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# Department of Environmental Protection

DEVAL L. PATRICK  
Governor

RICHARD K. SULLIVAN JR.  
Secretary

KENNETH L. KIMMELL  
Commissioner

September 5, 2013

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**In the Matter of  
Richard J. Kelly, individually and  
D/B/A R.J. Kelly Company**

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**OADR Docket Nos. 2004-086 & 087**  
DALA Docket Nos. DEP-04-518 & 04-519  
DEP File Nos. UAO-NE-04-3C001 and  
PAN-NE-04-3C001  
Burlington, MA

## FINAL DECISION

I adopt the Recommended Final Decision of the Presiding Officer, and issue this Final Decision approving and incorporating the parties' Settlement Agreement in the form of a Settlement Agreement and Administrative Consent Order With Penalty and Notice of Non-Compliance ("ACOP") that has been executed by the Petitioner Richard J. Kelly, individually and D/B/A R.J. Kelly Company, and Eric Worrall, Acting Regional Director of the Department's Northeast Regional Office. Per the ACOP, the effective date of the ACOP is the date of this Final Decision.

In accordance with the ACOP:

- (1) the Petitioner is ordered to perform the actions set forth in paragraphs 10a-10f of the ACOP within the time periods set forth in those paragraphs;
- (2) the Petitioner is ordered to pay \$5,200.00 in costs to the Commonwealth in accordance with paragraph 15 of the ACOP within 30 days after the date of this Final Decision;

- (3) the Petitioner is ordered to pay a civil administrative penalty of \$40,000.00 to the Commonwealth in accordance with paragraphs 16A, 16B, and 29 of the ACOP as follows:
- (a) the Petitioner shall pay 50% of the penalty (\$20,000.00) within 30 days after the date of this Final Decision;
  - (b) the balance of the penalty (\$20,000.00) is suspended provided that the Petitioner does not violate any provision of the ACOP and commit any violations of G.L. c. 21 E ("Chapter 21E") and the MCP Regulations at 310 CMR 40.000 ("MCP"); and
  - (c) if the Petitioner violates any provision of the ACOP or violates Chapter 21E and the MCP, the Petitioner shall pay the balance of the penalty (\$20,000.00) within 30 days after the Department issues the Petitioner a written demand for payment.
- (4) in accordance with paragraphs 26-29 of the ACOP, if the Petitioner violates any provision of the ACOP or violates Chapter 21E and the MCP, the Petitioner shall pay the Commonwealth, in addition to payment of the civil administrative penalty in paragraphs 16A, 16B, and 29 of the ACOP, stipulated civil administrative penalties of \$1,000.00 per day for each day any violations continue.

In accordance with 310 CMR 1.01(8)(c), these two appeals (Docket Nos. 2004-086 & 087) are dismissed with the parties waiving whatever rights they may have to further administrative review before the Department as well as any appeal to Court.

  
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Kenneth Kimmell  
Commissioner

**SERVICE LIST**

**In the Matter of  
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**Representative**

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Dept. of Environmental Protection

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OADR Docket Nos. 2004-086 & 087

Final Decision

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