

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

**THE OFFICE OF APPEALS AND DISPUTE RESOLUTION**

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**In the Matter of  
ERSI OF NEW YORK, LLC**

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May 1, 2019  
**Docket No. 2018-027**  
DEP Enforcement Document  
File No. 00005969  
Mt. Tom Station  
Holyoke, MA

**FINAL DECISION**

Martin Suuberg, the Commissioner of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”), has designated me as the Final Decision Maker in this appeal.

On November 21, 2018, the Petitioner ERSI of New York, LLC filed this appeal challenging a \$1,000.00 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 November 2, 2018 for purported violations of the Department’s Air Pollution Regulations at 310 CMR 7.00 in connection with the Petitioner’s demolition work in the decommissioning of a former coal-fired power plant known as Mt. Tom Station located at 200 Northampton Street in Holyoke, Massachusetts (“the Site”). In its Appeal Notice, the Petitioner denied that it had violated the Department’s Air

Pollution Regulations at 310 CMR 7.00 as alleged by the Department in the PAN and requested that the PAN be vacated.

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 and Notice of Non-Compliance ("Consent Order") that was executed by: (1) Chad Parks, the Petitioner's Vice President, on February 6, 2019 and (2) Eva V. Tor, Deputy Regional Director of the Department's Western Regional Office, on February 12, 2019.

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 Department's Air Pollution Regulations at 310 CMR 7.00. 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 ¶ 24 of the Consent Order, the effective date of the Consent Order is the date of this Final Decision.


(2) In accordance with ¶¶ 12 and 19 of the Consent Order, within 30 days of the date of this Final Decision, the Petitioner shall pay five hundred dollars (\$500.00) to the Commonwealth as a civil administrative penalty for the violations set forth in ¶¶ 4A through 5B of the Consent Order.

(3) In accordance with ¶ 19 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.

(4) In accordance with ¶¶ 7 and 13 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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Salvatore M. Giorlandino  
Chief Presiding Officer

## **SERVICE LIST**

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