

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

July 24, 2025

In the Matter of Bostik, Inc
c/o Nick Nelson, Inter-Fluve, Inc.
South Middleton Dam Removal

OADR Docket No. 2025-004
Chapter 91 Permit # 24-WW01-0202-APP
DEP File # 222-0826

RECOMMENDED FINAL DECISION

Steven Carreiro, Mildred Forbes, Kathleen Stewart, Melissa Austin, Laura Tempesta, Grant Nash and Shwan Mcentee, residents of Riverside Drive in North Reading, Massachusetts (the “Petitioners”) have filed this appeal with the Office of Appeals and Dispute Resolution (“OADR”)¹ challenging the Draft Waterways Permit (“Draft Permit”) issued by the Massachusetts Department of Environmental Protection (“MassDEP” or the “Department”) to Bostik, Inc. (the “Applicant”). The Department issued the Draft Permit pursuant to the Massachusetts Waterways Act, G.L. c. 91 and the regulations at 301 CMR 9.00 et. seq. The Draft Permit authorizes the Applicant to restore stream connectivity and improve aquatic habitat through removal of the South Middleton Dam in and on waters of the Ipswich River off 211 Boston Street in Middleton, Massachusetts.

The Petitioners contend that they own land currently submerged by the Ipswich River or own river frontage along the same corridor, and that their riparian rights to access and use this stretch of

¹ A description of OADR appears in Addendum No. 1.

the Ipswich River for recreational purposes would be negatively impacted. The Petitioners assert, as a result, that they are persons aggrieved by the Draft Permit.

The March 18, 2025 Scheduling Order we issued in this appeal to facilitate the appeal's adjudication directed the Parties to confer regarding settlement and a proposed appeal resolution schedule if their settlement discussions reached an impasse. On April 24, 2025 the Department and the Applicant each filed a Motion to Dismiss. On April 29, 2025 the Petitioners filed an Opposition to those motions and a Motion for Summary [Decision].² The Parties then filed a Joint Status Report pursuant to the Scheduling Order on May 2, 2025.³ Thereafter, on May 13, 2025 the Department and the Applicant each opposed the Petitioners' Motion for Summary [Decision].

On June 12, 2025 we issued a Ruling and Order denying the Applicant's and MassDEP's Motions to Dismiss,⁴ as well as the Petitioner's Motion for Summary [Decision], and directed the Petitioners to file a More Definite Statement within seven (7) business days of the Ruling and Order, or by June 23, 2025.⁵ The Petitioner's More Definite Statement was to include the following three components:

1. Affidavits, signed under pains and penalties of perjury, by each named Petitioner in support of Mr. Carriero's contention that comments he submitted on behalf of the

² The Parties' Motions for Summary Judgment are treated as Motions for Summary Decision consistent with 310 CMR 1.01(11)(f). A motion for summary decision in an administrative appeal is similar to a motion for summary judgment in a civil lawsuit. See e.g., In the Matter of Lowe's Home Centers, Inc., Docket No. WET -2009-013, Recommended Final Decision (June 19, 2009), adopted by Final Decision (June 30, 2009) (citing Massachusetts Outdoor Advertising Council v. Outdoor Advertising Board, 9 Mass. App. Ct. 775, 785-86 (1980)).

³ The Joint Status Report implied that the Parties were unable to reach settlement by stating that "the parties have not been able to reach an agreed settlement." However, the Petitioners' Opposition asserts that the Petitioners initiated settlement discussions but that the Applicant never responded to their overtures. In its Opposition to the Petitioners' Motion, MassDEP contends that it had separate conversations with the Applicant and Petitioners that amounted to good faith settlement efforts among the Parties.

⁴ The Department's Motion to Dismiss suggested in the alternative to dismissal that the Petitioners be ordered to file a More Definite Statement pursuant to 310 CRM 1.01(11)(b).

⁵ Ruling and Order on: (1) MassDEP's Motion to Dismiss; (2) Applicant's Motion to Dismiss; (3) Petitioners Motion for Summary Decision; and (4) More Definite Statement, June 12, 2025 ("Ruling and Order").

“Residents of Riverside Drive Community” were submitted on behalf of each named Petitioner, including but not limited to their intent to submit the comments, the date on which the Petitioner authorized Mr. Carriero to provide comments on their behalf, and the date on which they reviewed and approved the comments prior to their being filed by Mr. Carriero;

2. In accordance with 310 CMR 1.01(6)(b), 310 CMR 1.01(11)(b), and 310 CMR 9.17(3), a clear and concise reference to the statutory and regulatory provisions governing the Draft Permit and ties them to the facts alleged which are grounds for the Petitioners’ appeal of the Draft Permit and the relief sought, including the changes the Petitioners’ desire in the final permit; and
3. As the Petitioners have the burden of proof in this matter, specifically, proving through expert testimony at an evidentiary adjudicatory hearing that MassDEP improperly issued the Draft Permit, in accordance with 310 CMR 1.01(11)(b), the name of their expert witnesses, the credentials that establish the foundation for them to offer opinion testimony, and a summary of anticipated testimony.

On June 20, 2025 the Petitioners filed their More Definite Statement. The Petitioners did not file any affidavits, instead repeating their assertion that the email previously provided in the record is sufficient and requesting a 30-day extension to provide Affidavits, if needed. The Petitioners also failed to identify experts, contending instead that no expert opinion is necessary.

310 CMR 1.01(5)(a)15.d. authorizes Presiding Officers to issue an Order for a More Definite Statement to a party to provide a more definite statement of their claims, and to show cause why an appeal should not be dismissed. 310 CMR 1.01(5)(a)15.f.vi. authorizes Presiding Officers to dismiss appeals for failure to comply with an order. Pursuant to 310 CMR 1.01(10):

When a party fails to file documents as required, respond to notices, correspondence or motions, comply with orders issued and schedules established in orders or otherwise fails

to prosecute the adjudicatory appeal; demonstrates an intention not to proceed; demonstrates an intention to delay the proceeding or resolution of the proceedings; or fails to comply with any of the requirements set forth in 310 CMR 1.01; the Presiding Officer may impose appropriate sanctions on that party.

Among the sanctions authorized by this regulation is the sanction of dismissal. See 310 CMR 1.01(10)(e). Because the Petitioners failed to comply with the Order for More Definite Statement, they have demonstrated an intention not to pursue this appeal and a sanction of dismissal is appropriate. We recommend that the MassDEP's Commissioner issue a Final Decision dismissing the appeal and affirming the Draft Permit.

Date: July 24, 2025



Michael W. Dingle
Presiding Officer



Margaret R. Stolfa
Presiding Officer

NOTICE - RECOMMENDED FINAL DECISION

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for her Final Decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(d), and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's Final Decision is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion, directs otherwise.

SERVICE LIST

Petitioners:

Steve Carreiro (**Representative**)
25 Riverside Drive
North Reading, MA 01864
Email: scarreiro@mrgcm.com

Mildred Forbes
3 Riverside Drive
North Reading, MA 01864

Kathleen Stewart
13 Riverside Drive
North Reading, MA 01864

Melissa Austin
19 Riverside Drive
North Reading, MA 01864

Laura Tempesta
31 Riverside Drive
North Reading, MA 01864

Grant Nash
3 Riverside Drive
North Reading, MA 01864

Shawn Mcentee
37 Riverside Drive
North Reading, MA 01864

Applicant:

Bostik, Inc.

Legal Representative:

Shanisha Y. Smith, Esq.
Applicant Bostik, Inc.
900 First Avenue
King of Prussia, PA 19406
shanisha.smith@arkema.com

James W. Beers, Jr., Esq.
TROUTMAN PEPPER LOCKE
401 9th Street, NW, Suite 1000
Washington, D.C. 20004
james.beers@troutman.com

Continued from previous page:

MassDEP: Daniel Padien, Waterways Program Chief
Christine Hopps, Assistant Director
Susan You, Regional Planner
Waterways Regulation Program
MassDEP/Boston
100 Cambridge Street, 9th Floor
Boston, MA 02114
email: Daniel.Padien@mass.gov
email: Christine.Hopps@mass.gov
email: Susan.You@mass.gov

Legal Representative: Katherine Blakely, Esq.
Jakarta Childers, Program Coordinator
MassDEP/Office of General Counsel
100 Cambridge Street/9th Floor
Boston, MA 02114
email: Katherine.Blakely@mass.gov
email: Jakarta.childers@mass.gov

CC: Town of Middleton
Justin Sultzbach, Town Administrator
48 S. Main Street
Memorial Hall
Middleton, MA 01949
email: justin.sultzbach@middletonma.gov

Kate Frew, MA Division Marine Fishery
Kate.frew@mass.gov