2026 WL 1393598
Only the Westlaw citation is currently available.

Court of Appeals of Mississippi.

WASTE MANAGEMENT OF MISSISSIPPI, INC. APPELLANT

v.

CHICKASAW COUNTY, MISSISSIPPI, BY AND THROUGH ITS BOARD OF SUPERVISORS APPELLEE

NO. 2025-CA-00378-COA
|
DATE OF JUDGMENT: 03/17/2025
|
DISPOSITION: REVERSED AND RENDERED - 05/19/2026

TRIAL JUDGE: HON. JOHN KELLY LUTHER COURT FROM WHICH APPEALED: CHICKASAW COUNTY CIRCUIT COURT, FIRST JUDICIAL DISTRICT

NATURE OF THE CASE: CIVIL - CONTRACT

Attorneys and Law Firms

ATTORNEYS FOR APPELLANT: SIMON TURNER BAILEY J. CAL MAYO JR. JAMES STEPHEN FRITZ JR.

ATTORNEY FOR APPELLEE: JIM HOOD

BEFORE WILSON, P.J., McCARTY AND EMFINGER, JJ.

Opinion

WILSON, P.J., FOR THE COURT:

***1** ¶1. In 1992, Waste Management (WM) and Chickasaw County entered into a "Waste Disposal Agreement" under which WM would dispose of solid waste generated in the county at a **landfill** WM would operate in the county. The Agreement was for a thirty-year term and provided that the County could extend the Agreement "for the additional term of thirty (30) years or the remaining life of the Sanitary **Landfill**, whichever is less, *to the extent such extension is consistent with Mississippi Law*." (Emphasis added).

¶2. As the Agreement's initial thirty-year term approached its end in 2022, WM and the County disagreed as to whether the County could extend the Agreement. WM maintained that the Agreement could not be extended because Mississippi law limits such contracts to a maximum term of thirty years—hence, an extension would *not* be "consistent with Mississippi law." WM stated that a new public request for proposals (RFP) and a new contract were necessary. In contrast, the County maintained that it could extend the Agreement because it was executed during an alleged seven-month "gap" or "pause" in 1992 when the statutory thirty-year limit on waste disposal contracts allegedly was "not in effect." The County sued WM in the Chickasaw County Circuit Court, seeking a declaratory judgment that it could exercise the option to extend, injunctive relief requiring WM to continue to perform under the Agreement, and damages. The circuit court ultimately agreed with the County, denied WM's motion for summary judgment, and granted the County's motion for summary judgment. The court ordered WM to continue to perform under the terms of the 1992 Agreement. WM filed a notice of appeal.

¶3. For the reasons explained below, we conclude that the County cannot exercise the option to extend the Agreement because at all relevant times Mississippi law prohibited counties and municipalities from entering into waste disposal contracts longer than thirty years. Therefore, the plain language of the Agreement precludes an extension because the extension would *not* be "consistent with Mississippi law." Accordingly, we reverse the judgment of the circuit court and render summary judgment in favor of WM.

FACTS AND PROCEDURAL HISTORY

¶4. Prior to 1991, Mississippi law permitted counties and municipalities to provide for the collection and disposal of solid waste and also permitted them to enter into contracts for the disposal of solid waste for terms of up to twenty-

five years. Specifically, Mississippi Code Annotated section 17-17-5 provided as follows:

> The board of supervisors or municipal governing body may be and is hereby authorized to make available to the general public collection and disposal facilities for solid wastes. The board of supervisors or municipal governing body may provide such collection or disposal services by contract with private or other controlling agencies .... The board of supervisors or municipal governing body shall have the power to and are hereby authorized ... to enter into ... contracts for treatment, processing, distribution, recycling, elimination or disposal of solid wastes for a term of up to twenty-five (25) years....

***2** Miss. Code Ann. § 17-17-5 (Supp. 1984) (as amended by 1984 Miss. Laws ch. 523, § 1).

¶5. In 1991, the Legislature amended section 17-17-5 to *require*—rather than simply permit—local governments to provide for the collection and disposal of solid waste and to increase the maximum term for waste disposal contracts to thirty years. As amended, section 17-17-5 provided as follows:

> The board of supervisors or municipal governing body *shall* provide for the collection and disposal of garbage and the disposal of rubbish. The board of supervisors or municipal governing body may provide such collection or disposal services by contract with private or other controlling agencies .... The board of supervisors or municipal governing body shall have the power to and are hereby authorized ... to enter into ... contracts for treatment, processing, distribution, recycling, elimination or disposal of solid wastes *for a term of up to thirty (30) years*....

Miss. Code Ann. § 17-17-5 (Supp. 1991) (as amended by 1991 Miss. Laws ch. 581, § 25) (emphasis added). The amendments took effect upon passage (April 12, 1991).

¶6. In 1992, the Legislature further amended section 17-17-5 to delay the effective date of the mandate that local governments provide for waste collection and disposal services. The maximum term for waste disposal contracts remained thirty years. As amended, section 17-17-5 provided as follows:

> *After December 31, 1992*, the board of supervisors and/or municipal governing body *shall* provide for the collection and disposal of garbage and the disposal of rubbish. The board of supervisors and/or municipal governing body may provide such collection or disposal services by contract with private or other controlling agencies .... The board of supervisors and/or municipal governing body shall have the power to and are hereby authorized to ... enter into ... contracts for treatment, processing, distribution, recycling, elimination or disposal of solid wastes for a term of up to thirty (30) years....

Miss. Code Ann. § 17-17-5 (Supp. 1992) (as amended by 1992 Miss. Laws ch. 583, § 1) (emphasis added). The amendment took effect upon passage (May 15, 1992).[1]

¶7. On June 16, 1992, WM and Chickasaw County entered into the Agreement, under which WM would dispose of solid waste generated in the County at the Knox **Landfill**.[2] Section III of the Agreement described its term as follows:

> The term of this Agreement shall be thirty (30) years. The County shall have the right to extend the Agreement (by written notice prior to the end of the initial term) for the additional term of thirty (30) years or the remaining life of the Sanitary **Landfill**, whichever is less, *to the extent such extension is consistent with Mississippi Law*.

(Emphasis added).

¶8. Effective July 1, 1996, the Legislature amended Mississippi Code Annotated section 31-7-13 to require counties to issue a public RFP before entering into any contract for the collection or disposal of garbage or solid waste. *See* Miss. Code Ann. § 31-7-13 (Supp. 1996) (as amended by 1996 Miss. Laws ch. 495, § 1).

***3** ¶9. In September 2020, WM sent an email to the Chickasaw County Chancery Clerk advising that the Agreement between WM and the County would expire on June 15, 2022, and that because thirty years was the maximum term allowed by state law for waste disposal contracts, the County would need to issue a public RFP prior to the end of the contract term. Thereafter, WM and the County continued to communicate, and county officials initially indicated that they would issue a public RFP for a new waste disposal contract.

¶10. However, on March 22, 2022, the Chickasaw County Board of Supervisors voted to extend the original Agreement

"for another 30 years" pursuant to Section III of the Agreement. The County then notified WM of its intent to exercise its option to extend the Agreement. In response, WM stated that although it hoped to continue to provide disposal services for the County, the County was required by law "to advertise and offer an RFP," that the maximum term for a disposal contract under Mississippi law was thirty years, that the Agreement's thirty-year term was expiring, and that the Agreement could not "be renewed without going through the RFP process."

¶11. In May 2022, the County filed a complaint for declaratory and injunctive relief and, in the alternative, damages for breach of contract in the Chickasaw County Circuit Court. The County sought a declaratory judgment that its option to extend the Agreement was enforceable, a preliminary injunction requiring WM to continue to perform under the Agreement, and a permanent injunction requiring specific performance. Citing language from the May 1992 amendments to section 17-17-5, the County argued that the thirty-year limit on waste disposal contracts was not "in effect or applicable when the [Agreement] was entered into on June 16, 1992." In the alternative to specific performance, the County sought damages for breach of contract. The County also alleged that WM was estopped from denying the validity of the County's option to extend the Agreement and that WM was liable for punitive damages. In response, WM filed a motion to dismiss, arguing that the thirty-year maximum term for waste disposal contracts was in effect at all relevant times, including the Agreement's effective date.

¶12. On June 1, 2022, the circuit court held a hearing on the County's motion for a preliminary injunction. The County argued that the 1992 amendments to section 17-17-5 "froze" the "application" of the statute for "seven months," until December 31, 1992, creating a "pause time" or a "gap" during which the thirty-year limit on waste disposal contracts did not apply. The County argued that during that seven-month "pause" or "gap," a county could have entered into a contract "for a hundred years" if it so desired. In response, WM argued that the thirty-year limit applied at all times, that the County's attempt to extend the Agreement would effectively transform it into an illegal sixty-year contract,[3] and that the Agreement did "not provide an unconditional right to extend" but only a "conditional right to extend" if the extension would be "consistent with Mississippi law."

¶13. At the conclusion of the hearing, the circuit court ruled from the bench and granted the County's request for a preliminary injunction. The court found that there was "a real possibility" that the Agreement "fell into no man's land" because it was entered into between May 15 and December 31, 1992.

***4** ¶14. Before the circuit court issued a written ruling, WM filed a supplemental brief in which it again argued that the thirty-year limit on waste disposal contracts applied at all relevant times. WM emphasized that the phrase "After December 31, 1992" in the 1992 amendments to the statute referred only to the then-new "*mandatory* obligation" that the Legislature had imposed on counties and municipalities "to collect and dispose of waste."

¶15. In a response brief, the County seemingly pivoted and espoused a new theory regarding the extension. The County argued that neither the original thirty-year contract nor the proposed thirty-year extension violated the thirty-year limit in section 17-17-5. The County continued, "The statute states that county boards of supervisors can enter into contracts for periods of up to thirty years. That is what [the County] has done now, *twice*." (Emphasis added). The County argued that "two separate contracts" were at issue, both valid under Mississippi law.

¶16. On June 14, 2022, the circuit court entered a written order granting a preliminary injunction and denying WM's motion to dismiss. The order required WM to continue accepting waste for disposal pursuant to the terms of the 1992 Agreement.

¶17. WM subsequently filed a motion for summary judgment, arguing that the 1992 Agreement could not be extended for an additional thirty years because (a) the extension would transform the Agreement into a sixty-year contract in violation of section 17-17-5, and (b) the Agreement's plain language permitted an extension only "to the extent such extension is consistent with Mississippi law." WM also argued that the County could not circumvent section 17-17-5's thirty-year limit "by re-labeling its claimed extension of the Agreement as a new, separate contract." WM further argued that a new contract would require a public RFP pursuant to section 31-7-13.

¶18. The County responded to WM's motion and later filed a combined cross-motion for summary judgment and for sanctions for alleged discovery violations and alleged violations of court orders. The County argued that the contract was valid due to the Legislature's "suspension" of section 17-17-5 from May to December 1992. The County argued that the original 1992 Agreement and the thirty-year extension were both valid—and that the RFP statute enacted in 1996 did not apply—because "the extension of the 1992 contract in 2022 was **not a new contract under the bidding statute**." The County further argued that WM was estopped from denying the validity of the option to extend.

¶19. Following a hearing, the court ruled from the bench that the County's option to extend the Agreement was enforceable and that WM was obligated to continue to perform under the Agreement. The court subsequently entered a written order denying WM's motion for summary judgment, granting the County's motion for summary judgment, and ordering that WM was "permanently enjoined to comply with the terms of the 1992 [Agreement]." The court certified its decision as final pursuant to Mississippi Rule of Civil Procedure 54(b), and WM filed a notice of appeal.

ANALYSIS

¶20. We review an order granting or denying summary judgment de novo. *Price v. Purdue Pharma Co.*, 920 So. 2d 479, 483 (¶10) (Miss. 2006). "If no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law, summary judgment should be entered in that party's favor." *Id.* "Matters of statutory interpretation also are reviewed by this Court using a de novo standard." *Chandler v. McKee*, 202 So. 3d 1269, 1271 (¶5) (Miss. 2016). "Additionally, the Court applies a de novo standard of review to issues involving the interpretation of contracts." *R.K. Metals LLC v. E & E Co.*, 404 So. 3d 123, 125 (¶7) (Miss. 2025).

I. The plain language of the Agreement and section 17-17-5 do not authorize an extension.

***5** ¶21. As discussed above, prior to 1991, counties and municipalities were *authorized* to provide for the collection and disposal of solid waste but were not required to do so. *See supra* ¶4. Counties and municipalities were also authorized to enter into contracts for the disposal of solid waste for up to twenty-five years. *Id.* In 1991, the Legislature amended Mississippi Code Annotated section 17-17-5 to *mandate* that counties and municipalities provide for the collection and disposal of solid waste and to increase to thirty years the maximum term for contracts for the disposal of solid waste. Miss. Code Ann. § 17-17-5 (Supp. 1991). Finally, in 1992, the Legislature delayed the effective date of the statutory mandate that counties and municipalities provide for the collection and disposal of solid waste. Miss. Code Ann. § 17-17-5 (Supp. 1992). As amended in 1992, section 17-17-5 provided as follows:

> *After December 31, 1992*, the board of supervisors and/or municipal governing body shall provide for the collection and disposal of garbage and the disposal of rubbish. The board of supervisors and/or municipal governing body may provide such collection or disposal services by contract with private or other controlling agencies .... The board of supervisors and/or municipal governing body shall have the power to and are hereby authorized to ... enter into ... contracts for treatment, processing, distribution, recycling, elimination or disposal of solid wastes for a term of up to thirty (30) years....

Id. (emphasis added).

¶22. Contrary to the County's arguments, the 1992 amendments did *not* amend, repeal, or suspend the thirty-year limit on contracts for the disposal of solid waste. At all times relevant here, section 17-17-5 limited such contracts to a thirty-year term. The clause added to the beginning of section 17-17-5—"After December 31, 1992"—only amended the *first sentence* of the statute, delaying the effective date of the then-new statutory mandate requiring counties and municipalities to provide for the collection and disposal of solid waste. At the time the subject Agreement was executed—and at all subsequent times continuing to this day—the maximum term for solid waste disposal contracts has been thirty years. Therefore, a thirty-year extension of the original thirty-year contract term would result in a sixty-year contract and would violate section 17-17-5.

¶23. This Court addressed a similar issue in *Home Base Litter Control LLC v. Claiborne County*, 183 So. 3d 94 (Miss. Ct. App. 2015), *cert. denied*, 181 So. 3d 1010 (Miss. 2016). *Home Base* involved section 17-17-5's six-year limit on contracts for the collection of solid waste. *Id.* at 99-100

(¶¶17-18); *see supra* note 1. Home Base successfully bid on a contract for waste collection services, and Home Base and the county entered into a three-year contract effective April 1, 2008, that provided for an automatic three-year extension unless notice of termination was given at least sixty days prior to the end of the initial three-year term. *Id.* at 97 (¶6). However, an unsuccessful bidder challenged Home Base's contract award, and the circuit court ultimately ordered the county to reopen the bidding process while also allowing Home Base to continue providing collection services under its original contract during the rebidding process. *Id.* at (¶7). Home Base again submitted the winning bid, and Home Base and the county then entered into an "Extension" of the original contract that provided for a three-year term effective December 8, 2008, with an automatic three-year extension unless notice to terminate was given at least sixty days prior to the end of the initial three-year term. *Id.* at 97-99 (¶¶9, 14). After the automatic three-year extension took effect, the county argued that the contract violated section 17-17-5's six-year limit on waste collection contracts because its total term ran for approximately six years and eight months. *Id.* at 100 (¶20). In contrast, Home Base argued that the parties' "second contract" was a "new contract" with a "legal six-year term." This Court agreed with the county, holding:

> ***6** Based on these plain terms in the second agreement, the second agreement is not a new contract, but an extension of the first. Because there is no ambiguity in the plain terms of the contract, there is no need to go beyond the four corners of the contract. We find that since the second agreement is plainly an extension of the first, the combined agreements created a six-year eight-month contract, in violation of section 17-17-5(1).

Id. at (¶21). We further held that the contract was not "entirely void, but rather only void insomuch as it exceeded the statutory maximum of six years." *Id.* at 101 (¶24).

¶24. This reasoning applies here, and the result is the same in this case. The plain and unambiguous language of the Agreement between WM and the County shows that the thirty-year extension described therein "is not a new contract, but an extension of the first." *Id.* at 100 (¶21). Again, the relevant provision of the Agreement states:

> The term of this Agreement shall be thirty (30) years. The County shall have the right to *extend* the Agreement (by written notice prior to the end of the initial term) for the additional term of thirty (30) years or the remaining life of the Sanitary **Landfill**, whichever is less, to the extent such *extension* is consistent with Mississippi Law.

(Emphasis added). "Because there is no ambiguity in the plain terms of the contract, there is no need to go beyond the four corners of the contract." *Id.* And because the additional thirty-year term under the Agreement "is plainly an extension of the first," the proposed extension would "create[ ] a [sixty-year] contract, in violation of section 17-17-5[.]" *Id.* Indeed, the issue here is even clearer than in *Home Base* because WM and the County negotiated and signed only *one* Agreement in 1992, which they never had to rebid or renegotiate, as occurred in *Home Base*.

¶25. Importantly, by holding that the initial thirty-year term and the proposed thirty-year extension are both part of the single Agreement, we do not hold that the Agreement or any part of it is void or invalid. Rather, the Agreement itself resolves this issue by expressly providing that the option "to extend the Agreement" may be exercised *only* if and "to the extent such extension is consistent with Mississippi law." Because an extension would *not* be consistent with section 17-17-5, the extension is not permitted by the plain language of the Agreement itself. For these reasons, the circuit court erred by ruling that section 17-17-5 and the parties' Agreement would permit the extension.[4]

II. WM is not estopped from contesting the County's attempt to extend the Agreement.

¶26. The County also argues that "estoppel should apply to prevent [WM] from walking away from its obligations pursuant to the contract it drafted after [WM] has derived the benefits therefrom." The County contends that WM agreed to and benefitted from "the contract's terms" and should not be allowed "to avoid its obligation." The County further argues that "[e]ven if the contract could be considered void, as [WM] incorrectly claims, estoppel is nonetheless available to preclude [WM] from so wrongly depriving the people of Chickasaw County from receiving their end of the bargain."

¶27. However, for the reasons explained above, the Agreement is not "void," and WM is not seeking to "avoid" or "walk[ ] away from" any of its obligations under the Agreement. The Agreement itself provides that the option to extend for an additional thirty-year term can be exercised *only* if and "to the extent such extension is consistent

with Mississippi law." Because an extension would *not* be "consistent with Mississippi law," *the plain language of the Agreement itself does not permit an extension*. This is not a matter of a party seeking to "avoid" or "walk away from" a contract; rather, WM seeks to enforce the Agreement according to its terms.

***7** ¶28. In support of its estoppel argument, the County further alleges that WM attempted to mislead the County into believing that the Agreement would expire in 2022 and that a new public RFP and contract would be necessary. However, the premise of this argument is flawed. As explained above, the Agreement *did* expire in 2022. Therefore, any statements that WM's employees made to that effect were not misleading. In support of this argument, the County also points to several internal emails among WM employees between 2019 and 2021. These emails indicate that some WM employees appear to have believed that the County could extend the Agreement for an additional thirty years. However, other employees understood that the Agreement would end in June 2022 and stated that the Agreement's expiration needed to be communicated to and discussed with the County. But regardless of what any of these employees believed, WM cannot be "estopped" by an individual employee's understanding of the Agreement that was never communicated to the County.

CONCLUSION

¶29. A thirty-year extension of the 1992 Agreement between WM and the County would not be "consistent with Mississippi law" (specifically section 17-17-5). Therefore, the plain language of the Agreement precludes an extension, and the circuit court erred by granting the County's motion for summary judgment and by granting injunctive relief requiring specific performance under the terms of the 1992 Agreement. The judgment of the circuit court is reversed, and summary judgment is rendered in favor of WM.

¶30. **REVERSED AND RENDERED.**

BARNES, C.J., CARLTON, P.J., WESTBROOKS, McDONALD, LAWRENCE, McCARTY, EMFINGER, WEDDLE AND LASSITTER ST. PÉ, JJ., CONCUR.

All Citations

--- So.3d ----, 2026 WL 1393598

Footnotes

1 The same statute limited waste collection contracts to a maximum term of six years.

2 The **landfill** is now known as the Prairie Bluff **Landfill**.

3 WM cited *Home Base Litter Control LLC v. Claiborne County*, 183 So. 3d 94, 99-101 (¶¶17-24) (Miss. Ct. App. 2015), *cert. denied*, 181 So. 3d 1010 (Miss. 2016), for the proposition that the extension would result in an illegal sixty-year contract, not a new thirty-year contract.

4 As noted above, we review the circuit court's interpretation of the statute and the parties' Agreement de novo. *See supra* ¶20.

2026 WL 1393252
Supreme Court, New York,
Rensselaer County.

Rensselaer Environmental Coalition, Incorporated and THE CITY OF RENSSELAER, Petitioners,

v.

New York State Department of Environmental Conservation and S.A. DUNN & COMPANY, LLC, Respondents.

Index No. EF2025-279567
|
Decided on May 15, 2026

Attorneys and Law Firms

Pace Environmental Litigation Clinic

Elisabeth Haub School of Law

Todd D. Ommen, Esq., of counsel

For Petitioner Rensselaer Environmental Coalition, Incorporated

Phillip H. Dixon, Esq.

Special Counsel to the City of Rensselaer

For Petitioner City of Rensselaer

Hon. Letitia James

Attorney General of the State of New York

Assistant Attorney General Susan L. Taylor, Esq., of counsel

Assistant Attorney General Christopher C. Gore, Esq., of counsel

For Respondent Department of Environmental Conservation

Beveridge & Diamond, P.C.

Michael G. Murphy, Esq., of counsel

Katrina M. Krebs, Esq., of counsel

For Respondent S.A. Dunn & Company, LLC

Opinion

Noel Mendez, J.

***1** By way of Verified Petition, filed April 17, 2025, Petitioners Rensselaer Environmental Coalition, Incorporated ("REC") and the City of Rensselaer ("City") (collectively, "Petitioners") commenced this special proceeding pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR"), alleging that the determination made by Respondent New York State Department of Environmental Conservation ("DEC") to renew and modify a permit previously issued to Respondent S.A. Dunn & Company, LLC ("Dunn") (collectively, "Respondents") to continue operating the Dunn **Landfill** ("**Landfill**"), which is currently permitted to conduct mining and solid waste management operations next to the City and in Rensselaer County, was arbitrary, capricious, and contrary to law, in that the renewal and modification of the permit violates (1) the State Environmental Quality Review Act ("SEQRA"), (2) the Climate Leadership and Community Protection Act ("CLCPA"), (3) the New York Constitution, and (4) two policy proclamations issued by the Commissioner of DEC. In the main, Petitioners seek—whether under SEQRA or the CLCPA—the annulment of DEC's determination granting the renewal and modification of the permit, or alternatively, an adjudicatory hearing under the Uniform Procedures Act ("UPA") and attendant regulations.

As it pertains to this motion sequence, Respondents move separately to dismiss the Verified Petition pursuant to sections 3211 (a) (3), (5), (7) and 7804 (f) of the CPLR, with opposition from Petitioners and separate replies from Respondents. Based on the parties' submissions with exhibits attached thereto, and for the reasons that follow, the Court, in pertinent parts: (1) holds that the City does not have capacity to challenge the determinations made by DEC, but maintains capacity to sue Dunn for property damage, and denies the motion to dismiss this claim; (2) holds that the claims under SEQRA are timely; and (3) holds that Respondents' separate motions to dismiss the Verified Petition are denied in part and granted in part, to the extent the Court (a) denies the branch of Respondents' motions seeking dismissal of the

segmentation claim under SEQRA but otherwise grants the motion with respect to all other claims thereunder, any alleged constitutional claims, and any claims based on DEC's policy related to SEQRA, (b) grants in their entirety the branch of Respondents' separate motions seeking dismissal of all claims under and relating to the CLCPA, and (c) grants in their entirety the branch of Respondents' separate motions seeking dismissal of all claims related to Petitioners' request for an adjudicatory hearing.

I. Background and Procedural History

The **Landfill**, which lies on a 90-acre tract of land within the City and bordering other towns in Rensselaer County, has been used for mining operations since the 1800s. It is currently home to a sand and gravel mining area, a sediment pond, a maintenance garage, and a number of office facilities, and it lies next to, *inter alia*, a K-12 school ("School"), a baseball field, a soccer field, and a disadvantaged community ("DAC"), all within the City's confines.

***2** Dunn first applied for a solid waste management permit in April of 2010. In May of 2012, DEC issued a Final Environmental Impact Statement in connection with the permit application, determining that the **Landfill** constituted a Type I project under SEQRA. Approximately two months later, in July of 2012, DEC issued to Dunn a combined mining and solid waste management permit that would allow the company to continue operating as a mine and construct the facilities necessary to operate as a **landfill**. In January of 2015, after being acquired by a Texas-based waste management company known as Waste Connections, the **Landfill** began accepting construction and demolition debris for purposes of disposal.

Dunn's combined permit was renewed initially in either 2016 or 2017. DEC claims in their motion papers that the permit was renewed in 2016, whereas REC claims in their Verified Petition that DEC renewed the permit in 2017 without conducting any public hearings. The documentary evidence suggests that the renewal occurred in 2016. In any event, REC was formed in 2018 in response to DEC's approval allowing Dunn to operate the site as a **landfill** for solid waste management. From their perspective, REC advocates for the health and quality of life of the communities surrounding the **Landfill** and the local environment generally. Respondents, however, claim that REC merely seeks to have the **Landfill** shuttered. Regardless of the circumstances surrounding REC's formation, DEC acknowledges on their website having received complaints from residents concerning the **Landfill** dating back to December of 2018. Specifically, residents at the time complained of the smell of sulfur and rotten eggs emanating from the site. The permit was renewed in October of 2019 with a stated expiration date of July 20, 2022.

In January of 2022, prior to the expiration of the combined permit, Dunn, through an engineering and surveying firm, filed an application with a seven-page cover letter and supporting attachments with DEC pursuant to 6 NYCRR 621.11 (a) (1) ("Applications for permit renewals, reissuances and modifications, including transferring or relinquishing permits"), seeking to renew the permit for the continuance of both its mining and solid waste management operations. Dunn had submitted the application in August of 2021, but resubmitted it in January of the following year so that DEC could review and approve a modification to the **Landfill** in the form of a mechanically stabilized earthen berm ("Berm") along the northern perimeter of the property designed, in their view, to insulate the **Landfill** and mitigate any impact the facility may have on the surrounding community, including the School and adjoining DAC. Dunn asserted in the application that the Berm modification represented a change in the existing plan previously approved by DEC, but that the modification itself would not alter the **Landfill's** currently permitted operations or otherwise result in an increase to the **Landfill's** environmental impact. According to the application, the Berm's construction would reduce the permitted solid waste disposal area by 1.2 acres (from a total of 63.3 acres) and reduce the design capacity of the **Landfill** by approximately 220,000 cubic yards. Dunn asserted that the modification would not change traffic patterns. Moreover, the Berm would not affect permitted conditions regarding leachate management but would require minor revisions to the **Landfill's** stormwater and gas management systems based on the revised final grading plan. Dunn noted that the renewal would be subject to Commissioner Policy No. 29, in that the permit renewal would require the preparation of a full Environmental Assessment Form ("Full EAF") and a public participation plan. Dunn frames the Berm in their motion papers to this Court as a "visual mitigation measure" designed to reduce the **Landfill's** footprint and decrease emissions, which DEC, in turn, claims would insulate the **Landfill** and

further mitigate the impact the site may have on the adjoining School and the DAC.

***3** The Full EAF, also prepared in January of 2022, states that the Berm, which would run along the northern and eastern parts of the **Landfill**, was to rise approximately 40 to 60 feet above the existing grade of the site, thus serving as a visual "screen" of the **Landfill's** operations from the surrounding areas. The Full EAF only discussed the environmental impact of the Berm's construction because, according to Dunn and the firm assessing the project, there were no proposed changes being made to the **Landfill's** mining or solid waste management operations (including the rate at which the **Landfill** would accept waste) and the **Landfill's** combined operations had been previously reviewed for SEQRA compliance back in 2012 and 2016. After asserting they would continue complying with mine and solid waste management regulations, Dunn indicated that construction of the Berm would not result in an increase in truck traffic going to and from the **Landfill**, which was then limited in 2012 pursuant to a final environmental impact statement to 100 round trips per day. Dunn further asserted that construction of the Berm would not result in excess noise coming from the **Landfill**, additional peak off-site stormwater discharge, adverse changes to groundwater management, increased odors, or adverse impacts to air quality. DEC categorized Dunn's application type within their system as "Renewal Treat as New." It is unclear from DEC's "Permit Applications List" under what statute the designation was made.

Dunn received three separate Notices of Incomplete Application ("NOIA") from DEC concerning the renewal of the **Landfill's** combined permit—one in January of 2022, one in March of 2022, and one in January of 2023. DEC sought information on a number of items, including stakeholder participation; procedures and notices for public meetings; compliance with greenhouse gas emission limits pursuant to the CLCPA; and the potential effect the Berm's construction may have on noise levels, traffic, dust, and the surrounding community in general. Dunn filed responses to each of the NOIAs, one of which consisted of a greenhouse gas assessment, dated November 4, 2022.

The response to the first NOIA addressed questions concerning, *inter alia*, Dunn's contact information, lists of stakeholders, public meetings, and the distribution of participation materials. Neither the request nor the response to the first NOIA addressed questions concerning the environment.

The greenhouse gas assessment, submitted in response to the March 2022 NOIA, discussed emissions from both stationary and nonstationary sources and the **Landfill's** projected compliance with the CLCPA's emissions targets for 2030 and 2050. It was assumed that the gas generated from the **Landfill** itself (i.e., the stationary source of fugitive emissions) was 25 percent methane and 75 percent carbon dioxide by volume. Regarding emissions from nonstationary sources—consisting of diesel and gasoline exhaust from on-site and off-site mobile equipment—Dunn drew a distinction between the transportation of waste to the **Landfill**, which averages approximately 138.1 miles (i.e., the average distance as determined by the top 10 waste providers who send their waste to the **Landfill**) and the transportation of leachate to the off-site wastewater treatment facility, which averages about 3.7 miles per each tanker hauling 5,000 gallons of leachate per trip (assuming a total of 10 million gallons of leachate hauled annually). Dunn calculated that the transport of waste to the **Landfill** results, on a per-year basis, in approximately 7,393.7 tons of carbon dioxide; 0.30 tons of methane; 0.06 tons of nitrous oxide; 7,434.8 tons of carbon dioxide equivalents; and 0.17 tons of hazardous air pollutants. In terms of leachate transportation, Dunn calculated, also on a per-year basis, that the trips to the wastewater treatment facility would create 15.1 tons of carbon dioxide, no methane or nitrous oxide, 15.2 tons of carbon dioxide equivalents, and no hazardous air pollutants. The assessment also discussed greenhouse gas emissions stemming from a variety of other sources, including utility flare, but did not specifically address whether Dunn tests for the potential release of per- and polyfluoroalkyl substances ("PFAS") into the air. Insofar as DACs are concerned, the assessment estimated that approximately 20 percent of greenhouse gas emissions and 27 percent of hazardous air pollutant emissions stemming from waste going to the **Landfill** in 2030 would not impact the local DAC. Dunn estimated that current mitigation measures undertaken by the **Landfill** will result in a 58 percent reduction in greenhouse gas emissions by 2030 and an 82 percent reduction of these emissions by 2050. With respect to hazardous air pollutants, Dunn estimated a reduction of 61 percent by 2030 and a reduction of 88 percent by 2050. Dunn concluded that, based on these projections, the **Landfill** is on target to comply

with the CLCPA in 2030 and will be slightly short of target reductions under the act in 2050.

***4** Dunn's response to DEC's third and final NOIA included clarifications on how Dunn arrived at the percentages of **Landfill** gas emissions, correcting their prior assessment. Per a laboratory analysis conducted in February of 2023, the gas collected from the **Landfill** revealed that 27 percent of the gas emitted from the **Landfill** consists of methane, 29 percent consists of carbon dioxide, 4.9 percent consists of oxygen, and 35 percent consists of nitrogen. Dunn elaborated on the mitigation measures taken by the **Landfill** not required by the permit, indicating, *inter alia*, that the Berm would mitigate emissions by reducing the "waste in place" by approximately 220,000 cubic yards, which, in turn, would reduce potential greenhouse gas emissions emanating from the **Landfill** by approximately 914 tons per year, and reduce the total number of truck trips—and thus truck emissions—that would impact the adjacent DAC. Dunn also indicated that there would be a reduction of hauled materials resulting in a further decrease of truck and construction equipment emissions impacting the DAC. In addition to providing clarification on fugitive emissions stemming from leachate collection, so-called insignificant emissions, and peak emissions for the year 2032, Dunn clarified its calculations for greenhouse gas emissions and hazardous air pollutants for transporting waste in 2030 from its point of origin to the **Landfill**, and how that affects the DAC. Dunn stated that approximately 84 percent of the waste it receives comes from off-site sources. The travel between waste providers to the **Landfill**—which averages to about 138.1 miles per trip—results in 14,771 tons of greenhouse gas and hazardous air pollutant emissions a year, but only 107 tons would affect the DAC, given that the DAC lies approximately along a one mile stretch of the 138.1-mile trip. Dunn reiterated this information when asked to fully account for the potential impact of on-site mobile sources of emissions operating at the **Landfill**, as well as the effect transportation of leachate has on the DAC. Finally, Dunn addressed DEC's questions concerning hazardous air pollution emission calculations, propane emissions calculations, and emissions projections for 2030 and 2050 under the CLCPA, adjusting the calculations. Dunn continued operating the **Landfill** pending a final determination per a letter dated May 12, 2022, wherein DEC acknowledged having received the permit renewal and modification application from Dunn "in a timely and sufficient manner" in accordance with the State Administrative Procedures Act.

Dunn held a public meeting in June of 2022, wherein many individuals, including the superintendent of the school system, local advocates, and members of the community, expressed their concerns regarding the **Landfill**. The superintendent commented that it did not make sense to place the **Landfill** near a school. One person voiced their concerns over polyethylene liners used in some parts of the **Landfill**, which could allow toxins to leach into the ground should they fail in 30 years, while another noted the use of a 1992 traffic study when obtaining the 2012 permit leading to the creation of the **Landfill**, asking whether Dunn would comply with the then-newly enacted New York Constitutional amendment granting New Yorkers the right to clean water and air (discussed *infra*). Another claimed that the meeting was a "stopgap" and not a proper public hearing. Many were concerned with the odors emanating from the **Landfill**; the dust and its effect on residents with asthma; noise pollution; and the effect of truck traffic and resulting diesel exhaust on residents, especially as it pertains to fine diesel particulate matter and cardiac health. Some individuals raised questions concerning the Berm itself, asking whether it was an appropriate mitigation measure insofar as PFAS contamination is concerned. One person took issue with the lack of language access concerning non-English speaking residents. A person thereafter said that he had two pets with cancer. Many of the residents expressed their concerns over the health of their children, with one person noting a Senate bill that purportedly addresses the distance between **landfills** and schools. Only one individual at the meeting spoke in support of the **Landfill**.

Also in June of 2022, the parties to this case exchanged letters concerning the **Landfill** and permitting process. REC, joined by other environmental groups, sent to Respondents a letter, dated June 2, 2022, asking whether Dunn's permit renewal with accompanying Berm modification would be treated as "new" for purposes of environmental review. Claiming lack of clarity concerning the permitting process *vis a vis* Dunn, REC asked DEC to review the mine and solid waste management renewal and modification permit in its entirety pursuant to SEQRA, noting concerns that the Full EAF would apply solely to the Berm's construction. REC indicated that, while renewal applications are typically Type II actions under agency regulations promulgated under SEQRA, DEC would

not be constrained to such a classification and may treat the renewal and modification application as one requiring full environmental review. REC claimed in their letter that the issues raised now—such as increased truck traffic, the impact the **Landfill** would have on the School and adjoining DAC, and PFAS contamination around the **Landfill** and in leachate runoff—were not "fully contemplated when Dunn submitted its initial application." REC acknowledged they were "fortunate" that DEC decided to allow public participation but nevertheless claimed that such participation fell short of the agency's purported obligation to conduct an environmental review. In a responding letter, dated June 23, 2022, DEC indicated that it had treated the mining and solid waste management permit renewal as "new" under the UPA, the Environmental Conservation Law ("ECL"), and DEC regulations promulgated thereunder—as opposed to SEQRA—"based on the need for an expanded public participation process." DEC elaborated that the determination that the application was "major" under the UPA did not render complete the agency's analysis of the application under SEQRA, which it had indicated was still ongoing. DEC highlighted that Dunn was required to engage with the public pursuant to the DEC Commissioner's policies on environmental justice (discussed *infra*).

***5** On July 12, 2023, DEC issued an Environmental Notice Bulletin ("ENB"), concluding that under SEQRA, the Berm was a Type I action that would "not have a significant effect on the environment," and noting that it had performed a "coordinated review with other agencies" and that "a Negative Declaration is on file."

A hearing officer for DEC held two public comment hearings concerning the **Landfill** at the School's auditorium on August 8, 2023, receiving approximately 251 comments, both orally and in writing. The people commenting on the **Landfill** raised many of the issues discussed above, including the effects of noise, dust, exhaust, and truck traffic on the community; possible PFAS contamination; noxious odors and other air quality concerns; and health concerns of students and the public at large. The period for comments closed on August 28, 2023. Dunn responded to the comments in February of the following year, suggesting changes in light of the comments received. In 2024, DEC sent to Dunn two requests for additional information, while REC requested in writing that DEC rescind the Negative Declaration.

DEC issued the renewed and modified permit to Dunn effective December 23, 2024, until December 22, 2027. The permit requires Dunn to, *inter alia*, set lower hours of operation, fund an environmental monitor, maintain a complaint hotline, control dust so as not to create a nuisance, reject unacceptable waste, and allow for DEC inspection of both the site and certain documents. In terms of trucks, the permit limits traffic to 70 roundtrips per day, which includes 70 inbound truck trips and 70 outbound truck trips. The permit allows for an additional 10 zero-emission vehicle roundtrips and requires Dunn to produce a monthly report discussing truck traffic. Also per the permit, Dunn is to maintain a fund with a minimum of $150,000 in escrow for emissions reduction projects to benefit the DAC.

On April 17, 2025, Petitioners commenced this proceeding pursuant to Article 78 of the CPLR, arguing that the renewal and modification of the permit at issue violates SEQRA, the CLCPA, the New York Constitution, and the DEC Commissioner's policies. Petitioners seek vacatur or annulment of the agency's decision granting the renewal and modification permit, or in the alternative, an adjudicatory hearing, due to concerns they have raised throughout the process, including noise, dust, exhaust, and traffic stemming from trucks bearing waste to the **Landfill**; potential PFAS contamination from utility flare and leachate run-off; poor air quality resulting from **Landfill** operations; and the risks the **Landfill** poses to the School and the DAC. In addition to the above, the City also expresses concerns regarding property damage that may be caused by the trucks bearing waste to the **Landfill**. Respondents filed separate motions to dismiss for failure to state a cause of action under CPLR §§ 3211 (a) (3), (5), (7) and 7804 (f). After having heard oral arguments, the Court now considers the motions and renders the following decision.

II. Analysis

A. Applicable Standard of Review

The ultimate question presented in this special proceeding is whether the determination of DEC was, under CPLR 7803 (3), made in violation of lawful procedure, affected by an error of law, arbitrary and capricious, or an abuse of its discretion, both as it pertains to SEQRA (*see Matter of Clean Air Action Network of Glens Falls, Inc. v Town of Moreau Planning Bd.*, 235 AD3d 1124, 1126 [3d Dept 2025], quoting *Matter*

of Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 416 [1986]) as well as the CLCPA (*see Danskammer Energy, LLC v New York State Dept. of Envtl. Conservation*, 76 Misc 3d 196, 245 [Sup Ct, Orange County 2022], citing ECL 19-0511). An action is arbitrary and capricious when it is taken without a sound basis in reason or in disregard of the facts (*see Matter of Clean Air Action Network of Glens Falls, Inc.*, 235 AD3d at 1126, quoting *Matter of Murphy v New York State Div. of Hous. & Community Renewal*, 21 NY3d 649, 652 [2013]).

***6** For purposes of these motions, however, the central question is whether dismissal of the Verified Petition is warranted under sections 3211 (a) (3), (5), (7) and 7804 (f) of the CPLR. On a motion to dismiss for failure to state a cause of action pursuant to either CPLR 3211 (a) (7) or CPLR 7804 (f), the Court must accept the facts as alleged in the Verified Petition as true, accord Petitioners the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*see Matter of Upton v Town of Mooers*, 247 AD3d 1297, 1298 [3d Dept 2026], quoting *Matter of Clarke v Azar*, 233 AD3d 1396, 1396-1397 [3d Dept 2024], *appeal dismissed* 43 NY3d 999 [2025]; *see also Bennett v Bennett*, 223 AD3d 1013, 1014 [3d Dept 2024], citing *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

B. Overarching Constitutional Principles

Unlike its federal counterpart, the New York Constitution guarantees all New Yorkers the right to clean air, clean water, and a healthful environment (*see* NY Const, art I, § 19). Jurisprudence concerning the "Green Amendment" is only now developing, given that the amendment was duly adopted by voters through ballot initiative in November of 2021 and became effective on January 1, 2022 (*see generally People v Norlite*, LLC, 246 AD3d 1346, 1348-1349 [3d Dept 2026] [discussing the date the amendment was adopted and the date it became effective]). Most recently, the Appellate Division, Third Judicial Department, noted that, unlike similar amendments in other states, the Green Amendment contains no express language either mandating State enforcement or allowing the public to enforce its terms, and held that, notwithstanding the claims of the intervenors and amici in that case, the amendment does not create a self-executing substantive right that imposes environmental standards above and beyond those standards already in place within the State's robust environmental regulatory scheme (*see id.*).

C. Agency Discretion

As relevant here, the Third Department previously observed that DEC has considerable technical expertise as it pertains to the matters under its purview (*see Matter of Broome County Concerned Residents v New York State Bd. on Elec. Generation Siting & the Envt.*, 200 AD3d 26, 41 [3d Dept 2021]), and the agency has discretion when considering whether to modify, suspend, or revoke a permit under the relevant provisions of the ECL (*see Norlite*, 246 AD3d at 1350; *see also Matter of Natural Resources Defense Council, Inc. v New York State Dept. of Envtl. Conservation*, 25 NY3d 373, 397 [2015] [noting, in a case involving a State Pollutant Discharge Elimination System permit, that DEC possesses the discretion and expertise to make reasonable judgments in furtherance of its responsibilities under the ECL]).

D. The City's Capacity to Partake in the Proceeding

Dunn asserts that the City is precluded from challenging DEC's determination because the municipality did not allege it has the capacity to sue DEC. Petitioners oppose.

Not to be confused with standing, the capacity to sue concerns the power of a litigant to appear and bring a grievance before a court (*see Community Bd. 7 of Borough of Manhattan v Schaffer*, 84 NY2d 148, 154-155 [1994]). Though imprecise and eluding definition, the question of whether a litigant has the capacity to sustain a cause of action can turn purely upon the status of the litigant (*see id.* at 155). The notion of capacity sometimes involves governmental entities created by legislative decree looking to commence a proceeding against an agency (*see e.g. id.* at 152 [a community board established by the New York City Charter commencing a CPLR Article 78 proceeding against the New York City Department of City Planning to challenge the denial of certain documents under the Freedom of Information Law]); governmental entities created by legislative decree challenging the constitutionality of a state statute (*see Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 30 NY3d 377, 382, 384, 402 [2017] [a public authority established by the State Legislature challenging the constitutionality of a State statute extending the time to serve notices of claim for individuals seeking relief for illnesses developed after the September 11, 2001,

terrorist attacks]); or even governmental entities created by legislative decree seeking to enforce the laws of an agency in that agency's stead (*see Excess Line Assn. of NY [ELANY] v Waldorf & Assoc.*, 30 NY3d 119, 121, 123, 125 [2017] [an advisory association under the supervision of the Department of Financial Services seeking to enforce provisions of the Insurance Law and corresponding regulations relating to excess line broker licensees where the agency has been tasked with such enforcement by statute]). Capacity may be examined with a view towards the relief sought by the litigant (*see generally Excess Line Assn.*, 30 NY3d at 123), but the main inquiry is whether the State Legislature invested that party with authority to seek relief in court (*see Matter of World Trade Ctr.*, 30 NY3d at 384). As stated by the Court of Appeals in *Community Bd. 7 of Borough of Manhattan*: "Being artificial creatures of statute, [governmental] entities have neither an inherent nor a common-law right to sue. Rather, their right to sue, if it exists at all, must be derived from the relevant enabling legislation or some other concrete statutory predicate" (*Community Bd. 7 of Borough of Manhattan*, 84 NY2d at 155-156). The capacity to sue is a threshold consideration (*see Matter of Town of Riverhead v New York State Bd. of Real Prop. Servs.*, 5 NY3d 36, 41 [2005]).

***7** The Third Department has previously addressed whether a municipality has capacity to challenge State actions insofar as agencies are concerned. In *Matter of New York Blue Line Council, Inc. v Adirondack Park Agency* (86 AD3d 756 [3d Dept 2011], *appeal dismissed* 17 NY3d 947 [2011], *lv denied* 18 NY3d 806 [2012]), the Third Department observed that, as it related to the county and certain towns in that case, municipal corporate bodies, as subdivisions of the State, cannot contest the actions of the State when such actions affect them either in their governmental capacity or as representatives of their inhabitants (*see id.* at 758 [citing cases]). The Court would go on to note that, contrary to the arguments raised by the petitioners there, a municipality lacks the capacity to challenge a State agency's interpretation of statutes and regulations, where the agency's actions impact the municipality in their function as a governmental entity (*see id.* [citing cases]). While the municipal petitioners had the capacity to sue pursuant to the constitutional provisions governing home rule protections, there was no express statutory authority pursuant to which they could challenge certain rule amendments adopted by the Adirondack Park Agency (*see id.* at 757, 759). The Executive Law, while providing for standing, did not provide for capacity, indicating only that "any aggrieved person" may sue the agency (*see id.* at 759).

In *Matter of Town of Southampton v New York State Dept. of Envtl. Conservation* (194 AD3d 1310, 1313 [3d Dept 2021], *affd as mod* 39 NY3d 201 [2023]), the Third Department noted that a town, rather than a county, would have the capacity to commence a CPLR Article 78 proceeding to annul a DEC determination issuing a renewal permit to a facility similar to the one here (i.e., a mine) pursuant to the language contained in ECL 23-2703 (3) ("Declaration of policy") and 23-2711 (3) ("Permits"), where the town had enacted local zoning laws prohibiting mining uses within the area proposed to be mined.

It is unclear from Petitioners' papers whether the City has zoning laws relevant to the issues raised here that would implicate *Matter of Town of Southampton*. Moreover, the cases cited by Petitioners in support of the City's capacity to participate in this proceeding are not particularly instructive. *Matter of Village of Chestnut Ridge v Town of Ramapo* (45 AD3d 74 [2d Dept 2007], *lv dismissed* 12 NY3d 793 [2009], *lv dismissed* 15 NY3d 817 [2010]) involved four villages found to have capacity to sue their own town under the Village Law to challenge a local law enacted by the town permitting adult student living facilities in certain residential zones. In *City of New York v State of New York* (86 NY2d 286, 295 [1995]), the Court of Appeals expressly held that the municipal plaintiffs there—who sought to challenge the State's statutory scheme for funding public education as violative of both the Federal and State Constitutions—failed to bring their claim within a recognized exception to the rule that municipalities lack capacity to sue the State (i.e., express statutory authorization to bring suit or challenge State legislation adversely affecting a municipality's proprietary interest in a specific fund of moneys). Finally, *Matter of Clean Air Coalition of W. NY, Inc. v New York State Pub. Serv. Commn.* (226 AD3d 108 [3d Dept 2024]) does not address the issue of municipal capacity at all. Given the existing jurisprudence on this issue, the Court holds that the City does not have the capacity under CPLR 3211 (a) (3) to challenge DEC's determination issuing the renewed and modified permit to Dunn for continued operation of the **Landfill**.[1,2]

E. Timeliness of the SEQRA Claim

In addition to challenging the City's capacity to sue, Dunn also asserts that Petitioners are time-barred from asserting a claim under SEQRA because the limitations period began running on the date when DEC issued a Negative Declaration for the permit modification—July 12, 2023. Petitioners oppose this argument as well, arguing that the matter became final upon the issuance of the permit—December 23, 2024.

***8** The four-month statute of limitations as it pertains to determinations made pursuant to SEQRA begins to run from the date the determination becomes final and binding (*see Matter of Mule v Hawthorne Cedar Knolls Union Free School Dist.*, 290 AD2d 698, 699 [3d Dept 2002]; *see also Matter of Beer v New York State Dept. of Envtl. Conservation*, 189 AD3d 1916, 1921 [3d Dept 2020] ["allegations of SEQRA violations are subject to a four-month statute of limitations"], citing CPLR 217 [1]). Generally, an administrative determination becomes "final and binding" when the determination is complete inasmuch as the agency has reached a definitive position on the issue, and there are no more administrative remedies for the aggrieved party to exhaust (*see Walton v New York State Dept. of Correctional Servs.*, 8 NY3d 186, 194 [2007] ["First, the agency must have reached a definitive position on the issue that inflicts actual, concrete injury and second, the injury inflicted may not be . . . significantly ameliorated by further administrative action or by steps available to the complaining party"]). Where petitioners challenged the proceedings and environmental findings underlying a proposed county civic center, the Third Department held that the county's enactment of a resolution which adopted the underlying SEQRA findings for the project was a final and binding action since the decision-making process was complete, there was nothing inconclusive about the resolution immediately upon its enactment, and there were no further permits or approvals required (*see Matter of Wing v Coyne*, 129 AD2d 213, 216 [3d Dept 1987]). Although the Third Department has held more recently that a negative declaration may serve as a final agency action for purposes of SEQRA, in that case a town—not DEC—was the lead agency issuing the declaration (*see Matter of Beer v New York State Dept. of Envtl. Conservation*, 189 AD3d 1916, 1921 [3d Dept 2020]).

Given that DEC was the lead agency in this case and there was one more action for the agency to take—i.e., the issuance of the renewal and modification permit—the Court holds that the four-month statute of limitations began to run, not on the date that DEC issued its ENB with a Negative Declaration, but on the date DEC issued the renewal and modification permit to Dunn—December 23, 2024. Thus, Petitioners' SEQRA claims are timely under CPLR 3211 (a) (5).

F. The Merits of the Claims Related to SEQRA

In moving to dismiss the Verified Petition under SEQRA, Respondents argue that Petitioners fail to state a cause of action either under the statute itself or under Commissioner Policy No. 29, arguing that holding public comment hearings was a discretionary determination that did not turn the renewal and modification permit for the Berm into a Type I renewal subject to further scrutiny under SEQRA. Respondents disagree with Petitioners' assertion that treating the renewal of the **Landfill's** combined mine and solid waste management permit as "new" for review under the UPA transformed the permit to a designation requiring environmental review under SEQRA, and take issue with Petitioners' characterization of the process insofar as Petitioners claim that the Negative Declaration was impermissibly conditioned and that the renewal application was improperly segmented, to the extent that the review process was divided in such a manner as to circumvent SEQRA review. DEC designated the renewal permit as a Type II action pursuant to 6 NYCRR 617.5 (c) (32) in the normal course because the renewal and modification included no material changes in permit conditions or permitted activities, and claims that nothing in either the ECL or in their regulations suggests that a Type II permit application is converted to a Type I application merely because the agency decides, pursuant to its discretionary power, to treat the application as "new" under the UPA, claiming that the Third Judicial Department has rejected this approach in *Matter of Town of Waterford v New York State Dept. of Envtl. Conservation* (187 AD3d 1437, 1441 [3d Dept 2020]). From their perspective, there was no impermissible "condition" on the permit grant or "segmentation" of the review. Rather, the renewal of the permit merely addresses ongoing operations of the **Landfill**, and the Berm and permit renewal are independent of one another, such that they may be reviewed separately. DEC decided to designate the renewal application as "new" because the agency wanted to receive public feedback despite the designation as a Type II action, and claims that the changes in the renewal permit—

such as limitations on solid waste receiving hours and daily truckloads—are not adverse, but protective in nature. With respect to Commissioner Policy No. 29, Respondents assert that the plain language of the policy in clear in that it does not in any way create a cause of action, legal right, or benefit enforceable by law or equity against the DEC.

***9** Petitioners maintain they have a valid cause of action under SEQRA and Commissioner Policy No. 29. Petitioners claim that DEC expressly represented to both Dunn and the community that the permit renewal would be treated as "new" only to then limit that representation to a "procedural" public hearing and not a full environmental review under SEQRA. Petitioners assert that the issue of whether the designation to treat the permit renewal as "new" was limited to the UPA or the CLCPA but not SEQRA cannot be resolved on a motion to dismiss without a full administrative record. Petitioners distinguish the present action from *Town of Waterford* because here, DEC did conduct an environmental review under SEQRA, despite having treated the renewal application there as "new" under the UPA. This is what Petitioners seek here. Citing DEC's letter from June 23, 2022, Petitioners argue that it was arbitrary, capricious, and contrary to law for the agency to have reneged on the promise of conducting a review under SEQRA, given the environmental issues pertaining to the **Landfill's** operation that DEC has failed to address. They also argue that it was arbitrary, capricious, and contrary to law for DEC not to have conducted a full environmental assessment, given the substantive issues raised with respect to noise, dust, exhaust, PFAS contamination, noxious odors, and damage to public property. Petitioners argue that, in any event, the Court cannot determine on a motion to dismiss that the Type II classification here was erroneous due to the foreseeable significant impact posed by the **Landfill** that DEC neglected when renewing the permit.

In addition, Petitioners argue that any purported review conducted under the UPA was arbitrary, capricious, and contrary to law, to the extent that the review was conducted irrationally and not consistent with DEC's own regulations. They also argue that, in any event, all the issues raised in this case consist of questions of fact that are not resolvable on a motion to dismiss, and that DEC impermissibly segmented the process because the Berm and the renewal of the **Landfill's** permitted operations are not at all independent, since the Berm itself constitutes a mitigation measure of such operations. According to Petitioners, the segmentation of the Berm from the renewal of the permit allowed DEC to circumvent SEQRA in that the agency avoided fully reviewing the environmental impact of the proposal as a whole.

The State Legislature enacted SEQRA under Article 8 of the ECL in 1975 with the stated purpose of, *inter alia*, promoting efforts that prevent or eliminate damage to the environment (*see* L 1975, ch 612, § 1; ECL 8-0101). Under SEQRA, state agencies are required to "take immediate steps to identify any critical thresholds for the health and safety of the people of the [S]tate and take all coordinated actions necessary to prevent such thresholds from being reached"—giving appropriate weight to social, economic, and environmental factors—by conducting their affairs in a manner consistent with the act and regulating public and private actors with the express goal of preventing damage to our environment (*see* ECL 8-0103 [5], [7]-[9]; *see also* ECL 8-0107 ["Agency implementation"]).

To achieve this, SEQRA mandates the preparation of an "environmental impact statement" on any "action" that may have "a significant effect on the environment" (ECL 8-0109 [2]; ECL 8-0105 [7] [defining "environmental impact statement"]). The statement must contain descriptions concerning, *inter alia*, the proposed action and its setting, the environmental impact the proposed action may have, the adverse environmental effects the proposed action may have, any mitigation measures that need to be undertaken, the effects of the proposed action on solid waste management, the effects of the proposed action on groundwater, and the effects of the proposed action on DACs (*see* ECL 8-0109 [2]). The process of permitting certain endeavors constitutes an "action" under SEQRA (*see* ECL 8-0105 [4]). Indeed, SEQRA's stated goal of ensuring that governmental decision-making incorporates environmental considerations extends to the authorization of actions or projects to be undertaken by private actors (*see* Kevin Anthony Reilly, Practice Commentaries, McKinney's Cons Laws of NY, ECL 8-0105).

DEC's regulations, implemented pursuant to ECL 8-0113, expand upon what constitutes an action for purposes of SEQRA. As relevant here, ECL 8-0113 (2) (c) (i) and (ii) allows DEC to implement rules concerning those actions that are likely to require the preparation of environmental impacts statements, and those that do not based on a determination that they would not have a significant effect on the environment.

"Type I" actions as defined by regulation are those actions that are more likely to have a significant adverse impact on the environment and thus require the preparation of an environmental impact statement (*see* 6 NYCRR 617.4 [a] [1]). "Type II" actions are certain enumerated actions that have already been determined not to have a significant impact on the environment or are otherwise precluded from being reviewed under Article 8 of the ECL (*see* 6 NYCRR 617.5 [a]). Permit renewals are considered Type II actions in cases where there will be no material change in either permit conditions or in the scope of permitted activities (*see* 6 NYCRR 617.5 [c] [32]).

***10** DEC must determine the "significance" of a Type I action in writing (*see* 6 NYCRR 617.7 [a]). As relevant here, when determining whether a proposed Type I action may have at least one significant adverse impact on the environment—insofar as the adverse impact may be reasonably expected to result from the proposed action—the agency considers whether the action may result in "a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems" (*see* 6 NYCRR 617.7 [a] [1]; [c] [1] [i]). However, even Type I actions may not require an environmental impact statement where the agency determines "there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant"—a so-called "Negative Declaration" in agency parlance (*see* 6 NYCRR 617.7 [a] [2]; *see also Matter of Merson v McNally*, 90 NY2d 742, 747 [1997] ["a negative declaration may be issued under . . . SEQRA . . . even where the project--a Type I action--has been modified during the initial review process to accommodate environmental concerns of the lead agency and other interested parties"]). The environmental assessment form—the Full EAF in this case—is used in determining whether an action may have a significant adverse impact on the environment (*see* 6 NYCRR §§ 617.1 [e] [4]; 617.2 [m]; 617.8 [e] [2]; 617.20).

Negative declarations may be "conditioned" with respect to "[u]nlisted action[s]" where the action as initially proposed may result in one or more significant adverse environmental impacts, but the lead agency identified mitigation measures and required such measures to be undertaken such that the action, as modified, would result in no significant adverse environmental impacts (*see* 6 NYCRR §§ 617.2 [h]; 617.7 [d]). Insofar as segmentation is concerned, considering only part of an action is contrary to SEQRA (*see* 6 NYCRR 617.3 [g] [1]; *see also* 6 NYCRR 617.2 [ah] [defining segmentation]). If an agency believes that an action warrants segmented review, it must state so clearly in its determination of significance and any subsequent environmental impact statement, and it must set forth the reasons therefor and demonstrate that the segmented review is no less protective of the environment (*see* 6 NYCRR 617.3 [g] [1]).

The Third Department had occasion to address issues relating to this case in *Town of Waterford*. There, the Town of Colonie ("Colonie") owned a **landfill** in Albany County that was operated by Capital Region **Landfills**, Inc. pursuant to a solid waste management permit issued by DEC (*Town of Waterford*, 187 AD3d at 1438). Running out of space, Colonie applied for a modification of their existing permit, as well as for other permits, in order to facilitate the expansion of the **landfill** (*see id.*). After a number of years, DEC granted the permits on the basis that the **landfill** would not have a significant negative impact on the environment but imposed certain conditions on the permits to ensure future protections (*see id.*). The **landfill** was barred from maintaining operations within 500 feet of the Mohawk River and the maximum height of the **landfill** was capped (*see id.*).

The Towns of Waterford and Halfmoon—located in Saratoga County—and their residents commenced parallel CPLR Article 78 proceedings challenging DEC's decision to grant the permits under SEQRA (*see id.*). The parties appealed the judgment of the trial court dismissing the amended petitions for lack of standing (*see id.* at 1438-1439). After addressing the issue of standing and electing to address the merits of the case in the interest of judicial economy, the Court upheld DEC's determination, finding the arguments of the petitioners there unpersuasive (*see id.* at 1440-1441). Like here, DEC treated the application by Colonie to modify its solid waste management permit as "new" under the UPA, and like here, the petitioners there sought an environmental review they deemed consistent with that designation (*see id.* at 1441). The Court, however, deferred to the agency's interpretation of its own regulations when concluding that Colonie's application related to the expansion of an already permitted **landfill** rather than the initial construction of one, which essentially removed the matter from the ambit of one set of regulations to another (*see id.*).

***11** The Court also rejected the petitioners' arguments in support of an adjudicatory hearing (*see id.*). Once again deferring to DEC's technical assessments and noting the agency's examination of potential environmental impacts from the multitude of comments that the petitioners and others had raised—which concerned the sights, smells, and sounds emanating from the **landfill**, as well as the potential for the **landfill's** expansion to disrupt a nearby hazardous waste site—the Court upheld as rational DEC's determination that the petitioners had not raised the existence of ongoing "substantive and significant issues" concerning the expansion of the **landfill** requiring a hearing (*see id.* at 1441-1442).

Finally, the Court held that it would not disturb DEC's determination, to the extent that DEC identified pertinent areas of environmental concern, took a "hard look" at these items, and put forward a reasoned determination for its determination (*see id.* at 1442). The Court concluded by noting that it is not the role of the courts to determine whether any particular agency action was desirable, but to ensure that the agency satisfied its requirements under SEQRA, both procedurally and substantively (*see id.* [citations omitted]).

Here, DEC reviewed Dunn's renewal and modification permit application; asked Dunn on three separate occasions to provide additional and clarifying information concerning a multitude of environmental matters, including greenhouse gas emissions, the release of hazardous air pollutants, the effect of truck traffic on the area, and a host of other items cited by Petitioners as requiring review; and held two public comment hearings, receiving approximately 251 oral and written comments from stakeholders and the community wherein they expressed all of their concerns about the **Landfill**—all of which resulted in DEC issuing a permit to Dunn with limitations on facility hours and truck traffic, a requirement that Dunn fund a full-time environmental monitor, and a requirement that Dunn follow a host of other procedures in furtherance of its solid waste management duties. The record before the Court supports the position taken by DEC that it took a "hard look."

It is true that actions taken by an administrative agency are cloaked with a presumption of regularity and are valid unless proven otherwise (*see Matter of Entergy Nuclear Indian Point 2, LLC v New York State Dept. of Envtl. Conservation*, 23 AD3d 811, 813-814 [3d Dept 2005], *lv dismissed in part and denied in part* 6 NY3d 802, 803 [2006]), and that DEC is entitled to deference due to the agency's technical knowledge pertaining to environmental matters (*see Town of Waterford*, 187 AD3d at 1442). However, it is not unheard of for DEC to steer away from its own regulations (*see e.g. Matter of Shellfish, Inc. v New York State Dept. of Envtl. Conservation*, 76 AD3d 975, 979 [2d Dept 2010], *appeal dismissed and lv denied* 16 NY3d 740 [2011]), and it is unclear whether, under the facts as presented to the Court, segmentation occurred and was indeed proper in the event that it did. To be sure, permit renewals are, by regulation, Type II actions that do not require intense environmental scrutiny where there is no material change in either the permit's conditions or its scope (*see* 6 NYCRR 617.5 [c] [32]), and a lead agency may issue a negative declaration even when an action is classified as Type I, provided that the agency determines that there will be no adverse environmental impacts (*see Matter of Town of Copake v New York State Off. of Renewable Energy Siting*, 216 AD3d 93, 99 [3d Dept 2023], *appeal dismissed* 41 NY3d 990 [2024], *reconsideration dismissed* 42 NY3d 1034 [2024]). Also, the process undertaken by DEC in this case ultimately resulted in the issuance of a permit with limitations that are arguably protective of the environment (*see generally Matter of Evans v City of Saratoga Springs*, 202 AD3d 1318, 1320-1321 [3d Dept 2022] [noting that segmentation is appropriate where the agency sets forth their reasons supporting segmentation and demonstrates that the review and resulting determination are no less protective of the environment]). However, Respondents themselves describe the Berm in their motion papers as a "visual mitigation measure" that reduces the **Landfill's** overall environmental footprint by "address[ing] the ongoing operations of the facility itself." Given Respondents' own description of the Berm's purpose, it cannot be said in conclusory fashion that the Berm modification is truly "independent" from the renewal of the **Landfill's** combined mining and solid waste management permit. To put it another way, the individual components discussed here may arguably be considered together as "integrated components" of a larger plan, both dependent on one another and sharing in a common purpose insofar as the environment is concerned (*see id.*). Simply put, DEC's own characterization of the Berm as an independent structure is not reasonable as stated, given that the Berm is meant to mitigate the environmental effects of the **Landfill**. In the Court's view, the Berm and the **Landfill** may have more interrelated elements than just their "general location" (*cf. Matter of Settco, LLC v New York State Urban Dev. Corp.*,

305 AD2d 1026, 1027 [4th Dept 2003], *lv denied* 100 NY2d 508 [2003]).

***12** Thus, the Court is confronted with determining whether DEC can circumvent the principles governing segmentation merely because the agency has expertise with respect to environmental matters. To answer the question in the affirmative would be to render the concept of improper segmentation superfluous despite regulatory and judicial proscription of the practice in the absence of the appropriate circumstances; to answer in the negative would be to ignore the mitigation measures and limitations resulting from the process undertaken here, which appear to be protective of the environment, rather than detrimental. It is worth noting that in *Town of Waterford*, where it was reiterated that DEC has considerable discretion when addressing technical issues under its regulatory purview, the Third Department did not expressly address the issue of segmentation. In the end, the policy of SEQRA "is to inject environmental considerations directly into governmental decision making," and the policy "is effectuated, in part, through strict compliance with the review procedures outlined in the environmental laws and regulations" (*Matter of Merson*, 90 NY2d at 750 [quoting cases]). Given the facts as alleged by DEC as they relate to segmentation and the liberal pleading standard on a motion to dismiss under CPLR 3211 (a) (7), the Court denies this branch of Respondents' motion.

To the extent Petitioners seek redress under SEQRA by appealing to the Green Amendment, the Third Department has already held that the recently enacted constitutional provision does not in any way create standards above and beyond those that are already in place (*see Norlite*, 246 AD3d at 1348-1349). Also, a plain reading of Commissioner Policy No. 29, entitled "Environmental Justice and Permitting," suggests that, per its clear and unambiguous terms, Petitioners may not seek redress under this policy. As such, the Court grants Respondents' motion to dismiss insofar as these claims are concerned.

G. The Merits of the Claims Related to the CLCPA

Respondents further assert that Petitioners fail to state a cause of action under the CLCPA, given that DEC conducted what they purport to be extensive community outreach and consideration of public feedback leading to a reduction of hours during which the **Landfill** can receive solid waste, a reduction in the number of daily roundtrips of trucks transporting solid waste to the **Landfill**, the aforementioned fund for emissions reduction projects for the benefit of the DAC, and a promise to prepare a report concerning a vegetative buffer. With respect to Commissioner Policy No. 49, DEC argues, as above, that this policy also does not create a substantive legal right enforceable through litigation.

Petitioners argue in opposition that the issues presented in regard to these causes of action are factual and not subject to consideration for purposes of a motion to dismiss. They assert that the conditions placed on the renewal permit do not address the root causes of the environmental burden the **Landfill** has on the DAC and fail to ensure that the DAC is not disproportionately burdened by the **Landfill**.

The State Legislature enacted the CLCPA in July of 2019, thereby adding a new Article 75 to the ECL and amending other relevant laws, in an effort to address the imminent risks of climate change by adopting measures that will significantly reduce greenhouse gas emissions statewide (*see Glen Oaks Vil. Owners, Inc. v City of New York*, 44 NY3d 468, 471 [2025]; *Town of Copake*, 216 AD3d at 96; *see also* L 2019, ch 106). The law requires the DEC to estimate what the statewide greenhouse gas emissions level was in 1990 and establish a statewide limit of 60% of 1990 emissions by 2030 and 15% of 1990 emissions by 2050 (*see* ECL 75-0105, 75-0107 [1] [a], [b]; 6 NYCRR 496.1 ["This Part adopts limits on the emissions of greenhouse gases from across the State and all sectors of the State economy for the years 2030 and 2050, as a percentage of 1990 emission levels of 60 percent and 15 percent, respectively, as established in the Climate Leadership and Community Protection Act, Chapter 106 of the Laws of 2019"]).

Under the CLCPA, agencies must consider whether the approval of a permit would be inconsistent with statewide greenhouse gas emissions limits and ensure that permits do not disproportionately burden DACs (*see* L 2019, ch 106, § 7 [2], [3]; ECL 75-0111).

***13** Of relevance to the CLCPA is DEC's policy as it relates to the recently enacted statute. Commissioner Policy No. 49, entitled "Climate Change and DEC Action" and revised in 2022, requires that DEC consider, pursuant to CLCPA § 7 (3), the disproportionate impact the agency's administrative decisions may have on DACs, including the

issuance of permits, and prioritize reductions of greenhouse gas emissions and co-pollutants in DACs.

Here, DEC considered Dunn's NOIA responses concerning greenhouse gas emissions and other airborne pollutants, as well as oral and written comments from environmental stakeholders and the community, before issuing a renewal and modification permit to Dunn with the aforementioned limitations designed to reduce greenhouse gas emissions. In this regard, the Court notes that, when it comes to considering public comments and potential environmental impacts leading to environmentally favorable modifications, The Third Department has determined that "DEC is entitled to deference on those technical assessments" (*Town of Waterford*, 187 AD3d at 1442).

As with Commissioner Policy No. 29, the Court also finds that Petitioners cannot seek redress per the plain text of Commissioner Policy No. 49. In light of the foregoing, the Court grants this branch of Respondents' motion to dismiss.

H. "Substantive and Significant" Issues Requiring an Adjudicatory Hearing

Finally, the parties argue for and against the existence of substantive and significant issues requiring DEC to conduct an adjudicatory hearing.

Under the UPA, DEC is required to hold a public hearing in the event the agency receives comments from the community that "raise substantive and significant issues" relating to an application, the resolution of which may result in either the denial of a permit or in the imposition of significant conditions (ECL 70-0119 [1]). The regulations promulgated thereunder specifically allow for an adjudicatory hearing on the matter (*see* 6 NYCRR 621.8 [b]).

"An issue is substantive if there is sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry" (*Matter of Beer*, 189 AD3d at 1920, quoting 6 NYCRR 624.4 [c] [2]). "An issue is significant if it has the potential to result in the denial of a permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the draft permit" (*Matter of Beer*, 189 AD3d at 1920, quoting 6 NYCRR 624.4 [c] [3]). Whether an issue is substantive and significant enough to require an adjudicatory hearing is left to the discretion of DEC, and a determination made by the agency will not be disturbed absent a showing that it is predicated upon an error of law, is arbitrary and capricious, or represents an abuse of discretion (*Matter of Beer*, 189 AD3d at 1920 [citing cases]). Petitioners bear the burden of demonstrating that any issue relating to the application is both substantive and significant (*see id.*; citing 6 NYCRR 624.4 [c] [4]).

There is little doubt that issues raised by Petitioners throughout the process were indeed "significant," given that they led to DEC issuing the renewal and modification permit with what the Court finds are significant limitations. As discussed *supra*, DEC, *inter alia*, limited the **Landfill's** hours of operation, as well as total daily truck roundtrips, in an effort to address community concerns.

***14** The Court, on the other hand, finds that Petitioners failed to meet their burden of proving that the issues were "substantive" insofar as the regulatory definition of that term is concerned. It cannot be said that Petitioners failed to raise "substantial" concerns in the colloquial sense. They are genuinely concerned about the **Landfill** harming their community and the environment, and the harms of greenhouse gas emissions and other environmental hazards are very real. However, the term "substantive" is not defined in the NYCRR solely in terms of community concerns. Rather, the term "substantive" is relative to whether there is "sufficient doubt" as to an applicant's ability to meet DEC's applicable criteria. That does not appear to be the case here. Dunn responded to all of DEC's requests for information and clarification. DEC, after taking community feedback into account, then issued the renewal permit with the aforementioned limitations. The record, as provided to the Court, does not evince doubt; it evinces an agency and an applicant engaging in a technical back and forth that resulted in the renewal of the applicant's permit with limitations. On this basis, the Court grants this branch of Respondents' motion.

III. Conclusion

Based on the foregoing, it is hereby

ORDERED and ADJUDGED, that Respondents' separate motions to dismiss the Petitioners' claims in the Verified

Petition **DENIED IN PART and GRANTED IN PART**, insofar as the Court

DENIES those branches of Respondents' separate motions seeking dismissal of the segmentation claim under SEQRA but otherwise **GRANTS** the motions with respect to all other claims thereunder, any alleged constitutional claims, and any claims based on DEC's policy related to SEQRA;

DENIES the branch of Dunn's motion seeking dismissal of the property damage claim, and **GRANTS** the branch of DEC's motion seeking dismissal of the same;

GRANTS in their entirety the branch of Respondents' separate motions seeking dismissal of all claims under and relating to the CLCPA;

GRANTS in their entirety the branch of Respondents' separate motions seeking dismissal of all claims related to Petitioners' request for an adjudicatory hearing; and

ORDERS that an attorney-only conference will be held at a date and time yet to be determined.
This shall constitute the Decision and Order of the Court, which will be uploaded to the NYSCEF system for filing and entry by the Office of the County Clerk. The signing of this Decision and Order and uploading onto NYSCEF shall not constitute filing, entry, service, or notice of entry under CPLR 2220 and section 202.5-b (h) (2) of the Uniform Rules for the New York State Trial Courts. Counsel is not relieved from the applicable provisions of those Rules with respect to filing, entry, service, and notice of entry of the original Decision and Order.

Dated: May 15, 2026

Troy, New York

Hon. Noel Mendez

Acting Justice of the Supreme Court

Papers Considered:
All motion papers, with attached exhibits, on NYSCEF

All Citations

--- N.Y.S.3d ----, 2026 WL 1393252, 2026 N.Y. Slip Op. 26074

Footnotes

1 Capacity is not at issue insofar as REC is concerned, and based on their papers, REC and the individuals named in the Verified Petition have standing to challenge DEC's determination in this case (*see Matter of Town of Waterford v New York State Dept. of Envtl. Conservation*, 187 AD3d 1437, 1439-1440 [3d Dept 2020]).

2 Insofar as Dunn is concerned, the City does have capacity to sue Dunn for property damage, and this Court denies the motion to dismiss that claim.