



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Central Regional Office • 8 New Bond Street, Worcester MA 01606 • 508-792-7650

Charles D. Baker
Governor

Karyn E. Polito
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Secretary

Martin Suuberg
Commissioner



BY CERTIFIED MAIL: 7002 2410 0002 3912 1624
RETURN RECEIPT REQUESTED

Jack Hathaway, Town Administrator
Town of Norfolk
One Liberty Lane
Norfolk, MA 02056

Re: Wetlands-Norfolk
MassDEP File # 240-0598
Lawrence Street
M.G.L. c. 131, § 40 and 310 CMR 10.00
UAO-CE-19-6W001
Enforcement Document Number: 00006103

UNILATERAL ADMINISTRATIVE ORDER

THE ATTACHED DOCUMENT IS IMPORTANT. FAILURE TO TAKE ADEQUATE ACTION IN RESPONSE TO IT COULD RESULT IN SERIOUS LEGAL CONSEQUENCES.

Dear Mr. Hathaway:

In response to the Town of Norfolk's request, attached is a Unilateral Administrative Order (UAO-CE-19-6W001, Enforcement Document Number 00006103) extending the deadline for portions of the work required to correct violations of the Massachusetts Wetlands Protection Act at the Lawrence Street project. This UAO superseded the previous UAO issued on October 19, 2018 (UAO-CE-18-6W007, Enforcement Document Number 00005885).

Should you have any questions, please contact Denise Child, Wetlands Section Chief, at 508-767-2846.

Very truly yours,

Mary Jude Pigsley
Regional Director

DATE: 2/15/19

Attachments: UAO-CE-19-6W001, Enforcement Document #00006103

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Adjudicatory Hearing Fee Transmittal Form
Communication for Non-English Speaking Parties

Cc: Rebecca Tobin, Senior Regional Counsel, MassDEP CERO OGC
Norfolk Conservation Commission

5. On June 1, 2018, a group of ten or more residents of Norfolk submitted a Request for Departmental Action to MassDEP appealing the OOC. On July 31, 2018, MassDEP issued a Superseding Order of Conditions affirming the local OOC. The Superseding Order of Conditions was not appealed and subsequently became the Final Order of Conditions (the "FOC") for the Project.
6. General Condition #13 and Special Condition #4 of the FOC require that the Project shall conform to the plans approved by the Commission in the OOC. General Condition #14 and Special Condition #10 of the FOC require that in the event of a plan change, the applicant shall inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a New Notice of Intent.
7. In response to a complaint, on September 7, 2018, MassDEP staff inspected the Project and observed that Respondent had conducted work that did not conform to the project plans, resulting in unpermitted Bank alterations. Specifically, Respondent altered approximately 400 linear feet of Bank more than was permitted by the FOC.
8. On October 15, 2018, at the request of MassDEP, Respondent submitted a plan and narrative entitled "South Bank Habitat Restoration" for the restoration of the unpermitted Bank alterations described in Paragraph 7 above (the "Restoration Plan").
9. Respondent failed to comply with the conditions of its FOC, in violation of M.G.L. c. 131 § 40 and 310 CMR 10.08(1)(a). Specifically, Respondent did not adhere to its approved plan and altered additional linear feet of Bank not permitted by the FOC. In addition, Respondent did not inquire of the Conservation Commission or MassDEP in writing whether the change from the approved plan was significant enough to require the filing of a new Notice of Intent, as required by the FOC.
10. Respondent conducted unpermitted alterations of Bank, in violation of 310 CMR 10.54(4). Specifically, Respondent's unpermitted work altered approximately 400 linear feet of Bank more than was permitted by the FOC.
11. On October 19, 2018, MassDEP issued a Unilateral Administrative Order (Enforcement Document Number 00005885, "October 19, 2018 UAO") to Respondent ordering it to implement its Restoration Plan and submit reports to MassDEP documenting the progress and success of the restoration. The Restoration Plan specified that planting of the altered Bank would be completed during the autumn of 2018.
12. On November 20, 2018, Respondent requested an extension to May 31, 2019 to complete the planting portion of its Restoration Plan.

III. DISPOSITION AND ORDER

13. For the reasons stated above, and pursuant to the authority granted to MassDEP under the laws and regulations set forth above in paragraph 3, MassDEP hereby ORDERS Respondent to take the following actions:

- A. Immediately implement the restoration as proposed in the Restoration Plan, including stabilization of area of unpermitted Bank alteration in preparation for winter weather conditions.
- B. Complete the planting proposed in the Restoration Plan no later than May 31, 2019.
- C. After completing the planting proposed in the Restoration Plan, submit monitoring reports to MassDEP documenting the progress and success of the restoration by December 31st and July 30th of each year, as proposed in the Restoration Plan, for a minimum of two years.

14. This Unilateral Administrative Order supersedes the October 19, 2018 UAO in its entirety.

15. Notwithstanding this ORDER, MassDEP reserves the right to exercise the full extent of its legal authority in order to obtain full compliance with all applicable requirements, including but not limited to, referral to the Attorney General's Office for criminal prosecution or civil action including court-imposed civil penalties, or administrative penalties assessed by MassDEP.

16. Respondent is advised that M.G.L. c. 131, § 40 provides, "Whoever violates any provision of this section, (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both such fine and imprisonment; or (b), shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation."

17. Respondent is further advised that M.G.L. c. 21A, § 16 provides for civil administrative penalties of up to twenty-five thousand dollars (\$25,000.00) for each day after the issuance of this ORDER during which any violation covered by this ORDER continues or is repeated.

18. 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 this ORDER

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19. Under 310 CMR 1.01(6)(b), the request 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.

20. The original hearing request must be mailed to:

Case Administrator
Office of Appeals and Dispute Resolution
One Winter Street
Boston, MA 02108

A valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100.00) for the filing fee must be mailed separately along with a transmittal form to:

Massachusetts Department of Environmental Protection
P.O. Box 4062
Boston, Massachusetts 02211-4062

A copy of the transmittal form is attached for your convenience.

A copy of the hearing request should be sent to:

Anne Blackman, Chief Regional Counsel
Massachusetts Department of Environmental Protection
8 New Bond Street
Worcester, Massachusetts 01606

21. The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. MassDEP may waive the adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request as provided above, an affidavit setting forth the facts believed to support the claim of undue financial hardship.

[NO FURTHER TEXT APPEARS ON THIS PAGE.]

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22. Respondent may also be subject to administrative or civil penalties for the past violations described in the ORDER. Questions regarding the contents of the ORDER should be directed to Denise Child, Wetlands Section Chief, Massachusetts Department of Environmental Protection, 8 New Bond Street, Worcester, Massachusetts 01606, (508) 767-2846.

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Mary Jude Pigsley Date: 2/15/19
Mary Jude Pigsley
Regional Director
Central Regional Office
8 New Bond Street
Worcester, MA 01606



Adjudicatory Hearing Fee Transmittal Form

IMPORTANT! This form is intended for fee transmittal only. The contents of a request for an adjudicatory appeal (Notice of Claim) are established at 310 CMR 1.01(6) and the substantive statutes and regulations governing the Department's action.

A. Person/Party Making Request

1. Name and address of person or party making request:

Name - If appropriate, name group representative

Street Address

City

State

Zip Code

2. Project Information:

Street Address

City

State

Zip Code

DEP File or ID Number

\$

Amount of filing fee attached

Email Address

B. Applicant (if applicable)

1. Name and address of applicant:

Name - If appropriate, name group representative

Street Address

City

State

Zip Code

Email Address

C. Instructions

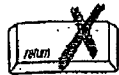
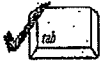
1. Send this form and check or money order of \$100.00 payable to the Commonwealth of Massachusetts to the MassDEP Lockbox at:

Department of Environmental Protection
P.O. Box 4062
Boston, MA 02211

2. Send a copy of this form and a copy of the check or money order with the Request for Adjudicatory Appeal (Notice of Claim) to:

Case Administrator
Office of Appeals and Dispute Resolution
One Winter Street
Boston, MA 02108

Important: When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.





Town of Norfolk

Amy Brady <abrady@norfolk.ma.us>

FYI -

1 message

Janet DeLonga <jdelonga@norfolk.ma.us>

Thu, Feb 21, 2019 at 9:32 AM

To: David Turi <d.w.turi@gmail.com>, James Wilson <jwilson60@verizon.net>, Bruce Jacobson <bruce_jacobson@outlook.com>, Ali Van Baars <avanbaars@gmail.com>

Cc: Amy Brady <abrady@norfolk.ma.us>

Good morning
ConCom was Cc'd on this
Janet

 **DEP-UAO-#240-598-Lawrence St.pdf**
743K