Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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September 16, 2015

In the Matter of
Arnie's 24 Hour Towing, Inc.

Docket No. 2015-004
DEP File No. PAN-CE-15-9001-2A

FINAL DECISION

In March 2015, the Petitioner Arnie's 24 Hour Towing, Inc. brought this appeal challenging a $53,299.00 Penalty Assessment Notice ("PAN" or "Civil Administrative Penalty") that the Central Regional Office ("CERO Office") of the Massachusetts Department of Environmental Protection ("MassDEP" or "the Department") issued to the Petitioner on February 18, 2015 for purported violations of the Massachusetts Hazardous Waste Management Act, G.L. c. 21C; the Department's Hazardous Waste Regulations at 310 CMR 30.00; and the Department's regulations at 314 CMR 18.00 governing Industrial Wastewater Holding Tank And Container Construction, Operation, and Record Keeping Requirements (the "IWWHT Regulations"). The Department issued the PAN in connection with the Petitioner's purported: (1) unauthorized transportation and disposal of hazardous waste, (2) failure to register as a hazardous waste generator, and (3) failure to comply with hazardous waste labeling, notice, and record-keeping requirements. The Department contended that the Petitioner committed these violations on February 22, 2013 when it delivered one or more metal Underground Storage

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Tanks ("UST") containing waste oil to Excel Recycling, LLC ("the Facility") in Charlton, Massachusetts. PAN, ¶¶ 4-13B.

The Petitioner denied the PAN's allegations and requested that the PAN be vacated, rescinded, modified, or remanded to the Department in whole or in part because the PAN purportedly was issued without basis in fact and/or law, was arbitrary and capricious, and constituted an abuse of enforcement discretion. Petitioner's Appeal Notice.

Recently, the Petitioner and the Department (collectively "the parties") filed a proposed Settlement Agreement for my review and approval pursuant to 310 CMR 1.01(8)(c) to resolve the Petitioner's claims in this appeal. See [Department's] Motion for Approval of Settlement Agreement (August 18, 2015). The proposed Settlement Agreement is in the form of an Administrative Consent Order With Penalty ("ACOP"), which has been signed by the Petitioner's President and the CERO Office's Regional Director. Under the ACOP, the Petitioner is required to do the following:

First, under ¶ 19A of the ACOP, the Petitioner is required immediately to comply with 310 CMR 30.341(2) and 310 CMR 253(6)(b) regarding labeling its containers of waste oil that it has not already labeled, and is required to: (1) mark and label each container (or tank) with the words "Hazardous Waste"; (2) identify in words the Hazardous Waste; (3) state in words the type of hazard associated with the waste; and (4) state the date upon which each period of accumulation of the waste began. The Petitioner is also required to place all marks on the side of each container in such a manner that they are clearly visible for inspection, and within thirty (30) days after the issuance of this Final Decision, the Petitioner is required to submit photographic evidence to the Department confirming compliance with the provisions of ¶ 19A

of the ACOP.

Under ¶ 21 of the ACOP, the Petitioner is required to pay a $53,299.00 civil administrative penalty to the Commonwealth for its purported violations of the Massachusetts Hazardous Waste Management Act, G.L. c. 21C; the Department's Hazardous Waste Regulations at 310 CMR 30.00; and the Department's IWWHT Regulations at 314 CMR 18.00, with $13,500.00 of the penalty to be paid to the Commonwealth within 30 days after the issuance of this Final Decision and the balance of $39,799.00 suspended pursuant to the Department's Small Business Policy. The $39,799.00 is suspended provided the Petitioner does not violate any provision of the ACOP and does not violate any requirements of the Department's Hazardous Waste Regulations at 310 CMR 30.00 and IWWHT Regulations at 314 CMR 18.00 within one year of the issuance of this Final Decision. ACOP, ¶ 21. If the Petitioner violates any provision of the ACOP, the requirements of 310 CMR 30.00, and/or the requirements of 314 CMR 18.00 within one year of the issuance of this Final Decision, the Petitioner is required to pay the $39,799.00 to the Commonwealth within 30 days of the Department's written demand for payment of that amount. Id. Additionally, the Department's agreement to suspend payment of the $39,799.00 does not bar, diminish, adjudicate, or in any way affect, any legal or equitable right of the Department to assess the Petitioner additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of the ACOP or any law or regulation. Id.

After reviewing the ACOP, I find that the parties' settlement of this appeal is reasonable and consistent with furthering the statutory and regulatory interests of the Massachusetts Hazardous Waste Management Act, G.L. c. 21C; the Department's Hazardous Waste

Regulations at 310 CMR 30.00; and the Department's IWWHT Regulations at 314 CMR 18.00. Accordingly, I issue this Final Decision approving and incorporating the ACOP.

In accordance with the ACOP, I issue the following orders:

(1) Pursuant to ¶ 19A of the ACOP, the Petitioner is ordered immediately to comply with 310 CMR 30.341(2) and 310 CMR 253(6)(b) regarding labeling its containers of waste oil that it has not already labeled, and shall: (1) mark and label each container (or tank) with the words "Hazardous Waste"; (2) identify in words the Hazardous Waste; (3) state in words the type of hazard associated with the waste; and (4) state the date upon which each period of accumulation of the waste began. The Petitioner is also ordered to place all marks on the side of each container in such a manner that they are clearly visible for inspection, and within thirty (30) days after the issuance of this Final Decision, the Petitioner shall submit photographic evidence to the Department confirming compliance with the provisions of ¶ 19A of the ACOP.

(2) Pursuant to ¶¶ 21 and 28 of the ACOP, the Petitioner is ordered to pay a $53,299.00 civil administrative penalty to the Commonwealth for its purported violations of the Massachusetts Hazardous Waste Management Act, G.L. c. 21C; the Department's Hazardous Waste Regulations at 310 CMR 30.00; and the Department's IWWHT Regulations at 314 CMR 18.00 as follows:

(a) the Petitioner shall pay $13,500.00 of the $53,299.00 to the Commonwealth within 30 days of the date of this Final Decision; and

(b) the Petitioner's payment of the remaining $39,799.00 of the $53,299.00 is suspended pursuant to the Department's Small Business Policy provided the Petitioner does not violate any provision of the ACOP and does not violate any requirements of the Department's Hazardous Waste

Regulations at 310 CMR 30.00 and IWWHT Regulations at 314 CMR 18.00 within one year of the issuance of this Final Decision.

If the Petitioner violates any provision of the ACOP, the requirements of 310 CMR 30.00, and/or the requirements of 314 CMR 18.00 within one year of the issuance of this Final Decision, the Petitioner is required to pay the $39,799.00 to the Commonwealth within 30 days of the Department's written demand for payment of that amount. Id. Additionally, the Department's agreement to suspend payment of the $39,799.00 does not bar, diminish, adjudicate, or in any way affect, any legal or equitable right of the Department to assess the Petitioner additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of the ACOP or any law or regulation. Id.

Under the terms of 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 Suuberg
Commissioner

SERVICE LIST

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