

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

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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

November 26, 2024

In the Matter of
Linda Canzanelli

OADR Docket Number: WET-2024-025
DEP File No. 259-0834
Pepperell, Massachusetts

RECOMMENDED FINAL DECISION ON RECONSIDERATION

Kelli Kinney ("Petitioner") has filed this appeal with the Office of Appeals and Dispute Resolution ("OADR")¹ of the Massachusetts Department of Environmental Protection ("Department") challenging the dismissal of her Request for a Superseding Order of Conditions relative to an Order of Conditions issued by the Pepperell Conservation Commission ("Commission") to perform work at 11 Prescott Street, Pepperell, pursuant to the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 ("MWPA"), and the Wetlands Regulations, 310 CMR 10.00, *et seq.* ("the Wetlands Regulations"). The Central Regional Office ("CERO") dismissed the Petitioner's request because, it determined that the Petitioner's request for department action under 310 CMR 10.05(7)(c) was untimely.

I issued a Recommended Final Decision ("RFD") on October 16, 2024. In that decision, I determined that the Department dismissed the Petitioner's request for department action on

¹ OADR is an independent quasi-judicial office in the Department which is responsible for advising its Commissioner in resolving all administrative appeals of Department Permit Decisions, Environmental Jurisdiction Determinations, and Enforcement Orders.

August 14, 2024, but she did not file her Appeal Notice until September 5, 2024, a week past the 10-day deadline to do so.² See 310 CMR 10.05(1) (computation of time). The Petitioner's response to the Order to Show Cause also did not address her failure to comply with the deadline to Request Department Action. Accordingly, I had no jurisdiction and recommended that the matter be dismissed.

The Commissioner appointed the Chief Presiding Officer as the final decision-maker, and he issued a Final Decision adopting my RFD on November 19, 2024. The Petitioner filed her Motion for Reconsideration on November 25, 2024.

Under 310 CMR 1.01(14)(d),

Where a finding of fact or ruling of law on which a final decision is based is clearly erroneous, a party may file a motion for reconsideration setting forth specifically the grounds relied on to sustain the motion. Where the motion 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, it may be summarily denied. The motion shall be filed within seven days from the date the decision is mailed to the parties by the Department. The filing of a motion for reconsideration is not required to exhaust administrative remedies.

A party seeking reconsideration of a Final Decision in an administrative appeal of a Department enforcement order or permit decision has a heavy burden of demonstrating that the Final Decision was unjustified. 310 CMR 1.01(14)(d); Matter of Gary Vecchione, OADR Docket No. WET-2014-008, Recommended Final Decision on Reconsideration (November 4, 2014), 2014 WL 6633667, *6, adopted as Final Decision on Reconsideration (November 7, 2014), 2014 WL 6633699. The party must demonstrate that the Final Decision was based upon a finding of fact or

² The Appeal Notice was due August 28, 2024.

ruling of law that was "clearly erroneous." Id. "[R]econsideration [of the Final Decision is not] justified by the [party's] disagreement with the result reached in the Final Decision." Id. at *7.

Here, the Petitioner makes two arguments that I already considered and addressed in the RFD adopted by the Final Decision: that she erroneously mailed her request for Department action to the Boston office, and that she did not receive the Department's dismissal until August 29, 2024. With respect to her failure to timely file her Appeal Notice, other than her own statements, she has not demonstrated that the Department did not timely mail its dismissal (such as with an envelope demonstrating that the dismissal was postmarked on a date other than when the order was issued). Given that the Petitioner raises issues that I already considered and rejected, I summarily deny the motion for reconsideration. 310 CMR 1.01(14)(d).



Date: November 26, 2024

Patrick M. Groulx
Presiding Officer

NOTICE OF RECOMMENDED FINAL DECISION ON RECONSIDERATION

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 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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