At a term of the Supreme Court of the State of New York, held in and for the County of Albany, at the Albany County Courthouse, New York on the 15 day of August, 2018.

PRESENT: Hon. HON. ROGER D. MCDONOUGH

STATE OF NEW YORK SUPREME COURT

ALBANY COUNTY

CPV VALLEY, LLC,

Petitioner-Plaintiff,

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

Respondent-Defendant.

FOR AN ORDER AND JUDGMENT PURSUANT TO CPLR §§ 3001, 6301 et seq., 7805 and 7806

ORDER TO SHOW
CAUSE FOR
TEMPORARY
RESTRAINING ORDER
AND STAY OF
ENFORCEMENT

Index No. 05146 -19

Upon the Affidavits of Ruth R. Leistensnider, sworn to on August 14, 2018, Christopher J. Allgeier, sworn to on August 10, 2018, Jonathan Moore, sworn to on August 10, 2018, Sherman Knight, sworn to on August 10, 2018, and Daniel Nugent, sworn to on August 11, 2018, Petitioner-Plaintiff's Memorandum of Law in Support of Order to Show Cause For a Temporary Restraining Order and Stay of Enforcement, dated August 14, 2018, and the Notice of Petition/Complaint and Verified Petition/Complaint herein, and, sufficient cause being alleged therefor, it is hereby:

ORDERED that Defendant New York State Department of Environmental Conservation

("DEC") show cause before the Hon______ at the Albany County

Courthouse, 16 Eagle Street, Albany, New York on the ____ day of _____, 2018,



at or before that day, or as soon thereafter as dounsel can be heard, why this Court should
not issue an Order granting Petitioner-Plaintiff the following relief:
Pursuant to CPLR § 7805, staying enforcement of and enjoining, restraining, and
prohibiting DEC, and its agents, servants and employees, and all other persons or entities that are

controlled by or acting in concert with it, from:

(a) Enforcing its determination, as communicated in its letter dated August 1, 2018, that CPV Valley's Amended Final ASF Permit (DEC ID #3-3356-00136/00001) expired on July 31, 2018; and

(b) Imposing any fines, penalties, levies, assessments, criminal charges, or the like against CPV Valley for operation of the Facility after July 1, 2018; and it is hereby further:

ORDERED that, pursuant to CPLR § 6301 et seq., pending a hearing on and a determination of the Petition/Complaint, DEC, and its agents, servants and employees, and all other persons or entities that are controlled by or acting in concert with it, shall be and hereby is immediately enjoined, restrained, and prohibited from:

- (a) Enforcing its determination, as communicated in its letter dated August 1, 2018, that CPV Valley's Amended Final ASF Permit (DEC ID # 3-3356-00136/00001) expired on July 31, 2018; and
- (b) Imposing any fines, penalties, levies, assessments, criminal charges, or the like against CPV Valley for operation of the Facility after July 31, 2018; and it is further:

ORDERED, that papers in opposition to this application if any, shall be delivered to the Court and served on Ruth E. Leistensnider, Nixon Peabody, LLP, attorneys for Petitioner-

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Plaintiff, by hand delivery, so as to be received no later than 5:00 p.m. on it is further

ORDERED, that Petitioner-Plaintiff's reply papers, if any, shall be delivered to the Court and served on DEC or its attorneys of record by electronic mail, facsimile or hand delivery so as

ORDERED, That the Return Date will be October 5, 2018.

Hon. Roger D. McDonough, A.J.S.C.

ENTERED: