



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

NEW JERSEY DEPARTMENT OF)	<u>ADMINISTRATIVE ACTION</u>
ENVIRONMENTAL PROTECTION,)	FINAL DECISION
AIR COMPLIANCE AND)	
ENFORCEMENT,)	OAL DKT. NO. ECE 15995-13
)	AGENCY DKT. NO. PEA090001-
Petitioner,)	21632
)	
v.)	
)	
HYBRID TEK, INC.,)	
)	
Respondent.)	

This Order addresses an appeal of an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) issued on January 5, 2010, by the Department of Environmental Protection assessing penalties in the amount of \$8,000 against Hybrid Tek, Inc., for failing to allow lawful entry to a Department inspector to inspect Respondent's business premises on November 25, 2009, to determine compliance with the Air Pollution Control Act (the Act), N.J.S.A. 26:2C-1 et seq., following a complaint of odors from the facility. The Department assessed the penalty under N.J.A.C. 7:27A-3.7, the rule governing penalties for failure to allow lawful entry and inspection, a violation which is non-minor under the Department's rules. N.J.A.C. 7:27A-3.7(e). Under N.J.A.C. 7:27A-3.7(c), a first offense for refusal to allow inspection results in a penalty of \$8,000.

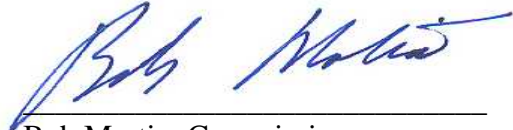
The matter was decided by Administrative Law Judge (ALJ) Susan M. Scarola on motion by the Department for summary decision, supported by certifications of the inspector and a manager of the Department's Bureau of Air Compliance and Enforcement. In an Initial Decision dated June 25, 2015, the ALJ found that the Department's inspector took all appropriate steps to gain entry to inspect Respondent's facility to investigate the complaint of air pollution. Because the facility's officer, Fayiz Hilal, was not physically present at the facility on the day the inspection was attempted, the inspector presented his credentials by reading all of the statements contained on his Department issued badge, which explain the inspection powers of the Department for enforcing the Act, to Mr. Hilal by way of telephone in the presence of the facility's office manager. Mr. Hilal refused to allow the inspector to conduct his inspection. On December 2, 2009, the inspector again attempted to inspect the facility and this time was allowed access by the office manager. During this second inspection, the Department's inspector verified the facility's compliance with the Act.

In both his hearing request challenging the AONOCAPA and his response to the Department's motion for summary decision, Mr. Hilal admitted that he denied access to the Department's inspector but claimed that the inspector did not produce proper identification. He provided no further response to the motion. The ALJ found in favor of the Department, but lowered the penalty assessed from \$8,000 to \$6,000 pursuant to N.J.A.C. 7:27A-3.5(e), based on the finding that the lack of any violation at the facility and the Respondent's subsequent cooperation with the inspector were mitigating factors which allowed a discretionary reduction in the penalties. Neither the Department nor Mr. Hilal took exception to the Initial Decision.

I ADOPT the Initial Decision. While the Department's assessed penalty of \$8000 is appropriate under the circumstances of a denial of access to perform a regulatory inspection, I will not disturb the ALJ's reduction to \$6000 in view of the lack of exceptions by either party. Respondent is directed to, in accordance with paragraph 11 of the AONOCAPA, submit payment of the penalties by check payable to the Treasurer, State of New Jersey, along with a copy of this Final Decision, within 20 days of the date of this decision.

IT IS SO ORDERED.

July 24, 2015
DATE



Bob Martin, Commissioner
New Jersey Department of
Environmental Protection

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
AIR COMPLIANCE AND ENFORCEMENT

v.

HYBRID TEK, INC.

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