

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Coos Superior Court
55 School St., Suite 301
Lancaster NH 03584

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TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

**CHRISTOPHER G. ASLIN
NH ATTORNEY GENERALS OFFICE - DOJ
33 CAPITOL STREET
CONCORD NH 03301-6397**

State of New Hampshire Department of Environmental Services v DG

Case Name: **Whitefield, LLC**
Case Number: **214-2016-CV-00099**

Please be advised that on August 26, 2016 Judge Bornstein made the following order relative to:

Assented to Motion to Enter Consent Decree - Granted.

August 26, 2016

David P. Carlson
Clerk of Court

(417)

C: Robert Paul Cheney, Jr., ESQ

THE STATE OF NEW HAMPSHIRE

COOS, SS

SUPERIOR COURT

Docket No. _____

State of New Hampshire
Department of Environmental Services

v.

DG Whitefield, LLC

COOS SUPERIOR COURT
2016 AUG 25 A 10:11

CONSENT DECREE

NOW COME the Petitioner, the State of New Hampshire Department of Environmental Services (hereinafter the "State" or the "Department"), by and through its attorneys, the Office of the Attorney General, and the Respondent, DG Whitefield, LLC (hereinafter "DG" or "Respondent"), represented by their counsel, Robert P. Cheney, Jr., Esq., Sheehan Phinney Bass & Green, P.A., and hereby agree to the terms and conditions set forth in this Consent Decree ("Decree"), as ordered by the Superior Court for Coos County, in settlement of the air pollution control violations alleged by the State in its Petition for Civil Penalties ("Petition") filed concurrently with this Decree.

A. INTRODUCTION

1. This Decree resolves all violations of New Hampshire statutes and rules for the control of air emissions alleged in the State's Petition; in particular, certain violations of the New Hampshire Air Pollution Control Act, under RSA Chapter 125-C and the administrative rules promulgated thereunder. The State's Petition alleges, among other things, that DG violated state law and regulation by exceeding its applicable emission limit for particulate matter ("PM") of 0.10 lb/MMBtu of heat input at DG's biomass generating facility in the

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8/26/16
CC: Ashin
Cheney

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Town of Whitefield for a period of 41 days.

2. The Petition seeks civil penalties for the alleged 41 days of DG's non-compliance with the applicable PM emissions limit.

3. There has been no trial on any issue of fact or law in this matter and no judicial determination of liability. The Parties agree that nothing in this Decree should be construed as an admission of liability or fact by DG or a denial of liability or fact by the State. Instead, the State and the Respondent, wishing to avoid the expense of litigation, and in an effort to work cooperatively in resolving this matter, agree that settlement of this matter is in the public interest and that entry of this Decree without further litigation is an appropriate way to resolve the dispute, and the parties consent to the entry of this Decree as an Order of the Court.

NOW THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

B. JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to RSA 491:7, RSA 498:1, and RSA 125-C:15, II. Venue is proper in Coos County because the facility at which the alleged unlawful activities occurred is located in the Town of Whitefield, Coos County, New Hampshire.

5. For purposes of this Decree and the underlying Petition, including any further action to enforce the terms of this Decree, DG waives any and all objections it may have to the Court's subject matter or personal jurisdiction. DG also agrees that its undersigned counsel will accept service of the Petition.

C. CIVIL PENALTIES

6. In complete settlement and resolution of the claims brought by the State against DG in the Petition, DG agrees to pay the State a civil penalty of forty-four thousand one hundred

dollars (\$44,100.00).

7. The civil penalty shall be paid by DG in two installments. The first installment of twenty-two thousand dollars (\$22,000.00) shall be remitted to the State not later than sixty (60) days from the date this Decree is entered as an order of this Court.

8. The second installment of twenty-two thousand one hundred dollars (\$22,100.00) shall be remitted to the State not later than six months from the date of the first installment identified in Paragraph 7, above.

9. Payment of the civil penalties due under Paragraphs 6-8, above, shall be made by company check payable to "Treasurer, State of New Hampshire" and shall be mailed or delivered to undersigned counsel for the State at 33 Capitol Street, Concord, New Hampshire, 03301.

D. OTHER TERMS AND CONDITIONS

10. The Department, by and through the Attorney General, releases and covenants not to sue or take any administrative action against DG and its successors and assigns for the violations alleged in the Petition or for violations that might have been alleged based on specific material facts alleged in the Petition, through the effective date of this Decree. The State expressly reserves the right to sue or to bring administrative actions against DG and its successors and assigns with regard to claims or liability for violations that could not have been alleged in the State's Petition and DG reserves any and all defenses with regard to such State claims. The State and DG each also reserves the right to bring an action to enforce the terms of this Decree. The provisions of this Paragraph 10 shall survive beyond the termination of this Decree.

11. The parties acknowledge that DG and its successors and assigns have a continuing obligation to remain in compliance with RSA 125-C and all other applicable federal and state

laws, rules and permits relating to its facility. The State reserves the right to bring an administrative, civil, and/or criminal enforcement action for any violation of air pollution control statutes, rules and permits arising after the effective date of this Decree. This reservation of rights includes, but is not limited to, violations that occur in connection with the terms of this Decree. DG reserves any and all defenses with regard to such State claims.

12. It is the intention of the parties that this Decree be entered and enforced as an Order of the Court, subject to all the power of the Court at law and equity. Upon entry of the order by the Court, DG acknowledges that any violation of the Decree or the agreements reflected herein may be cause for DG being adjudged in contempt of court and DG hereby waives any objections to jurisdiction or service of process if such remedy is sought by the State.

13. The State's failure to enforce any provision of this Decree after any breach or default shall not be deemed a waiver of its right to enforce each and all of the provisions of this Decree upon further breach or default.

14. This Decree contains the entire agreement of the parties, and any material modifications hereto must be agreed to in writing by both DG and the State, acting through the Office of the Attorney General, and approved of by an order of the Court. The parties may agree in writing without Court approval of non-material modification, such as modification to schedules established by this Decree with no effect on statutory, regulatory, or permitted obligations. Such non-material modifications become effective upon execution by both parties.

15. The effective date of this Decree shall be the date upon which it is entered as an Order of the Court.

16. This Decree shall be construed in accordance with the laws of New Hampshire.

17. Each party shall bear its own costs and attorneys' fees.

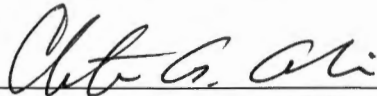
E. TERMINATION OF THE DECREE

18. The Court shall retain jurisdiction to enforce the terms and conditions of this Decree and to resolve disputes arising hereunder, as may be necessary or appropriate for the construction, execution or implementation of the Decree, and shall reopen the case upon motion by either party for enforcement of its terms. The Decree shall terminate after a determination by the State or the Court that DG has fulfilled all of its obligations under Section C of the Decree.

Respectfully submitted,

**THE STATE OF NEW HAMPSHIRE
JOSEPH A. FOSTER
ATTORNEY GENERAL**

Dated: 8/22/2016

By: 
Christopher G. Aslin (N.H. Bar # 18285)
Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, New Hampshire 03301
(603) 271-3679

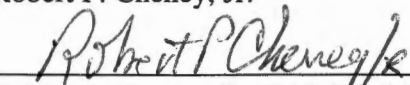
DG WHITEFIELD, LLC

Dated: 8/9/2016

By: 
Larry Gardner
Managing Member
DG Whitefield, LLC
260 Airport Road
Whitefield, NH 03598

**COUNSEL FOR DG Whitefield, LLC
Robert P. Cheney, Jr.**

Dated: 8/9/2016

By: 
Robert P. Cheney, Jr. N.H. Bar # 74
Sheehan Phinney Bass & Green, P.A.
Two Eagle Square, Third Floor
Concord NH 03301
(603) 223-2020

The Court finds that this Decree is a reasonable and fair settlement and adequately protects the public interest in accordance with the Air Pollution Control Act, RSA 125-C.

Dated and entered this 26th day of August, 2016.

SO ORDERED.

By: _____



Presiding Justice of the Superior Court

PETER H. BONAS
Justice