

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

May 8, 2018

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In the Matter of  
Kettle Cuisine, LLC  
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OADR Docket No. 2016-028  
DEP File No.: TBA  
Lynn, MA

**FINAL DECISION**

In October 2016, Kettle Cuisine, LLC (“the Petitioner”) filed this appeal with MassDEP’s Office of Appeals and Dispute Resolution (“OADR”) challenging an Air Pollution Abatement Order that the City of Lynn’s Inspectional Services Department (“the City” or “the Appellee”) issued to the Petitioner in September 2016 pursuant to G.L. c. 111, § 142B.<sup>1</sup> The City’s Air

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<sup>1</sup> Section 142B of G.L. c. 111 “establishe[s] a metropolitan air pollution control district” consisting of a number of Massachusetts municipalities, including the City. G.L. c. 111, § 142B, ¶ 1. Under the statute, the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) “shall control the pollution of the atmosphere within [the] district,” and “may from time to time, after a public hearing, prescribe and establish, amend or repeal, rules and regulations to prevent pollution or undue contamination of the atmosphere within [the] district.” In accordance with that statutory authority MassDEP has promulgated the Air Pollution Control Regulations at 310 CMR 7.00, et. seq..

The Regulations define “air pollution” as:

the presence in the ambient airspace of one or more air contaminants or combinations thereof in such concentrations and of such duration as to:

- (a) cause a nuisance;
- (b) be injurious, or be on the basis of current information, potentially injurious to human or animal life, to vegetation, or to property; or
- (c) unreasonably interfere with the comfortable enjoyment of life and property or the conduct of business.

Pollution Abatement Order directed the Petitioner to abate “odors originating and emanating from [the Petitioner’s food preparation or processing] facility” at 330 Lynnway in Lynn, Massachusetts (“the Facility”).

From December 2016 to March 2018, the proceedings in this appeal were stayed per the parties’ request in order to give them an opportunity to attempt a settlement of the appeal by a written agreement of the parties. During this period, MassDEP inspected the Facility, reviewed the Facility’s design and operations, and discussed with the Petitioner and the City potential technical solutions which would allow the Petitioner to conduct its operations at the Facility in

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310 CMR 7.00. Under 310 CMR 7.01(1):

[n]o person owning, leasing, or controlling the operation of any air contamination source shall willfully, negligently, or through failure to provide necessary equipment or to take necessary precautions, permit any emission from said air contamination source or sources of such quantities of air contaminants which will cause, by themselves or in conjunction with other air contaminants, a condition of air pollution

In addition, under 310 CMR 7.09(1):

[n]o person having control of any dust or odor generating operations such as, but not limited to . . . food preparation or processing facilities, . . . shall permit emissions therefrom which cause or contribute to a condition of air pollution.

The Regulations define “dust” as “finely divided solid matter” and “odor” as “that property of gaseous, liquid, or solid materials that elicits a physiologic response by the human sense of smell.” 310 CMR 7.00.

Under 310 CMR 7.52:

[a]ny [municipal] police department, fire department, or board of health official, acting within his or her jurisdictional area is . . . authorized . . . to enforce, as provided for in M.G.L. c. 111, § 142B, any [Air Pollution] [R]egulation in which specific reference to 310 CMR 7.52 is cited.

Under G.L. c. 111, § 142B, MassDEP is authorized :

to order any person, corporation, or political subdivision having control of an air contamination source, other than an employee, to stop or abate violation of any of the [Air Pollution Control Regulations]. . . . [The] order shall inform the alleged violator in writing of his right to request, within ten days, a hearing under the provisions of [G.L. c. 30A], but if no such request is made within ten days, said person, corporation, or political subdivision shall be deemed to have consented to the order. If said person, corporation, or political subdivision requests a hearing, [MassDEP’s] commissioner[,] . . . or his designee, shall within a reasonable time hold a hearing under the provisions of [G.L. c. 30A]. The commissioner may reissue such order as is warranted and all orders, permits, or other determinations of the commissioner, except those consented thereto, shall be subject to judicial review as provided in [G.L. c. 30A] . . . .

compliance with applicable law. At MassDEP's request, the Petitioner also retained an air quality odor consultant to conduct research to understand the odiferous compounds generated by the Petitioner's operations, analyze options for capture and control of those compounds, and test potential pollution control devices to address odor emissions. The Petitioner's consultant:

- (1) completed an odor study which collected data on specified odorous compounds and approximate air flows generated during cooking operations at the Facility;
- (2) used proportionately adjusted data values in air dispersion modeling analyses to show the dispersion of the odorous exhaust from the Facility into the surrounding area under various conditions; and
- (3) reviewed possible air pollution control methods and technologies, including efficacy and costs.

MassDEP reviewed the data from the odor study and the air dispersion modeling analyses conducted by the Petitioner's consultant. The parties agreed that the Petitioner would have to make a large capital expenditure at the Facility to address the odor issue. The parties also agreed to execute a Settlement Agreement in the form of an Administrative Consent Order and Notice of Non-Compliance ("Consent Order") setting forth a compliance schedule pursuant to which the Petitioner would take specific actions to address the odor issue at the Facility.

Currently pending before me for review and approval pursuant to 310 CMR 1.01(8)(c), is a proposed Consent Order to resolve this appeal that has been executed by parties, through their duly authorized representatives: (1) Liam McClennon, the Petitioner's CEO; (2) Thomas M. McGee, the City's Mayor; and (3) Eric Worrall, the Regional Director of MassDEP's Northeast Regional Office in Wilmington, Massachusetts. The Consent Order sets forth a compliance



schedule pursuant to which Petitioner will:

- (1) contract with an engineering consultant to design one or more stacks, including ductwork, fans, and other appurtenances at the Facility;
- (2) apply for and obtain state and local permits and approvals necessary for construction and operation of the stack(s);
- (3) issue a Request for Proposal for construction of the stack(s);
- (4) submit an emissions testing protocol and ambient impact analysis to MassDEP for review and approval;
- (5) complete installation of the stack(s), ductwork and fans and direct all cooking and processing emissions to the new stack(s);
- (6) conduct emissions testing of the Facility; and
- (7) submit the emissions test results report to MassDEP for review and approval.

The Consent Order also provides that during the interim period from the date when the Consent Order becomes effective through the requirements set forth above, the Petitioner will work cooperatively with the City to avoid or minimize the potential for Facility impact on outdoor City events, publicize to the Lynn community a telephone number and email address where the public may inform the Petitioner of odors that may be attributable to Facility operations, investigate such complaints to determine whether the reported odors are related to Facility operations, and keep a log of such complaints together with the Petitioner's determination and any actions taken in response.

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

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Control Regulations at 310 CMR 6.00, 310 CMR 7.00, and 310 CMR 8.00. Accordingly, I issue

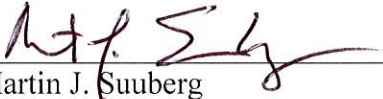
this Final Decision approving and incorporating the Consent Order. Pursuant to the Consent Order, I issue the following Orders:

(1) In accordance with ¶ 30 of the Consent Order, the effective date of the Consent Order is the date of this Final Decision.

(2) The Petitioner shall perform all of the actions set forth in ¶¶ 11.A through 11.J of the Consent Order within the time periods or deadlines set forth in those paragraphs.

(3) In accordance with ¶ 23 of the Consent Order, if the Petitioner violates any provision of the Consent Order, the Petitioner shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$500.00 per day for each day, or portion thereof, each such violation continues.

(4) In accordance with ¶ 17 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.

  
Martin J. Suuberg  
Commissioner

## **SERVICE LIST**

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