

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

May 29, 2024

In the Matter of
Daniel T. Boyle

OADR Docket Number: 2023-062
Enf. Document # 00016597
MassDEP BAW
Williamsburg, MA

RECOMMENDED FINAL DECISION

This matter is an appeal of a Notice of Intent to Assess a Civil Administrative Penalty (“Penalty Assessment Notice” or “PAN”) in the amount of \$860 issued by the Western Regional Office (“WERO”) of the Massachusetts Department of Environmental Protection (“Department”) to Daniel T. Boyle (“Petitioner”) on November 3, 2023. The PAN alleges that the Petitioner conducted an open burning of combustible materials in violation of 310 CMR 7.07(1). On November 20, 2023, Daniel T. Boyle (“Petitioner”) filed this appeal with the Office of Appeals and Dispute Resolution (“OADR”).¹

I. Procedural History.

As a preliminary matter, the Petitioner filed this matter on November 23, 2023. It quickly became apparent that the Petitioner does not use E-mail. Accordingly, I instructed the Interim Case Administrator to ensure that the Petitioner received all orders by sending them by first class

¹ OADR is an independent, neutral, quasi-judicial office within the Department responsible for advising the Department's Commissioner in the adjudication of such an appeal. The Commissioner is the final decision-maker in the appeal unless she designates another final decision-maker in the appeal pursuant to 310 CMR 1.01(14)(b).

mail and separately by certified mail. The Interim Case Administrator did so for all of the orders mentioned in this Recommended Final Decision.

While in almost all cases the certified mailings were returned to the OADR office without the green cards being executed, the first-class mailings appear to have been delivered without incident. None of those mailings was returned, and the Petitioner responded to them in some instances. This indicates that the Petitioner has been receiving all communications from OADR throughout the adjudicatory appeal process.

Turning to the relevant procedural history, on February 2, 2024, I issued a Scheduling Order requiring, among other things, the following:

5. By **February 23, 2024**, the Petitioner and the Department must confer to discuss the possibility of settlement of this appeal and their amenability to mediation or other forms of alternative dispute resolution. **It is the Petitioner's responsibility to initiate settlement discussions by February 16, 2024.**

6. By **March 8, 2024**, the Parties must file a Joint Status Report with OADR informing me of the status of their settlement negotiations.

See Scheduling Order, ¶¶ 5-6. The Scheduling Order specifically provided that failure "to comply with [those deadlines] may be subject to sanctions pursuant to 310 CMR 1.01." Id. at ¶ 12.

On March 11, 2023, I received a status report from the Department stating:

The parties were unable to file the Joint Status Report last Friday as the Department has not heard from the Petitioner in this matter.

I sent a letter to the Petitioner on February 22, 2024 providing him with my phone number and email address and asking him to contact me. I have not received a response at this time.

Accordingly, on March 11, 2024, I issued an Order to Show Cause stating in part:

If the Petitioner wishes to press his case, he must be attentive to the deadlines set. "Parties who do not conform to time limits or schedules established by the Presiding Officer shall, absent good cause shown, summarily be dismissed for failure to prosecute the

case." 310 CMR 1.01(3)(e). Accordingly, the Petitioner is ordered to show good cause why this case should not be dismissed for failure to prosecute.

Further, the Department contacted the Petitioner but did not hear back from him. It is essential that the Petitioner communicate with the Department and OADR when requested. This will allow all parties—including and especially the Petitioner—to receive a meaningful hearing of the issues raised in his appeal. In order to facilitate the resolution of this matter, pursuant to my authority under 310 CMR 1.01(5)(a), the Petitioner is ordered to provide the Department and OADR with a phone number and E-mail address where he can be readily reached or provide an affidavit under oath attesting that he does not have a phone number or an E-mail address.

Responses to the order to show cause and the order to provide a phone number and E-mail address to OADR and the Department are due on or before **March 28, 2024**. Failure to do both will result in me recommending that the Commissioner dismiss this matter. See 310 CMR 1.01(10)(g).

Order to Show Cause, pp. 2-3. This Order to Show Cause was also sent to the Petitioner by first class and certified mail.

On March 24, 2024, the Petitioner sent a letter to OADR stating in full:

I received a letter from some Kimberly Blakley stating that "as I Know" I've been "Ordered" to discuss Settlement in this matter. Ms. Blakley failed to mention the Judge who ordered this, nor did she attach a Mass legal statute number along with this "order."

Now, as you know my job was to appeal or not to appeal these ridiculous accusations, and I appealed them. I'm not sure why your Department continues to harass me with asking for Email, and phone numbers. I do not use Email, nor do I have to have Email. My personal phone number is private and legally none of your business. I'm sure the court would offer an attempt for arbitration if they feel it necessary. You desperately seem to want to dismiss this case, as it's the second time you've said it, just be sure refund my \$100.00 if so. It would look better for your Department in the long run. Once again, I have made an appeal in this case, you have cashed my \$100.00 check. My phone number is not something you're entitled to. I don't even have to have a phone. I suggest have an attorney look over the documents before sending them to me. Once again a video will be made of myself mailing this letter!

- Daniel Boyle

Letter from Daniel Boyle to Patrick Groulx (emphasis in original).

On April 10, 2024, I issued an order on the order to show cause stating, in part:

The Petitioner contends that he does not use E-mail and has refused to provide a phone number to the Department in violation of my order. This alone could provide sufficient justification to recommend entry of a final decision. However, the Petitioner has expressed his desire to press this matter. I will therefore give the Petitioner one additional chance. A scheduling hearing in this matter will be held *in person* at the Western Regional Office at 436 Dwight Street, Springfield, MA 01103, at 1:00 p.m. on Wednesday, April 24, 2024. The Interim Case Manager should work with the Western Regional Office to reserve a room for the hearing. The parties should check with reception for the location of hearing when they arrive.

Order on Order to Show Cause, pp. 3-4. On April 17, 2024, I issued a further order rescheduling the pre-hearing conference and stating in relevant part:

On April 10, 2024, I scheduled a pre-hearing conference for April 24, 2024. Due to a scheduling conflict, I am unable to hold the pre-hearing conference as originally scheduled. Accordingly, the hearing will be held on **May 13, 2024, at 2:00 p.m., via Zoom.**

I am aware that the Petitioner lacks E-mail and presumably access to Internet, but Zoom allows the Petitioner to participate via telephone. The Petitioner may participate by dialing (888) 330-1716 at the time of the hearing and entering the conference code 331020 when prompted. If the Petitioner has any difficulty accessing the hearing, he should contact the Interim Case Administrator at (617) 556-1003.

The Interim Case Administrator is ordered to send a copy of this Order to the Petitioner by first class and certified mail. The Petitioner is advised that failure to participate via phone will result me recommending that the Commissioner enter an order dismissing the matter.

Order Resetting Prehearing Conference for Zoom and Telephonic Access, pp. 1-2.

On May 13, 2024, I commenced the pre-hearing conference on Zoom at 2:00 p.m. In attendance were Joseph Ferson, Assistant Case Administrator with OADR; Katherine Blakley, the Department's Attorney; Sam Titelman, a Department attorney in WERO; Nicolina Fraietta with WERO; and Daniel Balboni with WERO. Three times (at 2:15 p.m., 2:18 p.m., and 2:26

p.m.) a phone number with a 413 area code² joined the Zoom meeting waiting room for a few seconds before dropping off. The number was not in attendance long enough for Mr. Ferson to admit the phone number to the meeting. It is unknown if that phone number was the Petitioner. The Petitioner did not appear at the pre-hearing conference and did not contact the Interim Case Administrator for assistance as instructed. I adjourned the hearing at 2:33 p.m. To this date, OADR has not heard from the Petitioner.

II. Analysis.

Under 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. Sanctions include, without limitation:

- (a) taking designated facts or issues as established against the party being sanctioned;
- (b) prohibiting the party being sanctioned from supporting or opposing designated claims or defenses, or introducing designated matters into evidence;
- (c) denying summarily late-filed motions or motions failing to comply with 310 CMR 1.01(4);
- (d) striking pleadings in whole or in part;
- (e) dismissing the adjudicatory appeal as to some or all of the disputed issues;
- (f) dismissing the party being sanctioned from the appeal; and
- (g) issuing a final decision against the party being sanctioned.

² Zoom logged the exact phone number. I do not include it in this Recommended Final Decision to avoid publishing personally identifiable information.

Even though the Petitioner is *pro se* (meaning not represented by an attorney), he is nevertheless required to comply with the applicable procedural rules. Matter of Dan and Eva Barstow, OADR Docket No. 2019-026, Recommended Final Decision (January 22, 2020), 2020 MA ENV LEXIS 16, at *8-9, adopted as Final Decision (February 19, 2020), 2020 MA ENV LEXIS 12; Lawless v. Bd. of Registration in Pharm., 466 Mass. 1010, 1011 n. 3 (2013).

"Although [his] *pro se* status in the appeal accords [him] some leniency from these litigation rules, [he is] not excused from complying with them." Barstow, 2020 MA ENV LEXIS 12 at *8-9. Nevertheless, the Petitioner has failed to comply with the procedural rules in several basic respects. First, the Petitioner failed to initiate and conduct settlement discussions with the Department. Second, he failed to comply with my order that he provide usable contact information to the Department and to OADR. Third, he failed to attend the pre-hearing conference.

The phone number that briefly appeared during the pre-hearing conference may have been the Petitioner. But even if it was, and even if he was unable for some reason to connect to the pre-hearing conference, he did not contact the Interim Case Administrator as I ordered on April 17, 2024, at the time of the pre-hearing conference or any time thereafter.

The Petitioner was given multiple opportunities to prosecute his appeal and comply with my orders and the procedural rules. He failed to do so. I therefore recommend that the Commissioner issue a Final Decision dismissing this appeal and affirming the PAN.



Patrick M. Groulx
Presiding Officer

Date: May 29, 2024

NOTICE OF RECOMMENDED FINAL DECISION

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to MassDEP's 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

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