

**Commonwealth of Massachusetts
County of Suffolk
The Superior Court**

CIVIL DOCKET#: SUCV2010-02920-B

RE: Blackinton Commons, LLC v MA Dept. of Environmental Protection

**TO: Seth Schofield,, Esquire
Attorney General Office-Environm
One Ashburton Place
Boston, MA 02108**

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MAR 18 2011

**OFFICE OF THE ATTORNEY GENERAL
ENVIRONMENTAL PROTECTION DIV**

NOTICE OF DOCKET ENTRY

You are hereby notified that on **02/28/2011** the following entry was made on the above referenced docket:

**Plaintiff Blackinton Commons, LLC's MOTION to Vacate judgment
w/opposition**

**Dated at Boston, Massachusetts this 17th day of March,
2011.**

**Michael Joseph Donovan,
Clerk of the Courts**

**BY: Richard Muscato
Assistant Clerk**

Telephone: 617-788-8141

NOTIFY

23

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

SUFFOLK, SS.

CIVIL ACTION NO. 10 2920-B

3-2

BLACKINTON COMMONS LLC,
Plaintiff,

v.

MASSACHUSETTS DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
Defendant.

) Notice sent
) 3/17/2011
) R. D. C., JR.
) B. & D.
) D. V.
) S. S.

(sc)

PLAINTIFF BLACKINTON COMMONS LLC'S MOTION TO VACATE JUDGMENT

Pursuant to Mass. R. Civ. P. 59(e), Plaintiff Blackinton Commons LLC ("Blackinton") moves this Court to vacate the dismissal of Blackinton's Complaint and the judgment entered on January 25, 2011 in favor of Defendant Massachusetts Department of Environmental Protection ("DEP"). The Court dismissed Blackinton's Complaint, which had sought judicial review of an administrative agency decision of the DEP, on the grounds that the Court lacked jurisdiction over the appeal because Blackinton had failed to place the full amount of a civil administrative penalty into an interest-bearing escrow account pursuant to G.L. c. 21A, § 16. The Court's dismissal and judgment should be vacated because this Court has jurisdiction over the portions of Blackinton's administrative appeal which seek review of the DEP's orders invalidating a Response Action Outcome ("RAO") Statement and compelling Blackinton to undertake certain response actions. These portions of Blackinton's appeal are separate and distinct from its request for review of the DEP penalty assessment, are not governed by G.L. c. 21A, § 16 and the Court's jurisdiction over these matters is not contingent on Blackinton's funding of an escrow account containing the penalty sum. Blackinton further relies on the Memorandum in Support of its Motion attached hereto.

After consideration, the court DENIES the motion for the reasons set forth in the defendant's opposition. 3/17/11

2011 FEB 28 AM 11:3
MICHAEL J. HASTINGS
CLERK OF SUPERIOR COURT
SUFFOLK COUNTY