



The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

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January 20, 2004

Office of Administrative Appeals Hearing Participant

Re: EOEA Office of Administrative Appeals—Relocation to Division of Administrative Law Appeals

Dear Hearing Participant:

Effective January 20, 2004, the Office of Administrative Appeals (“OAA”) within the Executive Office of Environmental Affairs (“EOEA”) is moving to the Division of Administrative Law Appeals (“DALA”). Please note that DALA is located in downtown Boston, at 133 Portland Street, 3rd Floor, Boston, MA 02114--the “North Station” part of Boston.

Please also note that all filings will continue to be directed to DEP’s Docket Clerk, at 1 Winter Street, 3rd Floor, Boston, MA 02108, until further notice. This process will ensure that all filings are entered into the electronic docket system while the transition of the OAA to DALA is completed.

Relocating the OAA to DALA (OAA was placed within EOEA by the FY 04 budget but to date has remained physically located at the Boston Office of the Department of Environmental Protection (“DEP”)) will enable EOEA to take advantage of efficiencies that can be obtained by having administrative appeals managed within the existing structure of administrative hearings at DALA. Combined with a pre-screening process to be implemented by DEP, EOEA believes this transition will ensure timely, fair, and efficient adjudicatory proceedings.

Within DALA, the OAA will continue to hear administrative appeals from DEP and the Licensed Site Professional Board (“LSP Board”). The five (5) OAA staff who currently hold these administrative hearings will be relocated to DALA, where such staff are known as administrative magistrates, and will continue (a) to work on those cases that have already had a prehearing conference, motion, or status conference scheduled, and (b) accept new DEP and LSP Board administrative appeals. Your hearing will continue

to be conducted pursuant to the DEP's administrative hearings regulations found at 310 CMR 1.00 and the Commissioner's Directives issued pursuant to those regulations.

What this relocation and pre-screening process means for the appeal you are involved in depends upon where your appeal is in the system now. The following summary describes how these appeals will be directed:

Appeals filed but not yet not scheduled for Prehearing Conference ("PHC"), Motion Hearing (where applicable), or Initial Conference by January 20, 2004, and all appeals filed on or after January 20, 2004: These appeals will go through the pre-screening process at DEP first, as set out below, and then the appeals will be transferred to DALA for continued proceedings, if necessary.

Appeals filed and PCH, Motion Hearing or Hearing scheduled as of January 20, 2004: These appeals will proceed on their established schedules and in the location(s) previously identified. For most cases this location will be the Hearing Room located at DEP, 1 Winter Street, 3rd Floor, Boston, MA 02108.

PHC completed, appeal proceeding to Hearing: Under the current administrative appeal system, a new ALJ is assigned after the PHC. This process will continue during the transition, and these appeals will be transferred to DALA for continued proceedings.

Hearing completed, Recommended Decision not issued by January 20, 2004: Such cases will be completed at DALA by the current ALJ who heard the case. If that ALJ is not available, DALA may reassign the case for Recommended Decision upon the record pursuant to 310 CMR 1.01(14)(c). DALA may order a re-hearing, in whole or in part, as it deems necessary (*e.g.*, where credibility of material witness is at critical to determining an issue for decision).

Dispositive motions pending but not acted on by January 20, 2004: Such cases will be completed at DALA by the ALJ already assigned to the case for ruling on the motion.

Recommended Decision submitted to Commissioner: The Commissioner will act on these cases as in the ordinary course of handling administrative appeals; any remands will be forwarded to DALA for inclusion in the record and further proceedings and distribution to all of the involved parties.

Pre-Screening at DEP: Appeals will be screened by a hearings officer designated by the Commissioner pursuant to 310 CMR 1.00 to promote alternatives to formal adjudication, and will be processed as follows:

Initial Review: The hearings officer will assess appeals for alternatives to formal adjudication and forward to the Commissioner for immediate issuance of a Final Decision, any routine dismissal of appeals (*e.g.*, including but not limited to,

timeliness, non-appealable document). The hearings officer will notify the parties accordingly.

Process at DALA: The hearings officer will docket for further proceedings at DALA those appeals not dismissed through the Initial Review process. DALA completes administrative proceedings through the issuance of either a Recommended Decision or a Tentative Decision for the Commissioner's review. The Commissioner will continue to issue the Final Agency Decision or will issue a Remand Decision to DALA, when appropriate.

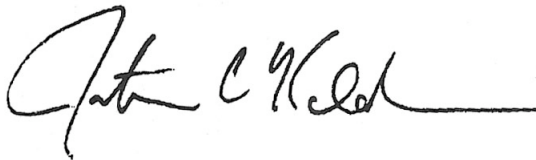
Settlement Process: At any time in the adjudicatory hearing process, any written agreement by the parties to dispose of an appeal by stipulation, settlement, or consent order shall be submitted to the Department's pre-screening hearing office for approval prior to forwarding to the Commissioner for Final Decision. If an appeal is in process at DALA, a copy of such agreement will be filed with the DALA ALJ and any schedule for adjudicatory proceedings will be suspended, in an effort to conserve resources.

Any such previously filed written agreement that has not yet been forwarded to the Commissioner for Final Decision, may be copied and submitted by any of the parties to the pre-screening hearing officer for approval prior to forwarding to the Commissioner for Final Decision.

EOEA and DEP aim to make the relocation of OAA to DALA, and the DEP's pre-screening process, as smooth as possible, and we appreciate your patience should any short term delays result in the appeal to which you are a party. While it is possible that there will be short-term delays in the administrative appeals process brought about by these changes, we believe that in the long-term the improvements within the system will be worthwhile.

Please do not hesitate to contact EOEA Deputy General Counsel Thomas LaRosa (617-626-1135) with any questions or concerns you might have. Finally, please note that a stakeholder group will be convened in the near future to provide input and review on its reforms to the administrative appeals process. DEP will also keep interested parties informed through regular updates through its web page, which can be found at www.state.ma.us/dep/OAA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan C. Kaledin". The signature is fluid and cursive, with a long horizontal line extending to the right.

Jonathan C. Kaledin
General Counsel

Commissioner's Directive Concerning Adjudicatory Proceedings

January 20, 2004

1. PURPOSE.

The purpose of this Directive is to ensure the efficient, timely, and fair resolution of all adjudicatory appeals to the Department of Environmental Protection during and after the physical move of the Executive Office of Environmental Affairs (“EOEA”) Administrative Law Judges (“ALJs”) from DEP’s Offices where they were previously housed, to the Offices of the Division of Administrative Law Appeals (“DALA”), and to set out the DEP’s pre-screening process.

2. APPLICABLE REGULATIONS, POLICIES, DIRECTIVES, AND GUIDANCE DOCUMENTS.

All applicable statutes, regulations, policies, Commissioner’s directives, and/or guidance documents that apply to the Department and the Office of Administrative Appeals will continue to apply to the adjudicatory proceedings in the same manner that each had been applied, respectively, after January 20, 2004 and until such time as these are expressly changed by statutory, regulatory, directive, policy, and/or guidance change, respectively.

3. FILINGS.

Effective January 20, 2004, all filings in all cases will continue to be directed to the Docket Clerk at DEP, 1 Winter Street, 3rd Floor, Boston, MA 02108. The practice of accepting faxed filings will continue and those faxed filings will be considered timely if received by DEP no later than 5:00 p.m. of the last date established for the filing. The DEP Docket Clerk’s phone number is 617-556-1003; the DEP Docket Clerk’s fax number is 617-556-1064.

4. HEARING COMPLETE BUT RECOMMENDED DECISION NOT ISSUED BY JANUARY 20, 2004 OR DISPOSITIVE MOTION PENDING.

For those appeals where the hearing has been conducted and the record is complete but no Recommended Final Decision has been issued by January 20, 2004, the cases will remain assigned to the same EOEA ALJ as was assigned before the

physical move. That ALJ will issue a Recommended Final Decision as per the current routine practices and procedures.

For those appeals where there are dispositive motions pending and no decision has yet been issued on these motions, the cases will remain assigned to the same EOEALJ as was assigned before the physical move. That ALJ will issue a Recommended Final Decision (or a Partial Recommended Final Decision, where appropriate) as per the current routine practices and procedures.

For those appeals where an ALJ has issued a Recommended Final Decision and submitted it to the Commissioner, the Commissioner will act on those appeals as per the Department's routine practice and procedures. Where appropriate, the same EOEALJ will handle any Remand Decisions after the physical move as was assigned before the physical move. That ALJ will issue a Recommended Final Decision After Remand (or a Partial Recommended Final Decision After Remand, where appropriate, or, if the parties request it, a Tentative Decision) as per the current routine practices and procedures.

If such ALJ is not available, DALA will reassign the case for Recommended Decision upon the record pursuant to 310 CMR 1.01(14)(c). DALA may order a re-hearing, in whole or in part, as it deems necessary (*e.g.*, where credibility of material witness on an issue is necessary for decision).

5. HEARING LOCATION.

All prehearings, hearings, motion arguments, and status conferences shall be conducted as previously scheduled at the Hearing Room (or other designated meeting/conference room) of the Department's Boston Office at One Winter Street, 3rd Floor, Boston, MA. As is currently the practice, parties should arrive at the Visitor's Desk, and they will be directed where to proceed.

The Department will make the Hearing Room or other meeting/conference room available at its Boston or Regional Offices for future prehearings, hearings, motion arguments, and status conferences in consultation with DALA.

6. PRE-SCREENING PROCESS.

INITIAL REVIEW: The Commissioner will designate a hearing officer pursuant to 310 CMR 1.00 to promote Alternatives to Formal Adjudication pursuant to 310 CMR 1.01(8) and to forward to the Commissioner for immediate issuance of a Final Decision for the routine dismissal of appeals, including but not limited to, where there is 1.) the

filing of a Stipulation of Dismissal voluntarily dismissing the Notice of Claim under 310 CMR 1.01(11)(d)1; 2.) the withdrawal of the Notice of Claim without objection by any party or participant; 3.) mootness of the underlying claim where there is no objection to the dismissal; 4.) a lack of jurisdiction because the Notice of Claim is not filed in a timely fashion; or 5.) a lack of jurisdiction because the Notice of Claim purports to appeal an unappealable document. The hearing officer will notify parties accordingly.

PROCEEDINGS AT DALA: The Department's hearing officer will docket for further proceedings at DALA those appeals not dismissed through the Initial Review process. DALA will assign an ALJ to complete the administrative appeal process, culminating in the issuance of a Recommended Final Decision (or a Recommended Final Decision After Remand, as may be appropriate, or if requested by the parties, a Tentative Decision), which will be transmitted to all parties and the Commissioner for his/her review. The Commissioner will issue the Final Agency Decision or Remand Decision to DALA, as appropriate, for distribution to the parties.

The ALJs handling appeals transferred to DALA for further administrative process may continue to issue routine Final Decisions in accordance with Standing Order 1-97.

SETTLEMENT PROCESS: At any time in the adjudicatory hearing process, any written agreement by the parties to dispose of an appeal by stipulation, settlement, or consent order shall be submitted to the Department's hearings officer for approval prior to forwarding to the Commissioner for Final Decision. In addition, if an appeal is docketed for further administrative proceedings at DALA, a copy of such agreement will be filed with the DALA ALJ assigned to the appeal and any schedule for adjudicatory proceedings will be suspended pending approval of the agreement, in an effort to conserve resources.

Any such previously filed written agreement that an ALJ has not yet forwarded to the Commissioner for Final Decision may be copied and resubmitted by any of the parties to the Department's hearings officer for approval prior to forwarding to the Commissioner for Final Decision.

7. DECISIONS.

Pursuant to the Commissioner's Directive on Adjudicatory Proceedings Conducted Pursuant to M.G.L. c.30A, signed November 8, 2000, the ALJ shall sign and date his or her Recommended Final Decision, and send a copy of his or her Recommended Final Decision to all parties in the case within

three (3) business days after it is transmitted to the Commissioner.

8. COMMISSIONER.

The Commissioner shall continue to approve and sign every Final Decision of the agency, except where the Commissioner designates another to do so in his place. The Commissioner will issue the Final Agency Decision or Remand Decision to DALA for further adjudicatory proceedings, as appropriate. If a Final Decision differs from the Recommended Final Decision, the Commissioner shall provide an appropriate statement of his reasons in accordance with 310 CMR 1.01(14)(b). The Commissioner will issue the Final Agency Decision or Remand Decision to DALA, as appropriate, for distribution to the parties.

Approved: Robert W. Golledge, Jr., Commissioner
Dated: January 20, 2004