



**U.S. Department of
Transportation**

Office of the Secretary
Of Transportation

Departmental Office of Civil Rights
1200 New Jersey Avenue, S.E., W76-401
Washington, DC 20590

October 26, 2020

Docket No. 20-0076

Paula A. Wells
Pure Water Pros, Inc.
806 Green Valley Road
Greensboro, NC 27408

Dear Ms. Wells:

This is in response to your appeal of the denial by the North Carolina Department of Transportation (NCDOT) of the application of your client, Pure Water Pros, Inc. (PWP), for DBE certification. NCDOT based its decision on the view that PWP's disadvantaged owner, Ms. Suzanne Brown, did not demonstrate that she controls the firm.

Ms. Brown owns 60 percent of the firm. Her husband, John Brown, owns the other 40 percent. NCDOT contends that because the two share a number of duties in the firm, and Mr. Brown has more extensive experience and credentials in the firm's type of work than Ms. Brown, PWP has not carried its burden of proof with respect to control. NCDOT also views Ms. Brown's functions as primarily administrative in nature.

The appeal points to corporate documents that give Ms. Brown control of the company. Because of her training and vetting by the Culligan water treatment firm, the appeal contends, she has sufficient experience and expertise to control the company, notwithstanding her husband's wider background in the field.

The record indicates that Ms. Brown is the 100 percent owner of another company, the Jessup Company, which shares an address with PWP. The North Carolina DBE Directory confirms that Jessup is a certified DBE, in NAICS code 238220, which covers heating, air conditioning, and plumbing contractors. According to the Jessup Company website,¹ Jessup, like PWP, does work under the Culligan brand.

Neither the firm's application nor other documents in the record specify the NAICS code in which PWP is seeking certification. However, NAICS code 238220 – the code in which Jessup is certified – also covers various kinds of water system work, such as water softener installation, in

¹ <https://www.jessupservice.com>.

which PWP is engaged.² It is reasonable to conclude that this is the code that would apply to PWP's activities as well as those of Jessup.

By certifying Jessup as a DBE in NAICSs code 238220, NCDOT necessarily concluded that Ms. Brown could control the work of a firm in that code. A conclusion that Ms. Brown is unable control the work of PWP in the same NAICS code seems inconsistent with NCDOT's previous determination.

For this reason, we conclude that NCDOT lacks substantial evidence to deny PWP's application, and we therefore reverse the decision under section 26.89(f)(2) of the DBE regulation. We direct NCDOT to certify the firm immediately.

This decision is administratively final and not subject to petitions for review.

Sincerely,

Samuel F. Brooks
DBE Appeal Team Lead
Disadvantaged Business Enterprise Division

cc: NCDOT
Suzanne Brown

² See <https://www.naics.com/naics-code-description/?code=238220>.

