

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

October 3, 2019

In the Matter of
Somerset Marine, Inc.

Docket No. 2018-021
DEP File Nos.:
MassDEP Facility Acct# 127818
RPAN-BO-18-7Q029

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 Somerset Marine, Inc. filed this appeal challenging a \$500.00 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 September 25, 2018 for purported violations of the Department’s Stage I Form C Annual In-Use Compliance Certification Regulations at 310 CMR 7.24(3)(e)4. The RPAN alleged that the Petitioner “ha[d] failed to remain in compliance with 310 CMR 7.24(3)(e)4 and ha[d] . . . repeated [its] violation of that regulation” by “[f]ail[ing] to submit a Stage I Form C Annual In-Use Compliance Certification in violation of [the

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regulation].” RPAN, at p. 1. In its Appeal Notice, the Petitioner denied having committed the violations and challenged the \$500.00 penalty amount as being excessive.

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 RPAN 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) the Petitioner on November 8, 2018 and (2) Geri Lambert, Deputy Division Director of the Business Compliance Division of the Department’s Bureau of Air and Waste, on November 16, 2018.¹

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 Stage I Form C Annual In-Use Compliance Certification Regulations at 310 CMR 7.24(3)(e)4. 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 ¶ 26 of the Consent Order, the effective date of the Consent Order is the date of this Final Decision.

(2) In accordance with ¶ 10 of the Consent Order, within 45 days of the date of this Final Decision the Petitioner shall submit to Jeff Gifford of the Department’s Stage 1 Program at the address listed in ¶ 10 of the Consent Order, a fully completed Stage I Form C Annual In-Use Compliance Certification in compliance with 310 CMR 7.24(3)(e)4.

(3) In accordance with ¶¶ 11 and 19 of the Consent Order, within 30 days of the date of this Final Decision, the Petitioner shall pay four hundred dollars (\$400.00) to the

¹ Ms. Lambert retired from State service in May 2019.

Commonwealth as a civil administrative penalty for the violations set forth in ¶¶ 4A through 4C of the Consent Order.

(4) In accordance with ¶ 18 of the Consent Order, if the Petitioner violates any provisions of ¶¶ 10 and 11 of the Consent Order, the Petitioner shall pay to the Commonwealth, in addition to the \$400.00 civil administrative penalty set forth in ¶ 11 of the Consent Order, 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.

(5) 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.

(6) In accordance with ¶¶ 12 and 24 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.



Salvatore M. Giorlandino
Chief Presiding Officer

Date: October 3, 2019

SERVICE LIST

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