

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT

C.A. NO.

21-0468A

In the Matter of

Peterson's Oil Service, Inc.

ASSURANCE OF DISCONTINUANCE, PURSUANT TO G. L. c. 93A, § 5

I. INTRODUCTION

1. The Commonwealth of Massachusetts, through the Office of Attorney General Maura Healey ("AGO"), and Peterson's Oil Service, Inc. ("Peterson") (hereinafter collectively referred to as the "Parties") voluntarily enter into this Assurance of Discontinuance ("Assurance" or "AOD") pursuant to G. L. c. 93A, § 5.

2. Peterson is a Massachusetts corporation, with a principal place of business at 75 Crescent Street, Worcester, MA 01605.

3. Pursuant to its statutory authority, the AGO conducted an investigation into Peterson's conduct on heating oil supply contracts with the Operational Services Division of the Commonwealth's Executive Office for Administration and Finance ("OSD"). As a result of the Investigation, the AGO alleges that Peterson violated G. L. c. 93A, § 2 and G. L. c. 12, § 5B by engaging in the conduct described below in Section II ("the Covered Conduct").

4. The AGO agrees to accept this AOD on the terms and conditions contained herein, pursuant to the Massachusetts Consumer Protection Act, G. L. c. 93A, §5, in lieu of litigation.

5. Peterson enters into this AOD for settlement purposes only and denies the AGO's allegations.

II. DEFINITIONS

As used herein:

6. "Effective Date" shall mean the date this AOD is filed with the Superior Court for Suffolk County.
7. "Political Subdivision" shall have the same meaning as that term is defined in G. L. c. 12, § 5A.
8. "Contracts" shall mean OSD contracts ENE34, titled "Statewide Contract for No.2 Heating Oil," and ENE45, titled "No. 2 Heating Oil and No. 4 & No. 6 Residual Fuels." This term shall include any and all amendments and contract extensions to ENE34 and ENE45.

III. COVERED CONDUCT

Based upon its investigation, the AGO alleges Peterson violated G. L. c. 93A, § 2 and G. L. c. 12, § 5B(a)(1), (2), as follows:

9. Peterson entered into the Contracts between 2011 and 2019 with OSD to provide heating fuel for Political Subdivisions.
10. The Contracts required that Peterson provide "No. 2 Heating Oil" that met "[t]he latest version of ASTM D396 Standard Specifications for Fuel Oils" ("ASTM D396").
11. At the time of the Contracts, ASTM D396 limited No. 2 Heating Oil to fuels "containing up to 5% by volume biodiesel."
12. However, Peterson regularly delivered fuel under the Contracts that exceeded 5% biodiesel by volume, sometimes providing fuel containing 40% biodiesel by volume or more.
13. In required reports to OSD, Peterson stated that it was delivering "No. 2 Heating Oil" under the Contracts.

14. Some of the Political Subdivisions that purchased No. 2 Heating Oil from Peterson under the Contracts saw performance issues with their heating systems that may be attributed to using heating oil that contains significantly in excess of 5% biodiesel by volume.

15. By procuring and entering into the Contracts knowing it would not be delivering fuel with up to 5% biodiesel by volume but would instead regularly deliver fuel that exceeded 5% biodiesel by volume and thus did not meet the Contracts' definition of No. 2 Heating Oil, Peterson violated G. L. c. 12, § 5B and G. L. c. 93A, § 2.

16. Further, by knowingly submitting documents over the course of the Contracts, including reports to OSD, falsely reflecting the delivery of No. 2 Heating Oil, Peterson violated G. L. c. 12, § 5B and G. L. c. 93A, § 2.

IV. PAYMENT TO THE AGO

17. Peterson agrees to pay the AGO \$450,000 ("the Settlement Amount"), which will be paid in four installments, as follows: the first installment of \$50,000 will be paid within three business days of the Effective Date; the second installment of \$100,000 will be due on or before December 30, 2021. The third installment of \$150,000.00 will be due on or before December 30, 2022 and a final payment of \$150,000.00 will be paid on or before December 30, 2023. Peterson understands and acknowledges that the AGO agreed to this payment schedule based on financial documents and information Peterson and its counsel provided. In the event Peterson fails to pay any of the installments set forth herein or the AGO discovers that the documents and information Peterson provided concerning its financial condition were materially false or inaccurate, the entire unpaid Settlement Amount will immediately become due and owing. Payment shall be made by wire in accordance with instructions provided by the AGO.

V. ASSURANCES

18. Peterson agrees to the following assurances ("Assurances").

19. In connection with any current or future contract with the Commonwealth or a Political Subdivision thereof to which Peterson is a party, Peterson will:

- (a) Comply with applicable statutory, regulatory, and contractual provisions, including applicable industry standards, governing products to be delivered; and
- (b) For a period of five (5) years, or longer if required by contract, following the end of such contract, maintain records that are sufficient to identify what products have been provided under the contract and to demonstrate that the product is in compliance with contract requirements.

20. Peterson will maintain records sufficient to demonstrate Peterson's compliance with the terms of this Section and will provide such records promptly upon the AGO's reasonable request pursuant to this AOD.

21. Peterson will cooperate with the AGO during the implementation of this AOD and any related AGO reviews of compliance undertaken pursuant to this AOD.

VI. RELEASE

22. In consideration of the foregoing and except to enforce the obligations set forth in Sections IV and V herein, the Commonwealth, for itself and on behalf of all Political Subdivisions, forever discharges and releases Peterson together with its predecessors, current and former parent companies, direct and indirect affiliates, divisions and subsidiaries and their current and former employees, agents, representatives, shareholders, officers, directors, managers, successors and assigns from civil liability to the Commonwealth and Political Subdivisions pursuant to G.L. c. 12, § 5B arising from or relating to the Covered Conduct.

23. Any notices or communications transmitted between Peterson and the AGO pursuant to this AOD shall be provided in writing by first class mail and email to the AGO or Peterson or their successors, as follows:

AGO:

Cassandra Arriaza, AAG
False Claims Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Cassandra.Arriaza@mass.gov

Peterson:

Louis Ciavarra
Bowditch & Dewey
311 Main Street
Worcester, MA 01608
lciavarra@bowditch.com

VII. MISCELLANEOUS

24. By signing below, the Parties agree to comply with all the terms of this AOD.

25. This AOD may be enforced only by the Parties hereto.

26. This AOD is not intended to be construed or used as a waiver or any limitation of any defense otherwise available to Peterson in any pending or future legal or administrative action or proceeding relating to the Covered Conduct. Nothing in this AOD shall provide any rights to or permit any person or entity not a party hereto to enforce any provision of this AOD.

27. This AOD does not constitute an approval by the AGO of any of Peterson's business acts and practices, and Peterson will make no representations to the contrary.

28. This AOD contains the complete agreement between the Parties. No promises, representations or warranties other than those set forth in this AOD have been made by any of the Parties. This AOD supersedes all prior communications, discussions, or assurances, if any, of the Parties, whether orally or in writing.

29. This AOD may not be changed, altered, or modified, except by order of the Court or by written agreement of the Parties.

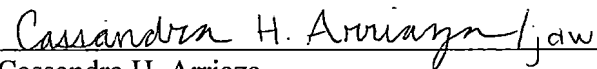
30. This AOD may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same AOD.

31. Peterson acknowledges it is represented by counsel, including Louis Ciavarra of Bowditch & Dewey, with whom it has consulted concerning this AOD.

32. The undersigned signatories acknowledge that execution of this AOD is voluntary and authorized.

33. This AOD and its provisions will be effective on the Effective Date.

Office of the Attorney General


Cassandra H. Arriaza

Assistant Attorney General

False Claims Division

Office of the Attorney General

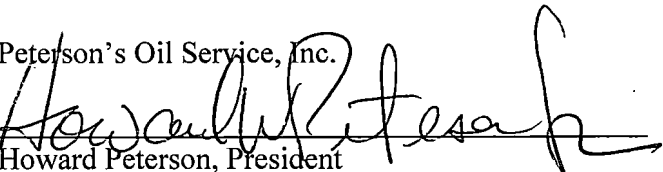
One Ashburton Place

Boston, MA 02108

Cassandra.Arriaza@mass.gov

March
~~February~~ 2, 2021

Peterson's Oil Service, Inc.


Howard Peterson, President

February 12, 2021