

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

July 15, 2020

**In the Matter of
Paul E. Coan**

**Docket No. 2019-043
DEP File Nos.:
RPAN-BO-19-U-105
Enforcement Document No. 00009316**

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.

The Petitioner Paul E. Coan filed this appeal with the Office of Appeals and Dispute Resolution (“OADR”) challenging a \$1,000.00 Reporting Penalty Assessment Notice (“RPAN” or “Civil Administrative Penalty”) that the Boston Office of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) issued to the Petitioner on October 28, 2019 pursuant to the Department’s Underground Storage Tank (“UST”) Systems Regulations at 310 CMR 80.34(1). The Department issued that RPAN (“the 2019 RPAN”) as a result of the Petitioner’s purported failure to file a UST Facility Compliance Certification for the Petitioner’s facility at 205 Lowland Street in Holliston (“the Facility”) by the compliance



deadline in violation of 310 CMR 80.34(1). RPAN, at p. 1. Two years earlier, on November 21, 2017, the Department issued a \$500.00 RPAN (“the 2017 RPAN”) to the Petitioner for having failed to file a UST Facility Compliance Certification for the Facility. Department’s Motion to Approve Settlement and For Issuance of Final Decision (June 18, 2020), at pp. 1-2. However, the Petitioner did not appeal the 2017 RPAN, and as a result, the \$500.00 penalty amount of the 2017 RPAN became final pursuant to G.L. c. 21A, § 16.¹

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: (1) obligation to pay the \$500.00 penalty amount of the 2017 RPAN; and (2) appeal of the \$1,000.00 penalty amount of the 2019 RPAN. The Settlement Agreement is in the form of an Administrative Consent Order With Penalty and Notice of Non-Compliance (“the Consent Order”) that was executed by: (1) Paul E. Coan for the Petitioner on June 1, 2020 and (2) by Richard Blanchet for the Department on June 15, 2020 (Enforcement Document No. 00009316).

After reviewing the Consent Order, I find that it is reasonable and furthers the statutory and regulatory interests of G.L. c. 21O, § 5; G.L. c. 21C; G.L. c. 21E, § 6; G.L. c. 21A, § 16; and

¹ Under G.L. c. 21, § 16, a civil administrative penalty assessed by the Department against a party is final unless the party files an administrative appeal of the penalty with OADR within 21 days of the Department’s issuance of the penalty. The statute provides in relevant part that:

Whenever the department seeks to assess a civil administrative penalty on any person, such person shall have the right to [file administrative appeal with OADR to challenge the penalty] . . . [and] [s]uch person shall be deemed to have waived such right to [such an appeal] unless, within twenty-one days of the date of the department's notice that it seeks to assess a civil administrative penalty, such person files with [OADR] a written statement denying the occurrence of any of the acts or omissions alleged by the department in such notice, or asserting that the money amount of the proposed civil administrative penalty is excessive. In any [evidentiary Adjudicatory Hearing conducted by a Presiding Officer in the appeal] . . . the department shall, by a preponderance of the evidence, prove the occurrence of each act or omission alleged by the department. If a person waives his right to an [administrative appeal], the proposed civil administrative penalty shall be final immediately upon such waiver.

the Department's UST Systems Regulations at 310 CMR 80.34(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 ¶ 30 of the Consent Order, the effective date of the Consent Order is the date of this Final Decision.

(2) In accordance with ¶ 14.A of the Consent Order, within 30 days of the date of this Final Decision, the Petitioner shall submit to the Department a fully completed and signed UST Compliance Certification in accordance with 310 CMR 80.34(1).

(3) In accordance with ¶ 14.B of the Consent Order, within 30 days of the date of this Final Decision, the Petitioner shall fully update: (a) the Petitioner's and (b) the UST Facility Registration in the UST Data Management System, including, but not limited to, Financial Responsibility mechanisms.

(4) In accordance with ¶¶ 15 and 23 of the Consent Order, within 30 days of the date of this Final Decision, the Petitioner shall pay to the Commonwealth of Massachusetts the sum of One Thousand Three Hundred and Sixty Dollars (\$1,360.00), which is the sum of: (a) the \$500.00 penalty amount of the 2017 RPAN and (b) \$860.00 of the \$1,000.00 penalty amount of the 2019 RPAN. The Petitioner's payment of the remaining \$140.00 of the \$1,000.00 penalty amount of the 2019 RPAN has been suspended ("the \$140.00 suspended penalty amount") subject to the provisions of ¶ 22 of the Consent Order discussed below.

(5) In accordance with ¶¶ 15, 22, and 23 of the Consent Order, if the Petitioner violates any of the provisions of ¶ 14.A of the Consent Order, ¶ 14.B of the Consent Order, and/or ¶ 15 of the Consent Order, the Petitioner shall pay to the Commonwealth of

Massachusetts: (a) the \$140.00 suspended penalty amount; and (b) stipulated civil administrative penalties to the Commonwealth in the amount of one hundred dollars (\$100.00) per day for each day, or a portion thereof, each such violation continues. The Petitioner shall pay the \$140.00 suspended penalty amount and all accrued stipulated civil administrative penalties within 30 days of the date the Department's issuance of a written demand for payment to the Petitioner.

Stipulated civil administrative penalties will begin to accrue on the day a violation of ¶ 14.A of the Consent Order, ¶ 14.B of the Consent Order, and/or ¶ 15 of the Consent Order occurs and shall continue to accrue until the Petitioner corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether the Department has notified the Petitioner of a violation or act of noncompliance.

(6) In accordance with ¶ 23 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 the 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.

(7) In accordance with ¶¶ 16 and 28 of the Administrative 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.

Salvatore M. Giorlandino

Date: July 15, 2020

Salvatore M. Giorlandino
Chief Presiding Officer

SERVICE LIST

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