



Office of Adjudications

***IN THE MATTER OF***

**:**

***CEASE and DESIST  
ORDER NO.  
CDOWSUST 12-001***

***ASNAT REALTY LLC,  
EVERGREEN POWER LLC,  
JAQUELINE COHEN,  
GRANT MACKAY DEMOLITION CO.  
GRANT MACKAY CO., INC. D/B/A  
GRANT MACKAY DEMOLITION CO., AND  
JOSEPH VENDETTI***

**:**

***OCTOBER 4, 2012***

***FINAL DECISION AND NOTICE OF DEFAULT***

DEEP issued Cease and Desist Order No. CDOWSUST 12-001 (the Order) on February 8, 2012. The hearing process was initiated on February 17, 2012. After a prolonged continuance to accommodate efforts to resolve the issues through mediation, a hearing was held on October 1, 2012 pursuant to General Statutes § 22a-7. Notice of the hearing was issued to the parties on September 19, 2012. In attendance at the hearing were Assistant Attorney General Matthew Levine, Assistant Attorney General Sharon Seligman, Lori Saliby, and Gary Trombly on behalf of the Department of Energy and Environmental Protection (DEEP) and Attorney Alan Kosloff on behalf of respondents ASNAT Realty LLC, Evergreen Power LLC and Jaqueline Cohen. There was no one in attendance on behalf of Grant Mackay Demolition Co., Grant Mackay Demolition Co., Inc. d/b/a Grant Mackay Demolition Co. or Joseph Vendetti (collectively Grant Mackay).

Prior to the opening of the hearing record, a brief prehearing discussion was held. Attorney Kosloff indicated that he was not intending to contest the Order on behalf of his clients. He requested that Mr. Mehboob H. Shah be substituted for Ms. Cohen because Ms. Cohen no longer plays an active role with ASNAT Realty LLC or Evergreen Power LLC. Atty. Kosloff indicated that he represented Mr. Shah in his capacity as manager of ASNAT Realty and Evergreen Power. DEEP agreed to make the substitution as requested. (M. Levine, Hearing Recording, 10/1/12)<sup>1</sup>.

DEEP staff requested that Grant Mackay be issued a Notice of Default and that the order be affirmed absent a re-opening of the record pursuant to Regs., Conn. State Agencies § 22a-3a-6(u). (M. Levine, Hearing Recording, 10/1/12)

The Order had previously been marked as Exhibit DEEP-1 and it was admitted into the record without objection.

### ***FINDINGS OF FACT***

DEEP issued a Cease and Desist Order (the Order) to the respondents on February 8, 2012 regarding activity being conducted at 510 Grand Avenue in New Haven (the site). (Ex. DEEP-1). The Order was served on the named respondents by a state marshal on February 9, 2012 and notice of the Order was posted at the site by the same marshal. (Ex. DEEP-1). Polychlorinated Biphenyls (PCBs) and other hazardous substances exist in concentrations at the site that warrant proper characterization and disposal. (Ex. DEEP-1). Any demolition and scrapping activities conducted at the site without proper characterization and disposal of PCBs and other hazardous substances are likely to result in imminent and substantial damage to the

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<sup>1</sup> The testimony and proceedings in this matter were recorded. No written transcript has been prepared. The audio recording of this hearing is on file with the Office of Adjudications and is the official record of this proceeding.

environment or to public health by exposing the public or the environment to PCBs and other hazardous substances. (Ex. DEEP-1).

The respondents were initially offered an opportunity to be heard on February 17, 2012. At the initial hearing, the matter was continued to allow the parties to mediate the dispute and arrive at a mutually satisfactory agreement to allow further activity at the site. On September 7, 2012, DEEP notified the mediator that it was no longer participating in mediation. A notice of hearing was distributed and received by the parties on September 19, 2012.<sup>2</sup> There was no request for a continuance from any party.<sup>3</sup>

### *CONCLUSIONS OF LAW*

The Commissioner is authorized to order any person engaging in conduct that will result in or is likely to result in substantial damage to the environment or public health to discontinue, abate, or alleviate such activity. General Statutes § 22a-7. The Order requires the respondents to cease any demolition and scrapping activities on the site until they properly characterize and remediate the on-site contamination. No one is permitted to access the site and its building for any activity other than for remediation activities necessary for the investigation, removal, and proper disposal of contaminants.

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<sup>2</sup> All documents pertaining to the procedural history that are not specifically cited as exhibits are contained in the docket file maintained by the Office of Adjudications and are part of the administrative record in this matter. General Statutes §4-177(d).

<sup>3</sup> I acknowledge that Joseph McAllister, counsel for Grant Mackay and Joseph Vendetti (Grant Mackay) indicated in an e-mail dated September 30, 2012 and sent at 11:07 pm that Grant Mackay would not be attending the hearing on October 1. That e-mail also indicated counsel's availability by telephone but did not provide a telephone number. An e-mail with a telephone number was provided in response to my request but not until I was already in the hearing room on the morning of the hearing. At no time did counsel for Grant Mackay and Joseph Vendetti request a continuance of this matter or seek leave to "attend" the hearing by telephone. In fact, counsel had indicated in an e-mail dated September 24, 2012 that Grant Mackay would be in attendance at the hearing. This was reasonably assumed to mean his or another representative's attendance in person. There is no record of a phone call or other attempt to contact me or other parties regarding the lack of an appearance at the hearing.

At the hearing, the respondents ASNAT Realty, LLC, Evergreen Power, LLC, Jacqueline Cohen, and Mehboob Shah, as a substitute for Ms. Cohen (collectively the ASNAT and Evergreen respondents) indicated through counsel that they did not contest the Order. The opportunity for the hearing is an opportunity for the respondents to show that the alleged conditions that support issuance of the Order do not exist. The ASNAT and Evergreen respondents have chosen not to contest Cease and Desist Order CDOWSUST 12-001 and instead affirmatively indicated their intent to work with DEEP to address the requirements of the Order.

Grant Mackay failed to appear at the hearing. The notice of hearing issued on September 19, 2012 clearly indicated that a failure to appear at the hearing would result in a Notice of Default.

#### ***DISPOSITION***

Based on the evidence in the record and the lack of any affirmative showing by the respondents that the alleged conditions do not exist, I find that any demolition and scrapping activities at the site conducted without proper characterization and remediation of PCB and other hazardous substance contamination would or were likely to result in imminent and substantial damage to the environment or public health. The order is affirmed against the ASNAT and Evergreen respondents upon issuance of this final decision.

#### ***NOTICE OF DEFAULT***

Based on its failure to appear, Respondent Grant Mackay is issued this Notice of Default. The decision to affirm the Order will be final and effective against Grant Mackay on October 19,

2012<sup>4</sup> unless it submits and is granted a motion to reopen the record to affirmatively place evidence on the record that the alleged conditions do not exist. Any motion to reopen the record must provide a compelling reason for the failure to appear at the scheduled hearing. Absent a re-opening of the record, the Order as it applies to Grant Mackay is affirmed. Grant Mackay remains subject to the Order while the Notice of Default is pending.

  
Kenneth M. Collette, Hearing Officer

cc: Lori Saliby  
Matthew I. Levine, AAG  
Sharon Seligman, AAG  
Alan Kosloff, Esq.  
Thomas Katon, Esq.  
Joseph McAllister, Esq.

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<sup>4</sup> §22a-3a-6(u) is clear that a party that fails to appear has 14 days from the date of the scheduled hearing to file a request to re-open the record. However, in an earlier e-mail I mistakenly indicated that the respondents had 14 days from the notice of default to file the request. To avoid any confusion, the decision will be effective and the order affirmed on the fifteenth day following the issuance of this Final Decision and Notice of Default. If a motion to re-open is submitted and rejected prior to 10/19/12, the decision will be effective and the order affirmed on the date of the rejection of that request.

**SERVICE LIST**

**PARTY**

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ASNAT Realty LLC  
Evergreen Power  
Jaqueline Cohen  
Mehboob Shah

Grant Mackay Demolition Co.  
Grant Mackay Co., Inc. d/b/a  
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Joseph Vendetti

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