

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
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**THE OFFICE OF APPEALS AND DISPUTE RESOLUTION**

October 8, 2021

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In the Matter of  
Brendan Kuntz

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OADR Docket No. 2021-018  
New Salem, MA

**RECOMMENDED FINAL DECISION**

Brendan Kuntz (“Petitioner”) filed this appeal to challenge the Penalty Assessment Notice (“PAN”) issued by the Western Regional Office of the Massachusetts Department of Environmental Protection (“MassDEP”) for two separately alleged open-burning violations of the Air Quality regulations, 310 CMR 7.00, at 17 Whitaker Road, New Salem, Massachusetts. The PAN references four prior alleged open-burning incidents against the Petitioner in 2019 and 2020. The PAN was issued in the amount of \$2,000 pursuant to the Air Pollution Control Regulations at 310 CMR 6.00 and 310 CMR 7.00.

On August 10, 2021, approximately a week after this appeal was filed, I issued an Order for Petitioner to Provide a More Definite Statement (“Order”). I issued the Order because the Petitioner’s Notice of Claim failed to provide sufficient specificity to give adequate notice of the Petitioner’s alleged claims. In fact, the Petitioner failed to provide any basis or stated reason for his appeal.

The Adjudicatory Proceeding Regulation at 310 CMR 1.01(6)(b) provides that a Notice of Claim must specify each alleged violation, stating:

(b) Form and Content. The notice of claim for adjudicatory appeal shall state specifically, clearly and concisely the facts which are grounds for the appeal, the relief sought, and any additional information required by applicable law or regulation.... When the contents of a notice of claim do not meet the requirements of 310 CMR 1.01 and any other applicable regulations, the Presiding Officer shall dismiss the appeal or require a more definite statement. If the person filing the notice of claim fails to file a more definite statement within the period specified, the appeal shall be dismissed.

The Petitioner's Notice of Claim did not comply with these requirements.

In addition, the PAN provided detailed instructions on how to file a Notice of Claim and what information to include in it. It stated that if the Petitioner files an appeal, he must state "every point of fact and law that [he] intend[s] to raise in the adjudicatory proceeding." The Petitioner did not comply with this requirement. The Petitioner also failed to meet the appeal requirements outlined in the PAN that he: (1) deny that he committed any air pollution violations; and/or (2) claim that the \$2,000.00 penalty amount was excessive. The Petitioner's Notice of Claim failed to provide any explanation why he was filing the appeal.

To remedy the preceding pleading defects, the Order required the Petitioner to file an Amended Notice of Claim by August 24, 2021. The Order required the Amended Notice of Claim to: (1) specify the reasons why the Petitioner believes that the PAN was wrongfully issued to him and/or why the penalty amount is incorrect; (2) provide a detailed factual basis that underlies each of those reasons; and (3) specify the relief that the Petitioner seeks in this appeal along with the legal basis for such relief. See 310 CMR 1.01(5) and (11)(b).

I concluded the Order by stating: "Failure to meet the above requirements will result in dismissal of the appeal, absent a showing of good cause."

On September 20, 2021, MassDEP filed a Motion to Dismiss because the Petitioner failed to respond to the Order and failed to provide good cause for that noncompliance. The Motion to Dismiss should be allowed because the Petitioner: failed to comply with the Order,

show good cause why the appeal should not otherwise be dismissed, and failed to prosecute this appeal. See 310 CMR 1.01(5).

For all the above reasons, I recommend that MassDEP's Commissioner issue a Final Decision adopting this Recommended Final Decision and dismissing the appeal.

NOTICE- RECOMMENDED FINAL DECISION

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for his 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 his sole discretion, directs otherwise.

Date: October 8, 2021



Timothy M. Jones  
Presiding Officer

## SERVICE LIST

**In The Matter Of:**

**Brendan Kuntz**

**Docket No. 2021-018**

**File No. 00011592**

**New Salem, MA**

Representative

Party

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DEPARTMENT

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Recommended Final Decision

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