

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**

**October 16, 2024**

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In the Matter of  
Linda Canzanelli

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

**RECOMMENDED FINAL DECISION**

Kelli Kinney ("Petitioner") has filed this appeal with the Office of Appeals and Dispute Resolution ("OADR")<sup>1</sup> 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.

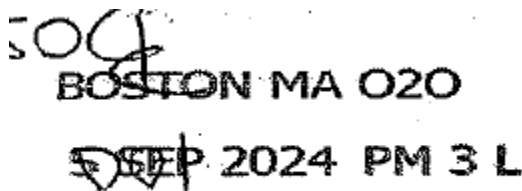
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<sup>1</sup> OADR is an independent quasi-judicial office in the Department which is responsible for advising its Commissioner in resolving all administrative appeals of Department Permit Decisions, Environmental Jurisdiction Determinations, and Enforcement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

**I. Facts and Procedural History.**

On May 21, 2024, the Pepperell Conservation Commission ("Commission") issued an Order of Conditions ("OOC"), approving the Petitioner's Notice of Intent. Letter from Department to Petitioner, p. 1 (August 14, 2024) (produced with the Department's Basic Documents).<sup>2</sup> According to the Department, on July 16, 2024, the Petitioner submitted to the Department a Request for Department Action for a Superseding Order of Conditions. Id. The Petitioner contends that she filed the Request for Department Action on June 5, 2024. Response to Order to Show Cause, p. 1. On August 14, 2024, CERO dismissed the request because it was past the deadline to request department action. Letter from Department to Petitioner, p. 2.

The Petitioner filed Notice of Claim ("Appeal Notice") with OADR on September 5, 2024, according to the postmark on the envelope:



See Envelope to OADR.

Because it appeared that the Petitioner's appeal was untimely, I issued an order to show cause on September 16, 2024, requiring the Petitioner to explain why this matter should not be dismissed for failure to file her Appeal Notice timely. The Petitioner submitted a response on

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<sup>2</sup> "Basic Documents" are those documents in the official file of the Department program that was involved in the decision, order, or determination that is on appeal. Basic Documents generally include (1) all submissions used by the Department in reaching the decision, order, or determination and (2) all documents constituting the Department's decision, order, or determination. Basic Documents do not include internal deliberations of the Department. The Department's Basic Documents are admissible and probative as "the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs." G.L. c. 30A, § 11(2); 310 CMR 1.01(8)(a); see also Mass. Guide Evid. 201(b)(2).

September 25, 2024; the Applicant filed her response on September 27, 2024; and the Department filed its response on October 2, 2024.

## **II. Applicable Standards.**

### **A. The Applicable Standards.**

Following the issuance of a Superseding Order of Conditions, an "applicant, landowner, aggrieved person if previously a participant in the permit proceedings, conservation commission, or any ten residents of the city or town where the land is located, if at least one resident was previously a participant in the permit proceeding may request review" of the Superseding Order of Conditions by OADR. 310 CMR 10.05(7)(j)2.a. An appeal to OADR must be filed within ten days of the issuance of the reviewable decision. Id. The failure to file timely deprives OADR of jurisdiction to hear the appeal. Matter of Worcester School Dept., Docket No. 99-164, Decision and Order on Motions to Dismiss and to Strike (Jan. 26, 2000), 2000 MA ENV LEXIS 57, \*5.

A Presiding Officer may "on the Presiding Officer's own initiative... dismiss appeals for... lack of jurisdiction." 310 CMR 1.01(5)(a)2.; see also 310 CMR 1.01(11)(d) (Motion to Dismiss may be filed for lack of jurisdiction); Matter of Boyajian, OADR Docket No. WET-2010-030, Recommended Final Decision, 2011 MA ENV LEXIS 50 (February 23, 2011), adopted by Final Decision, 2011 MA ENV LEXIS 48 (March 9, 2011). The Presiding Officer may determine whether there is a jurisdictional defect by issuing an order to show cause. 310 CMR 1.01(6)(d); see also, e.g., Matter of Ana Duarte, OADR Docket No. 2022-015, Recommended Final Decision (Mar. 27, 2023), 2023 MA ENV LEXIS 25, \*1, Adopted as Final Decision (Jun. 27, 2023), 2023 MA ENV LEXIS 27; Matter of Emile Tayeh, Jr., OADR Docket No. WET-2019-016, Recommended Final Decision (Jun. 8, 2020), 2020 MA ENV LEXIS 63, \*2-\*3, Adopted as Final Decision (Jun. 22, 2020), 2020 MA ENV LEXIS 66 (dismissing for failure to file appeal of Superseding Order of Conditions timely).

**B. The Petitioner's Appeal Notice Was Untimely.**

The Department dismissed the Petitioner's request for department action on August 14, 2024. Under 310 CMR 10.05(7)(j)2.a., this appeal to OADR was due 10 business days later, August 28, 2024. See also 310 CMR 10.05(1) (computation of time). The Petitioner did not file her Appeal Notice until September 5, 2024, a week late.

The Petitioner's response to the Order to Show Cause did not address her failure to comply with the deadline. Even assuming her Request for Department Action was timely, her failure to meet the appeal deadline deprives me of jurisdiction to hear her appeal. Worcester School Dept., 2000 MA ENV LEXIS 57, \*5. The matter must therefore be dismissed.

**III. Conclusion.**

For the foregoing reasons, I recommend that the Commissioner issue a Final Decision dismissing this matter for failure to meet the filing deadline of 310 CMR 10.05(7)(j)2.a.



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Patrick M. Groulx  
Presiding Officer

**Date:** October 16, 2024

### **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**

Kelli Kinney 7 Prescott Street Pepperell, MA 01463 <a href="mailto:kellikinney@aol.com">kellikinney@aol.com</a>	<b>Petitioner</b>
Linda Canzanelli 11 Prescott Street Pepperell, MA 01463 <a href="mailto:lcanzanelli@rivier.edu">lcanzanelli@rivier.edu</a>	<b>Applicant</b>
Christopher J. Alphen, Esq. Blatman, Bobrowski, Haverty & Silvers, LLC 9 Damonmill Square, Suite 4A4 Concord, MA 01742 <a href="mailto:Chris@bbhslaw.net">Chris@bbhslaw.net</a>	<b>Applicant's Legal Representative</b>
Judith Schmitz, Wetlands Section Chief MassDEP/CERO Bureau of Water Resources 8 New Bond Street Worcester, MA 01606 <a href="mailto:Judith.Schmitz@mass.gov">Judith.Schmitz@mass.gov</a>	<b>Department</b>
Pepperell Conservation Commission c/o Paula Terrasi, Conservation Administrator Town Hall 1 Main Street Pepperell, MA 01463 <a href="mailto:pterrasi@town.pepperell.ma.us">pterrasi@town.pepperell.ma.us</a>	<b>Conservation Commission</b>
Ian M. Leson, Esq. MassDEP/Office of General Counsel 100 Cambridge Street, 9th Floor Boston, MA 02114 <a href="mailto:Iam.m.leson@mass.gov">Iam.m.leson@mass.gov</a>	<b>Department's Legal Representative</b>
CC: Bruce E. Hopper, Litigation Manager Jakarta Childers, Program Coordinator MassDEP/Office of General Counsel 100 Cambridge Street, 9 <sup>th</sup> Floor Boston, MA 02114 <a href="mailto:Bruce.e.hopper@mass.gov">Bruce.e.hopper@mass.gov</a> <a href="mailto:Jakarta.Childers@mass.gov">Jakarta.Childers@mass.gov</a>	<b>Department</b>
Anne Blackman, Chief Regional Counsel MassDEP/CERO 8 New Bond Street Worcester, MA 01606 <a href="mailto:Anne.blackman@mass.gov">Anne.blackman@mass.gov</a>	<b>Department</b>