

Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

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Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

### THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

January 26, 2015

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In the Matter of  
Gator Swansea Partners, LLLP  
\_\_\_\_\_

**Docket No. 2014-021**  
DEP File No. ACOP-SE-14-1G002

### FINAL DECISION

The Petitioner Gator Swansea Partners, LLLP brought this appeal challenging a Demand for Payment of \$31,000.00 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 September 3, 2014. The Department issued the Stipulated Penalties Demand as a result of the Petitioner’s alleged violations of a July 2013 Administrative Consent Order With Penalty (“the July 2013 ACOP”) that the Petitioner executed with the Department to address the Petitioner’s purported violation in discharging wastewater without a groundwater discharge permit from the Department during the course of owning and/or operating the Swansea Crossing Shopping Center at 207 Swansea Mall Drive in Swansea, Massachusetts (“the Site”). The Petitioner’s discharge of the wastewater is

governed by the Massachusetts Clean Water Act (“MCWA”), G.L. c. 21, §§ 26-53 and the Groundwater Discharge Regulations at 314 CMR 5.00.

Paragraph 8.1 of the July 2013 ACOP required the Petitioner to complete construction of a wastewater treatment facility at the Site no later than July 31, 2014. The July 2013 ACOP also required the Petitioner to pay stipulated penalties of \$1,000.00 per day if it violated any of the July 2013 ACOP’s provisions.

The Petitioner failed to complete construction of a wastewater treatment facility by July 31, 2014 as required by ¶ 8.1 of the July 2013 ACOP. As a result, on September 3, 2014, the Department issued the Petitioner a demand for payment of \$31,000.00 in stipulated penalties. The amount represented the number of days that had elapsed from July 31, 2014 to August 31, 2014 (31 days) multiplied by \$1,000.00 per day in accordance with the July 2013 ACOP. This appeal by Gator then followed.

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: (1) an Administrative Consent Order With Penalty and Notice of Non-Compliance (“the October 2014 ACOP”) and (2) Amendment to Administrative Consent Order (“the December 2014 ACOP Amendment”) that have been executed by: (1) James A. Goldsmith, the Petitioner’s President and (2) Philip Weinberg, Regional Director of the Department’s Southeast Regional Office.<sup>1</sup> If approved, the Settlement Agreement will direct the Petitioner to pay a reduced

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<sup>1</sup> Mr. Goldsmith and Mr. Weinberg signed the October 2014 ACOP on October 29 and 31, 2014 respectively. The October 2014 ACOP was filed with the Office of Appeals and Dispute Resolution (“OADR”) on November 24, 2014. On December 2, 2014, the Chief Presiding Officer issued an Order directing the parties to file the December 2014 ACOP Amendment because the October 2014 ACOP did not contain a deadline for the Petitioner’s payment of

stipulated penalty amount of \$25,000.00 (\$6,000.00 from the original \$31,000.00 demand); follow a new schedule to construct a wastewater treatment facility at the Site, or, in the alternative, connecting the Site to an existing nearby wastewater treatment facility; and pay other stipulated penalties as described below if the Petitioner violates the Settlement Agreement.

After reviewing the Settlement Agreement, I find that it 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 Settlement Agreement. Pursuant to the Settlement Agreement, I issue the following Orders:

(1) In accordance with ¶ 28 of the October 2014 ACOP, the effective date of the Settlement Agreement is the date of this Final Decision.

(2) The Petitioner shall perform the actions set forth in ¶¶ 8A-8J of the October 2014 ACOP within the time periods set forth in those paragraphs.

(3) In accordance with ¶ 12 of the October 2014 ACOP and the December 2014 ACOP Amendment, the Petitioner shall pay a civil administrative penalty of \$25,000.00 to the Commonwealth within thirty (30) days of the date of this Final Decision.

(4) In accordance with ¶ 19 of the October 2014 ACOP:

- (a) if the Petitioner fails to timely comply with ¶ 8H of the October 2014 ACOP, the Petitioner shall pay the Commonwealth a stipulated civil administrative penalty of \$15,000.00;

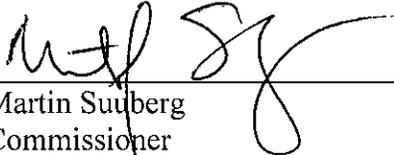
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the \$25,000.00 civil administrative penalty in settlement of the appeal. The December 2014 ACOP Amendment was executed by the parties in accordance with ¶ 14 of the October 2014 ACOP which requires any modifications of the October 2014 ACOP to be in writing. The original executed December 2014 ACOP Amendment was filed with OADR on December 29, 2014.

- (b) if the Petitioner fails to timely comply with ¶ 8I of the October 2014 ACOP, the Petitioner shall pay the Commonwealth a stipulated civil administrative penalty of \$15,000.00;
- (c) if the Petitioner fails to timely comply with ¶ 8J of the October 2014 ACOP, the Petitioner shall pay the Commonwealth a stipulated civil administrative penalty of \$15,000.00; and
- (d) if the Petitioner violates any other provision of the October 2014 ACOP, the Petitioner shall pay the Commonwealth stipulated civil administrative penalties of \$1,000.00 per day for each day or portion thereof the violation continues.

The Petitioner shall pay all stipulated civil administrative penalties to the Commonwealth within thirty (30) days after the Department issues the Petitioner a written demand for payment.

(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.

  
Martin Suuberg  
Commissioner

SERVICE LIST

In The Matter Of: Gator Swansea Partners, LLLP

Docket No. 2014-021 File No. ACOP-SE-14-1G002  
Swansea

Representative

Party

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ANALYST

Date: January 26, 2015