

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

December 30, 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
ON RECONSIDERATION

Steven Carreiro, Mildred Forbes, Kathleen Stewart, Melissa Austin, Laura Tempesta, Grant Nash and Shawn Mcentee, residents of Riverside Drive in North Reading, Massachusetts (the “Petitioners”) have filed this appeal with the Office of Appeals and Dispute Resolution (“OADR”) 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 of this stretch of 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.

In denying Motions to Dismiss filed by the Department and the Applicant, and the Petitioners' Motion for Summary Decision, the Petitioners were afforded a More Definite Statement to support standing and to identify expert witnesses. Because the Petitioners failed to comply with the Order for More Definite Statement ("Order"),¹ we determined that they demonstrated an intention not to pursue this appeal and a sanction of dismissal was appropriate. We issued a Recommended Final Decision recommending that MassDEP's Commissioner issue a Final Decision dismissing the appeal and affirming the Draft Permit. The Commissioner issued a Final Decision adopting the Recommended Final Decision on August 29, 2025.

On September 9, 2025 the Petitioners filed an opposition to the Final Decision which we treat here as a Motion for Reconsideration. The Department filed an opposition to the Petitioners' filing on September 18, 2025 with which the Applicant joined. The Petitioners have failed to meet the heavy burden required for reconsideration of a Commissioner's Final Decision. For the reasons discussed below, we recommend that the Commissioner issue a Final Decision on Reconsideration denying the Petitioners' Motion.

STANDARD OF REVIEW

A Party seeking reconsideration of a Final Decision has a heavy burden of demonstrating that the Final Decision was unjustified. 310 CMR 1.01(14)(d); In the Matter of Kevin Slattery and Etchstone Properties, Inc., OADR Docket No. WET-2018-015, Recommended Final Decision on Reconsideration (December 17, 2019), 2019 WL 8883857, *5, adopted as Final Decision on Reconsideration (January 7, 2020), 2020 WL 2616493; In the Matter of Gary Vecchione, OADR Docket No. WET-2014-008, Recommended Final Decision on Reconsideration (November 4, 2014), 2014 WL 6633667, *2, adopted as Final Decision on Reconsideration (November 7, 2014), 2014 WL 6633699. Specifically, the party must demonstrate that the Final Decision was based upon a finding of fact or ruling of law that was "clearly erroneous" and materially impacted the Final Decision's

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

validity warranting its vacating by the Commissioner. Id. In addition, a Motion for Reconsideration may be summarily denied if “[it] repeats matters adequately considered in the final decision, renews claims or arguments that were previously raised, considered and denied, or where it attempts to raise new claims or arguments” 310 CMR 1.01(14)(d); Slattery, 2019 WL 8883857, *5; Vecchione, 2014 WL 6633667, *2. Moreover, “reconsideration [of the Final Decision is not] justified by the [party’s] disagreement with the result reached in the Final Decision.” Id.

DISCUSSION

1. The Petitioners failed to demonstrate that the Final Decision was based upon a finding of fact or ruling of law that was “clearly erroneous” and materially impacted the Final Decision’s validity warranting its vacating by the Commissioner

The Petitioners contend that the appeal should be decided on the merits and not on procedural grounds which they characterize as a minor procedural technicality without any opportunity to have the facts and evidence argued. The Petitioners made no showing that the Final Decision was based on a finding of fact or ruling of law that was clearly erroneous.

First, the Petitioners’ More Definite Statement did not include the supportive affidavits required in the Order to demonstrate standing,² 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.³ The affidavits were necessary to demonstrate Petitioners’ standing, which is not a procedural technicality,⁴ as explained in the Order. The Order provided the Petitioners with an

² In the Order we concluded that the Petitioners had made the initial showing of standing to proceed through the “standing gateway to the inquiry on the merits” to survive the Motions to Dismiss and addressed the Applicant’s and the Department’s contention that 5 of the 7 Petitioners did not participate in the prior proceedings by requiring the Petitioner to file affidavits.

³ The Petitioner did not request an extension that was denied, as implied in the Motion for Reconsideration. They made no assertion that they had tried to obtain affidavits and needed more time, instead contending only that affidavits were unnecessary are needed. They requested an additional 30 days if affidavits were required, seemingly ignoring the preceding Order requirement.

⁴ Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667, 672 (1975)(standing is not simply a procedural technicality and a party must meet the legal requirements necessary to confer standing); In the Matter of Webster Ventures, LLC, OADR Docket No. 2015-014 (“Webster Ventures II”), Recommended Final Decision (June 3, 2016), 2016 MA ENV LEXIS 27, at 19-20, adopted as Final Decision (June 15, 2016), 2016 MA ENV LEXIS 32.

additional opportunity to demonstrate standing by showing that each Petitioner submitted comments during the public comment period.

Second, the Petitioners failed to identify experts, contending instead that no expert opinion is necessary.⁵ Petitioners repeat their contention that no experts are necessary because their assertions are supported by facts within common knowledge and on which a reasonable person could rely. In this de novo proceeding the Petitioners have the burden of proof, specifically, of presenting credible evidence from a competent source to support their claims that MassDEP improperly issued the Draft Permit. See In the Matter of Diamond Development Realty Trust, *5. A “competent source” is a witness who has sufficient expertise to render testimony on the technical issues on appeal. Id.⁶ In accordance with 310 CMR 1.01(11)(b), the Petitioners were to provide the name of their expert witnesses, the credentials that establish the foundation for them to offer opinion testimony, and a summary of anticipated testimony. Their assertion that no expert is necessary is insufficient to overcome their responsibility to carry their burden of proof. As a result, the Petitioners failed to demonstrate that the Final Decision was based upon a finding of fact or ruling of law that was “clearly erroneous” and materially impacted the Final Decision’s validity warranting its vacating by the Commissioner.

2. The Petitioners repeat matters adequately considered in the Final Decision, renew claims or arguments that were previously raised, considered and denied, or attempt to raise new arguments.

As noted above, regarding standing, the Petitioners failed to support their standing claim when given a further opportunity to do so. Regarding expert testimony, the Petitioners contend that common knowledge is sufficient to prove their case as their grounds for not identifying expert witnesses but also contend that the impact on water levels will depend on the reading of the

⁵ Nor did Petitioners identify any expert witnesses in the Joint Status Report and Proposed Appeal Resolution Schedule filed by the Parties on May 2, 2025 or in their response to the Order.

⁶ Because no witnesses were identified, whether a witness was qualified to offer expert testimony was not reached in this matter. See Commonwealth v. Cheromcka, 66 Mass.App.Ct. 771, 786 (2006)(whether witness has necessary expertise depends on sufficient education, training, experience and familiarity of subject matter.)

engineering plans and is “not within the common knowledge of and experience of the lay person.”
See Pets’ More Definit. Statement., 6. As the Department and Applicant contend in their Opposition,
this admission, and other relief sought, makes clear that expert testimony is necessary.⁷

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, if the party
fails to do so, to show cause why an appeal should not be dismissed. Moreover, 310 CMR
1.01(5)(a)15.f.vi. authorizes Presiding Officers to dismiss appeals for failure to comply with an order.
See 310 CMR 1.01(10)(e). Because the Petitioners declined to file the required information, they
demonstrated an intention not to pursue this appeal and a sanction of dismissal is appropriate. The
Petitioners repeat matters adequately considered in the Final Decision, renew claims or arguments
that were previously raised, considered and denied.

CONCLUSION

Prosecution of an appeal is a serious matter. The Petitioners declined to support their
standing by filing affidavits and failed to support their claims by identifying experts. An inadequately
filed and prosecuted appeal does not further the noble cause of public trust protection and results in
the unnecessary expenditure of OADR’s limited, publicly funded resources to adjudicate the appeal
when such resources could have been utilized in adjudicating an appeal having a good faith basis.

We recommend that the Department’s Commissioner deny the Petitioners’ Motion pursuant to
310 CMR 1.01(14)(d)⁸ for failure to satisfy the requirements for reconsideration of the Final Decision
that the Commission issued in this appeal. Any party may appeal this Final Decision to the Superior

⁷ “[R]evise existing plans, design to millrace and proposed grades @ [sic] existing dam location, by bringing in suitable materials, to create a higher depth of water after dam removal” and that the applicant be required to “retain a hydrologist to use current and historical data @ [sic] current dam location...to create hydrological models that will simulate the change in water level following dam removal[.]” Pets,’ More Definit. Statement, p. 5

⁸ 310 CMR 1.01(14)(d) provides in relevant part:

Where a finding of fact or ruling of law on which a final decision is based is clearly erroneous, a party may file a motion for reconsideration setting forth specifically the grounds relied on to sustain the motion. Where the motion repeats matters adequately considered in the final decision, renews claims or arguments that were previously raised, considered and denied, or where it attempts to raise new claims or arguments, it may be summarily denied. . . .

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 Final Decision.

Date: December 30, 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.

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