



Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs

Department of Environmental Protection

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March 27, 2026

**In the Matter of
Markley Group, LLC**

**OADR Docket No. 2025-022
DEP File No. 24-AQ02F-0001-APP
Approval No. NE-25-002
Air Quality Plan Approval
Lowell, MA**

FINAL DECISION

I adopt the Recommended Final Decision as my final decision in this matter. I therefore grant Summary Decision to the Massachusetts Department of Environmental Protection (“MassDEP” or “Department”) and Markley Group, LLC (“Applicant”), and affirm the Air Permit issued by the Department to the Applicant.

I have reviewed the Petitioners’ February 27, 2026 Notice of Significant Developments (“Notice”) regarding an Administrative Consent Order (“ACO”) between MassDEP and the Applicant. The Notice asked the Office of Appeals and Dispute Resolution (“OADR”) to take notice of the ACO and the Applicant’s activities pursuant to it and to “offer instructions to the Parties as appropriate to ensure a full and fair hearing of the issues subject to this Appeal.” Notice at 2. I also have reviewed the status reports filed

by the Department and the Applicant, on March 11, 2026, and the Petitioners' response filed on March 18, 2026.

MassDEP is responsible for enforcing the statutes and regulations within its purview, including the Massachusetts Clean Air Act, M.G.L. c. 111, §§ 142A-142O and the Air Pollution Control Regulations at 310 CMR 7.00. MassDEP's authority includes the discretion to take enforcement action in a variety of ways, such as issuing unilateral administrative orders or entering into administrative consent orders. See DiCicco v. Department of Environmental Protection, 833 N.E.2d 654, 658 (Mass. App. 2005) ("We give substantial deference to the construction placed on a statute ... by the agency charged with its administration; and deference is especially appropriate where the Legislature has seen fit to delegate broad rulemaking authority to the [agency]. As the Superior Court judge properly observed, judicial intrusion into agency discretion in enforcement matters is particularly inappropriate." (Internal quotations and citations omitted)).

The Department's exercise of enforcement authority is distinct from its permitting authorities, and it is well settled that matters of enforcement authority may not be addressed through a permitting process, including permit appeals. See In the Matter of Stephen Arena, OADR Docket No. WET-2021-034, Recommended Final Decision (Nov. 9, 2021), adopted by Final Decision (Dec. 3, 2021) (observing that "a party may not use the Department's permitting process to compel enforcement action against another party"); In the Matter of Marco Tamaro, OADR Docket No. WET-2016-029 ("It has long been established, however, that there is no jurisdiction over DEP's exercise of enforcement

discretion in administrative appeals.”). MassDEP’s exercise of enforcement discretion is not properly challenged in the present permitting appeal.

Further, the ACO has not impacted the process or resolution of this appeal in any way. In particular, it did not dispose of the appeal, nor is it a full or partial settlement of the appeal. See 310 CMR 1.01(8)(c). It is an interim exercise of enforcement discretion that terminates, by its terms, once this appeal is resolved. See, e.g., Administrative Consent Order ¶ 8(A)-(B) (the ACO is effective only “until a Final Decision and any Motion for Reconsideration and Decision on that Motion is issued in the Administrative Appeal OADR Docket No. 2025-22.”).

The parties to this proceeding are notified of their right to file a motion for reconsideration of this decision, pursuant to 310 CMR 1.01(14)(d). Any such motion must be filed with the Case Administrator and served on all parties within seven business days of the postmark date of this decision. A person who has the right to seek judicial review may appeal this decision to the Superior Court pursuant to M.G.L. c. 30A, §14(1). Any such appeal must be filed with the Court within thirty days of receipt of this decision.



Bonnie Heiple
Commissioner

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