

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

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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

May 11, 2026

In the Matter of
Rust-Oleum Corporation

OADR Docket Number: 2026-015
DEP File No. 00022249
Westminster, Massachusetts

RECOMMENDED FINAL DECISION

Rust-Oleum Corporation (“Petitioner”) on March 30, 2026, filed an appeal with the Office of Appeals and Dispute Resolution (“OADR”) to challenge a Unilateral Administrative Order (“UAO”) issued by the Central Regional Office of the Massachusetts Department of Environmental Protection (“MassDEP” or the “Department”) on March 6, 2026. The UAO was issued pursuant to G.L. c. 21E, § 5(a), § 9, and § 10(a) and under G.L. c. 111, § 2C. The UAO was issued to the Petitioner and 6 other Parties identified by the Department as Potentially Responsible Parties (“PRPs”),¹ relative to releases or threats of release of oil or hazardous material at 65 Bean Porridge Hill Road, Westminster, Massachusetts (the “Site”). The UAO states that a Notice of Responsibility was sent to Petitioner on July 14, 2023, which stated that responsible parties must perform Immediate Response Actions. The UAO states that sampling results from abutting residential properties indicate the

¹ See In the Matter of Massachusetts Natural Fertilizer, et al., OADR Docket No. 2026-014; In the Matter of Ball Corporation, OADR Docket No. 2026-012. All Parties identified on the UAO are referred to herein as the “Respondents.”

presence of per- and poly-fluoroalkyl substances (“PFAS”)² exceeding Imminent Hazard levels.³ The UAO directs the Respondents to conduct further Immediate Response Actions (“IRAs”) to address PFAS in drinking water on abutting affected properties, including construction of a water line (the “Woodland Loop”). The Petitioner contends that it is not a PRP and asserts that the PFAS detected in samples attributed to it were cross-contaminated from the Ball Corporation stockpile. The Petitioner seeks to have the UAO withdrawn, rescinded, or modified and to have the NOR retracted.

On April 30, 2026, MassDEP filed a Motion to Dismiss, contending that the appeal was untimely and therefore OADR does not have jurisdiction. The Petitioner filed an Opposition to the Department’s Motion to Dismiss on May 8, 2026.

As discussed below, the Parties’ filings demonstrate that the Petitioner’s appeal was not timely filed, and therefore I recommend that the Department’s Commissioner issue a Final Decision: (1) granting MassDEP’s Motion to Dismiss dismissing the appeal; (2) affirming the UAO as to the Petitioner, but staying the enforcement of the UAO pending a Final Decision in the appeal brought by 5 of the Respondents, In the Matter of Massachusetts Natural Fertilizer, et al., OADR Docket No. 2026-014, which challenged the response actions required in the UAO, and as a result, may have a material impact on UAO requirements.

STATUTORY AND REGULATORY FRAMEWORK

The Massachusetts Administrative Procedure Act, G.L. c. 30A (the “Act”), the law applicable to this adjudicatory proceeding, places the burden upon the petitioner to file his

² Specifically, for six PFAS compounds combined (“PFAS6”).

³ MassDEP assigned Release Tracking Number 2-0021866 to the PFAS6 release.

or her appeal on time under the laws applicable to this adjudicatory proceeding. The Department implements this Act through the Department's Adjudicatory Proceeding Rules, 310 CMR 1.00, which are grounded in §§ 10-11A of the Act, which empower agencies to provide adjudicatory hearings and to promulgate regulations to implement this authority. Section 10 of the Act allows agencies to place responsibility for requesting a hearing upon petitioners.

The Adjudicatory Proceeding Rules establish a 21-day appeal deadline at 310 CMR 1.01(6)(a):

Any person having a right to initiate an adjudicatory appeal shall file a written notice of claim for an adjudicatory appeal. The 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. (Emphasis supplied.)

The Adjudicatory Proceedings Rules at 310 CMR 1.01(3)(c) also detail how to compute the time required for a timely submission:

Unless otherwise specifically provided by law, computation of any time period referred to in 310 CMR 1.01 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is to be included unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next business day. When the time period is seven days or less, intervening Saturdays, Sundays, or legal holidays shall be excluded in the computation. When a time period is greater than seven days each intervening calendar day shall be included in the computation.

The UAO included the following notice regarding the right to request an adjudicatory hearing:

IV. ADJUDICATORY HEARING

1. This ORDER is an action of MassDEP. If you are aggrieved by this action, you may request an adjudicatory hearing. A request for a hearing

must be made in writing and must be received by MassDEP as provided in 310 CMR 1.01, within twenty-one (21) days from the date of issuance of this ORDER. (Emphasis supplied.)

2. Under 310 CMR 1.01(6)(b), the request for an adjudicatory hearing must state clearly and concisely the facts that are the grounds for the request, and the relief sought. Additionally, the request must state why the ORDER is not consistent with applicable laws and regulations.

See UAO at ¶ 57.

DISCUSSION

The Jurisdictional Nature of the Filing Deadline

The Adjudicatory Appeal Regulations provide that a person with a right to file an appeal must file the appeal within 21 days of the issuance of the appealable document.

The UAO in question included the notice regarding this timeline. The Administrative Procedure Act and the implementing Regulations⁴ are explicit that a failure to file an appeal within 21 days of the date of issuance is deemed a waiver of the right to appeal.

Administrative cases have consistently construed the timely filing of an appeal as a jurisdictional requirement that has been strictly applied. See In the Matter of Ricardo Baldissera, OADR Docket No. WET 2021-026, Recommended Final Decision (March 7, 2024), 2024 WL 2845058, *3, adopted by Final Decision (May 7, 2024), 2024 WL 2845057 (wetlands appeal dismissed for failure to timely file proper notice of claim); In the Matter of Emile Tayeh, Jr., OADR Docket No. WET 2019-016, Recommended Final Decision (June 8, 2020), 2020 WL 3960472, *2, adopted by Final Decision (June 22, 2020), 2020 WL 3960471 (“Tayeh”) (administrative cases have consistently construed the timely filing of an appeal as

⁴ G.L. c. 30A, §§ 10-11A; G.L. c. 21A, § 16; and 310 CMR 5.00.

a jurisdictional requirement that has been strictly applied); In the Matter of Santo Anza, Individually, and as Trustee of 429 Whitney Street Realty Trust, and S.A. Farm LLC, OADR Docket No. 2018-026, Recommended Final Decision (January 29, 2019), 2019 WL 2491654, *3, adopted by Final Decision (March 6, 2019), 2019 WL 2491653 (dismissing UAO appeal as untimely by one day); In the Matter of Wilbraham Land and Development, OADR Docket No. 2017-016, Recommended Final Decision (February 13, 2018), 2018 WL 2022976, *9, adopted by Final Decision (March 1, 2018), 2018 WL 2002975 (dismissing PAN appeal as untimely by 3 months); In the Matter of Sherrill Gould, OADR Docket No. 2014-012, Recommended Final Decision (July 14, 2014), 2014 WL 4384003, *2, adopted by Final Decision (August 18, 2014), 2014 WL 4384005 (dismissing PAN appeal as untimely by ten days); In the Matter of Erik Erkinen, Docket No. 2011-006, Recommended Final Decision (May 13, 2011), 2011 WL 2164099, *3-4, adopted by Final Decision (May 23, 2011), 2011 WL 2164097 (dismissing PAN appeal as untimely by three days).⁵

The UAO expressly provides that the appeal timeline is counted from the date of issuance: “[a] request for hearing must be made in writing and must be received by

⁵ See also In the Matter of Berkshire Housing Services, Inc., Docket No. 2010-007, Recommended Final Decision (March 16, 2010), 2010 WL 1257132, *1-2, adopted by Final Decision (March 19, 2010), 2010 WL 1257131 (dismissing c. 91 appeal as untimely by one day); In the Matter of Margot Xarras, Docket No. 2008-059, Recommended Final Decision (June 26, 2008), 2008 WL 2952651, *2, adopted by Final Decision (June 27, 2008), 2008 WL 2952650 (failure to file request for appeal within required period is jurisdictional defect that requires dismissal); In the Matter of Orazio Petrosillo, OADR Docket Nos. 2001-022 and 024, Recommended Final Decision (February 6, 2002), 2002 WL 450916, *3, adopted by Final Decision (February 22, 2002) (“an untimely request for a superseding order divests the Department of jurisdiction to issue a superseding order”); In the Matter of Stanley E. Bogaty and Frances Bogaty, Docket No. 2001-005, Recommended Final Decision (August 17, 2001), 2001 WL 1240713, *3, adopted by Final Decision (September 19, 2001), 2001 WL 1240714 (dismissing c. 91 appeal as untimely by one day); In the Matter of Joseph Demaio, Docket No. 97-063, Final Decision (April 9, 1998), 1998 WL 233315, *4 (dismissing wetlands appeal as untimely by two days); In the Matter of Peabody Truck Equipment Corporation, Docket No. 87-013, Hearing Officer’s Decision on Request for Determination of Timeliness of Penalty Appeal (September 8, 1987), 1987 WL 228982, *3 (“a waived appeal is ‘dead on arrival,’ so much so that not even the tribunal’s willingness to overlook critical defects in the appeal, for whatever reason, can breathe life into it”).

MassDEP as provided in 310 CMR 1.01, within twenty-one (21) days from the date of issuance of this ORDER.” See UAO at ¶ 57. The appeal regulations provide the same. 310 CMR 1.01(6)(a). The record shows that MassDEP issued the UAO by mailing a copy of the UAO to the Petitioner via first class mail on March 6, 2026. As a result, the deadline for filing a Notice of Claim for an adjudicatory appeal of the UAO was within twenty-one (21) days from the date that the UAO was issued, or March 27, 2026.

The Petitioner’s Notice of Claim

The Petitioner filed its Notice of Claim on March 30, 2026. See Notice of Claim. The UAO provided notice to the Respondents (which includes the Petitioner) that they had 21 days from the date of issuance to appeal the UAO. MassDEP issued the UAO by mailing it to the Petitioner on March 6, 2026. MassDEP Motion to Dismiss, Attachment 2.⁶ This Attachment shows that the Department issued the UAO directly to the Petitioner as follows: Rust-Oleum Corporation, Attn: Jeffrey C. Ackerberg, President, 11 E. Hawthorn Parkway, Vernon Hills, IL 60061. Therefore, March 6, 2026, is the date of issuance and the opportunity to appeal the UAO ran from that date for 21-days, or until March 27, 2026.

The asserted circumstances of the late appeal

The Petitioner first contends that the Department inappropriately assumed that emailing a copy of the UAO to the Petitioner’s “presumed counsel” was adequate notice. Pet Opp., pp. 2-4. However, as noted above, the relevant fact is that the Department mailed the UAO directly to the Petitioner on March 6, 2026, and therefore the appeal period

⁶ Attachment 2 includes two pages. The first page is a photocopy of addresses with USPS Tracking Numbers, and the second page is the receipt from the USPS dated March 6, 2026. Rust-Oleum is listed on the first page with USPS Tracking Number 9488 8090 0027 2610 01. On the second page, the USPS receipt includes this tracking number.

ran from that date of issuance, or until March 27, 2026. The date on which the Petitioner's "presumed counsel" received the UAO is not relevant.

Petitioner's second argument is that the "mailbox rule" should apply, giving Petitioner an additional 3 days to initiate its appeal, citing 310 CMR 1.01(3)(b).⁷ This section of the regulation provides that notices from the Department shall be presumed to be received 3 days after the date of postmark. This provision is relevant when a filing deadline runs from the date a Notice of Department Action is received, unlike the present case, which expressly provides that the deadline to challenge this Department Action runs from the date of issuance. If the Petitioner's interpretation of this provision were adopted, it would effectively nullify the meaning of 310 CMR 1.01(6)(a).⁸ See In the Matter of SEMASS Partnership, OADR Docket No. 2010-051, Recommended Final Decision (December 20, 2010), 2010 WL 5804745, *7, adopted by Final Decision (January 18, 2011), 2011 WL 573405 (adopting an interpretation that creates unwarranted inconsistent across regulations contradicts basic canons of interpretation).

There is no basis for tolling the filing deadline

The circumstances described by the Petitioner to justify its late appeal do not provide a basis for tolling the filing deadline on equitable grounds. Neither the Adjudicatory Proceeding Rules, 310 CMR 1.01, nor the MCP provide a Presiding Officer with the explicit

⁷ "Notice of actions and other communications from the Department hand-delivered or mailed to the person's last known address shall be presumed received upon the day of hand-delivery or, if mailed, three days after the date postmarked."

⁸ "Any person having a right to initiate an adjudicatory appeal shall file a written notice of claim for an adjudicatory appeal. The 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."

authority to extend a filing requirement in an administrative appeal. While the doctrine of equitable tolling has long been applied in MassDEP administrative cases where a party entitled to appeal did not receive notice and as a result missed the appeal deadline, the Petitioner has not made such a demonstration in this case.⁹

CONCLUSION

In sum, on March 6, 2026, the Department issued the UAO to the Petitioner which provided notice that a request for adjudicatory hearing was to be filed within 21 days of the date of issuance. The Petitioner filed its appeal 24 days after issuance, on March 30, 2026. It is well established that the failure to file a notice of appeal within the required period is a jurisdictional defect that requires dismissal. I recommend that the Department's Commissioner issue a Final Decision: (1) allowing MassDEP's Motion to Dismiss, dismissing the appeal (2) affirming the UAO as to the Petitioner, but staying the enforcement of the UAO pending a Final Decision in the appeal brought by 5 of the Respondents, In the Matter of Massachusetts Natural Fertilizer, et al., OADR Docket No. 2026-014, which challenged the response actions required in the UAO, and as a result, may have a material impact on UAO requirements.

Date: May 11, 2026



Margaret R. Stolfa
Presiding Officer

⁹ See Tayeh, 2020 WL 3960472, *3, citing, In the Matter of FTO Realty Trust, OADR Docket No. WET-2015-024RM, Recommended Final Decision After Remand (October 19, 2018), 2018 WL 6844320, adopted by Final Decision After Remand (October 29, 2018), 2018 WL 6844319; see also In the Matter of M.G. Hall Company, Docket No. WET-2012-023, Recommended Final Decision (May 7, 2013), 2013 WL 8473953, *4, adopted by Final Decision (March 19, 2014) (“[i]n unusual circumstances, the Department has recognized that the ten day appeal period may be tolled where legally required notice was not given to a party entitled to receive it and where the failure to obtain notice caused that party’s failure to timely file an appeal”).

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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