



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

November 15, 2019

**In the Matter of
V & J LLC**

Docket No. 2018-028
DEP Enforcement Document
No. 00004745

FINAL DECISION

On December 20, 2018, the Petitioner V & J LLC filed this appeal challenging a \$51,937.50 Penalty Assessment Notice (“PAN” or “Civil Administrative Penalty”) that the Central Regional Office of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) issued to the Petitioner on November 28, 2018 for purported violations of the Department’s Asbestos Regulations at 310 CMR 7.15. The Department issued the PAN to the Petitioner in connection with the removal of asbestos containing materials at the Petitioner’s real property at 21 May Street in Worcester, Massachusetts (“the Site”). In its Appeal Notice challenging the PAN, the Petitioner denied it violated the Asbestos Regulations and requested that the PAN be vacated. Petitioner’s Appeal Notice, at pp. 1-2. In the alternative, the Petitioner asserted that the \$51,937.50 PAN amount was excessive and should be reduced to an appropriate amount.

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 and Notice of Non-Compliance ("Consent Order") that was executed by: (1) Van K. Nguyen, the Petitioner's Manager, on April 24, 2019 and (2) Mary Jude Pigsley, Regional Director of the Department's Central Regional Office, on April 26, 2019.

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 Regulations at 310 CMR 7.00, including the Asbestos Regulations at 310 CMR 7.15.

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 ¶¶ 13 and 21 of the Consent Order, the Petitioner shall pay the sum of Forty Two Thousand Five Hundred dollars (\$42,500.00) to the Commonwealth as a civil administrative penalty for the violations set forth in ¶¶ 4 through 7 of the Consent Order according to the following schedule:

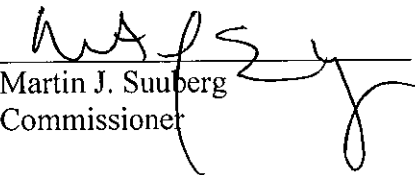
- (a) Within 10 days after the effective date of this Final Decision, the Petitioner shall pay to the Commonwealth the sum of Twenty One Thousand Two Hundred Fifty dollars (\$21,250.00);
- (b) Within 182 days after the effective date of this Final Decision, the Petitioner shall pay to the Commonwealth an additional Ten Thousand Six Hundred Twenty Five dollars (\$10,625.00); and
- (c) Within 356 days after the effective date of this Final Decision, the Petitioner shall pay to the Commonwealth an additional Ten Thousand Six Hundred Twenty Five dollars (\$10,625.00).

(3) In accordance with ¶¶ 20 and 21 of the Consent Order, if the Petitioner violates

any provision of the Consent Order, the Petitioner shall pay to the Commonwealth, in addition to the \$42,500.00 civil administrative penalty set forth in ¶ 13 of the Consent Order and discussed above in ¶ 2, stipulated civil administrative penalties to the Commonwealth in the amount of five hundred dollars (\$500.00) per day for each day, or a portion thereof, each such violation continues.

(4) In accordance with ¶ 21 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, 9, and 14 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

Petitioner: V & J LLC

Legal representative: Robert D. Cox, Jr., Esq.
Bowditch & Dewey, LLP
311 Main Street, P.O. Box 15156
Worcester, MA 01615
e-mail: rcox@bowditch.com;

The Department: Mary Jude Pigsley, Regional Director
MassDEP/Central Regional Office
8 New Bond Street
Worcester, MA 01606
e-mail: MaryJude.Pigsley@mass.gov;

Douglas Fine, Deputy Regional Director
MassDEP/Central Regional Office
Bureau of Air and Waste
8 New Bond Street
Worcester, MA 01606
e-mail: Douglas.Fine@mass.gov;

Gregory Levins, Section Chief, Asbestos Program
MassDEP/Central Regional Office
Bureau of Air and Waste
8 New Bond Street
Worcester, MA 01606
e-mail: Gregory.Levins@mass.gov;

Legal representative: MacDara Fallon, Senior Counsel
MassDEP/Office of General Counsel
One Winter Street
Boston, MA 02108
e-mail: macdara.fallon@mass.gov;

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cc: Anne Berlin Blackman,
Chief Regional Counsel
MassDEP/CERO
8 New Bond Street
Worcester, MA 01606
e-mail: Anne.Blackman@mass.gov;

Leslie DeFilippis, Paralegal
MassDEP/Office of General Counsel
One Winter Street
Boston, MA 02108.