

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  
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Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

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Commissioner

BY CERTIFIED MAIL: 7099 3400 0016 6081 9285  
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-18-6W007**  
**Enforcement Document Number: 00005885**

### 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:

Attached is an ADMINISTRATIVE ORDER that the Massachusetts Department of Environmental Protection ("MassDEP") is now issuing to the Town of Norfolk for violations of the Wetlands Protection Act, M.G.L. c. 131, § 40, and its regulations at 310 CMR 10.00.

The ORDER contains a written description of (1) activities observed by MassDEP; (2) the statutory and regulatory requirements violated; (3) the action MassDEP now wants you to take to correct the violations; and (4) the deadline for taking such action.

You should note that the ORDER has a distinct appeal deadline. A request for an adjudicatory hearing on this ADMINISTRATIVE ORDER 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. Complete instructions relative to an appeal of this Order may be found in paragraphs 15 through 18 of the Order.

If you fail to take any action that MassDEP now wants you to take by the prescribed deadline, or if you otherwise fail to comply in the future with the applicable requirements, such failure could be subject to legal action. Such action could include criminal prosecution, court-imposed civil penalties, or civil administrative penalties.

Wetlands-Worcester  
Worcester Country Club Acres, LLC  
M.G.L. c. 131, § 40 and 310 CMR 10.00  
**UAO-CE-18-6W007**  
**Enforcement Document Number: 00005885**

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Please be advised that MassDEP may assess a civil administrative penalty in this case for the violations identified in this Order. If so, you will receive information about the penalty under separate cover.

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: 10/19/18

Attachments: UAO-CE-18-6W007, Enforcement Document #00005885  
Adjudicatory Hearing Fee Transmittal Form  
Communication for Non-English Speaking Parties

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

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

\_\_\_\_\_) )  
In the Matter of: ) )  
 ) )  
**Town of Norfolk** ) )  
 ) )  
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**UNILATERAL  
ADMINISTRATIVE  
ORDER**

UAO-CE-18-6W007  
Enforcement Document Number: 00005885  
MassDEP File #240-0598

I. THE PARTIES

1. The Massachusetts Department of Environmental Protection (“Department” or “MassDEP”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Central Regional Office at 8 New Bond Street, Worcester, Massachusetts 01606.
2. The Town of Norfolk (“Respondent”) is a municipality with its principal offices located at One Liberty Lane in Norfolk, Massachusetts. Lawrence Street is a public roadway in Norfolk, Massachusetts. Respondent’s mailing address for purposes of this Order is One Liberty Lane, Norfolk, Massachusetts 02056.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 (the “Act”) and the regulations promulgated thereunder at 310 CMR 10.00 (the “Wetlands Regulations”). MassDEP has authority under M.G.L. c. 111, § 2C to issue orders to any person in violation of any law or regulation MassDEP is authorized to enforce.
4. On May 17, 2018, the Norfolk Conservation Commission (the “Commission”) issued an Order of Conditions (the “OOC”) to Respondent under MassDEP File #240-0598. The OOC permitted the alteration of 410 linear feet of Bank and 1,835 square feet of Land Under Waterbodies and Waterways during the construction of roadway, bridge, and stormwater improvements to a portion of Lawrence Street that runs for 950 feet starting at the intersection with Park Street and extending to the west side of the bridge that crosses Bush Pond (the “Project”).

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 the alteration of 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 (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.

10. Respondent altered 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.

### III. DISPOSITION AND ORDER

11. 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. Submit reports to MassDEP documenting the progress and success of the restoration by December 31<sup>st</sup> and July 30<sup>th</sup> of each year, as proposed in the Restoration Plan, for a minimum of two years following completion of the construction phase of the restoration described in the Restoration Plan.

12. 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.

13. 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."

14. 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.

15. 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.

16. 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.

17. 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:

In the Matter of: Town of Norfolk  
UAO-CE-18-6W007  
Enforcement Document #: 00005885  
MassDEP File #240-0598

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

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

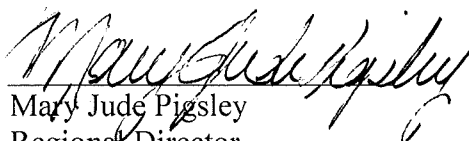
A copy of the hearing request should be sent to:

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

18. 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.

19. 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  
Regional Director  
Central Regional Office  
8 New Bond Street  
Worcester, MA 01606

Date: 10/19/18



# 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

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



## 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



Massachusetts Department of Environmental Protection  
One Winter Street, Boston MA 02108 • Phone: 617-292-5751

**Communication For Non-English Speaking Parties** - 310 CMR 1.03(5)(a)



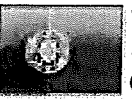
**1 English:**

This document is important and should be translated immediately. If you need this document translated, please contact MassDEP's Diversity Director at the telephone numbers listed below.



**2 Español (Spanish):**

Este documento es importante y debe ser traducido inmediatamente. Si necesita este documento traducido, por favor póngase en contacto con el Director de Diversidad MassDEP a los números de teléfono que aparecen más abajo.



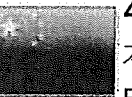
**3 Português (Portuguese):**

Este documento é importante e deve ser traduzida imediatamente. Se você precisa deste documento traduzido, por favor, entre em contato com Diretor de Diversidade da MassDEP para os números de telefone listados abaixo.



**4(a) 中國 (傳統) (Chinese Traditional):**

本文件非常重要，應立即翻譯。如果您需要翻譯這份文件，請用下面列出的電話號碼與MassDEP的多樣性總監聯繫。



**4(b) 中国 (简体中文) (Chinese Simplified):**

本文件非常重要，應立即翻譯。如果您需要翻譯這份文件，請用下面列出的電話號碼與MassDEP的多样性总监联系。



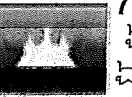
**5 Ayisyen (franse kreyòl) (Haitian) (French Creole):**

Dokiman sa-a se yon bagay enpòtan epi yo ta dwe tradui imedyatman. Si ou bezwen dokiman sa a tradui, tanpri kontakte Divèsite Direktè MassDEP a nan nimewo telefòn ki nan lis pi ba a.



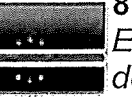
**6 Việt (Vietnamese):**

Tài liệu này là rất quan trọng và cần được dịch ngay lập tức. Nếu bạn cần dịch tài liệu này, xin vui lòng liên hệ với Giám đốc MassDEP đã dạng tại các số điện thoại được liệt kê dưới đây.



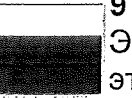
**7 ប្រទេសកម្ពុជា (Kmer (Cambodian):**

ឯកសារនេះគឺមានសារៈសំខាន់និងគួរត្រូវបានបកប្រែភ្លាម។ ប្រសិនបើអ្នកត្រូវបានបកប្រែឯកសារនេះសូមទំនាក់ទំនងឆ្លោកជានាយក MassDEP នៅលេខទូរស័ព្ទដែលបានរាយខាងក្រោម។



**8 Kriolu Kabuverdianu (Cape Verdean):**

*Es documento é importante e deve ser traduzido imidiatamente. Se bo precisa des documento traduzido, por favor contacta Director de Diversidade na MassDEP's pa es numero indicode li d'boche.*



**9 Русский язык (Russian):**

Этот документ является важным и должно быть переведено сразу. Если вам нужен этот документ переведенный, пожалуйста, свяжитесь с директором разнообразия MassDEP по адресу телефонных номеров, указанных ниже.