

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
100 CAMBRIDGE STREET, BOSTON, MA 02114 617-292-5500

**THE OFFICE OF APPEALS AND DISPUTE RESOLUTION**

**March 27, 2023**

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In the Matter of  
AAD, LLC

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OADR Docket No. 2022-019  
Enforcement Doc. No. 00013283  
Penalty Assessment Notice  
Agawam, MA

**RECOMMENDED FINAL DECISION**


On September 8, 2022, the Massachusetts Department of Environmental Protection's Office of Appeals and Dispute Resolution ("OADR") received a copy of an enforcement document and a check for an appeal filing fee from AAD, LLC ("the Petitioner"). The enforcement document, Enforcement Doc. No. 00013602, is a Penalty Assessment Notice ("PAN") issued by MassDEP's Western Regional Office ("WERO") to the Petitioner on August 23, 2022, for alleged violations of the Massachusetts air quality regulations at 310 CMR 7.00. While OADR received a copy of the enforcement document and a copy of the filing fee, OADR did not receive a notice of claim identifying the reasons for the appeal and the relief sought, as required by the appeal regulations.

On October 17, 2022 I issued an Order to Show Cause to the Petitioner ordering the Petitioner to show cause why this appeal should not be dismissed for lack of jurisdiction. The Petitioner's response was due by October 28, 2022; no response was filed.

An administrative appeal of a PAN is initiated when a notice of claim is filed with OADR. 310 CMR 1.01(c); 310 CMR 1.01(6)(a).<sup>1</sup> The requirements of 310 CMR 1.01(6)(a) are mandatory. The PAN at Section IV., ¶ 11, contained instructions for filing an appeal. Specifically, ¶ 11 stated that if the Petitioner intended to appeal the PAN, the Petitioner was required to file with OADR a written statement that denied the alleged facts and/or asserted that the assessed penalty amount is excessive; and clearly and concisely stated every point of fact and law it intended to raise in the adjudicatory hearing. The purported appeal by the Petitioner failed to comply with these requirements because no notice of claim was filed by the filing deadline for the appeal. Thus, OADR lacks jurisdiction to adjudicate the appeal. Payment of the filing fee does not serve as a place holder for a late-filed appeal notice.

I recommend that the Commissioner or her designee issue a Final Decision dismissing this appeal and making the PAN final.

Date: 3/27/2023



Jane A Rothchild  
Presiding Officer

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<sup>1</sup> 310 CMR 1.01(6)(a) provides that “[a]ny person having a right to initiate an adjudicatory appeal shall file a written notice of claim for an adjudicatory appeal. The notice shall be filed within the time prescribed by any applicable provision of law, or in the absence of a prescribed time period, within 21 days from the date that the notice of Department action was sent to a person.”

**IN THE MATTER OF:** **AAD, LLC**

**Petitioner:** AAD, LLC

**The Department:** Peter Varley, Environmental Analyst  
MassDEP/Western Regional Office  
436 Dwight Street  
Springfield, MA 01103  
[peter.varley@mass.gov](mailto:peter.varley@mass.gov)

**Legal Representative:** Bruce Hopper, Chief, Litigation  
MassDEP/Office of General Counsel  
100 Cambridge Street, 9<sup>th</sup> Floor  
Boston, MA 02114  
[bruce.e.hopper@mass.gov](mailto:bruce.e.hopper@mass.gov)

cc: Eva Tor, Deputy Regional Director  
Bureau of Air & Waste  
MassDEP/Western Regional Office  
436 Dwight Street  
Springfield, MA 01103  
[eva.tor@mass.gov](mailto:eva.tor@mass.gov)

Jakarta Childers, Paralegal  
MassDEP/Office of General Counsel  
100 Cambridge Street, 9<sup>th</sup> Floor  
Boston, MA 02114  
[Jakarta.childers@mass.gov](mailto:Jakarta.childers@mass.gov)