

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

In the Matter of
James P. LaMountain

June 16, 2017
Docket No. 2016-026
DEP File No. PAN-WE-16-7001
Enforcement No.: 00001348

FINAL DECISION

In October 2016, the Petitioner James P. LaMountain filed this appeal challenging a \$860.00 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, specifically the open burning of a large pile of trash, plastic, bricks, processed wood, and other building debris. PAN, ¶¶ 4a-4j, 5, 5a. The PAN asserted that the smoke emanating from that burning of materials had a strong odor of plastic that was painful to the eyes and nose, and that the Petitioner conducted the open burning 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. The Petitioner denied the PAN's allegations and contended that the \$860.00 penalty was excessive, and that he lacked the financial ability to pay the penalty. Id., ¶¶ 3, 11.

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) 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.

(2) In accordance with ¶¶ 7A-7J, 14, and 15 of the Consent Order, the Petitioner shall pay two hundred and fifty dollars (\$250.00) to the Commonwealth in ten equal installments of twenty-five dollars (\$25.00) according to the following schedule:

- (i) On July 15, 2017, the Petitioner shall pay the Commonwealth the sum of twenty-five dollars (\$25.00);
- (ii) On August 15, 2017, the Petitioner shall pay the Commonwealth the sum of twenty-five dollars (\$25.00);
- (iii) On September 15, 2017, the Petitioner shall pay the Commonwealth the sum of twenty-five dollars (\$25.00);

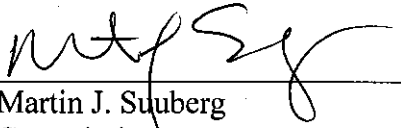
- (iv) On October 15, 2017, the Petitioner shall pay the Commonwealth the sum of twenty-five dollars (\$25.00);
- (v) On November 15, 2017, the Petitioner shall pay the Commonwealth the sum of twenty-five dollars (\$25.00);
- (vi) On December 15, 2017, the Petitioner shall pay the Commonwealth the sum of twenty-five dollars (\$25.00);
- (vii) On January 15, 2018, the Petitioner shall pay the Commonwealth the sum of twenty-five dollars (\$25.00);
- (viii) On February 15, 2018, the Petitioner shall pay the Commonwealth the sum of twenty-five dollars (\$25.00);
- (ix) On March 15, 2018, the Petitioner shall pay the Commonwealth the sum of twenty-five dollars (\$25.00); and
- (x) On April 15, 2018, the Petitioner shall pay the Commonwealth the sum of twenty-five dollars (\$25.00).

(3) In accordance with ¶ 14 of the Consent Order and in addition to the \$250.00 penalty set forth in the Consent Order, the Petitioner shall pay stipulated civil administrative 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.



Martin J. Suuberg
Commissioner

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