. Dunn & Company, LLC (S.A. Dunn) have prepared this letter in further response to comments received from the New York State Department of Environmental Conservation, dated March 30, 2022, regarding the Part 360 Permit Renewal and Modification Application and MLR Permit Renewal and Modification Application for the S.A. Dunn Mine and Construction & Demolition Debris (C&D) Facility (Dunn Facility). This letter supplements S.A. Dunn's April 21, 2022 response to the March 30, 2022 Notice of Incomplete Application (NOIA).

The Department's close review of the permit application materials and its NOIA comments are appreciated. S.A. Dunn believes there is a logical path forward to ensure that a robust record is developed for this application to allow the Department to make the necessary findings. Among other things, this letter addresses issues raised by the Department in relation to the Climate Leadership and Community Protection Act (CLCPA)—key elements of which are still in development.

The Department's comments are provided below in bold, with CEE and S.A. Dunn's responses immediately following.

**Climate Leadership and Community Protection Act**

- 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.**

Draft Commissioner’s Policy (CP)-49, Climate Change and DEC Action, provides direction for implementing Section 7(2) of the CLCPA, and explains permit renewals “that would not lead to an increase in actual or potential GHG emissions would ordinarily be considered consistent with the CLCPA pending finalization of the Scoping Plan and future regulations.”<sup>1</sup> Neither the Scoping Plan nor the referenced regulations has been finalized.

Consistent with draft CP-49, the Department recognized in the NOIA that because the “renewal applications reflect a continuation of current practices, . . . the facility meets emission standards in effect prior to CLCPA.” The permit modification likewise will not increase actual or potential GHG emissions, as it will not change truck traffic and in fact will reduce the C&D disposal area and the area associated with the life of mine boundary. Given this guidance, CLCPA Section 7(2) does not require S.A. Dunn to complete a consistency analysis.

Nevertheless, S.A. Dunn is currently preparing an assessment of GHG emissions to confirm that facility operations under the permit renewal will not result in an increase in GHG emissions, and that GHG emissions will be modestly reduced by berm construction. Pursuant to 6 NYCRR Part 496, S.A. Dunn proposes to evaluate consistency with the 2030 and 2050 statewide GHG emission limits (rather than the 2040 and 2050 statewide GHG emission limits, as indicated in the NOIA). Based on the permit renewal’s consistency with the CLCPA, an assessment of justification and mitigation is also not required; however, these issues will be addressed in the assessment. The foregoing analysis will be submitted to the Department when complete.

2. **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**

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<sup>1</sup> [https://www.dec.ny.gov/docs/administration\\_pdf/cp49revised.pdf](https://www.dec.ny.gov/docs/administration_pdf/cp49revised.pdf). The Department has not yet finalized CP-49.

**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.**

S.A. Dunn disputes that a disproportionate burden analysis is currently required; no guidance has been issued to implement CLCPA Section 7(3), and the designation of disadvantaged communities is not complete. On December 30, 2021, the New York State Climate Action Council released the draft Scoping Plan for the CLCPA for public review and comment. The draft Scoping Plan recognizes the importance of guidance in implementing Section 7(3): "Coordinated guidance for agencies is necessary to ensure Section 7(3) is applied effectively and consistently in agency decision making." Draft CP-49 similarly states: "Detailed guidance on implementation of Section 7(3) will be provided through a forthcoming revision to CP-29." To S.A. Dunn's knowledge, necessary revisions to CP-29 have not yet been proposed. Absent guidance in final form, there is a risk of requiring compliance with Section 7(3) in an ad hoc manner.

Additionally, in defining disadvantaged communities in ECL 75-0101, the CLCPA states that they are identified pursuant to Section 75-0111—which in turn sets forth the procedure for designating disadvantaged communities and specifically provides for public comment before finalization. The process is not complete—the Department has issued draft disadvantaged communities criteria and just recently closed the public comment period in early August. S.A. Dunn is therefore concerned that compliance with Section 7(3) is being required before steps mandated by statute for doing so are complete.

Even assuming a disproportionate burden analysis were required, draft CP-49 states that in “advance of the completion of the proposed criteria identifying disadvantaged communities . . . , the Department will identify disadvantaged communities using an interim approach,” and will look to opportunity zones or certain census blocks within a potential environmental justice area to identify the interim disadvantaged communities. Under this interim criteria, S.A. Dunn would only be required to conduct a disproportionate burden analysis for Census Tract 36083051500—not both Census Tract 36083051500 and Census Tract 36083051600, as the Department requests by referencing the draft disadvantaged communities criteria.<sup>2</sup>

However, S.A. Dunn is currently preparing the requested disproportionate burden analysis for both Census Tract 36083051500 and Census Tract 36083051600 to supplement the permit record. The analysis will be submitted to the Department when complete.

## **6 NYCRR Part 450 Noise from Heavy Motor Vehicles**

- 1. 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**

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<sup>2</sup> Compare <https://www.nyserda.ny.gov/ny/disadvantaged-communities> (identifying areas that meet the interim criteria) with <https://climate.ny.gov/Our-Climate-Act/Disadvantaged-Communities-Criteria/Disadvantaged-Communities-Map> (identifying the draft disadvantaged communities).

**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.**

Because 6 NYCRR Part 450 is an enforcement regulation, S.A. Dunn is not required to demonstrate compliance with the specified noise limits as part of the permit renewal process. *See Application of Custom Compost, Inc.*, DEC Application No. 3-5136-00058/00001, 2004 WL 630479 (A.L.J. Mar. 25, 2004) (application of 6 NYCRR Part 450 to trucks accessing facility “is a matter of enforcement and not strictly within the purview of this permit proceeding”). Underscoring this point, S.A. Dunn does not own or operate trucks accessing the Dunn Facility to dispose of C&D waste—meaning S.A. Dunn does not control whether the trucks comply with 6 NYCRR Part 450. Thus, the requested analysis of noise from offsite motor vehicles is not legally required.

That said, S.A. Dunn is preparing an assessment of truck noise along Partition Street Extension and will submit it to the Department once complete.

### **Permit Modification for MSE Berm**

- 1. 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.**

There will be no additional processing equipment required to construct the MSE berm beyond that already approved for use at the Facility site. On site sand and gravel will be used to construct the berm. The sand and gravel material may be screened (already approved) prior to placement if needed to meet project specifications but that would be the only “processing” required. The earthen fill is placed and compacted in conjunction with geosynthetic materials, vegetative support soils, seed and fertilizer to build the berm utilizing customary construction equipment (e.g., haul truck, dozer, roller, etc.).

- 2. Noise Analysis**
  - a. 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 \(ny.gov\)](#).**

S.A. Dunn initially notes that 6 NYCRR Subdivision 360-1.14(p) has been repealed. 6 NYCRR 360.19(j) establishes A-weighted decibel levels that are not to be exceeded at the property line, and specifically exempts construction activities from compliance with those noise limits. 6 NYCRR 360.19(j) (“The owner or operator of a facility must ensure that noise (*other than that occurring during construction of the facility*) resulting from equipment or operations at the facility does not exceed the following energy equivalent sound levels beyond the property line” or at residential locations. (emphasis added)).

Nonetheless, S.A. Dunn is undertaking a facility noise assessment and will submit it when complete.

### **3. Dust**

- a. 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.**

When S.A. Dunn submits the supplemental assessments addressed above, it will provide updated application documents in response to this request.

**4. Traffic**

- a. 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.**

Construction of the berm will involve excavating to berm subgrade elevations and placing geosynthetics and earthen fill to construct the berm. This will be accomplished using on-site temporary and permanent roads and will not require the use of external roads. All construction materials will enter through the Facility gate and will be subject to the daily truck limit of 100 trucks.

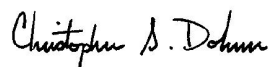
**Public Participation Plan**

S.A. Dunn's Public Participation Plan (PPP) was approved in May 2022, following S.A. Dunn's April 21, 2022 response to the Department's NOIA. The first PPP meeting under the plan was held on June 14, 2022. S.A. Dunn will be submitting a progress report regarding implementation of the PPP under separate cover.

If you have any questions on the information submitted, please do not hesitate to contact me at 774-501-2176.

Sincerely,

CIVIL & ENVIRONMENTAL ENGINEERING, LANDSCAPE ARCHITECTURE AND LAND SURVEYING, PLLC



Christopher S. Dohner, P.E.  
Project Manager



Amy J. Knight, P.E.  
Principal

Kate Kornak  
New York State Department of Environmental Conservation  
CEC Project 182-442  
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cc: Curt Taylor, S.A. Dunn & Company, LLC.  
Jeff Burrier, S.A. Dunn & Company, LLC.  
Corey Judd, S.A. Dunn & Company, LLC.  
Alanah Keddell-Tuckey, NYSDEC OEJ  
Jon Whitcomb, NYSDEC-DMM  
Jami June, NYSDEC-MLR  
Carrie Buetow, NYSDEC-DOW