

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**

**March 22, 2024**

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In the Matter of  
Matthew Richard Hill

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OADR Docket Nos.: 2024-001 and 2024-002  
Enf. Doc. No. 00016747 and 00016699  
Athol and Phillipston, Massachusetts

**RECOMMENDED FINAL DECISION**

Matthew R. Hill ("Petitioner"), has filed these consolidated appeals with the Office of Appeals and Dispute Resolution ("OADR")<sup>1</sup> of the Massachusetts Department of Environmental Protection ("Department") challenging the Department's issuance of a Penalty Assessment Notice ("PAN") (in Docket Number 2024-001) and Unilateral Administrative Order ("UAO") (in Docket Number 2024-002). Both the PAN and the UAO were issued for the alleged violations of the following statutes and regulations:

- The Wetlands Protection Act, G.L. c. 131, § 40 ("MWPA"), and the Wetlands Regulations at 310 CMR 10.00, *et seq.* In particular, the PAN and UAO allege that the Petitioner placed (and later altered) fill (including altering at least 6,500 ft.<sup>2</sup> of Bordering Vegetated Wetland, 500 ft.<sup>2</sup> of Riverfront Areas, and associated Buffer

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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. A detailed description of OADR is set forth in Addendum No. 1, below.

Zones) in the area of the Thousand Acre Brook without first obtaining a Notice of Intent.

- The Massachusetts Clean Waters Act, G.L. c. 21, §§ 26 – 53, and the 401 Water Quality Regulations at 314 CMR 9.00 arising out of the same alterations.
- G.L. c. 111, §§ 150A and 150A1/2; the Solid Waste Management Regulations at 310 CMR 19.000; and the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00 for allegedly disposing of solid waste at a location without a site assignment and operating a facility to store solid waste without the proper permits.
- G.L. c. 111, §§ 142A-142O, and the Air Pollution Control Regulations at 310 CMR 6.00, 7.00, and 8.00 for alleged open burning of combustible materials.

The PAN was issued in the amount of \$54,165.63. Among other things, the UAO requires the Petitioner to hire an environmental consultant, draft plans to stabilize and remediate the affected site, and implement the plans.

#### **I. Facts and Procedural History.**

On January 12, 2024, the Department issued the PAN and the UAO. See PAN, p. 1.; UAO, p. 1. The Petitioner's appeals of the PAN and the UAO are undated. However, labels for both envelopes show that they were post marked on February 12, 2024. First, the postmark for the appeal of the PAN:



Second, the postmark for the appeal of the UAO:



On February 20, 2024, I issued an order to show cause, stating in part (emphasis in original), " there is a fundamental question of whether the Petitioner timely filed the Appeal Notice, a show cause order is appropriate. The Petitioner is therefore given until **March 5, 2024**, to explain why this case should not be dismissed for failure to timely file his appeal pursuant to 310 CMR 1.01(6)(a)."

The Petitioner did not respond to the Order to Show Cause by March 5, 2024. In order to give the Petitioner a fulsome opportunity to respond, I issued the following order on March 6, 2024 (emphasis in original):

Parties: on February 20, 2024, I issued an Order to Show Cause requiring the Petitioner to explain why these consolidated appeals should not be dismissed for failure to timely file his appeal pursuant to 310 CMR 1.01(6)(a). A response was due March 5, 2024. OADR has not received a response. Even though the Petitioner is pro se (meaning not represented by an attorney), he is nevertheless required to comply with the applicable procedural rules. Matter of Dan and Eva Barstow, OADR Docket No. 2019-026, Recommended Final Decision (January 22, 2020), 2020 MA ENV LEXIS 16, at 8-9, adopted as Final Decision (February 19, 2020), 2020 MA ENV LEXIS 12; Lawless v. Bd. of Registration in Pharm., 466 Mass. 1010, 1011 n. 3 (2013). Nevertheless, to ensure that the Petitioner has received notice and a full opportunity to respond, I am ordering the Interim Case Administrator to send to the Petitioner forthwith a copy of this order and the Order to Show Cause by E-mail, first class mail, and certified mail. The Petitioner will have until **March 21, 2024**, to respond to the Order to Show Cause. Absent a response, the consolidated appeals will be dismissed.

The Petitioner filed a response to the Order to Show Cause dated March 13, 2024.

## **II. Applicable Standards.**

Timely filing is a requirement for OADR to have jurisdiction over the appeal. Under 310 CMR 1.01(6)(a), an Appeal Notice must be filed "within 21 days from the date that the notice of Department action was sent to a person." As one case stated:

Both M.G.L. c. 21A, § 16 and 310 CMR 5.00 are explicit that a failure to appeal a PAN within 21 days of the date the PAN is issued is deemed a waiver of the right to appeal. Timely filing is a jurisdictional requirement. In the Matter of Gould, OADR Docket No. 2014-012, 2104 MA ENV LEXIS 66, Final Decision (August 18, 2014); In the Matter of Erkkinen, Docket No. 2011-006, Recommended Final Decision (May 13, 2011), adopted by Final Decision, 2011 MA ENV LEXIS 63 (May 23, 2011). The PAN [in this case] was issued on March 1, 2017. The appeal was filed on June 22, 2017. Because the appeal was not filed within 21 days after the PAN was issued, [the Petitioner] waived its right to a hearing on the PAN. Where an appeal is not timely, OADR lacks jurisdiction to hear the appeal. Matter of Peabody Truck Equipment Corporation, Hearing Officer's Decision on Request for Determination of Timeliness of Penalty Appeal, 1987 WL 228982 (Sept. 8, 1987).

Matter of Nelson, OADR Docket No. 2017-016, Recommended Final Decision (Feb. 13, 2018), 2018 MA ENV LEXIS 27, \*28-\*29, Final Decision on Voluntary Withdrawal (Jan. 12, 2018), 2018 MA ENV LEXIS 26.

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).

### **III. Analysis.**

The PAN and UAO were both issued on January 12, 2024. PAN, p. 1.; UAO, p. 1. Twenty-one days after January 12, 2024, was February 2, 2024. However, the Petitioner's envelopes are both postmarked February 12, 2024,<sup>2</sup> and this office did not receive them until after that date. It is clear that the Petitioner's filings were submitted after the deadline to appeal.

The Petitioner argues that he should be given an extension to file because his brother passed away on January 10, 2024, understandably distracting his attention from this matter, and because he is unable to afford an attorney as a result of his brother's passing. While I am not without sympathy for his situation, the deadline is set by the regulations. I lack the authority to deviate from it. The Petitioner's failure to file timely is a fatal defect that deprives me of jurisdiction.

### **IV. Conclusion.**

For the foregoing reasons, I recommend that the Commissioner enter a Final Decision affirming the PAN and the UAO.



Patrick M. Groulx  
Presiding Officer

**Date:** March 22, 2024

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<sup>2</sup> I note also that both checks were dated February 6, 2024, after the deadline.

### **NOTICE OF RECOMMENDED FINAL DECISION**

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 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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