

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

In the Matter of
Ana Duarte, Trustee
The Michael C. Coakley Living Trust

OADR Docket No. 2022-015
Enforcement Doc. No. 00013968
Penalty Assessment Notice
Woburn, MA

RECOMMENDED FINAL DECISION

On or about September 27, 2022, the Massachusetts Department of Environmental Protection's Office of Appeals and Dispute Resolution ("OADR") received a copy of a check and an Adjudicatory Fee Transmittal Form signed by Ana Duarte, Trustee of The Michael C. Coakley Living Trust ("the Petitioner") that had been sent to MassDEP's Lock Box. The Transmittal Form referenced Enforcement Doc. No. 00013602. Enforcement Doc. No. 00013602 is a Penalty Assessment Notice ("PAN") issued by MassDEP's Northeast Regional Office ("NERO") to the Petitioner on August 24, 2022, for alleged violations of the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40, and the Wetlands Regulations at 310 CMR 10.00. OADR received neither a copy of the enforcement document nor a notice of claim identifying the reasons for the appeal and the relief sought.¹

¹ NERO provided OADR with a copy of the PAN.

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).² The requirements of 310 CMR 1.01(6)(a) are mandatory. The PAN at Section III., ¶ 9, contained instructions for filing an appeal. Specifically, ¶ 9 stated that if she 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 she 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 MassDEP's Commissioner issue a Final Decision dismissing this appeal and making the PAN final.

Date: 3/27/2023



Jane A Rothchild
Presiding Officer

² 310 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.”

SERVICE LIST

IN THE MATTER OF:

**Ana Duarte, Trustee, The Michael C. Coakley
Living Trust
Woburn**

Docket No. 2022-015

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