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Executive Office of Energy & Environmental Affairs

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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

February 24, 2014

In the Matter of
Stonebridge Commons Condominium Trust

Docket No. 2013-036
DEP File No. ACOP-SE-13-1G007-NT-STP

FINAL DECISION

The Petitioner Stonebridge Commons Condominium Trust brought this appeal challenging a Demand for Payment of \$158,000.00 in Stipulated Penalties (“Stipulated Penalties Demand”) that the Southeast Regional Office of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) issued to the Petitioner on October 4, 2013. The Department issued the Stipulated Penalties Demand as a result of the Petitioner’s alleged violations of a February 2013 Administrative Consent Order With Penalty (“the February 2013 ACOP”) that the Petitioner executed with the Department to address the Petitioner’s purported violations of groundwater discharge effluent standards in operating an on-site wastewater treatment facility (“WWTF”) at the Stonebridge Condominium Complex in

Hanson, Massachusetts (“the Site”). The groundwater discharge effluent standards are governed by a Groundwater Discharge Permit (“Permit”) that the Department issued to the Petitioner for the WWTF in accordance with the Massachusetts Clean Water Act (“MCWA”), G.L. c. 21, §§ 26-53 and the Groundwater Discharge Regulations at 314 CMR 5.00.

Currently pending before me for review pursuant to 310 CMR 1.01(8)(c), is a proposed Settlement Agreement that the Petitioner and the Department have executed to settle the Petitioner’s appeal of the Stipulated Penalties Demand. The Settlement Agreement is in the form of an Administrative Consent Order With Penalty and Notice of Non-Compliance (“the December 2013 ACOP”) that has been executed by: (1) Donald P. Nagle, Esq., as attorney for the Petitioner Stonebridge Commons Condominium Trust and (2) Philip Weinberg, Regional Director of the Department’s Southeast Regional Office. If approved, the December 2013 ACOP will direct the Petitioner to:

[i]mmediately upon the Effective Date of the [the December 2013 ACOP], . . . monitor, record[,] and report the effluent for UV Intensity and Turbidity in accordance with the schedule contained in the Permit [referred in ¶¶ 4D-4F, 4P-4Q, 9-13, and 16 of the December 2013 ACOP].

December 2013 ACOP, ¶ 16. The December 2013 ACOP will also significantly reduce the \$158,000.00 in Stipulated Penalties to \$23,162.50. *Id.*, ¶¶ 20A-20G. The \$23,162.50 would be paid by the Petitioner over a near three year period (until December 1, 2016) according to a payment plan set forth in the December 2013 ACOP. *Id.*

To assist me in my review of the December 2013 ACOP, I recently requested that the Department explain in writing the rationale for reducing the \$158,000.00 in Stipulated Penalties to \$23,162.50. See [Chief Presiding Officer’s] Order Directing MassDEP to File Motion Supporting Proposed Settlement (January 28, 2014). In response, the Department has filed a

detailed response providing a reasonable explanation for the reduction and basis for approval of the December 2013 ACOP. See Department's Motion for Approval of Settlement Agreement and for Issuance of Final Decision (February 4, 2014) ("Department's Motion for Approval of Settlement").

According to the Department, the reduced \$23,162.50 penalty amount under the December 2013 ACOP is the sum of (1) \$3,162.50 in civil administrative penalties that the Petitioner owes the Commonwealth under the February 2013 ACOP, and (2) \$20,000.00 for the Petitioner's failure to provide the Department with a required engineering report by April 22, 2013. Id.

The Department explained that under the February 2013 ACOP, the Petitioner was required to pay a \$6,325.00 civil administrative penalty for its purported violations of groundwater discharge effluent standards in operating the WWTF. Id., at p. 2. The Petitioner was required to pay the \$6,325.00 in four installments of \$1,581.25 over the course of the year following execution of the February 2013 ACOP. Id. The first installment was due by May 22, 2013. Id. The February 2013 ACOP made clear that the Petitioner's "[f]ailure to make timely payments in accordance with the [installment] payment plan [would] result in [the plan's] revocation[,] . . . [and] the entire remaining penalty amount, plus interest dating back to the default date, [would] become immediately due to the Commonwealth." Id. The Petitioner failed to make the first installment payment of \$1,581.25 on May 22, 2013, resulting in termination of the installment payment plan and making the entire \$6,325.00 penalty due, plus interest dating back to May 22nd. Id. On July 15, 2013, the Petitioner only paid one-half of that amount: \$3,162.50, leaving a balance of \$3,162.50. Id.

The Department also explained that under the February 2013 ACOP, the Petitioner was

required to submit to the Department by April 22, 2013 an engineering report from a Massachusetts registered professional engineer evaluating the WWTF's ability to meet the effluent limits contained in a groundwater discharge permit that the Department had previously issued to the Petitioner, and to identify any modifications or additional treatment necessary to meet the limits contained in the permit. Id., at pp. 1-4. If the Petitioner failed to submit the required engineering report on time, the Petitioner would be required to pay stipulated penalties of \$1,000.00 per day for each day that the engineering report was late. Id., p. 2.

The Petitioner failed to submit the engineering report by the April 22, 2013 deadline. The Petitioner submitted the report more than five months later on October 4, 2013, and only after the Department had issued an initial draft of the \$158,000.00 Stipulated Penalties Demand to the Petitioner two days earlier on October 2nd. Id., p. 4, n.2.¹ The \$158,000.00 figure represented 158 days of non-compliance with the engineering report requirement from April 22 to September 27, 2013 at \$1,000.00 per day. Id.

The Department contends that the reduction of \$158,000.00 Stipulated Penalty to \$20,000.00 as called for in the December 2013 ACOP is appropriate for several reasons, including that discharge reports received by the Department indicate that the WWTF has been in compliance with groundwater discharge effluent limits since July 2013. Id., at p. 6. The Department also contends that the reduced \$20,000.00 penalty amount is appropriate because it will be borne by the residential condominium unit owners at the Site who already contribute monthly amounts to the WWTF's operating fund. Id., at p. 5. According to the Department, the

¹ The initial draft was incomplete because it was missing a page. Id., p. 4, n.2. As a result, the Department issued a complete Stipulated Penalties Demand to the Petitioner on October 4, 2013. Id.

\$20,000.00 penalty amount will likely deter any future non-compliance by the Petitioner to Department orders. Id., at p. 6.

Based upon my review of the Department's rationale, the December 2013 ACOP is reasonable and furthers the statutory and regulatory interests of MCWA and the Groundwater Discharge Regulations at 314 CMR 5.00. Accordingly, I issue this Final Decision approving and incorporating the December 2013 ACOP. Pursuant to the December 2013 ACOP, I issue the following Orders:

(1) In accordance with ¶ 37 of the December 2013 ACOP, the effective date of the consent order is the date of this Final Decision.

(2) The Petitioner shall immediately perform the actions set forth in ¶ 16 of the December 2013 ACOP. Specifically, the Petitioner:

[i]mmediately upon the Effective Date of the [the December 2013 ACOP], . . . monitor, record[,] and report the effluent for UV Intensity and Turbidity in accordance with the schedule contained in the Permit [referred in ¶¶ 4D-4F, 4P-4Q, 9-13, and 16 of the December 2013 ACOP].

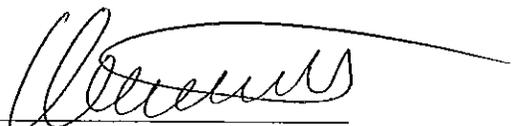
(3) In accordance with ¶¶ 20A-20G of the December 2013 ACOP, the Petitioner shall pay a total civil administrative penalty of **\$23,162.50** to the Commonwealth as follows:

- (a) Within sixty (60) days of the effective date of the December 2013 ACOP, the Petitioner shall pay to the Commonwealth the sum of **\$3,162.50**;
- (b) By no later than June 1, 2014, the Petitioner shall pay to the Commonwealth the sum of **\$3,333.33**;
- (c) By no later than December 1, 2014, the Petitioner shall pay to the Commonwealth the sum of **\$3,333.33**;
- (d) By no later than June 1, 2015, the Petitioner shall pay to the Commonwealth the sum of **\$3,333.33**;
- (e) By no later than December 1, 2015, the Petitioner shall pay to the Commonwealth the sum of **\$3,333.33**;

- (f) By no later than June 1, 2016, the Petitioner shall pay to the Commonwealth the sum of **\$3,333.33**; and
- (g) By no later than December 1, 2016, Respondent shall pay to the Commonwealth the sum of **(\$3,333.35)**.

(4) In accordance with ¶ 28 of the December 2013 ACOP, if the Petitioner violates any provisions of ¶ 16 of the December 2013 ACOP, the Petitioner shall pay the Commonwealth stipulated civil administrative penalties of \$1,000.00 per day for each day any violations continue. The stipulated civil administrative penalties shall be in addition to the **\$23,162.50** civil administrative penalty that the Petitioner is required to pay the Commonwealth pursuant to ¶¶ 20A-20G of the December 2013 ACOP.

(5) In accordance with 310 CMR 1.01(8)(c), this appeal is dismissed with the parties waiving whatever rights they may have to further administrative review before the Department as well as any appeal to Court.



Kenneth Kimmell
Commissioner

SERVICE LIST

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Stonebridge Commons Condominium Trust

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