

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

ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

**THE OFFICE OF APPEALS AND DISPUTE RESOLUTION**

**July 31, 2018**

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In the Matters of  
Jean T. Ricupero and  
Karen and Thomas Doyle

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OADR Docket No. WET-2017-015, 016  
DEP File Nos. SE 66-1744, 1745

Sandwich, MA

**RECOMMENDED FINAL DECISION ON RECONSIDERATION**

**INTRODUCTION**

The Department of Environmental Protection's Commissioner issued a Final Decision on July 13, 2018 adopting the Recommended Final Decision ("RFD") issued in these consolidated appeals. The RFD recommended that Department's Commissioner issue a Final Decision dismissing the appeals (1) because the Petitioners lack standing or alternatively, (2) because the Petitioners failed to prove that the Department erred in issuing the Superseding Orders of Conditions ("SOCs") at issue. Additionally, the RFD recommended that the Department's Commissioner issue a Final Decision affirming the two SOC's because a preponderance of the evidence demonstrated that the proposed work in the identified resource areas "will contribute to the protection of the [statutory interests] by complying with the general performance standards established by 310 CMR 10.00 for [those areas]". On July 19, 2018 the Petitioners moved for reconsideration of the Final Decision pursuant to 310 CMR 1.01(14)(d). The Applicants and the

Department oppose the motion. I recommend that the Department's Commissioner issue a Final Decision on Reconsideration denying the Petitioners' motion for reconsideration.

### **STANDARD OF REVIEW**

A party seeking reconsideration of a Final Decision must meet a heavy burden. Matter of LeBlanc, Docket No. 08-051, Recommended Final Decision on Reconsideration (February 4, 2009), adopted by Final Decision on Reconsideration (February 18, 2009). The party must demonstrate that the Final Decision was based upon a finding of fact or ruling of law that was "clearly erroneous." 310 CMR 1.01(14)(d). 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 . . . ." Id. Moreover, "reconsideration [of the Final Decision is not] justified by the [party's] disagreement with the result reached in the Final Decision." In the Matter of Gary Vecchione, OADR Docket No. WET-2014-008, Recommended Final Decision on Reconsideration (November 4, 2014), 2014 MA ENV LEXIS 83, at 7.

### **DISCUSSION**

The Petitioners contend in their Motion for Reconsideration that it was error to deny them the opportunity to submit expert testimony after the close of the hearing. This argument was thoroughly addressed in the RFD at pp. 39-41. The Petitioners also challenge the RFD's findings regarding the credibility of their expert witness and his conclusions. This issue was addressed in detail in the RFD at pp. 43-44, 46-52. In sum, the Petitioners' Motion for Reconsideration raises issues and arguments that were previously raised and which were thoroughly addressed in the RFD. Because the Petitioners have not met their "heavy burden" on their Motion for

Reconsideration, I recommend that the Department's Commissioner issue a Final Decision on Reconsideration denying the Motion for Reconsideration.

Date: 7/31/2018



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Jane A Rothchild  
Presiding Officer

**NOTICE- RECOMMENDED FINAL DECISION ON RECONSIDERATION**

This decision is a Recommended Final Decision on Reconsideration 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 may be appealed and will contain a notice to that effect.

## SERVICE LIST

### IN THE MATTERS OF:

**Docket No. WET-2017-015**  
**Docket No. WET-2017-016**

**Jean T. Ricupero**  
**Tom and Karen Doyle**

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**In the Matter of Jean T. Ricupero**  
**In the Matter of Karen and Thomas Doyle**  
OADR Docket Nos. WET-2017-015 and WET-2017-016  
Recommended Final Decision on Reconsideration

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