

## RESPONSE TO PUBLIC COMMENTS

Permittee: S.A. Dunn and Company, LLC  
Facility Location: 209 Partition Street Extension, City of Rensselaer, Rensselaer County  
NYSDEC ID#: 4-3899-00006/00006  
Part 360 Solid Waste Management Facility (SWMF) Permit  
Application for Renewal and Modification  
  
4-3899-00006/00001  
Mined Land Reclamation (MLR) Permit  
Application for Renewal and Modification

The New York State Department of Environmental Conservation (Department) has prepared this Response to Comments document which addresses comments received during the public comment period.

### FACILITY DESCRIPTION AND RELEVANT CURRENTLY PERMITTED ACTIONS

The Facility is an existing sand and gravel mine with a construction and demolition debris (C&D) landfill situated on a 90-acre parcel owned and operated by S.A. Dunn and Company, LLC (Dunn or Permittee) and located at 209 Partition Street Extension within the municipalities of the city of Rensselaer and the town of North Greenbush. The Facility is located in and near two disadvantaged communities (DACs), as determined by the Climate Justice Working Group (CJWG), as well as an environmental justice area as designated under Commissioner's Policy 29 (CP-29) Environmental Justice and Permitting.

The active site encompasses approximately 70 acres of the 90-acre parcel. The Facility shares a northern property line with the Rensselaer City Central School District Junior/Senior High School and Van Rensselaer Elementary School campus, which includes parking lots and sports fields to the north and east of the Facility. The Facility is bordered to the east by the Holy Sepulcher Cemetery, to the south by private residentially zoned land, and to the west by undeveloped city-owned land adjacent to private property. There is a single point of ingress and egress to the Facility on the south end of the property, which is accessible via Partition Street Extension through the city of Rensselaer. There is no other operational access to the Facility.

**PREVIOUS PERMITS**

The Facility has been operating under existing Department permits and approvals, including a MLR Permit (ID 4-3899-00006/00001), and a SWMF Permit (ID 4-3899-00006/00006). The Facility also maintains an Air Facility Registration for operation of an onsite flare and maintains a Multi-Sector General Permit for stormwater discharges. Under the SWMF Permit, the Facility accepts only C&D waste to be landfilled. The previously permitted design capacity for C&D disposal at the Facility is approximately 11 million cubic yards, with a total permitted waste disposal footprint of 63.3 acres.

Special Condition numbers 3, 5 and 6 within the previous MLR and SWMF Permits for the Facility limited the hours of operation, established truck limits, and provided for noise monitoring in lieu of truck counts, as outlined below:

**3. Hours of Operation** Construction and operation of the Facility shall be limited to Monday through Friday from 6:30 AM to 5:30 PM. The Facility shall not construct or operate on Saturdays, Sundays, or federal legal holidays.

**5. Truck Counts** The facility is limited to receiving a maximum of 100 truck round trips per day. A truck round trip is defined as any truck that enters and leaves the Facility for the purpose of C&D debris disposal, mining activities, Facility construction activities (except those involving the use of only light duty or smaller vehicles), or leachate hauling. By the 28th of each month, the permittee shall submit a report to the Regional Permit Administrator which provides the daily scale data and a daily summary listing the number of truck round trips. Only trucks capable of carrying more than 2.5 yards count towards this limit and must be reported.

**6. Noise Monitoring** In lieu of truck counts, as in prior permits, the applicant may conduct noise monitoring to ensure compliance with the noise limits discussed in the DEIS Appendix 1, Page 9, dated 10/28/92. If noise monitoring is proposed, a monitoring protocol shall be submitted to the Department for approval, and noise monitoring shall be conducted only after such protocol is approved in writing by the Department.

**PERMIT APPLICATION SUBMISSIONS AND RELATED MILESTONES**

On January 14, 2022, Dunn submitted Application documents (Application) to the Department’s Region 4 Schenectady Office. Throughout the permitting process, Uniform Procedures Act (UPA) timeframes were extended on mutual consent of the parties as needed. In the Application, Dunn proposed to continue existing operations, which include mineral extraction of sand and gravel in addition to disposal of construction and demolition

(C&D) debris, with a modification to incorporate a mechanically stabilized earthen screening berm (MSE Berm) along the northern property boundary, as required under Consent Order R4-2019-0409-24. The Application cited the applicability of CP-29 and provided the corresponding public participation plan.

Between January 28, 2022, and April 14, 2023, the Department issued the Permittee three notices of incomplete application (NOIAs) and the Department received corresponding resubmissions/responses from the Permittee. The Department's NOIAs and the Permittee's submitted responsive documents addressed the Climate Leadership and Community Protection Act (CLCPA) Section 7(3), some of which are referenced below.

On July 12, 2023, the Department sent the Permittee a combined notice of complete application, notice of public comment period, and notice of a Part 621 legislative public comment hearing (the Combined Notice). In the Combined Notice, the Department indicated it would need to ensure that its actions are consistent with the requirements of the CLCPA prior to making any final permitting determinations.

On August 8, 2023, the legislative public comment hearing was held, and over 250 public comments were received from individuals or organizations prior to the close of the public comment period on August 28, 2023.

On February 27, 2024, the Permittee submitted to the Department a response to public comments document wherein Dunn requested modifications to existing permit conditions in order to be responsive to feedback from the public (February 27, 2024 Response to Comments). Specifically, the Permittee proposed to establish "Waste Receiving Hours", which would delay receipt of C&D debris until 7:45 a.m. from the previously permitted time of 6:30 a.m., as well as reduce the number of total trucks accessing the facility to a weekly average of 80 trucks per operating day. As a rationale for the proposed Waste Receiving Hours, the Permittee represented that, based on staff observations, the latest school bus pickup on Partition Street occurred at 7:16 am and school bus traffic from cross streets concluded around 7:30 a.m.; therefore, "[m]oving the start time for incoming waste loads [to 7:45 a.m.] would remove potential conflicts between these vehicles and school buses picking up children along and near the truck route."

On May 24, 2024 the Department sent the Permittee a request for additional information (May 24, 2024 RFAI), which included requests relative to Facility truck traffic overlap with public school bus pickup times; clarification on the Permittee's proposed truck limits; and an analysis that (1) describes how the Dunn's Response to Comments mitigates or addresses the existing impacts on the impacted DACs, specifically those comments received on community impacts from trucks transporting C&D debris, (2) outlines additional alternate scenarios for truck limits and hours of operation, and (3) assesses the corresponding impacts to DACs from these alternative scenarios.

On July 31, 2024, Dunn submitted a response to the May 24, 2024 RFAI (July 31, 2024 RFAI Response) that clarified its earlier statement on school bus schedules, noting the school bus schedule for the 2024-2025 school year was not yet available. The school bus schedule for the 2024-2025 school year posted online, as last accessed on December 19, 2024, states the last scheduled pickup on Partition Street occurs at 8:13 a.m. The July 31, 2024 RFAI Response stated that in addition to its earlier-proposed weekly average of 80 trucks, it would be amenable to maintaining the daily truck limit of 100 trucks permitted under its MLR/SWMP Permits. The Dunn Response also described how its February 27, 2024 Response to Comments mitigated or addressed existing impacts to the DACs relative to C&D truck traffic by proposing a “more restrictive truck limit to further mitigate truck-related impacts” because the proposed 400 weekly truck trips was more restrictive than the currently permitted limit of 500 weekly truck trips. Relative to the Department’s request for additional alternate scenarios for truck limits, Dunn stated it had evaluated a weekly average of 90 trucks per operating day but determined it did not result in sufficient mitigation.

On October 15, 2024, the Department sent the Permittee a request for additional information (October 15, 2024 RFAI), which (1) noted the proposed truck limit of a weekly average of 80 trucks per operating day is greater than the actual current average conditions at the Facility based on the truck counts in Dunn’s required monthly report; and (2) requested an outline of further mitigation strategies to reduce exposure to emissions from trucks traveling along Partition Street to the Facility that would result in a reduction of annual PM<sub>2.5</sub> concentrations.

On November 13, 2024, Dunn submitted a response to the Department’s October 15, 2024 RFAI (November 13, 2024 RFAI Response), which asserted that emissions in particulate matter would be reduced for the years 2025 – 2029 and provided the corresponding AFLEET tables. In support of this claim, Dunn compared the emissions from the projected truck counts for those years if the Facility were permitted to operate under current truck limits (100 daily round trips), versus the emissions from the project truck counts for the same time if the Facility were permitted to operate under the truck limits proposed by Dunn during this application process (100 daily round trips and weekly average of 80 trucks per operating day). Dunn did not submit an assessment of the estimated actual emissions during the previous permit term as compared to the projected emissions based on Dunn’s proposed truck limit.

The November 13, 2024 RFAI Response also noted that the construction of the berm will reduce the landfill footprint by 1.2 acres (220,000 cubic yards in waste reduction and approximately four to six-month decrease of operational life), thereby reducing emissions from the Facility over its operational lifetime. Additionally, while the November 13, 2024 RFAI Response asserted the Department Policy entitled “Permitting and Disadvantaged Communities under the Climate Leadership and Community Protection Act” (DEP 24-1) does not apply to the Application, it proposed a project design consideration to address particulate by way of a financial mitigation fund for a Greenhouse Gases (GHGs) or co-pollutant

emissions reduction project: a \$50,000 donation to Rensselaer City School District for three consecutive years to help fund the District's transition to electric school buses which is required by a 2022 state mandate.

## **PUBLIC COMMENTS**

A total of 251 public comments were received by the Department on the Application. The Department evaluated each email and letter submitted during the UPA public comment period, as well as the written statements made at the Legislative Hearing on August 8th, 2023. The 251 public comments were received from DAC and Environmental Justice community members, environmental groups, elected officials, parents and representatives from the Rensselaer City School District K-2 and QUESTAR schools (RCSD), stakeholders, and the general public, including:

- 135 comments on health impacts that members of the community attributed to ongoing operations at the Facility, as well as comments specifically focusing on potential health impacts to children attending the RCSD school adjacent to the Facility;
- 115 comments were received that specifically mentioned impacts to the RCSD school and children;
- 72 comments mentioning truck traffic from Facility operations and the associated burdens on community members;
- 69 comments that specifically mention CLCPA Section 7(3) and the mapped DACs that are impacted by burdens from operations at the Dunn Facility;
- 59 comments mentioning odor and 4 comments mentioning refuse or garbage;
- 51 comments were received from community members on burdens from noise from operations at this Facility, the majority of which are referencing noise from heavy truck traffic accessing the Facility;
- 50 comments mentioning environmental impact;
- 27 comments mentioning dust impacts from operations at the existing Facility. Many of these comments discuss dust deposited along Partition Street, on front yards, and in windowsills of houses within the DAC from heavy truck traffic entering and exiting the Facility; and
- 12 comments mentioning Facility violations.

Many commenters provided statements on multiple topics. The Department also received correspondence from the city of Rensselaer, town of East Greenbush, from citizens, and from environmental justice advocacy groups in support of ceasing operations at the Facility.



## RESPONSE TO PUBLIC COMMENTS

### AIR QUALITY, HEALTH IMPACTS, SCHOOL, AND CHILDREN

Public comments were received that expressed concern regarding health impacts the commenters attributed to ongoing operations at the Facility, as well as comments on potential health impacts to children attending the RCSD school adjacent to the Facility.

On August 1, 2024, the Department released a report entitled “Rensselaer Air Quality Monitoring: Dunn Landfill” (Air Quality Report). The Air Quality Report analyzed and provided conclusions on the air quality data collected over a period of five years in the area surrounding the Facility, including continuous particulate matter data smaller than 10 microns (PM10) from a TEOM 1405 instrument, continuous Modulair-PM sensor PM10 data, and 24-hour filter based PM10 sampling data all located at the Rensselaer City School, as well as one-second pollutant sensor measurements pursuant to the CLCPA Community Air Monitoring (CAM) Initiative along Partition Street. The Air Quality Report concluded the following relative to the off-site impacts from truck traffic accessing the Facility: “[b]ecause CLCPA specifically prioritizes the improvement of air quality in DACs affected by local air pollution, mitigation strategies to reduce exposure to emissions from trucks traveling along Partition Street should be evaluated.”

Relative to impacts at the Rensselaer school, the PM10 particulate monitoring location at the school did not detect concentrations above the national air quality guideline of 150 µg/m<sup>3</sup> over a 24-Hr period. The results for the 24-hour TO15a VOC sampling showed that the air quality at the school is typical of the general air quality for a suburban area. The Department also found nothing to suggest that operations at the Facility are increasing the concentrations of volatile organic compounds in the area.

The monitoring locations at the Rensselaer school are too far to accurately determine the impact of emissions along Partition Street, however, the Department’s CAM Initiative included sensor measurements taken on Partition Street. Sensors provide nonregulatory and supplemental data that may be helpful to evaluate qualitative differences across a community and to identify local sources, especially mobile sources. The CAM sensor data indicated that while particulate matter smaller than 2.5 microns (PM2.5) levels were similar to those across the Capital District, on a road segment near 5th and 6th Street on Partition Street, PM2.5 annual concentrations were estimated at 26% greater than the Capital District CAM study area median. On a road segment near 1st and 2nd Streets along Partition Street, black carbon annual concentrations were estimated at 25% greater than the Capital District CAM study area median. Although black carbon is not regulated by the department, it is associated with adverse health effects. The Air Quality Report concluded that truck emissions are higher on some sections of Partition Street than are typically found in the rest of the study area.

Dunn’s November 13, 2024 RFAI Response pointed to a city of Rensselaer culvert replacement project on Partition Street near 5<sup>th</sup> and 6<sup>th</sup> Streets, which included use of heavy



equipment and a temporary traffic light, as an explanation for the elevated emissions and PM2.5 levels during the CAM Initiative data collection period. The Department verified the timing and nature of the construction activity cited by Dunn.

The Department has determined it is appropriate to issue permits that reduce the actual number of trucks accessing the Facility, limit the waste receiving hours to reduce impacts to morning commuters and public-school bus routes, require funding of an emissions reduction project in the DAC, and mandates a vegetative buffer feasibility study. Collectively, these conditions will reduce exposure to emissions from trucks traveling along Partition Street. In addition, the construction of the berm, once completed, will reduce potential impacts from activities at Dunn to the areas north and northeast of the Facility, including the school.

## **TRUCK TRAFFIC, DUST, AND NOISE**

Over the past 10 years, Department staff have received many complaints from the public regarding daily quality-of-life impacts from the heavy tractor trailer vehicle traffic traveling past houses along Partition Street and side streets, a maximum of 200 times per day. These complaints were memorialized during the public comment period relative to noise, vibrations, dirt, dust, and particulate matter from heavy truck traffic accessing the Facility, as well as dust impacts from operations on site.

The Department received many comments from the community relating to the density of large truck traffic along Partition Street, which has become disruptive to daily life, especially during traditional peak traffic hours for morning commuters and school buses. Community members who live along Partition Street reported having difficulty exiting their driveways to leave for work in the morning or to drive children to school, because the large tractor trailers are continually passing their driveways when travelling to the Facility to drop off a morning load, and then passing the same driveways again when leaving the Facility. Public comments described school buses attempting to navigate narrow city streets with tight corners and having to make way for large tractor trailers delivering material to and from the Facility during the morning hours in which both school bus activity and traffic to the Facility are heightened. Public comments also described queues of tractor trailers lined up along Partition Street as the gates to the Facility open, causing back-ups of large idling trucks as they wait to cross over the scale at the weigh station.

Due to the close proximity of passing tractor trailers to the homes on Partition Street, comments described how noise and vibrations from passing trucks cause windows to shake and rattle, cause sleeping citizens to wake, cause parents to feel that their children are unsafe playing outside in the front yard, and cause potentially dangerous situations for kids waiting at bus stops.

The Department required a Facility Noise Study to be generated in order to evaluate impacts of noise attributed to the operations of this Facility on the DAC and Environmental Justice

community in and near which the Facility is located.

The Department's noise policy, "DEP-00-01 Assessing and Mitigating Noise Impacts," was used to help the Department evaluate the potential for impacts to nearby receptors from noise generated *at the Facility* from construction of the proposed berm, as well as noise from modifications to the mining and C&D operations that will be affected by berm construction. The proposed operations within the Facility perimeter have also been evaluated for compliance with operating requirements under Part 360.19. The Facility Sound Survey, which was submitted as part of the Application, does not indicate exceedances of the operating requirements under Part 360.19.

The Department did not apply the noise policy to assess noise generated by traffic moving *outside* of the Facility perimeter along Partition Street because noise originating from offsite mobile sources is not intended to be assessed under the policy. In order to better evaluate the extent of burden borne by the DACs from heavy truck traffic impacts *outside* of the Facility perimeter, the Department requested an acoustic survey to be performed in accordance with 6 NYCRR Part 450. As opposed to being reviewed under State Environmental Quality Review Act (SEQR), this was a technical request to evaluate compliance with Part 450. The results of the Facility Sound Survey determined that vehicles accessing the Facility are operating in compliance with Part 450.

The Department has made the determination to issue permits that reduce the actual number of trucks accessing the Facility, limit the waste receiving hours to reduce impacts to morning commuters and public-school bus routes, and mandate a vegetative buffer feasibility study along Partition Street. Additionally, Condition 29 in the MLR permit requires the Facility to monitor sound levels during berm construction if this occurs while school is in session and, if any measured sound levels exceed 61.4 dBA at either of the designated locations, then a functional continuous vertical noise attenuation barrier, which must be a minimum 12 feet in height, must be installed on the northern and northeastern perimeter of the berm during construction activities. Collectively, these conditions will reduce the impacts on the community related to dust, noise, and vibrations from facility truck traffic.

## **FACILITY VIOLATIONS, ODOR, REFUSE, AND GARBAGE**

In response to odor complaints, in April 2019, the Department set up four portable screening level hydrogen sulfide (H<sub>2</sub>S) monitors to determine if the reported odors were linked to H<sub>2</sub>S from the landfill. Hydrogen sulfide monitoring did periodically detect short, 10- minute impacts that could have been from the landfill, however, most of those occurred very late at night. Follow-up monitoring with better instrumentation did not detect H<sub>2</sub>S at levels of concern or that warranted continued monitoring.

The Department has pursued enforcement against Dunn for environmental violations, resulting in a number of administrative orders on consent involving the payment of monetary penalties and the implementation of various mitigative measures, including revising the dust control plan,



reducing the area affected by mining exposed to potential wind erosion, and removing unstabilized sand piles in certain areas of the mine. The violations addressed in these orders included the following: failing to adequately apply daily operating cover be applied to exposed waste to effectively control blowing litter, exceeding the truck limit, failing to properly hydromulch excavation areas, failing to prevent dust from leaving the facility property. The Department has not received any dust complaints based on on-site operations in 2023 or 2024 and odor complaints have also decreased following the installation of the gas collection system and flare.

## **ENVIRONMENTAL IMPACT REVIEW PURSUANT TO SEQR**

The SEQR and the Department's implementing regulations under 6 NYCRR Part 617 require state government agencies to equally examine the environmental impacts along with the social and economic considerations for a certain project, or "action", during their discretionary review. Elements of an existing operation that continue unchanged and are subject to the renewal of a permit with no material change in conditions are not within the scope of review under SEQR and are Type II actions. In this case, the scope of review under SEQR applied only to facility changes proposed by the applicant, specifically construction of a mechanically stabilized earthen screening berm (MSE Berm) and related changes to the operational footprint.

The Department determined the proposed modification to construct the MSE Berm required modification of the MLR an SWMF permits and was a Type I action under SEQR. The Department conducted a coordinated review, served as the lead agency for SEQR review, and issued a negative declaration following coordinated review. In issuing the negative declaration for the proposed modification, the Department carefully evaluated the potential for significant adverse impacts as a result of the proposed modification, including the following considerations: construction of the berm will not require additional disturbance to areas beyond the existing LOM limits, and the action will not generate any additional traffic beyond permitted levels along Partition Street because the proposed berm will be constructed from sand and gravel material mined from the site and internal haul roads will be used to transport mined material to the construction staging area. As also explained in DEC's negative declaration, the proposed changes will, once completed, provide additional visual screening and operational setbacks, reducing impacts to areas north and northeast of the Facility. Therefore, the preparation of an environmental impact statement was not warranted for the modification of the permits to construct the berm.

## **CLCPA SECTION 7(3)**

In contrast to SEQR review, which broadly examines whether a given action may have a significant adverse impact on the environment for purposes of determining whether an environmental impact statement should be prepared, Section 7(3) of the CLCPA specifically requires the Department to assess whether the emissions of GHGs or co-pollutants from an action would cause or contribute to a disproportionate burden on a DAC.

Comments were received that specifically mention CLCPA Section 7(3) and the mapped disadvantaged communities that are impacted by burdens from operations at the Dunn Facility. The permit, as further modified by the Department in response to comments received by the public, is consistent with CLCPA Section 7(3) by ensuring that the disadvantaged communities are not disproportionately burdened by the operations at the Dunn Facility and prioritizing the reduction of GHGs and co-pollutants in DACs as discussed further below.

Effective January 1, 2020, Section 7(3) of CLCPA requires the following:

In considering and issuing permits . . . all state agencies . . . shall not disproportionately burden disadvantaged communities as identified pursuant to subdivision 5 of section 75-0101 of the environmental conservation law. All state agencies . . . shall also prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities as identified pursuant to such subdivision 5 of section 75-0101 of the environmental conservation law.

On March 27, 2023, the Climate Justice Working Group finalized the DAC criteria and identified census tracts that constitute DACs pursuant to ECL 75-0111 using 45 indicators. Two census tracts that surround the Facility and encompass the neighborhoods along Partition Street have been mapped as DACs:

- **Census tract GEOID# 36083051500 (“51500”)** which encompasses the largely residential area south of Partition Street; and
- **Census tract GEOID# 36083051600 (“51600”)** which encompasses the entirely residential area to the north of Partition Street including the RCS campus.

A census tract’s Burden Score Percentile is the combined percentile ranking for the cumulative score of all Indicators within the “Environmental Burden and Climate Change Risks” category comprised of three factors:

- (1) Pollution Exposures;
- (2) Land Use Associated with Historical Discrimination or Disinvestment; and
- (3) Climate Risks and Land Use Affecting Climate Vulnerabilities.

The Burden Score Percentile Ranking is 98% for Tract 51500 and 92% for Tract 51600.

Because Dunn is located in, or likely to affect, two census tract DACs, the requirements of CLCPA 7(3) do apply. More information on the Climate Justice Working Group’s DAC criteria can be accessed at the following website: [Disadvantaged Communities Criteria - New York's Climate Leadership & Community Protection Act](#)

In this matter, after a detailed review of the Permittee’s Application submissions and thorough consideration of the public comments, the Department has determined that the issuance of permits with the conditions requested by the Permittee would be inconsistent with CLCPA Section 7(3).

The Permittee provided an economic benefit report estimating the annual economic benefits of the Facility to New York State, Rensselaer County, and the Capital Region; however, they do not demonstrate benefits to the specific DACs that are likely to be impacted by the Facility's operations. Additionally, purely economic considerations with no nexus to reductions in GHGs and co-pollutants are not a factor for consideration under Section 7(3) of the CLCPA. While the Permittee proposed conditions intended to reduce emissions in the impacted DACs, the Department determined further conditions or other measures are required to address any disproportionate burden in that community, including through the Department's obligation in Section 7(3) to prioritize reductions in GHGs and co-pollutants in DACs.

Based on its analysis, the Department has issued permits that reduce the actual number of trucks accessing the Facility, limit the waste receiving hours to reduce impacts to morning commuters and school bus routes, requires funding of an emissions reduction project in the DAC (as part of the permit condition the Department is seeking input from the community regarding its preferred project to reduce GHGs and co-pollutants in the DAC), and mandates a vegetative buffer feasibility study. As a result, the issued permits are consistent with CLCPA 7(3).