

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

July 2, 2026

In the Matter of
John Staffier III

OADR Docket Nos. 2019-014
Enforcement Document No. 00004796
Pepperell, MA

RECOMMENDED FINAL DECISION

John Staffier III (“Petitioner”) filed this appeal with the Office of Appeals and Dispute Resolution (“OADR”) challenging the issuance of a Notice of Intent to Assess a Civil Administrative Penalty (also known as a “Penalty Assessment Notice” or “PAN”) by the Central Regional Office of the Massachusetts Department of Environmental Protection (“Department” or CERO). The PAN alleges that the Petitioner violated 314 CMR 5.00, promulgated pursuant to G.L. c. 21, §§ 26-53. Specifically, the PAN alleges that the Petitioner was the sole owner of the property at 7 Shawnee Road, Pepperell, MA (the “Property”), and that he rinsed several 300-gallon tote containers that contained landscape mulch dye which contained ammonium hydroxide and other ingredients. The PAN alleges that the Petitioner discharged the resulting discolored polluted water on the Property and that it flowed into the street, into a nearby storm drain, and then discharged from a drainpipe

onto the dirt ground. The PAN alleges that the Petitioner discharged pollutants to the ground surface and therefore the groundwaters of the Commonwealth without a written permit from the Department, in violation of 314 CMR 5.04(1) and assesses a Civil Administrative Penalty (“Penalty”) against the Petitioner in the amount of \$5,750.00. The Petitioner argues that the Penalty should be vacated because the Department’s PAN was factually inaccurate, and that the “documents regarding [the] case were sent to [an] improper address.”

Having reviewed the administrative record in this matter, I find that the Petitioner's Notice of Claim appealing the PAN was untimely. I therefore recommend that the Department's Commissioner issue a Final Decision dismissing the Petitioner's appeal and upholding the PAN.

BACKGROUND

On December 4, 2018, the Department issued the PAN. The PAN described in detail the Petitioner’s right to an adjudicatory hearing, stating that his right to a hearing would be waived if MassDEP did not receive a written statement including the grounds for the appeal within twenty-one days of the PAN’s issuance. The Petitioner’s Notice of Claim was signed on January 9, 2019, and was received by OADR on February 4, 2019—two months after the PAN was issued.

On April 2, 2019, the then-Chief Presiding Officer¹ issued the Petitioner an Order to Show Cause (the “Order”) why the appeal should not be dismissed for failure to file a timely

¹ Chief Presiding Officer Salvatore Giorlandino, now retired.

request for an Adjudicatory Hearing. The Order reviewed the law underlying the jurisdictional nature of the appeal deadline and noted that the Petitioner's Notice of Appeal was submitted more than one month after the December 26, 2018, appeal deadline in this matter.

Pursuant to the Order, the Petitioner submitted a letter to OADR on April 16, 2019. This letter, however, failed to comply with the requirements of the Order, which had directed the Petitioner "to file a written affidavit (a document signed and dated by the Petitioner under the pains and penalties of perjury) with OADR...demonstrating cause why this appeal should not be dismissed for failure to file a timely request for an Adjudicatory Hearing." As a result, the Chief Presiding Officer issued an Order Directing Petitioner to Comply with Order to Show Cause (the "Order to Comply") on April 17, 2019, which noted that, "The Petitioner's letter does not constitute an affidavit because it is not a document signed and dated by the Petitioner under the pains and penalties of perjury." Order to Comply at 4. The Order to Comply continued, "If the Petitioner files the required affidavit by April 29, 2019, the Department shall file a written response to the Petitioner's affidavit by Monday, May 13, 2019. The Department's response shall be in the form of an affidavit of a Department staff member having personal knowledge of [sic] Department's issuance of the PAN to the Petitioner." *Id.*, at 5-6.

On April 29, 2019, the Petitioner submitted a one-page handwritten affidavit signed "under the pains and penalty of perjury." The affidavit stated that he did not send the "letter" on time because the "first letter" was sent to the "wrong address" and because he believed the "government was shut down." On May 10, 2019, the Department submitted a Motion to

Dismiss the Petitioner's appeal "for lack of jurisdiction because it is untimely." The Motion to Dismiss included affidavits from Giles T. Steele-Perkins and Anne Berlin Blackman.² Steele-Perkins attested that the PAN, directed to John Staffier III, included a cover letter "addressed to John Staffier III, 7B Shawnee Road, Pepperell, MA 01463." Steele-Perkins Aff., ¶ 2. The cover letter for the PAN also bore, "the following language which indicates the method by which it was mailed: 'Certified Mail Return Receipt Requested 7002 2410 0002 3911 6811.'" *Id.* Steele-Perkins attested that he "placed the letter with the Certified Mail sticker and the green Domestic Return Receipt card attached to it into MassDEP CERO's mail container to be mailed. The letter was picked up by the letter carrier on December 5, 2018... The Return Receipt [attached to the Steele-Perkins affidavit as an exhibit] bears Mr. Staffier's signature and indicates the PAN was delivered to Mr. Staffier on December 11, 2018." *Id.*, ¶ 3.

Blackman attested:

On December 11, 2018, Mr. Staffier telephoned me because I was listed in the PAN as the person to contact if he had questions about the document... Mr. Staffier began talking about the PAN that he said he had received in the mail that day. I asked Mr. Staffier to wait on the phone while I invited Mr. Steele-Perkins to join me in my office to participate in the conversation with Mr. Staffier, which he did. Mr. Staffier asked Mr. Steele-Perkins and me how he could appeal the PAN... I encouraged Mr. Staffier to read the sections of the PAN that set forth his appeal rights and the process for appealing the PAN.

Blackman Aff., ¶ 3.

² Steele-Perkins was Section Chief of the Compliance & Enforcement Unit of the Bureau of Air and Waste at MassDEP CERO, and Blackman was CERO Chief Regional Counsel.

The record contains no filings or affidavits from the Petitioner in response to the Department's Motion to Dismiss and the Steele-Perkins and Blackman affidavits.

DISCUSSION

A Notice of Claim must be timely filed in order for OADR to have jurisdiction over an appeal. Under 310 CMR 1.01(6)(a), "The [appeal] notice shall be filed within the time prescribed by any applicable provision of law, or in the absence of a prescribed time period, within 21 days from the date that the notice of Department action was sent to a person." In this case, the PAN itself stated that, "Respondent shall be deemed to have waived his right to an adjudicatory hearing on this civil administrative penalty assessment unless, within...twenty-one (21) days, he files with MassDEP (i.e., MassDEP receives) a written statement [properly establishing the claim]." Prior OADR decisions have consistently established that, "timely filing is a jurisdictional requirement." In the Matter of Ken James Gordon, OADR Docket No. 2024-004 and 2024-005, Recommended Final Decision (March 15, 2024), 2024 WL 1915686, *2, adopted by Final Decision (April 5, 2024), 2024 WL 1915685; see also In the Matter of Erik Erkkinen, OADR Docket No. 2011-006, 2011 WL 2164099, Recommended Final Decision (May 13, 2011), adopted by Final Decision, 2011 WL 2164097, (May 23, 2011) (where appeal notice was received by OADR three days after the end of 21-day appeal period, "there is no jurisdiction to hear the merits of this appeal and it must be dismissed.").

Here, it is not disputed that the Petitioner's notice of claim was received by the Department after the 21-day appeal period elapsed. The PAN was issued on December 4,

2018. Accounting for the Christmas holiday, the 21-day appeal period ran until December 26, 2018. 310 CMR 1.01(3)(c) (“The last day of the time period is to be included unless it is a . . . legal holiday in which event the period shall run until the end of the next business day.”) The Petitioner mailed his appeal notice on February 1, 2019, and it was received by the Department on February 4, 2019. Though the Petitioner claims in his April 29, 2019, affidavit that the PAN was sent to the wrong address, Blackman attested in her affidavit that the Petitioner called her to discuss the PAN on December 11, 2018, which was the date the Petitioner received the PAN per the USPS Return Receipt. The Petitioner filed no opposition to the Department’s Motion to Dismiss and no affidavit disputing Blackman’s statements.

Given that the notice of claim was untimely, there is no jurisdiction to hear the merits of this appeal and it must be dismissed. I recommend that MassDEP's Commissioner issue a Final Decision dismissing the appeal as untimely and upholding the PAN.



Date: July 2, 2026

Ian Leson
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.

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