

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**

**December 17, 2025**

---

In the Matter of  
Charles and Francine Rogers

---

OADR Docket No. 2003-170  
DEP File No. SE 3-4030  
Barnstable, MA

**RECOMMENDED FINAL DECISION**

The Barnstable Conservation Commission (“Petitioner”) filed this appeal with the Massachusetts Department of Environmental Protection’s (“MassDEP” or “the Department”) Office of Appeals and Dispute Resolution (“OADR”) challenging the Superseding Order of Conditions (“SOC”) issued on November 17, 2003 to Charles and Francine Rogers (“Applicant”) by the MassDEP’s Southeast Regional Office pursuant to the Massachusetts Wetland Protection Act, M.G. L. c. 131, § 40 (“MWPA”), and the Wetlands Regulations, 310 CMR 10.00. The SOC approved the Applicant’s proposed construction of a pier, lateral access stairs, ramp and float as revised. The Petitioner’s appeal claimed the proposed project should have been denied under the local bylaw. The matter was stayed on January 15, 2004 pending the resolution of the related Superior Court Action, appealing the denial for the proposed project under the local bylaw. The Order staying the proceedings required that status reports be filed on an ongoing basis at six-month intervals. The last status report filed with OADR was on July 26, 2005. Accordingly, I ordered the parties to file a status report in the above referenced appeal by May 3, 2024. On

May 29, 2025, Department counsel noted that Petitioner had not filed any further status report, and moved to dismiss the appeal.

310 CMR 1.01(5)(a)(15)(f)(vi) authorizes a Presiding Officer to dismiss an appeal 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 the above regulation is the sanction of dismissal. See 310 CMR 1.01(10)(e). Because the Petitioner failed to respond to my order, it demonstrated an intention not to pursue its appeal, a sanction of dismissal is appropriate. Accordingly, I recommend that MassDEP's Commissioner issue a Final Decision dismissing the appeal.

Date: December 17, 2025



Michael W. Dingle  
Presiding Officer

**NOTICE OF 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 may file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party may communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion, directs otherwise.

**SERVICE LIST**

<b>Petitioner</b>	Barnstable Conservation Commission
<b>Counsel for Petitioner</b>	Karen L. Nober, Esq. 367 Main Street Barnstable, Massachusetts 02601 <a href="mailto:karen.nober@town.barnstable.ma.us">karen.nober@town.barnstable.ma.us</a>
<b>Applicants</b>	Charles and Francine Rodgers
<b>Counsel for Applicants</b>	Robert S. Troy, Esq. ROBERT S. TROY & ASSOCIATES 90 Route 6A Sandwich, Massachusetts 02653 <a href="mailto:RST@troywallassociates.com">RST@troywallassociates.com</a>
<b>MassDEP</b>	Maissoun Reda, Wetlands Section Chief Shaun Walsh, Chief Regional Counsel MassDEP, Southeast Regional Office 20 Riverside Drive Lakeville, Massachusetts 02347 <a href="mailto:maissoun.reda@mass.gov">maissoun.reda@mass.gov</a> <a href="mailto:shaun.walsh@mass.gov">shaun.walsh@mass.gov</a>
<b>Counsel for MassDEP</b>	Katherine Blakley, Esq. MassDEP, Office of General Counsel 100 Cambridge Street, 9 <sup>th</sup> Floor Boston, Massachusetts 02114 <a href="mailto:Katherine.blakley@mass.gov">Katherine.blakley@mass.gov</a>
<b>Litigation Manager for MassDEP</b>	Bruce Hopper, Esq. MassDEP, Office of General Counsel 100 Cambridge Street, 9 <sup>th</sup> Floor Boston, Massachusetts 02114 <a href="mailto:bruce.e.hopper@mass.gov">bruce.e.hopper@mass.gov</a>
<b>Program Coordinator for MassDEP</b>	Jakarta Childers MassDEP, Office of General Counsel 100 Cambridge Street, 9 <sup>th</sup> Floor Boston, Massachusetts 02114 <a href="mailto:jakarta.childers@mass.gov">jakarta.childers@mass.gov</a>