

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

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In the Matter of  
Blodgett Farm @ Mashapaug, LLC

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June 16, 2017

**Docket No. 2016-027**  
DEP File No. PAN-WE-16-7002  
Enforcement No.: 00001349

**FINAL DECISION**

In October 2016, the Petitioner Blodgett Farm @ Mashapaug, LLC filed this appeal challenging a \$1,720.00 Penalty Assessment Notice (“PAN” or “Civil Administrative Penalty”) that the Western Regional Office of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) issued to the Petitioner on August 8, 2016 for purported violations of G.L. c. 111, §§ 142A-142O and the Air Pollution Control Regulations at 310 CMR 7.07(1) as a result of the Petitioner’s purported unauthorized open (outdoor) burning of materials at the real property located at 178 Mashapaug Road, Holland, Massachusetts (“the Property”).

The PAN asserted that on April 17, 2016 the Petitioner violated 310 CMR 7.07(1) by conducting an unauthorized open burning of materials at the Property on two occasions on that date, specifically at 10:35 a.m. and later at 5:20 p.m. PAN, ¶¶ 4a-4l. The PAN asserted that at 10:35 a.m. an unauthorized open burning took place at the Property involving a large pile of trash, plastic, bricks, processed wood, and other building debris, and that the smoke emanating from that burning of materials had a strong odor of plastic that was painful to the eyes and nose. Id., ¶¶ 4a-4e, 4i-4l, 5, 5a. The PAN asserted that at 5:20 p.m. another unauthorized burning took place at the Property involving building materials, processed wood, and plastic, and that the

Petitioner conducted the open burning on both occasions by means of a large semi-circular fire pit constructed from construction and demolition debris (“C & D”) material (brick, etc.) intermingled with trash and refuse, and that among the burnt, unburned, and partially burnt items at the Property were purportedly electronics, beverage cans and bottles, wood waste, plastic sheeting, and wires. Id., ¶¶ 4f-4l, 5, 5b.

The Petitioner denied the PAN’s allegations and contended that the \$1,720.00 penalty was excessive.<sup>1</sup> Petitioner’s Appeal Notice, ¶¶ 3-11. The Petitioner also contended that it lacked the financial ability to pay the penalty. Id.

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 PAN as set forth above. The Settlement Agreement is in the form of an Administrative Consent Order With Penalty (“Consent Order”) that has been executed by: (1) Jerica Miner on behalf the Petitioner and (2) Michael Gorski, Regional Director of the Department’s Western Regional Office.

After reviewing the Consent Order, I find that it is reasonable and furthers the statutory and regulatory interests of G.L. c. 111, §§ 142A-142O and the Air Pollution Control Regulations at 310 CMR 7.07(1). Accordingly, I issue this Final Decision approving and incorporating the Consent Order. Pursuant to the Consent Order, I issue the following Orders:

(1) In accordance with ¶ 20 of the Consent Order, the effective date of the Consent Order is the date of this Final Decision.

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<sup>1</sup> The \$1,720.00 penalty was the sum of: (1) \$860.00 for the Petitioner’s purported violation of 310 CMR 7.07(1) at 10:35 a.m. on April 17, 2016; and (2) \$860.00 for the Petitioner’s purported violation of 310 CMR 7.07(1) at 5:20 p.m. on that date. PAN, ¶¶ 5a-5b.

(2) In accordance with ¶¶ 7A-7J, 14, and 15 of the Consent Order, the Petitioner shall pay five hundred dollars (\$500.00) to the Commonwealth in ten equal installments of fifty dollars (\$50.00) according to the following schedule:

- (i) On July 15, 2017, the Petitioner shall pay the Commonwealth the sum of fifty dollars (\$50.00);
- (ii) On August 15, 2017, the Petitioner shall pay the Commonwealth the sum of fifty dollars (\$50.00);
- (iii) On September 15, 2017, the Petitioner shall pay the Commonwealth the sum of fifty dollars (\$50.00);
- (iv) On October 15, 2017, the Petitioner shall pay the Commonwealth the sum of fifty dollars (\$50.00);
- (v) On November 15, 2017, the Petitioner shall pay the Commonwealth the sum of fifty dollars (\$50.00);
- (vi) On December 15, 2017, the Petitioner shall pay the Commonwealth the sum of fifty dollars (\$50.00);
- (vii) On January 15, 2018, the Petitioner shall pay the Commonwealth the sum of fifty dollars (\$50.00);
- (viii) On February 15, 2018, the Petitioner shall pay the Commonwealth the sum of fifty dollars (\$50.00);
- (ix) On March 15, 2018, the Petitioner shall pay the Commonwealth the sum of fifty dollars (\$50.00); and
- (x) On April 15, 2018, the Petitioner shall pay the Commonwealth the sum of fifty dollars (\$50.00).<sup>2</sup>

(3) In accordance with ¶ 14 of the Consent Order and in addition to the \$500.00 penalty set forth in the Consent Order, the Petitioner shall pay stipulated civil administrative

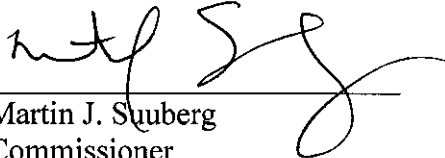
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<sup>2</sup> Paragraph 7J of the Consent Order contains a typographical error because it lists date of January 15, 2018 as following the date of March 15, 2018 in ¶ 7I of the Consent Order. I have corrected this typographical error by listing the correct date of April 15, 2018 as set forth above.

penalties to the Commonwealth in accordance with the schedule set forth in ¶ 14 of the Consent Order if the Petitioner violates any provision of the Consent Order.

(4) In accordance with ¶ 15 of the Consent Order and G.L. c. 21A, § 16, if the Petitioner fails to pay in full any civil administrative penalty as required by the Consent Order as set forth above, the Petitioner will be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorney's fees, including all costs and attorney's fees incurred in the collection thereof. The rate of interest will be the rate set forth in G.L. c. 231, § 6C.

(5) In accordance with ¶ 8 of the Consent Order, G.L. c. 30A, and 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.

  
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Martin J. Stenberg  
Commissioner

### **SERVICE LIST**

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