COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

	November 7, 2008
In the Matter of	DEP Docket No. 2006-155
	DALA No. DEP-07-61
Michael Gaspard	File No. SE3-4391
	Barnstable

Final Decision on Motion for Reconsideration

The issue in this case was whether the water body associated with the Bumps River in Centerville is a river or a pond. If it is a river, work within riverfront area would be subject to review. Both the Barnstable Conservation Commission and the Southeast Regional Office of the Department of Environmental Protection determined that the waterbody is not a river. In a Recommended Final Decision, adopted by Final Decision, the Administrative Magistrate found that the water body is a pond rather than a river in a factually-based decision. Consistent with prior Department decisions on this distinction, the lack of unidirectional flow was the most determinative criterion. The evidence was conclusive that there was no flow in the waterbody, based upon studies performed by the Department's and Applicant's witnesses.

The Petitioner, an abutter, filed a motion for reconsideration claiming errors of fact and law and further moved to reopen the hearing. The petitioner argues that the Department's change in position and the conduct of its testing were unfair. The Applicant and the Department filed oppositions. I have considered the arguments of the

parties and decline to reconsider the Final Decision or to reopen the hearing. It is well settled that the Department may revise its positions during the course of a hearing. See, e.g., Matter of Capolupo, Docket No. 2000-097, Motion Rulings (March 15, 2001). Further, nothing precludes Department staff from exchanging information with experts associated with other parties. Both these practices serve to better inform the agency's action. The Petitioners have identified no new evidence that was not reasonably available at the time of the hearing, the standard for reopening a hearing. 310 CMR 1.01(14)(e). No ruling of law or finding of fact is clearly erroneous, the standard for reconsideration under the regulations. 310 CMR 1.01(14)(d).

A person who has the right to seek judicial review may appeal this Decision to the Superior Court pursuant to M.G.L. c. 30A, §14(1). The complaint must be filed in the Court within thirty days of receipt of this Decision.

This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.

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Laurie Burt
Commissioner