



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

June 18, 2019

In the Matter of
Alan Marks, Tri Street Partners, LLC

OADR Docket No. WET-2018-009
Ashland, MA

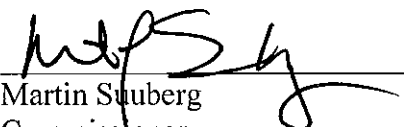
FINAL DECISION

I adopt the Recommended Final Decision (“RFD”) of the Presiding Officer.

In issuing this Final Decision adopting the RFD, I reiterate and emphasize one of the RFD’s holdings based on precedent established in prior MassDEP Final Decisions during the past six years (since 2013). Specifically, the RFD correctly ruled that MassDEP’s Office of Appeals and Dispute Resolution (“OADR”) has jurisdiction to adjudicate facial challenges to MassDEP’s regulations. This ruling follows the rulings in the Final Decisions issued in Matter of SEMASS Partnership, OADR Docket No. 2012-015, Recommended Final Decision (June 18, 2013), adopted by Final Decision (June 24, 2013); Matter of Boston Environmental Corporation, OADR Docket No. 2013-041, Recommended Final Decision (February 10, 2015), adopted by Final Decision (March 19, 2015); and Matter of 104 Stony Brook, Docket No. 2017-021, Recommended Final Decision (May 21, 2018), adopted by Final Decision (July 17, 2018). In this appeal, MassDEP, for reasons not explained by MassDEP in the Administrative Record,

ignored this precedent. In the future, I expect MassDEP to follow the holdings of this appeal and the prior three Final Decisions discussed above.

The parties to this proceeding are notified of their right to file a motion for reconsideration of this decision, pursuant to 310 CMR 1.01(14)(d). The motion must be filed with the Case Administrator and served on all parties within seven business days of the postmark date of this decision. 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.


Martin Stenberg
Commissioner

SERVICE LIST

In The Matter Of:

Alan Marks, Tri Street
Partners, LLC

Docket No. WET-2018-009

File No. SDA
Ashland

Representative

George Connors
10 SW Cutoff
Northborough, MA 01532
George@gfconnorslaw.com

PARTY
Tri Street Partners, LLC

Brian J. Winner
Mead, Talerman & Costa, LLC
730 Main Street, Suite 1F, Millis, MA 02054
brian@mtclawyers.com

PETITIONER
Ashland Conservation Commission

Gene Crouch
VHB
101 Walnut Street
PO Box 9151
Watertown, MA 02472
gcrouch@vhb.com

Elizabeth Kimball
Sarah Baron
Mass DEP Office of General Counsel
One Winter Street
Boston, MA 02108
Sarah.Baron@mass.gov
Elizabeth.Kimball@mass.gov

DEPARTMENT

Cc:
Gary Bogue
MassDEP – Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887
Gary.Bogue@mass.gov

DEPARTMENT

Date: June 18, 2019