

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 7834

June 28, 2019

Javid Afzali
Bond Schoeneck & King
22 Corporate Woods Boulevard, Suite 501
Albany, NY 12211

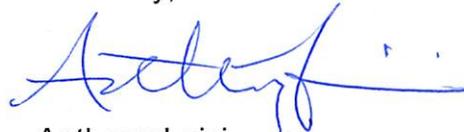
Re: Order on Consent
R4-2019-0409-24
S.A. Dunn & Company, LLC

Dear Mr. Afzali:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$20,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Anthony Luisi
Regional Attorney
Region 4

Enclosure

ec: K. Goertz
V. Schmitt
P. Wyckoff



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of the Environmental
Conservation Law Article 23 and Part 422
of Title 6 of the Official Compilation of Codes,
Rules and Regulations of the State of New York,

ORDER ON CONSENT
Case No. R4-2019-0409-24

- by -

S.A. Dunn & Company, LLC
1319 New Loudon Road
Cohoes, New York 12047

Respondent

WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (“DEC” or “the Department”) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to § 3-0301 of the Environmental Conservation Law (“ECL”).
2. The Department has administrative jurisdiction pursuant to ECL Title 27 of Article 23 to regulate surface mining and reclamation.
3. ECL 23-2711(1) provides, in pertinent part, that any person who mines or proposes to mine from a jurisdictional mine site shall not engage in such mining unless a permit for the mining operation has been obtained from the Department.
4. ECL 71-1305(2) provides that it shall be unlawful for any person to violate any of the provisions of or fail to perform any duty imposed by ECL Article 23 or any rule or regulation promulgated thereunder, or any Order or condition of any permit of the Department made pursuant thereto.
5. Pursuant to authority granted to the Department under ECL Article 23, the Department promulgated rules respecting surface mining and reclamation at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”).
6. Regulations at 6 NYCRR 422.1(a) provide that every applicant for a mining permit shall submit to the Department a Mined Land-Use Plan setting forth in detail an outline of the mining property and the affected land, the applicant’s mining plan, and the applicant’s reclamation plan and that after the Department has issued a mining permit, the permittee

shall not deviate or depart from the mined land-use plan without approval by the Department of an alteration or amendment thereto.

Permits and Conditions

7. Respondent S.A. Dunn & Company, LLC (“Respondent”) holds a Mined Land Reclamation Permit, #4-3899-00006/00001 (Modification #7, effective September 9, 2016, expires July 19, 2022) (the “Mined Land Permit”) for operation of an existing sand and gravel mine commonly known as the Dunn Facility, located on Partition Street Extension, Rensselaer, New York 12180 (the “Mine Site”).

8. Special Condition No. 3 of the Mined Land Permit provides, “*All activities authorized by this permit must be in strict conformance with the approved plans submitted as part of the permit application.*”

9. Special Condition No. 33 of the Mined Land Permit provides, “*Water or other approved dust palliatives must be applied to haulageways and other parts of the mine, as often as necessary, to prevent visible dust from leaving the mine property.*”

10. Pursuant to prior Order on Consent executed by Respondent and the Department dated August 29, 2018 (DEC Case No. R4-2018-0228-27) (the “Prior Order”), Respondent was required to submit to the Department a fugitive dust control plan detailing how dust will be controlled at all areas of the Mine Site to prevent dust from migrating offsite (a “Dust Control Plan”).

11. The Prior Order required the Dust Control Plan to include certain dust mitigation measures, including but not limited to the spray of mulch and growing medium on wind-sided slopes at the Mine Site, and provided that upon submission by Respondent and approval by the Department of the Dust Control Plan, the Dust Control Plan would be incorporated into the Mined Land Permit.

12. On or about September 27, 2018, Respondent submitted a Dust Control Plan to the Department.

13. By correspondence to the Department on or about December 5, 2018, Respondent acknowledged and agreed that the Dust Control Plan amends the Mined Land Use Plan for the Mine Site, as identified in Special Condition 3 of the Mined Land Permit.

14. The Prior Order imposed a civil penalty in the total amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00), of which Fifty Thousand and 00/100 Dollars (\$50,000.00) was suspended “so long as Respondent shall comply with the Schedule of Compliance,” including but not limited to Respondent’s continuous implementation of the Dust Control Plan.

Mine Site

15. On April 3, 2019, the Department received a complaint of substantial quantities of visible dust migrating offsite from the Mine Site.

16. In response to the complaint, Department staff conducted an inspection of the Mine Site on April 3, 2019, beginning at approximately 5:15 p.m., from several vantage points adjacent to the Mine Site. During the inspection, Department staff observed a westerly wind blowing across the sand stockpiles and accumulating substantial clouds of airborne dust over the Mine Site. Department staff observed the visible dust clouds drifting across Partition Street Extension and migrating offsite onto adjacent properties located to the east of the Mine Site.

17. During the site inspection, Department staff also witnessed wind erosion on slopes within the Mine Site and observed that most of the sand stockpiles at the Mine Site did not show evidence of prior hydromulch applications.

18. Following its receipt of notice from the Department of the occurrence of substantial quantities of visible dust migrating from the Mine Site, Respondent notified the Department that Respondent was going to begin applying hydromulch at the Mine Site.

19. Each date on which Respondent failed to contain dust within the Mine Site and comply with the Mined Land Use Plan and the Mined Land Permit constitutes a separate violation.

First Series of Violations

20. Respondent failed to properly hydromulch the excavation areas on wind sided slopes at the Mine Site in accordance with the Dust Control Plan.

21. The Dust Control Plan provides that “*excavation areas on wind sided slopes that will be exposed for an extended period will be hydromulched to reduce the potential for wind borne erosion*” and that “*hydromulch will be re-applied as necessary.*”

22. The requirement to hydromulch wind sided slopes to the extent necessary to reduce the potential for wind borne erosion was incorporated into Respondent’s Mined Land Permit as an amendment to the Mined Land Use Plan.

23. Respondent’s last application of hydromulch to the wind sided slopes was October 17, 2018.

24. Regulations at 6 NYCRR 422.1(a) provides that a mining permittee shall not deviate or depart from the mined land-use plan without approval by the Department of an alteration or amendment thereto.

25. The Department has not approved an alteration or amendment to Respondent's Mined Land Use Plan for the Mine Site related to the violations described herein.

26. Respondent deviated and departed from its Mined Land Use Plan, and accordingly, for each date on which Respondent failed to perform in accordance with the Mined Land Use Plan, Respondent was in violation of regulations at 6 NYCRR 422.1(a).

Second Series of Violations

27. Respondent failed to properly apply water or other approved dust palliatives as necessary to prevent visible dust from leaving the Mine Site.

28. Special Condition No. 33 of the Mined Land Permit provides, "*Water or other approved dust palliatives must be applied to haulageways and other parts of the mine, as often as necessary, to prevent visible dust from leaving the mine property.*"

29. While Respondent ceased operations and commenced internal road watering at the Mine Site approximately five hours prior to the Dust Event in anticipation of high winds, the wind sided slopes were not watered.

30. ECL 71-1305(2) provides that it shall be unlawful for any person to violate any of the provisions of or fail to perform any duty imposed by any condition of a mining permit under ECL Article 23.

31. Respondent violated Special Condition No. 33 of its Mined Land Permit, and accordingly, for each date on which Respondent failed to contain dust within the Mine Site, Respondent was in violation of ECL 71-1305(2).

Civil Penalty

32. ECL Section 71-1307(1) provides in general that any person who violates any provision of Article 23 of the ECL or commits any offense described in Section 71-1305 of such title shall be liable to the People of this State for a civil penalty not to exceed Eight Thousand Dollars (\$8,000.00) and an additional penalty of Two Thousand Dollars (\$2,000.00) for each day during which such violation continues. In addition, the violator may be ordered to cease the violation and reclaim and repair the affected site to a condition acceptable to the Department.

33. Pursuant to the Department's Commissioner Policy DEE-1, Civil Penalty Policy, civil penalties may be adjusted for, among other things, repeated violations and gravity of actual or potential harm.

Waiver of Hearing

34. Respondent has affirmatively waived its right to a hearing in the manner provided by law and has consented to the issuing of this Order on Consent and has agreed to be

bound by the terms, provisions, and conditions contained herein.

NOW, being duly advised and having considered this matter, IT IS HEREBY ORDERED THAT:

I. Civil Penalty

In respect of the aforesaid violations, Respondent shall pay a civil penalty in the amount of THIRTY-FIVE THOUSAND and 00/100 DOLLARS (\$35,000.00), to be paid as follows:

- a. TWENTY THOUSAND and 00/100 DOLLARS (\$20,000.00) shall be paid at the time this Order is signed, notarized and returned to the Department, by electronic payment at <http://www.dec.ny.gov/about/61016.html>, or by check with the enclosed invoice and the Case Number of this Order written in the memorandum line of the check. If paying by check, Respondent shall deliver the check to:

**Department of Environmental Conservation
Division of Management and Budget Services
625 Broadway, 10th Floor
Albany, New York 12233-4900**

- b. The remaining penalty amount of FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00) shall be suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order, including the Schedule of Compliance. If Respondent fails to satisfy or observe any requirement of this Order, including the Schedule of Compliance, the whole amount of the suspended penalty, or any portion thereof as determined by the Department, shall be immediately due and payable after Respondent's receipt of written notice from the Department, without prejudice to any other rights or remedies available to the Department at law or in equity.

Payment of the Penalty shall not in any way modify, condition, or affect Respondent's obligations to perform in accordance with this Order.

The penalty assessed in this Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order will constitute a debt owed to the State of New York when and if such penalty becomes due.

II. Schedule of Compliance

Respondent shall comply with the Schedule of Compliance attached to this Order and incorporated by reference as if fully set forth herein to the satisfaction of the Department. Compliance with the Schedule of Compliance shall not be an affirmative defense or mitigating circumstance in connection with any other violation of the Mined Land Permit or related to the Mine Site.

III. Communications

All communications and submissions hereunder, including delivery of this Order duly executed and notarized by Respondent, shall be made to the address set forth below:

Department of Environmental Conservation
Region 4, Office of General Counsel
1130 North Westcott Road
Schenectady, New York 12306
Attn: Anthony P. Luisi, Regional Attorney
E-mail: Anthony.Luisi@dec.ny.gov

IV. Access

Respondent shall allow duly authorized representatives of the Department unobstructed access to the Mine Site without prior notice, at such times as may be desirable or necessary for the Department to inspect the Mine Site and to determine Respondent's compliance with this Order and any laws, rules, or regulations under the jurisdiction of the Department.

V. Summary Abatement

This Order shall not be construed to prohibit or impair the Commissioner or the Commissioner's designee from exercising any summary abatement powers, either at common law or under any laws, rules, or regulations under the jurisdiction of the Department.

VI. Indemnification

Respondent shall indemnify, release, and hold harmless the Department, the State of New York, and their respective representatives, employees, and agents from and against all claims, damages, demands, injuries, liabilities, losses, costs and expenses of all kinds arising from Respondent's acts or omissions in connection with performance or attempted performance pursuant to this Order.

VII. Review of Submittals

1. All documents that Respondent submits to the Department pursuant to this Order

are subject to the Department's approval.

2. The Department shall review each submittal from Respondent to determine whether it was prepared, and whether the work to generate the data and other information contained in the submitted was performed, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All submittals approved by the Department shall be deemed to be automatically incorporated into, and shall become an enforceable part of, this Order. Respondent shall implement such submittals in accordance with their schedules, terms, and conditions as approved by the Department.

3. A. If the Department disapproves a submittal required by the Schedule of Compliance, it shall so notify Respondent in writing and shall specify the reasons for disapproval. Within the time frame set forth in such written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

B. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submittal is not approvable as submitted, the Department shall have the option to either disapprove it or approve it on condition that Respondent accepts such modifications as may be specified by the Department to render the submittal approvable. If Respondent does not accept such modifications, the revised submittal shall be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall automatically be deemed incorporated into, and shall become an enforceable part of, this Order.

4. Respondent shall amend and/or modify a submittal upon the Department's direction, if the Department determines that further work is necessary, whether because of reviewing data generated by an activity required under this Order, as a result of reviewing any other data or facts, or otherwise. The Department agrees that any amendments or modifications will be reasonable and consistent with customary engineering standards.

VIII. Binding Effect

The provisions of this Order shall inure to the benefit of, and be binding upon, Respondent, the Department, and their respective successors and assigns.

IX. Modification

This Order shall not be amended or modified without duly executed written order of the Commissioner or the Commissioner's designee.

X. Entire Order

This Order, including the Schedule of Compliance, constitutes the entire agreement between Respondent and the Department for the violations identified herein. No rights or remedies of the Department shall be deemed waived or released except as specifically set forth in a duly executed writing by the Commissioner or the Commissioner's designee.

XI. Effective Date

The effective date of this Order (the "Effective Date") shall be the date it is signed by the Regional Director, as the Commissioner's designee, following due execution and delivery by Respondent.

XII. Reservation of Rights

Except as expressly set forth herein to the contrary, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action, or demands whatsoever that the State of New York may have against Respondent for any other or additional violations of the ECL or any other laws, rules or regulations under the jurisdiction of the Department;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action, or demands whatsoever that the State of New York may have against any person or entity other than Respondent, including but not limited to Respondent's officers, directors, agents, employees, successors, and assigns;

C. Any legal or equitable rights the Department may now or hereafter have to bring any action or proceeding against Respondent or any person or entity other than Respondent, including but not limited to Respondent's officers, directors, agents, employees, successors, and assigns, with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of action, or demands made or commenced by the State or the Department; provided, however, that Respondent waives all legal and equitable rights, claims, actions, proceedings, suits, causes of action, defenses, and demands whatsoever that Respondent may have to judicial review of the validity, enforceability, and binding effect of this Order and whether this Order has been entered into voluntarily by Respondent.

XIII. Termination

This Order shall terminate upon the Department's determination that Respondent

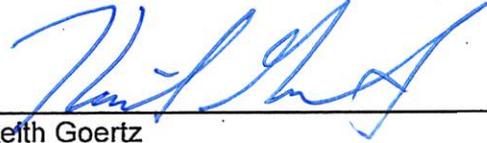
has fully complied with the terms, conditions, and provisions of this Order, including the Department's receipt of the Penalty as and when due and Respondent's performance of all actions and satisfaction of all requirements under the Schedule of Compliance to the satisfaction of the Department.

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Dated: *June 28*, 2019
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order on Consent (R4-20190409-24), waives its rights to notice and hearing herein, and agrees to be bound by the provisions, terms, and conditions contained herein.

S.A. Dunn & Company, LLC

Authorized Representative:



SIGNED: James M. Little

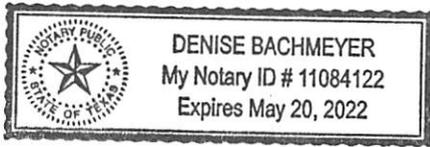
TITLE: Sr. V.P. - Engineering + Disposal

DATE: June 24, 2019

STATE OF Texas)
) ss.:
COUNTY OF Montgomery

On the 24th day of June in the year 2019 before me, the undersigned, a Notary Public in and for the State, personally appeared James M. Little, Sr. V.P. - Engineering + Disposal, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Denise Bachmeyer
Notary Public



Qualified in the County of:
My Commission Expires:

SCHEDULE OF COMPLIANCE

All capitalized terms used in this Schedule of Compliance shall have the same definitions as set forth in the Order on Consent (R4-2019-0409-24) unless otherwise expressly defined herein.

1. Respondent must immediately hydromulch all sand stockpile slopes on the Mine Site to the extent not previously completed as of the Effective Date.

2. Within thirty (30) calendar days after the Effective Date, Respondent must submit a joint mined land reclamation permit modification application and a solid waste management facility modification application and plans (to include a proposed construction schedule) to the Department for the construction of a berm on the northern and northeastern perimeter of the Mine Site. The berm shall incorporate the following design characteristics: (i) the north and east facing slopes of the berm to be vegetated; (ii) the plans shall discuss the feasibility of designing the top of the berm to accommodate small evergreen trees and shrubs; (iii) the berm is to result in no increase in disposal capacity at the Mine Site; and (iv) the berm is to result in no increase to the maximum height of waste placement. Within thirty (30) calendar days after Respondent's submission, the Department shall provide comments, if any, on Respondent's application and plans. The Department will continue to provide comments, and Respondent shall continue to provide responses, until the Department determines the application and plans are complete. After the application and plans are complete and after the application and plans are approved in accordance with all applicable laws and regulations, Respondent shall begin construction according to the approved schedule.

3. Within thirty (30) calendar days after the Effective Date, an account to fund a daily environmental monitor will be established by the Department in accordance with the following terms and conditions:

a. Respondent shall fund daily environmental monitoring services to be performed by or on behalf of the Department. These monitoring services will include, but not be limited to, the scope of work detailed in subsection (m), below.

b. Respondent shall provide to the Department the funds necessary to support the activities set forth herein. The sum to be provided will be based on the budgeted amount and is subject to revision. Subsequent payments shall be made until the environmental monitoring services are discontinued, as set forth in subsection (n) below.

c. Respondent will be billed by the Department within thirty (30) calendar days after the Effective Date; provided, however, that the initial bill will be for an amount sufficient to meet the anticipated cost of the environmental monitoring services through the end of the current State Fiscal Year (SFY).

d. The Department may revise the required bill to include all of the Department's estimated costs associated with the environmental monitoring services. The revision may account for such factors as inflation, salary increases, changes in the fringe benefits rate, changes in operating hours and procedures, changes in non-personal service costs (including travel, training, sampling and analytical, and equipment costs, etc.), an increase or decrease in the level of environmental monitoring services necessary, and an increase or decrease in the number of environmental monitors. Upon written request by Respondent, the Department shall provide Respondent with a written explanation of the basis for any revisions.

e. Prior to making any subsequent payments, Respondent will receive, and have an opportunity to review and request adjustment to, the scope of work that the Department will undertake during any subsequent term in excess of the period set forth in subsection (n), below. The Department will provide a final scope that the Department will undertake during any subsequent term.

f. Payments are to be made in advance of the period in which they will be expended and shall be made in full within thirty (30) calendar days of receiving a bill from the Department. The bill from the Department to Respondent will provide information regarding to whom payments should be made payable and the address to which payments should be sent.

g. Failure to make the required payments shall be a violation of this Order. The Department reserves all rights to take appropriate action to enforce the payment provisions set forth herein.

h. The environmental monitor shall, when present at the facility/site, abide by all of Respondent's health and safety and operational requirements and policies, if such requirements and policies exist and provided they are not inconsistent with Department policies and labor management contracts, and further provided, however, that this shall not be construed as limiting the environmental monitor's powers as otherwise provided for by law and shall not result in the environmental monitor being afforded less protection than otherwise provided to the environmental monitor by State and Federal health and safety requirements.

i. The environmental monitor shall receive from Respondent all general and site-specific safety training that is normally given to new facility/site employees for all areas of the facility/site. This training will be a supplement to the health and safety training that the environmental monitor routinely receives from the Department.

j. Upon selection of the environmental monitor by the Department, Respondent shall immediately furnish to the environmental monitor any facility/site health and safety and operation requirements and policies. Within five (5) calendar days of any revision to the facility/site health and safety and operational requirements and policies, Respondent shall furnish to the environmental monitor the health and safety and operational requirements and policies.

k. The environmental monitor shall be permitted to use environmental monitoring and data collection (e.g., photo ionization detectors, cameras, video recording devices, computers, cell phones, etc.) deemed necessary by the Department to evaluate and document observed conditions. If the data or images are collected from areas where confidentiality is a concern to Respondent, Respondent may request that the data or images be considered confidential information. The Department will consider any confidentiality requests and, if determined by the Department to be appropriate, copies of the data or images collected from areas where confidentiality has been determined by the Department to be a concern shall be provided to Respondent.

l. It will remain the responsibility of Respondent to contact the Spill Hotline or any Division within the Department regarding any required notification of any spill, release, exceedance, etc. Notification to the environmental monitor will not be considered sufficient to replace any required notifications to the Department.

m. The monitoring services will include daily inspections of the Mine Site and other on-site facilities for the purpose of determining compliance with all Applicable Laws. For purposes of this provision, "Applicable Law" means (i) this Order, (ii) any other Order of the Commissioner to which Respondent is or may hereafter be subject, (iii) any term, condition, or provision of the Mined Land Permit, including but not limited to the Dust Control Plan, as revised, or (iv) any applicable law, rule, or regulation under the jurisdiction of the Department. The Monitor's daily inspections of the Mine Site shall be without prior notice to Respondent and shall be at such times as determined from time to time by the Monitor.

n. Upon 30 calendar days' prior written notice to the Department, Respondent shall have the option to discontinue the monitoring services after 6 continuous months of environmental monitoring, provided that no more than two Uncured Violations (as defined below) occur during the 6-month period. The term "Uncured Violation" means a violation of Applicable Law that (A) creates or consists of an unreasonable hazard to the environment or to public health or safety, or (B) if enforced, would subject Respondent to a potential statutory civil penalty or fine equal to or in excess of Ten Thousand and 00/100 Dollars (\$10,000) in the aggregate, which Respondent fails to cure to the reasonable satisfaction of the Department within 48 hours of receiving notice thereof. If such violation cannot be cured within a 48-hour period despite Respondent's commercial best efforts, then the cure period shall be extended for a reasonable time (not to exceed 15 calendar days), provided that Respondent has made and continues to make commercial best efforts to cure such violation.

4. Within thirty (30) calendar days after the Effective Date, Respondent shall submit a revised Dust Control Plan to the Department for approval (the "Revised Dust Control Plan"). The Revised Dust Control Plan shall include:

- a. Full assessment of the palliatives discussed in Section 4 of the Dust Control Plan, including a determination of which measures are suitable

for the Mine Site and specific details regarding when, where, and how the measures will be used at the Mine Site, including applying rolled erosion control products, such as erosion control blankets and turf reinforcement mats, for any slopes or sand piles that have been, or are anticipated to be, present at the Mine Site for greater than twelve (12) months.

- b. Specific time periods for implementation of the Dust Control Plan to the fullest extent applicable. For example, the use of the phrase “extended period” in Section 3.1.4 shall be deleted and replaced with a fixed number of calendar days.
- c. An action plan that will be implemented on any days for which the National Weather Service forecasts any extreme weather watches, warnings, or advisories that include high wind speeds (e.g., wind advisories, high wind watches, tornado watches). Actions may include, but are not limited to, ceasing operations within a prescribed number of hours prior to the forecasted weather, and/or applying palliatives on the sand stockpiles, roads, and daily cover. The action plan must account for forecasts for weekends, holidays, and early portions of the week, which may require actions to take place one or more days in advance during permitted hours of operation.

Upon the Department’s approval of the Revised Dust Control Plan, the Revised Dust Control Plan shall amend the Mined Land Use Plan and shall be incorporated as if fully set forth in the Mined Land Permit.