COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

November 6, 2025

In the Matter of **Holtec Decommissioning** **International, LLC**	**OADR Docket No. 2024-025** **MassDEP – MA 0003557** **Plymouth, MA**

RECOMMENDED FINAL DECISION

INTRODUCTION

Holtec Decommissioning International, LLC ("Holtec"), has filed this appeal with the Office of Appeals and Dispute Resolution ("OADR")[1] of the Massachusetts Department of Environmental Protection ("MassDEP") challenging MassDEP's July 18, 2024 Final Determination denying Holtec's application to modify its existing Surface Water Discharge Permit ("the Permit") that had originally been issued to the Pilgrim Nuclear Power Station ("Pilgrim") on January 30, 2020, pursuant to the Massachusetts Clean Waters Act ("MCWA"), G.L. c. 21, §§ 26-53, and MassDEP's Regulations at 314 CMR 2.00, 3.00, and 4.00. Holtec requested that MassDEP modify the Permit to authorize Holtec to discharge industrial

[1] OADR is an independent, neutral, quasi-judicial office within MassDEP whose Presiding Officers (senior environmental attorneys) are responsible for advising MassDEP's Commissioner in the adjudication of appeals filed with OADR.

wastewater into Cape Cod Bay, an ocean sanctuary protected by the Massachusetts Ocean Sanctuaries Act ("OSA"), G.L. c. 132A, §§ 12A-18. MassDEP denied Holtec's Permit modification request after determining that the proposed discharge of industrial wastewater into Cape Cod Bay was prohibited by the OSA, G.L. c. 132A, § 15(4), and none of the exemptions in the OSA, G.L. c. 132A, § 16, authorized the discharge.

Holtec requests that MassDEP's Final Determination be vacated, contending that MassDEP erred in denying Holtec's Permit modification request on several grounds, including that: (1) the proposed discharge does not constitute the discharge of "industrial waste" under the OSA; (2) the proposed discharge is exempt from the OSA as an "existing discharge"; (3) the proposed discharge is exempt from the OSA as an activity "associated with the generation, transmission, and distribution of electrical power"; and (4) the federal Atomic Energy Act of 1954 ("AEA"), 42 U.S.C. §§ 2011 to 2297g-4, preempts the OSA from prohibiting the proposed discharge. MassDEP disputes Holtec's claims, contending that the Final Determination is proper. MassDEP's Final Determination is supported by four Intervenors in the appeal: the Association to Preserve Cape Cod Group ("APCC Group"), the Environmental Group ("EG"), the Town of Barnstable, and the Town of Plymouth (collectively "the Intervenors").[2] It is also supported by four Participants in the appeal: Jo-Anne Wilson-Keenan and John H. Keenan ("the Keenans"), residents of Dennis, Massachusetts; Mary Lampert ("Mrs. Lampert"), Executive Director of Pilgrim Watch, an unincorporated association and public interest group relating to Pilgrim; and Ben Cronin ("Mr. Cronin"), a resident of Duxbury, Massachusetts.[3]

[2] Holtec, MassDEP, and the Intervenors are collectively referred here as "the Parties."

[3] The legal requirements governing Intervenor and Participant status in an appeal before OADR are discussed below, at pp. 17-18.

I conducted a two-day evidentiary adjudicatory hearing ("Hearing") to adjudicate Holtec's appeal at which Holtec, MassDEP, the APCC Group, and EG presented expert witnesses supporting their respective positions in the appeal regarding whether MassDEP's Final Determination should be affirmed.[4] The Hearing was recorded by a certified court reporter who prepared a transcript of the Hearing which was filed with the record in the appeal. Following the Hearing, the Parties and the Participants filed Closing Briefs supporting their respective positions on whether MassDEP's Final Determination should be affirmed based on the testimonial and documentary evidence presented by the expert witnesses at the Hearing and the governing environmental statutory and regulatory requirements as set forth in the OSA and federal preemption principles. After careful consideration of the Parties' and the Participants' arguments and the evidence presented at the Hearing, I recommend that MassDEP's Commissioner issue a Final Decision affirming the Final Determination and dismissing this appeal.

WITNESSES[5]

The evidence in the administrative record includes the Department's basic records, the sworn and written pre-filed testimony ("PFT"), and the exhibits submitted by Holtec's, MassDEP's, the APCC Group's, and EG's respective expert witnesses at the Hearing. The names

[4] Presiding Officer Patrick Groulx was present at the Hearing and has assisted me in adjudicating Holtec's appeal of MassDEP's Final Determination. He heard all the expert witnesses testify at the Hearing and concurs with my findings below and recommendation that MassDEP's Commissioner issue a Final Decision affirming MassDEP's Final Determination and dismissing this appeal. We are very grateful for the legal research and writing assistance that we received from Michael Bader, OADR's Counsel I and Law Clerk.

[5] Throughout this Recommended Final Decision, the witnesses' Pre-Filed Direct Testimony is referred to as "[Witness] PFT, ¶ X" or [Witness] PFT, page:lines" and Pre-Filed Rebuttal Testimony will be referred to as "[Witness] PFR, ¶ X" or "[Witness] PFR, page:lines." Exhibits to testimony are referred to by their designation in the record or as "[Witness] Ex. X." The witnesses' cross examination testimony at the Hearing is referred to as "[Witness], page:lines."

and backgrounds of the expert witnesses who testified at the Hearing are set forth below. They were available for cross-examination by opposing counsel at the Hearing.[6]

For Holtec:

1. David Noyes: Mr. Noyes is the Compliance Manager for Holtec at Pilgrim, a position he has held since 2021. He graduated from the Massachusetts Maritime Academy with a Bachelor of Science in Marine Engineering and became a licensed Senior Reactor Operator in 1996. He has worked at Pilgrim in various positions since 1989. In his current position, he is responsible for inspections, regulatory filings, and corresponding with federal and state agencies and local stakeholders. In his previous positions at Pilgrim, he was responsible for writing and issuing operating procedures, directing plant operations, authorizing maintenance activities, and authorizing liquid discharges.
2. Russell B. Parkman: Mr. Parkman is a Project Officer in the Water and Wastewater Treatment Division at Ramboll Americas Engineering Solutions, Inc. ("Ramboll"). He graduated from the University of Maine with a Bachelor of Science in Chemical Engineering. He leads the Industrial Stormwater Engineering Services for Ramboll and provides consulting services relating to stormwater evaluation, compliance, permitting, engineering design, construction, and commissioning. He is a Registered Professional Engineer in Massachusetts and has nearly 40 years of experience in industrial wastewater and industrial stormwater engineering.
3. Robin L. Richards: Ms. Richards is a Principal in the Water and Wastewater Treatment Division at Ramboll. She graduated from Rice University with a Bachelor of Arts in

[6] The Town of Barnstable and the Town of Plymouth did not offer PFT or present any witnesses at the Hearing.

Biochemistry and from Texas A&M University with a Graduate Studies degree in Plant Physiology. She leads the Water Management and Planning Services for Ramboll and provides consulting services relating to compliance with federal and state water quality laws and regulations. She has over 40 years of experience in biochemistry.

4. T. Michael Twomey: Mr. Twomey is a senior consultant with CRA International, Inc. He graduated from Tulane University with a Bachelor of Arts and from the University of Connecticut School of Law with a Juris Doctor. During his professional career, he has served as an attorney representing regulated public utilities. From 2010 to 2022, he was responsible for state regulatory and government affairs functions for Pilgrim.
5. Steven T. Walker: Mr. Walker is a Principal Consultant with ENERCON Services, Inc. He graduated from New England College with a Bachelor of Arts in Geology and from the University of South Florida with a Master of Science in Marine Science/Geology. He has over 40 years of experience in hydrogeology, contaminated site assessment and cleanup, and permitting, compliance, and environmental enforcement. He has provided services to Holtec pertaining to the non-radiological environmental aspects of nuclear power plant decommissioning since 2018 and helped prepare Holtec's Permit modification request.

For MassDEP:

1. Lealdon Langley: Mr. Langley is the Director of the Division of Watershed Management in MassDEP's Bureau of Water Resources. He graduated from Hendrix College with a Bachelor of Arts in Biology and from Boston University with a Master of Arts. He oversees the permitting of discharges into surface water and groundwater and is responsible for interpreting statutes, regulations, policies, and guidance, as well as

authoring regulations, policies, and guidance. He has 40 years of experience in water discharge permitting. He was responsible for processing Holtec's Permit modification request.

For the APCC Group:

1. Andrew Gottlieb: Mr. Gottlieb is the Executive Director of the APCC. He graduated from Harvard University with a Bachelor of Arts in Government and from Boston University with a Masters of Business Administration in Public and Non-Profit Administration. He has previously provided consulting services relating to energy and water resources management and has worked at MassDEP and the Executive Office of Commonwealth Development. He has nearly 40 years of experience in environmental protection. He also serves as a member of the Nuclear Decommissioning Citizens Advisory Panel ("NDCAP") and has had regular interactions with Holtec in this role with respect to the decommissioning of Pilgrim.
2. John Cumbler: Mr. Cumbler is a retired academic historian who previously worked as a professor of environmental and social history at the University of Louisville for 40 years. He graduated from the University of Michigan with a PhD in history. He specializes in environmental history and has authored numerous books on American social, economic, and environmental history, including about Cape Cod. He also serves on the Wellfleet Conservation Commission and on the APCC Board of Directors.

For the Environmental Group:

1. Mary E. Lampert: Ms. Lampert is the Executive Director of Pilgrim Watch, an unincorporated association and public interest group relating to Pilgrim. She serves on the boards of numerous environmental organizations, is the chair of the Duxbury Nuclear

Advisory Committee, and is a member of NDCAP. She has spent nearly 40 years working on nuclear power safety issues.

BACKGROUND

Pilgrim Nuclear Power Station

Pilgrim is a 140-acre defunct nuclear power plant located on the western shore of Cape Cod Bay in Plymouth, Massachusetts. HDI-DN-6, p. 10. Cape Cod Bay is designated as an ocean sanctuary under the OSA. G.L. c. 132A, § 13(b). The principal structures of Pilgrim are the reactor and turbine buildings, the off-gas retention building, the radwaste building, the diesel generator building, the intake structure, the switchyard, the main stack, administration buildings, and the former recreational facilities. HDI-DN-6, p. 10.

Pilgrim was constructed between 1968 and 1972 and was originally owned and operated by Boston Edison Company ("Boston Edison"). Noyes PFT, 6:11, 6:17; Lampert PFT, ¶ 25. The date on which Pilgrim began operations and began discharging into Cape Cod Bay is unclear from the record. Boston Edison's revised Refuse Act application, submitted on September 30, 1971, indicates that a discharge was "present" as opposed to "proposed new or changed" on the day it was filed. HDI-STW-14, p. 5. Mr. Noyes testified that "[d]ischarges from the facility's radwaste system commenced on December 1, 1971." Noyes PFT, 6:19-20. On cross-examination, Mr. Noyes stated that "[r]adwaste logs from the initial operation of the plant identified a discharge that had occurred on that date." Noyes, 236:21-23. However, he admitted that these alleged radwaste logs had not been submitted as evidence in this case. Noyes, 237:8-14. Mr. Walker testified that electricity generation began at Pilgrim in June 1972. Walker PFT, 38:5-6. Finally, Holtec's Post-Shutdown Decommissioning Activities Report ("PSDAR") states

that Pilgrim began operating on December 1, 1972, a fact which Mr. Noyes admitted is accurate. HDI-DN-6, p. 10; Noyes, 274:2-9.

Boston Edison sold Pilgrim to Entergy Nuclear Generating Company and transferred the operating license to Entergy Nuclear Operations, Inc. (collectively, "Entergy"), in 1999. Noyes PFT, 6:22-7:3; Lampert PFT, ¶ 26. In the mid-2010s, Entergy decided that it wanted to focus on operations in the South and end its operations in the Northeast. Twomey, 57:16-58:1. On October 13, 2015, Entergy announced its plans to permanently shut down Pilgrim. Noyes PFT, 7:5-6; Gottlieb PFT, ¶ 28. On November 16, 2018, Entergy applied to the Nuclear Regulatory Commission ("NRC") to transfer control of Pilgrim and the operating license to Holtec.[7] Noyes PFT, 7:12-13; Gottlieb PFT, ¶ 29; Lampert PFT, ¶ 165; HDI-DN-6, p. 2. Pilgrim ceased commercial power generation on May 31, 2019. Noyes PFT, 7:21-8:1; Gottlieb PFT, ¶ 31; Lampert PFT, ¶ 27; HDI-DN-7, p. 2. The NRC approved the transfer of Pilgrim and the operating license to Holtec on August 22, 2019. Noyes PFT, 8:1-2; Gottlieb PFT, ¶ 32; HDI-DN-7, p. 3.

The Water and the Proposed Discharge

Holtec's proposed discharge involves the discharge of industrial wastewater from Pilgrim's spent fuel pool, torus, dryer separator, and reactor cavity ("the Water") into Cape Cod Bay. HDI-STW-6, pp. 5-7. When Holtec initially applied to discharge the Water in March 2023, there were 1.1 million gallons of Water. Lampert PFT, ¶ 97; HDI-STW-3, p. 3; MassDEP Ex. 8, p. 2. Due to naturally-occurring evaporation, approximately 860,000 gallons of Water remained as of mid-2025. Lampert PFT, ¶ 102; Noyes, 272:5. The Water contains both radioactive and

[7] Control of Pilgrim was transferred to Holtec Pilgrim, LLC, while the operating license was transferred to Holtec Decommissioning International, LLC. Noyes PFT, 7:14-15; HDI-DN-6, p. 2.

non-radioactive pollutants. Radioactive pollutants include manganese-54, cobalt-60, zinc-65, cesium-137, and tritium (hydrogen-3). Lampert PFT, ¶ 57. Non-radioactive pollutants include suspended solids, oil and grease, copper, zinc, lead, nickel, boron, and phenol. HDI-STW-3, p. 8; MassDEP Ex. 8, p. 2. There is no commercially available technology that can separate out the radioactive pollutants from the non-radioactive pollutants. Noyes PFT, 26:12-16; Parkman PFT, 3:15-4:2. The Water will be treated before being discharged, and Holtec asserts that the Water will meet the water quality standards for the non-radioactive pollutants[8] and will have no adverse effect on the water quality, ecology, or appearance of Cape Cod Bay. Noyes PFT, 23:12-14; Walker PFT, 19:19-20:8. The Water will not necessarily contain "zero" pollutants, as that is impossible to measure. Richards PFT, 11:11-12. The Water will be discharged through an outfall designated as Outfall #015. HDI-STW-6, p. 7.

Permitting History of Pilgrim

1. Massachusetts Clean Waters Act

On October 17, 1968, Pilgrim's prior owner, Boston Edison, applied to the Commonwealth's Division of Water Pollution Control ("DWPC") for a permit under the MCWA, G.L. c. 21, § 43, to discharge industrial wastes into Cape Cod Bay. Walker PFT, 26:17-19; HDI-STW-8, p. 1. At the time, the MCWA provided in relevant part:

> No person shall make or permit a new outlet for the discharge of sewage or industrial waste or wastes, or the effluent therefrom, into any of the waters of the commonwealth nor shall he construct or operate a new disposal system for the discharge of sewage or industrial or other wastes or the effluent therefrom into the waters, of the commonwealth without first obtaining a permit, which the director is hereby authorized to issue subject to such conditions as he may deem necessary to insure compliance with the standards established for the waters affected . . . .

[8] As discussed below, radioactive pollutants are regulated under federal law and are not relevant to this appeal, which arises solely under Massachusetts law.

St. 1966, c. 685, § 1. Boston Edison attached a report titled "Salt Water Use and Waterfront Development for Pilgrim Nuclear Power Station" ("Salt Water Use Report") to its application. Walker PFT, 26:19-21; HDI-STW-12. The Salt Water Use Report states that Pilgrim would discharge 4,000,000 gallons of radioactive water annually and specifies the radioactive pollutants present in this water[9] but not the non-radioactive pollutants. HDI-STW-12, pp. 25-26. It also states that Pilgrim would discharge 2.9 million gallons of non-radioactive water that would contain "suspended particulates" and "dissolved solids," with the only specific pollutants mentioned being sodium sulfate[10] and chlorine. HDI-STW-12, p. 27. The Salt Water Use Report also describes how the water will be treated; HDI-STW-12, pp. 25, 27; and describes the location of the discharge channel. HDI-STW-12, p. 7.

On January 8, 1969, the DWPC issued an interim permit for the discharge of industrial wastes from Pilgrim Station into Cape Cod Bay ("Interim Permit") under the MCWA. Walker PFT, 26:1-2; HDI-STW-8, p. 1. The Interim Permit specified that the DWPC had reviewed the Salt Water Use Report. HDI-STW-8, p. 1. The Interim Permit contained three conditions: (1) radiological and ecological studies be performed to indicate that the discharges will not be harmful to human or marine life, with changes made if so; (2) a method be developed for the operation and control of the use of chlorine in the circulation cooling water system; and (3) operating records pertaining to the treatment of liquid wastes, including the levels of radioactivity and to the discharge of effluents to Cape Cod Bay, be maintained and made

[9] "The annual release of radioactive substances to Cape Cod Bay from Pilgrim Station is estimated to be between 7 and 50 curies of mixed fission and activation products. This mixture can be expected to include radioactive isotopes of Cobalt-60, Cobalt-58, Manganese-54, Iron-59, Chromium-51, and Zinc-65, with possible additional fission products of Iodine-131 and Cesium-137, Technisium-99 [sic], and Molybdenum-99." HDI-STW-12, p. 26.

[10] The Salt Water Use Report states that the non-radioactive water would contain Na_2SO_4, which is also referred to as sodium sulfate.

available to the DWPC. HDI-STW-8, p. 1. It did not include any conditions pertaining to the volume or locations of the discharges. The Interim Permit was valid for three years following the initiation of operations at Pilgrim. Walker PFT, 28:18-19; HDI-STW-8, p. 1.

Between March 18, 1973, and June 20, 2020, the U.S. Environmental Protection Agency ("EPA") and MassDEP issued joint permits under both the MCWA and the federal Clean Water Act ("CWA"). Langley PFT, ¶ 9; MassDEP Ex. 9. The history of the joint permits obtained by Pilgrim is discussed *infra* at page 13 in connection with the CWA.

2. Water Quality Certification

Massachusetts adopted water quality standards in June 1967 which were approved by the federal government on August 7, 1967. HDI-STW-11, pp. 7-8. Boston Edison applied to the DWPC on February 17, 1971, for a certification that the discharges from Pilgrim would comply with the applicable water quality standards. HDI-STW-9, p. 1. On April 23, 1971, the DWPC certified that "there is reasonable assurance that the proposed activity will be conducted in a manner which will not violate applicable water quality standards." HDI-STW-9, p. 1.

3. Refuse Act

The federal Refuse Act of 1899, 33 U.S.C. § 407, provides in relevant part:

> It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited . . . from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever . . . into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water . . . provided further, that the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful.

The Refuse Act Permitting Program ("RAPP") was established by regulations promulgated by the U.S. Army Corps of Engineers ("USACE") on April 7, 1971. The RAPP was applicable to "all direct and indirect discharges or deposits . . . by any person, firm or other entity . . . into a navigable waterway or tributary," with exceptions not relevant here. 36 Fed. Reg. 6565 (April 7, 1971). The RAPP required entities wishing to discharge into waters covered by the Refuse Act to apply to USACE for a permit, with facilities lawfully under construction prior to April 3, 1970, being required to apply by July 1, 1971. Id. Regarding the legality of discharges without a permit, the RAPP provided:

> All discharges or deposits to which the Refuse Act is applicable . . . are unlawful unless authorized by an appropriate permit issued under the authority of the Secretary of the Army. The fact that official objection may not have been raised with respect to past or continuing discharges or deposits does not constitute authority to discharge or deposit or to continue to discharge or deposit in the absence of an appropriate permit. Any such discharges or deposits not authorized by an appropriate permit may result in the institution of legal proceedings in appropriate cases for violation of the provisions of the Refuse Act. Similarly, the mere filing of an application requesting permission to discharge or deposit into navigable waters or tributaries thereof will not preclude legal action in appropriate cases for Refuse Act violations.

Id.

On June 30, 1971, Boston Edison applied to USACE for a permit under the RAPP to discharge liquid from Pilgrim into Cape Cod Bay. Walker PFT, 32:16-17; HDI-STW-13. On July 29, 1971, USACE sent a letter to Boston Edison stating that it had received the permit application and required additional information. Walker PFT, 33:7-11; HDI-STW-16, p. 1. Boston Edison filed a revised application on September 30, 1971. Walker PFT, 33:20-34:2; HDI-STW-14.

On December 21, 1971, the United States District Court for the District of Columbia held that portions of the RAPP were invalid. Kalur v. Resor, 335 F. Supp. 1 (D.D.C. 1971).

Specifically, the court held that the RAPP was invalid to the extent that it allowed USACE to issue permits for the discharge of refuse into non-navigable waters and to the extent that it allowed USACE to issue permits without complying with the National Environmental Policy Act. Id., at 12, 15. The RAPP was eliminated by the Federal Water Pollution Control Act Amendments of 1972 ("FWPCA Amendments"). Boston Edison never received a permit under the Refuse Act.

4. Clean Water Act

The FWPCA Amendments amended the CWA, 33 U.S.C. § 1342, to establish the National Pollutant Discharge Elimination System ("NPDES"). All pending applications for Refuse Act permits were converted to applications for NPDES permits when the FWPCA Amendments were passed. 33 U.S.C. § 1342(a)(5) ("[e]ach application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section"). On March 26, 1975, the EPA and the DWPC issued a joint permit to Boston Edison. Walker PFT, 36:4; HDI-STW-21. This permit listed the radwaste outfall as Outfall #001A. Walker PFT, 36:5-7; HDI-STW-21, p. 5. The joint permit issued on May 15, 1980, redesignated the radwaste outfall as Outfall #010. Walker PFT, 36:14-15; HDI-STW-22, p. 7. The joint permit issued on September 8, 1983, did not specifically designate the radwaste outfall, which remained the case for all future joint permits. Walker PFT, 36:15-37:5; HDI-STW-23. The Permit, which was granted to Holtec on January 30, 2020, included a new condition not present in the previous joint permits for Pilgrim, that "[t]he discharge of pollutants in spent fuel pool water (including, but not limited to, boron) is not authorized by this permit." Noyes PFR, 4:11-

16; HDI-STW-4, p. 27.

5. Atomic Energy Act

The federal Atomic Energy Act, 42 U.S.C. § 2131, makes it illegal "for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility[11] except under and in accordance with a license issued" by the Nuclear Regulatory Commission ("NRC"). Boston Edison received its operating license from the NRC on June 8, 1972. HDI-DN-2, p. 7. The current NRC license held by Holtec permits it only to "possess, maintain, and decommission" Pilgrim. Gottlieb PFT, ¶ 32; HDI-DN-2, p. 7.

The Decommissioning Process and the Final Determination

On November 16, 2018, Holtec submitted a PSDAR to the NRC, to become active when the transfer from Entergy to Holtec was completed, explaining that it was choosing the DECON method of decommissioning, which involves immediate dismantlement of the facility.[12] Noyes PFT, 7:15-21; Twomey, 83:9-11; Gottlieb PFT, ¶¶ 29-30; HDI-DN-6, p. 2. The PSDAR states that the spent fuel pool will be drained; HDI-DN-6, p. 19; but does not indicate how the liquid will be disposed of. The PSDAR also includes an overall decommissioning cost estimate; HDI-DN-6, p. 48; but it does not include different estimates for different methods of waste disposal.

[11] A utilization facility is "(1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission." 42 U.S.C. § 2014(cc).

[12] DECON is a "phase of reactor decommissioning in which structures, systems, and components that contain radioactive contamination are removed from a site and safely disposed of at a commercially operated low-level waste disposal facility or decontaminated to a level that permits the site to be released for unrestricted use." DECON, Nuclear Regulatory Commission, https://www.nrc.gov/reading-rm/basic-ref/glossary/decon (last accessed October 29, 2015).

On August 22, 2019, the NRC approved the transfer, and on October 18, 2019, the NRC approved Holtec's PSDAR. Noyes PFT, 8:1-3; HDI-DN-7, pp. 3, 10.

On January 27, 2022, Holtec issued an "Information Sheet" indicating that it intended to discharge the Water during decommissioning. MassDEP Ex. 11, p. 1. On February 17, 2022, the EPA sent a letter to Holtec informing it that the Permit explicitly forbade it from discharging pollutants in spent fuel pool water. MassDEP Ex. 10, p. 3. On May 24, 2022, Holtec sent a letter to the EPA arguing that the Permit did allow it to discharge the Water. MassDEP Ex. 12, p. 2. On June 17, 2022, the EPA sent a letter to Holtec reiterating that the proposed discharge was forbidden under the Permit and explaining that Holtec would need to apply for a modification of the Permit. MassDEP Ex. 13, pp. 1-3.

On March 31, 2023, and April 4, 2023, Holtec applied to the EPA and MassDEP, respectively, for a permit modification that would allow it to discharge the Water into Cape Cod Bay. Langley PFT, ¶ 5. The EPA application referred to Outfall #015 as a "new source" and the MassDEP application referred to the proposed discharge as a "new discharge." HDI-STW-3, p. 4; MassDEP Ex. 3, Letter to CZM, p. 7. Holtec also sent a letter to the Massachusetts Environmental Policy Act ("MEPA") Office on May 4, 2023, claiming that the proposed discharge would not trigger any applicable MEPA review thresholds. Langley PFT, ¶ 33; MassDEP Ex. 20, p. 1. Holtec attached an alternatives analysis to this letter evaluating discharge of the Water to Cape Cod Bay, evaporation, and off-site disposal. Langley PFT, ¶ 33; MassDEP Ex. 20, p. 5; HDI-DN-10. The alternatives analysis states that all three proposed alternatives could be performed in compliance with all applicable federal and state laws and regulations and would be effective in both the short- and long-term. HDI-DN-10, pp. 4-5. The alternatives analysis claims that evaporation and off-site disposal are more expensive than discharge to Cape

Cod Bay, but does not say how much more expensive they will be or provide any cost estimate for any alternative. HDI-DN-10, pp. 4-6.

Via letters dated July 21, 2023, and July 24, 2023, MassDEP consulted with the Commonwealth's Office of Coastal Zone Management ("CZM"), the agency responsible for administering the OSA, and both agencies agreed that the proposed discharge was prohibited by the OSA. See MassDEP Ex. 3. Specifically, both agencies agreed that (1) the Water constituted an industrial waste; (2) the proposed discharge was not associated with the generation, transmission, and distribution of electrical power; and (3) the proposed discharge was not an existing discharge. MassDEP Ex. 3, Letter to CZM, pp. 4-7; MassDEP Ex. 3, Letter from CZM, pp. 2-4. On July 24, 2023, MassDEP issued a Tentative Determination denying Holtec's requested modification to the Permit. Langley PFT, ¶ 5; MassDEP Ex. 3, Tentative Determination Cover Letter, p. 1. In November and December 2023, Holtec provided additional information regarding the discharge permits and water quality certifications issued to Boston Edison in 1971 or earlier in response to information requests from MassDEP. See MassDEP Exs. 4-7. On April 23, 2024, Holtec sent a letter to the EPA revising its application to no longer refer to Outfall #015 as a "new source," contending that Outfall #015 was the same as the outfall designated as Outfall #001A and Outfall #010 in previous NPDES permits.[13] Noyes PFT, 36:12-13; HDI-STW-6, p. 2.

On July 18, 2024, MassDEP issued a Final Determination denying Holtec's requested modification. MassDEP Ex. 8. The Final Determination reiterated the rationale from the Tentative Determination and noted that the additional materials submitted by Holtec did not

[13] Holtec claims that it also sent a letter to MassDEP making the same changes, but this letter is not in the record.

indicate that the proposed discharge was an existing discharge. MassDEP Ex. 8, pp. 3-5. The Final Determination mentions that the Water contains "pollutants such as suspended solids, oil and grease, copper, zinc, lead, nickel, boron, and phenol," but makes no reference to the radioactivity levels in the Water.[14] MassDEP Ex. 8, p. 2.

Procedural History

Holtec filed a Notice of Claim with OADR on August 16, 2024, appealing MassDEP's Final Determination. From September 11, 2024, to September 19, 2024, OADR received seven Motions to Intervene[15] from the following individuals and entities:

1. the Keenans, filed on September 11, 2024;
2. Mrs. Lampert, filed on September 18, 2024;
3. EG, a group of 28 individuals,[16] filed on September 18, 2024;
4. Mr. Cronin, filed on September 19, 2024;
5. Town of Barnstable, filed on September 19, 2024;
6. Town of Plymouth, filed on September 19, 2024; and
7. the APCC Group, a group of 19 individuals and four organizations,[17] filed on September 19, 2024.

In response, Holtec opposed the Motions to Intervene of the Town of Barnstable and the

[14] The Final Determination does reference that the Water is radioactive in discussing when radwaste discharges began at Pilgrim, as the RAPP application stated that non-radioactive discharges would begin before radioactive discharges. MassDEP Ex. 8, p. 4.

[15] Under 310 CMR 1.01(7)(d) "Intervenors shall be persons substantially and specifically affected by the adjudicatory proceeding, or persons who have the constitutional or statutory right to intervene without showing that they are substantially and specifically affected. . . . Every person permitted to intervene as a party, whether individually or collectively, shall have all the rights of and be subject to all limitations imposed upon a party."

[16] EG's members include Leslie A. Danielson, Arthus Deslodges, Heidi Mayo, James Martucelli, Maximilian Martucelli, Milaela Milano, Molly Barlett, Christine Silva, Peter Keane, Anne Coeswell, Brandon Yerov, Julia Cutler, Patricia Janiak, Kristen Coletti, Phoebe Flynn, John E. McCluskey, Sheila Lynch-Benttinen, Rebecca J. Chin, David Amory, Susan T. Amory, Mary Lampert, James B. Lampert, Abby O'Connell, Matt DiMouchelle, Patricia O'Connell, David O'Connell, Kevin Weafer, and Diane Turco.

[17] The APCC Group includes the Association to Preserve Cape Cod, Inc., the Cape Cod and Islands Association of Realtors, the Cape Cod Chamber of Commerce, Inc., the Cape Cod Commercial Fisherman's Alliance, Sally Andreola, Wayne Bergeron, Dylan Fernandes, Owen Fletcher, Trish Kellinui, Steve Koppel, Jack Looney, Sheila Lyons, Elysse Magnotto-Cleary, Robert Mills, William C. Mills, Rick Sawyer, Emily Summer, David Weeden, and Taryn Wilson.

Town of Plymouth in part and opposed the other five Motions to Intervene in their entireties. MassDEP assented to all Motions to Intervene except the Keenans' Motion to Intervene. On October 17, 2024, Presiding Officer Patrick Groulx issued a Ruling and Order on each Motion to Intervene. Specifically, he: (1) granted the Town of Barnstable's and the Town of Plymouth's respective Motions to Intervene because they had established that they would be substantially and specifically affected by the adjudicatory proceeding; and (2) granted EG's and the APCC Group's respective Motions to Intervene because they had a statutory right to intervene as ten-persons groups under G.L. c. 30A, § 10A.[18] He denied the Keenans', Mrs. Lampert's, and Mr. Cronin's respective Motions to Intervene because they did not meet the requirements to obtain Intervenor status, but, in accordance with 310 CMR 1.01(7)(e), he granted them Participant status.[19]

I conducted a Pre-Hearing Conference in the appeal with the Parties on January 15, 2025, at which the Issues for Adjudication and the schedule for Holtec's, MassDEP's, the APCC Group's, and EG's respective witnesses to file PFT for the Hearing were discussed and established. I also disclosed to the Parties my prior professional relationships with four individuals involved in the proceedings dating back many years, and no Party expressed concern that my objectivity would be impacted by those relationships. On January 22, 2025, I issued a

[18] G.L. c. 30A, § 10A provides in relevant part: "[N]ot less than ten persons may intervene in any adjudicatory proceeding as defined in section one, in which damage to the environment as defined in section seven A of chapter two hundred and fourteen, is or might be at issue; provided, however, that such intervention shall be limited to the issue of damage to the environment and the elimination or reduction thereof in order that any decision in such proceeding shall include the disposition of such issue."

[19] "A person affected by an adjudicatory proceeding shall be permitted to participate. . . . Permission to participate shall be limited to the right to argue orally at the close of the hearing and the right to file a brief." 310 CMR 1.01(7)(e).

Pre-Hearing Conference Report and Order setting forth the Issues for Adjudication as follows:

1. Whether the proposed discharge constitutes a discharge of "industrial wastes" within the Ocean Sanctuaries Act at G.L. c. 132A, § 15 and 301 CMR 27.00?
2. Whether the proposed discharge falls within the exception provided under G.L. c. 132A, § 16 for an "existing discharge," as defined by the Ocean Sanctuaries Act under G.L. c. 132A, § 12B and 301 CMR 27.02?
3. Whether the proposed discharge falls within the exception provided under G.L. c. 132A, § 16 for activities, uses and facilities that are "associated with" the generation, transmission, and distribution of electrical power?
4. Whether the Atomic Energy Act of 1954 preempts the Ocean Sanctuaries Act from prohibiting the proposed discharge?

In accordance with the schedule established at the Pre-Hearing Conference, Holtec's, MassDEP's, the APCC Group's, and EG's respective witnesses filed PFT prior to the Hearing. In response, Holtec filed a Motion in Limine to exclude portions of Mrs. Lampert's PFT on behalf of EG and strike certain documents supporting her PFT. EG and MassDEP opposed this motion. Holtec also filed a Motion in Limine to exclude portions of Mr. Gottlieb's and Mr. Cumbler's PFT on behalf of the APCC Group. The APCC Group, MassDEP, and the Town of Plymouth opposed this motion.

I referred Holtec's Motion in Limine to Presiding Officer Groulx for his review and ruling. On June 10, 2025, he issued a ruling and order denying both of Holtec's Motions in Limine, granting Holtec's Motion to Strike two documents from Mrs. Lampert's PFT,[20] and denying Holtec's Motion to Strike with respect to all other documents.

The Hearing took place at MassDEP's Boston office on June 12, 2025, and June 13, 2025, at which the Parties were given the opportunity to cross-examine the expert witnesses. Closing Briefs were filed after the Hearing and closing arguments were heard via the Zoom internet platform on September 3, 2025.

[20] Specifically Exhibits EG-12 and EG-15.

STATUTORY FRAMEWORK

1. Ocean Sanctuaries Act

The OSA defines five ocean sanctuaries: the Cape Cod Ocean Sanctuary, the Cape Cod Bay Ocean Sanctuary, the Cape and Islands Ocean Sanctuary, the North Shore Ocean Sanctuary, and the South Essex Ocean Sanctuary. G.L. c. 132A, § 13. This appeal involves the Cape Cod Bay Ocean Sanctuary. The OSA states that ocean sanctuaries "shall be under the care, oversight and control of" CZM and "shall be protected from any exploitation, development, or activity that would significantly alter or otherwise endanger the ecology or the appearance of the ocean, the seabed, or subsoil thereof, or the Cape Cod National Seashore." Id. § 14. The OSA prohibits a number of activities in ocean sanctuaries, including "the dumping or discharge of commercial, municipal, domestic or industrial wastes." Id. § 15(4). It also provides a number of exemptions from its prohibitions, including for "all other activities, uses and facilities associated with the generation, transmission, and distribution of electrical power" and "the operation and maintenance of existing municipal, commercial or industrial facilities and discharges where such discharges or facilities have been approved and licensed by appropriate federal and state agencies." Id. § 16. Massachusetts state agencies are forbidden from "permit[ting] or conduct[ing] any activity which is contrary to the provisions of" the OSA and must "confer and consult with" CZM to "ensure compliance with" the OSA. Id. § 18.

2. Atomic Energy Act

The AEA is a federal law that governs the development, use, and control of nuclear energy and the possession, use, and production of radioactive material. 42 U.S.C. §§ 2011, 2013. The AEA generally gives the NRC exclusive jurisdiction over "the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the

Commission." Id. § 2021(c)(3). However, the AEA does not "affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards." Id. § 2021(k).

LEGAL STANDARDS

1. Burden of Proof

Holtec, as the Party challenging the Final Determination, has the burden of proof, specifically the burden of proving that MassDEP erred in making the Final Determination based on a preponderance of the evidence presented by the Parties' respective expert witnesses at the Hearing. In the Matter of Brockton Power Co., LLC, ("BP"), OADR Docket Nos. 2011-025 and 2011-026, Recommended Final Decision (July 29, 2016), 2016 WL 8542559, *5, adopted by Interlocutory Decision [of MassDEP's Commissioner] (March 13, 2017), 2017 WL 1063662; In the Matter of The Prysmian Group and Prysmian Cables & Systems USA, LLC, OADR Docket No. 2024-006, Recommended Final Decision (August 26, 2024), 2024 WL 4920921, *3, adopted as Final Decision (September 26, 2024), 2024 WL 4920920. Regarding its burden of proof, Holtec was required to present competent and persuasive evidence at the Hearing from one or more expert witnesses with sufficient expertise to testify on the technical issues presented by its claims that MassDEP improperly issued its Final Determination. Id.; In the Matter of Dan and Eva Barstow, OADR Docket No. 2019-026, Recommended Final Decision (January 22, 2020), 2020 WL 2616472, *4, adopted by Final Decision (February 19, 2020), 2020 WL 2616471. The question of "sufficient expertise" turns on "whether the witness has sufficient education, training, experience, and familiarity with the subject matter of the testimony." Id.

2. Standard of Review

My review of MassDEP's factual and legal findings underlying its grounds for issuing its

Final Determination is *de novo*, meaning that my review is anew irrespective of MassDEP's prior factual and legal findings in the matter. In the Matter of Kane Built, Inc., OADR Docket No. 2017-037, Recommended Final Decision (December 18, 2018), 2017 WL 10924859, *5, adopted by Final Decision (January 17, 2019), 2019 WL 1122833; Prysmian, 2024 WL 4920921, *3. Under the *de novo* standard of review, I owe no deference to MassDEP's prior factual findings in the matter because the Adjudicatory Proceeding Rules at 310 CMR 1.01(13)(h) governing adjudication of the appeal provide that the "[t]he weight to be attached to any evidence in the record [of the appeal] will rest within the sound discretion of the Presiding Officer . . . ." Kane Built, 2017 WL 10924859, *5; Prysmian, 2024 WL 4920921, *3. This Rule also provides that "unless otherwise provided any law," the rules of evidence that Massachusetts courts follow "need not [be] observe[d]" in an evidentiary adjudicatory hearing "[except for] the rules of privilege recognized by law." This Rule also requires that "probative effect [be given to evidence] only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs." My legal determinations in adjudicating the Final Determination's validity will be based on the governing legal requirements with deference to MassDEP's reasonable interpretation of environmental statutes, regulations, and policies it is responsible for enforcing, including the OSA.[21] In the Matter of Pioneer Valley Energy Center, LLC ("PVEC"), OADR Docket No. 2011-010, Recommended Final Decision (September 23, 2011), 2011 WL 6019097, *8, adopted by Final Decision (November 9, 2011), 2011 WL 6019096; Prysmian, 2024 WL 4920921, *3. However, no deference is due to MassDEP's interpretation or

[21] CZM, not MassDEP, is the agency normally responsible for enforcing the OSA. However, G.L. c. 132A, § 18, mandates that "other departments, divisions, commissions, units, or other agencies shall confer and consult with [CZM] to ensure compliance with the [OSA]." Given that MassDEP consulted with CZM as required and both were in full agreement regarding the meaning and interpretation of the OSA, I will accord deference to MassDEP's reasonable interpretation of the OSA.

construction of a statutory or regulatory requirement that is arbitrary, unreasonable, or inconsistent with the plain terms of the governing statutory and regulatory requirements. Arrowood Indemnity Company v. Workers' Compensation Trust Fund, 104 Mass. App. Ct. 419, 421 (2024), affirmed, 496 Mass. 222, 229-31 (2025); PVEC, 2011 WL 6019097, *8; Prysmian, 2024 WL 4920921, *3, citing, BP, 2016 WL 8542559, *8-10 (no deference due MassDEP's interpretation that OADR lacked jurisdiction to adjudicate federal Title VI discrimination claims in air permit appeal where MassDEP lacked a formal Title VI Grievance Policy required by Title VI Regulations of the EPA to review such claims).[22] In sum, as the Presiding Officer responsible for adjudicating this appeal, "[I am] responsible . . . for independently adjudicating [the] appea[l] and [issuing a recommended decision] to MassDEP's Commissioner that is consistent with [the governing statutory and regulatory requirements] . . . ." In the Matter of Christopher N. Colby, OADR Docket No. WET-2016-012, Recommended Remand Decision (October 12, 2018), 2018 WL 6844318, at 9, adopted as Remand Decision (October 26, 2018), 2018 WL 6844317. Additionally, because my review of MassDEP's factual and legal findings underlying its grounds for issuing its Final Determination is *de novo*, MassDEP "is authorized to, and should change its position" on any Issue for Adjudication it had taken previously in issuing the Final Determination "if during the pendency of [the] appeal, '[it] becomes convinced' based on [1] a

[22] In BP, MassDEP's then-Commissioner noted that "MassDEP [was] in the process of developing a formal Title VI Complaint Policy for the Department" and until such time the Policy was adopted, Title VI discrimination claims could be asserted in an administrative appeal before OADR. BP, 2017 WL 1063662, *2 n.8. Specifically, MassDEP's then-Commissioner ruled that:

> anyone aggrieved by the Department's permit decisions or enforcement orders, based on purported Title VI violations [could in the absence of a formal MassDEP Title VI Grievance Policy] assert such claims in an administrative appeal with [OADR], as the Petitioners [had done] in [BP and] [a]s was also done in [that] case, the claims [would be] adjudicated by an OADR Presiding Officer based on the evidentiary record in the case, who [would] forward a Recommended Final Decision to the Department's Commissioner.

Id.

different legal interpretation of applicable regulatory standards, [2] new evidence, [and/or] [3] error in its prior determination," that a change in position is warranted. See In the Matter of John Soursourian, OADR Docket No. WET-2013-028, Recommended Final Decision (June 13, 2014), 2014 WL 2996120, *11, adopted as Final Decision (June 19, 2014), 2014 WL 2996126; In the Matter of Francis P. and Debra A. Zarette, Trustees of Farm View Realty Trust, OADR Docket No. WET-2016-030, Recommended Final Decision (February 20, 2018), 2018 WL 2002978, *4, adopted as Final Decision (March 1, 2018), 2018 WL 2002977.

DISCUSSION

I. The proposed discharge constitutes a discharge of "industrial wastes" within the meaning of the Ocean Sanctuaries Act at G.L. c. 132A, § 15 and 301 CMR 27.00.

"[My] primary duty [as the Presiding Officer in the appeal] in interpreting a statute is to effectuate the intent of the Legislature in enacting it. . . . [I] begin with the language of the statute, as the principal source of insight into legislative intent. . . . Where the words are plain and unambiguous in their meaning, [I] view them as conclusive as to legislative intent. . . . Where the meaning of a statute is not plain from its language, [I] consider the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated. . . . Where possible, [I] construe the various provisions of a statute in harmony with one another, recognizing that the Legislature did not intend internal contradiction." Water Department of Fairhaven v. Department of Environmental Protection, 455 Mass. 740, 744-45 (2010).

Section 15 of the OSA states, "the following activities shall be prohibited in an ocean sanctuary . . . the dumping or discharge of commercial, municipal, domestic or industrial wastes." G.L. c. 132A, § 15(4). The Parties agree that if the Water qualifies as "industrial waste," Holtec's proposed discharge would be prohibited by Section 15 of the OSA. Holtec also

concedes that Pilgrim is an industrial facility. Holtec Post-Hearing Memo., p. 30 n.14 ("Holtec also does not dispute that Pilgrim is an industrial facility. The term 'industrial' is not at issue in this proceeding."). The gravamen of the Parties' dispute is the definition of "waste" and whether the Water falls under that definition.

The OSA itself does not define "waste." However, the OSA Regulations define "waste" in 301 CMR 27.02 as "any unwanted, discarded, or environmentally harmful solid, liquid, or gaseous materials resulting from commercial, municipal, domestic, or industrial Activities." The crux of the Parties' dispute comes down to the phrase "unwanted, discarded, or environmentally harmful." MassDEP and the Intervenors argue that materials that are unwanted qualify as waste even if not discarded or environmentally harmful. Holtec argues that the definition of "waste" must be read in light of the OSA's stated purpose in G.L. c. 132A, § 14, that ocean sanctuaries "shall be protected from any exploitation, development, or activity that would significantly alter or otherwise endanger the ecology or the appearance of the ocean, the seabed, or subsoil thereof, or the Cape Cod National Seashore." According to Holtec, materials must "significantly alter or otherwise endanger the ecology or the appearance" of the ocean sanctuary to qualify as waste. I disagree with Holtec's interpretation of the statute for the following reasons.

First, rather than "harmonizing" the language of the statute, Holtec is attempting to combine different sections of the OSA when the Legislature never intended for them to be combined. Section 14 provides in full, "All ocean sanctuaries as described in section thirteen shall be under the care, oversight and control of [CZM] and shall be protected from any exploitation, development, or activity that would significantly alter or otherwise endanger the ecology or the appearance of the ocean, the seabed, or subsoil thereof, or the Cape Cod National Seashore." Importantly, the statute states that ocean sanctuaries "shall be protected from [the

listed activities]"; it does not state that the listed activities are prohibited in ocean sanctuaries. Section 14 therefore imposes no requirements on members of the public. The actual target of § 14 is clarified by the preceding clause: "[a]ll ocean sanctuaries . . . shall be under the care, oversight and control" of CZM. Section 14 is a directive to CZM: it is responsible for protecting ocean sanctuaries from the listed activities.

If § 14 describes the activities from which CZM must protect ocean sanctuaries and § 15 describes the activities that members of the public are prohibited from performing in ocean sanctuaries, then logically they must comprise the same activities. The Legislature could not have intended to prohibit an activity but not require CZM to prevent it, nor to require CZM to prevent an activity but not prohibit it. Thus, if an activity is prohibited by § 15, it necessarily must be included in the list of activities in § 14. This interpretation is confirmed by a 1987 report commissioned by the Secretary of the Executive Office of Environmental Affairs[23] titled "Review of the Massachusetts Ocean Sanctuaries Act" (the "Report"), which states:

> The Act places the designated sanctuaries under the care and control of the Department of Environmental Management and states that they shall be protected from any exploitation, development, or activity that would seriously alter or otherwise endanger the ecology or the appearance of the ocean, the seabed, or subsoil thereof, or the Cape Cod National Seashore . . . It is clear that these requirements go beyond standards for the protection of human health in their jurisdiction. Among the specifically prohibited activities are such things as . . . the dumping or discharge of commercial or industrial wastes . . . .

APCC-JTC-15, pp. 4-5 (emphasis in original; internal quotation marks omitted). The Report makes clear that the activities described in § 15 are particular applications of the standards set in § 14. Rather than being an absurd result as Holtec suggests, this reflects a conservative approach aimed at preventing activities that, although not environmentally harmful in isolation, may

[23] The former name of the Executive Office of Energy and Environmental Affairs.

significantly alter or otherwise endanger the ecology or the appearance of ocean sanctuaries in the aggregate. In other words, the Legislature and CZM have already performed the analysis suggested by Holtec; there is no room for me to perform that analysis myself. The only question is whether the Water meets the definition of "waste" in the OSA Regulations.

A plain reading of the OSA Regulations confirms that the Water qualifies as waste. Mr. Walker testified that the Water constitutes liquid materials resulting from industrial activities; Walker, 163:7-11;[24] so it qualifies as waste if it is "unwanted, discarded, or environmentally harmful." "The use of the word 'or' to separate the prongs of a statute indicates that the prongs are alternatives, that is, that either one would be sufficient on its own and that it is not necessary to establish both." Moronta v. Nationstar Mortgage, LLC, 476 Mass. 1013, 1014 (2016). Therefore, the Water is waste if it is unwanted even if it is not discarded and it is not environmentally harmful. Because the word "unwanted" is not defined in the OSA Regulations, it is given its ordinary meaning. See Matter of Estate of Slavin, 492 Mass. 551, 554 (2023) ("[w]here a statute contains specific definitions, but does not define the word at issue, [i]t is particularly appropriate . . . to interpret the word according to its common usage" (internal quotation marks omitted)). "Unwanted" means "not desired or needed; not wanted."[25] At no point during these proceedings has Holtec contended that it or anyone else desires, needs, or wants the Water. Mr. Walker even admitted that the Water is unwanted on cross-examination. Walker, 163:2-4 ("I suppose in sort of a general interpretation of the word, [the Water] would be

[24] Q: And is it liquid?
A: It is liquid.
Q: And it is from industrial activity, correct?
A: Yes.

[25] https://www.dictionary.com/browse/unwanted (last accessed November 3, 2025).

unwanted"). Because the Water is an unwanted liquid material resulting from industrial activities, it is waste under 301 CMR 27.02.

Holtec contends that the previous analysis cannot be accurate because all discharge applications seek to discharge materials that are unwanted or discarded, and therefore the qualifiers would be superfluous. Holtec ignores the fact that § 15 of the OSA does not just apply to discharge applications; it also prohibits certain actions and exposes violators to legal consequences. See G.L. c. 132A, § 18 ("[t]he attorney general or the appropriate state agency shall take such action as may be necessary from time to time to enforce the provisions of the Act, and the superior court shall have jurisdiction to enforce the provisions thereof"). In such contexts, there could be discharges that are not unwanted and not discarded. "Discarded" means "having been disposed of, cast out, or put aside."[26] This definition implies intention and an affirmative act on the part of the disposer. Thus, a substance that is accidentally discharged would not be considered discarded. As for unwanted, its inclusion eliminates the need to prove that a discharge was intentional in obvious cases. Finally, the inclusion of "environmentally harmful" ensures that those who damage ocean sanctuaries can be held accountable even if the damage was accidental. The three qualifiers, when taken together, demonstrate an intention to prevent ocean sanctuaries from being used as landfills without punishing harmless accidents. The qualifiers are not superfluous.[27]

To the extent Holtec protests that the Legislature could not have intended to categorize all prospective discharges as waste, I disagree. The very existence of the OSA suggests that the

[26] https://www.dictionary.com/browse/discarded (last accessed November 3, 2025).

[27] Consequently, all testimony claiming that the Water is not environmentally harmful or that it is impossible to achieve a zero level of pollutants—which includes the entirety of Ms. Richards's testimony and a large portion of Mr. Walker's testimony—is irrelevant.

Legislature put more value on the environmental integrity of ocean sanctuaries than on other bodies of water. Section 15 of the OSA was intended to be an extremely broad, maximally protective prohibition on nearly any kind of discharge into ocean sanctuaries under the notion that even discharges which appear harmless in isolation could have negative effects in the aggregate. The Legislature intended for prospective dischargers to show not that they are outside the scope of § 15, but rather that they qualify for one of the exemptions in § 16, as these exemptions generally relate to activities that provide greater economic benefits than environmental costs. Cumbler PFT, ¶¶ 37, 45. The interpretation I have laid out here is in line with this intention.

In sum, the Water is an unwanted liquid material resulting from industrial activities. It therefore constitutes waste under 301 CMR 27.02 and its discharge into Cape Cod Bay is therefore prohibited under G.L. c. 132A, § 15(4).

II. The proposed discharge does not fall within the exception provided under G.L. c. 132A, § 16, for an "existing discharge," as defined by the Ocean Sanctuaries Act under G.L. c. 132A, § 12B, and 301 CMR 27.02.

1. The proposed discharge is not an existing discharge because it did not exist on December 8, 1971.

The OSA provides, "Nothing in this act is intended to prohibit the following activities, uses or facilities . . . the operation and maintenance of existing municipal, commercial or industrial facilities and discharges where such discharges or facilities have been approved and licensed by appropriate federal and state agencies . . . ." G.L. c. 132A, § 16. The OSA defines "existing discharge" as "a municipal, commercial or industrial discharge at the volume and locations authorized by the appropriate federal and state agencies . . . on December eighth, nineteen hundred and seventy-one, in the case of the Cape Cod Bay and Cape and Islands Ocean Sanctuary." G.L. c. 132A, § 12B. The OSA Regulations define "existing discharge" as "a

municipal, commercial, or industrial discharge at the volume and location approved and licensed by the appropriate federal and state agencies . . . on December 8, 1971, in the case of the Cape Cod Bay and Cape and Islands Ocean Sanctuaries." 301 CMR 27.02.

Inserting the definition of "existing discharge" into the exception, it would effectively exempt "the operation and maintenance of a municipal, commercial or industrial discharge at the volume and locations authorized by the appropriate federal and state agencies on December 8, 1971, where such discharges or facilities have been approved and licensed by appropriate federal and state agencies." Thus, a discharge would need to be authorized, approved, and licensed by the appropriate federal and state agencies to qualify as an existing discharge. MassDEP and the Intervenors argue that this means there must be a permit affirmatively allowing a discharge for it to qualify as an existing discharge. This interpretation is unreasonable and not entitled to deference. If a discharge were not forbidden in the first place, then there would be no need to issue a permit for it. Such a discharge would be authorized, approved, and licensed by the appropriate federal and state agencies because there are no appropriate federal and state agencies who need to authorize, approve, or license it. Showing that a discharge is not illegal is equivalent to showing that it has been authorized, approved, and licensed by the appropriate federal and state agencies.

MassDEP also argues that a discharge must have actually existed on December 8, 1971, for a later discharge to qualify as an existing discharge. This interpretation is reasonable and is entitled to deference, as reading the definition of "existing discharge" as a whole indicates that a discharge must have been existing as of December 8, 1971, to qualify as an existing discharge. The definition of an existing discharge is "a municipal, commercial or industrial discharge *at the volume and locations* authorized by the appropriate federal and state agencies." (Emphasis

added.) The phrase "authorized by the appropriate federal and state agencies" does not apply to the discharge, it applies to the volume and locations of the discharge. See Lydon v. Contributory Retirement Appeal Board, 101 Mass. App. Ct. 365, 370 (2022) ("[g]enerally, [t]he last antecedent rule provides . . . that a modifying clause is confined to the phrase that immediately precedes it and not to the phrases appearing earlier" (internal quotation marks omitted)). In other words, a discharge must comply with the authorized volume and locations to qualify as an existing discharge. It is impossible to know whether a discharge will comply with the authorized volume and locations until that discharge has occurred, so the definition must include only discharges that have already occurred at least once as of December 8, 1971.

Holtec contends that a discharge does not have to have actually existed on December 8, 1971, to qualify as an existing discharge as long as a discharge was authorized to exist on that date. While the term "existing discharge" does have a statutory definition, it is difficult to accept Holtec's contention that a discharge does not need to have existed to be an existing discharge but merely have been allowed. It is true that "the Legislature is clearly acting within its powers when it defines a general term beyond its ordinary meaning for use in a particular piece of legislation." Tirado v. Board of Appeal on Motor Vehicle Liability Policies and Bonds, 472 Mass. 333, 339-40 (2015). However, Holtec is not simply suggesting that the Legislature defined a phrase beyond its ordinary meaning, it is suggesting that the Legislature defined a phrase to mean the exact opposite of its ordinary meaning.

Holtec argues that a change in the regulatory language indicates that a discharge does not have to have already occurred to qualify as an existing discharge. Holtec points to the regulations promulgated under the OSA on July 20, 1978, at which time the OSA did not define "existing discharge." Those regulations provided, "the operation and maintenance of any municipal,

commercial or industrial facility or discharge *existing* as of the following dates, which are the effective dates of the applicable original ocean sanctuaries acts, shall be allowed so long as such facility or discharge has been approved and licensed by the appropriate federal and state agencies . . . .” 115 Mass. Reg. 54 (July 20, 1978) (emphasis added). When the OSA was amended in 1989, the definition for “existing discharge” was added and it does not contain the word “existing.”[28] St. 1989, c. 728, § 2. The current version of the Regulations has removed the word “existing” and adopted the wording from the OSA.[29] According to Holtec, these changes evince the Legislature’s intention not to require a discharge to have already occurred on or before December 8, 1971, to qualify as an existing discharge.

Holtec’s argument overlooks the other changes that were made to the definition of “existing discharge.” Importantly, the regulatory language in 1978 did not state that the discharge must be “at the volume and locations authorized.” As explained, the phrase “at the volume and locations authorized” necessarily requires that a discharge have already occurred, as it is impossible to determine whether a series of discharges will comply with the volume and locations authorized before one occurs. It is reasonable that the word “existing” would be removed from the definition when the definition already implies that the discharge must be existing.

Further evidence that the current definition of “existing discharge” requires a discharge to have already occurred on or before December 8, 1971, comes from a pamphlet published by the Massachusetts Department of Environmental Management in the 1990s[30] titled “Massachusetts

[28] See *supra*, p. 29.

[29] See *supra*, p. 29.

[30] The pamphlet does not contain a date of publication; while a stamp on the front reads “September 1, 1998,” this appears to be a library stamp. However, the pamphlet lists the Governor of Massachusetts as William F. Weld. In

Ocean Sanctuaries Act: A Few Questions Answered." In describing activities allowed under the OSA, the pamphlet states: "Numerous activities are allowed under the Act, including . . . continued operation of municipal, commercial or industrial facilities and discharges *in existence* at the time of the passage of the original Act, where such activities have been approved and licensed by appropriate federal and state agencies." APCC-JTC-17, p. 6 (emphasis added). This pamphlet was published after the definition of "existing discharge" was added to the OSA in 1989, yet the official position of the Department of Environmental Management did not change that a discharge must have been in existence to qualify as an existing discharge. While Holtec is correct that this pamphlet was not approved by the Legislature, it represents the interpretation of the OSA by the agency charged with primary responsibility for administering it and would therefore have been entitled to "substantial deference." Gateley's Case, 415 Mass. 397, 399 (1993). MassDEP, in consultation with CZM, has made the same interpretation and likewise its interpretation is entitled to deference.

Having established that a discharge must have occurred at least once as of December 8, 1971, to qualify as an existing discharge, it must be determined whether a discharge occurred at Pilgrim prior to that date. As discussed, Holtec—which bears the burden of proof—has presented so much conflicting evidence about when discharges began at Pilgrim that it is impossible to discern the actual date. Holtec's evidence that discharges took place at Pilgrim prior to December 8, 1971 are Mr. Noyes's bare assertion, without any supporting evidence, that "[d]ischarges from the facility's radwaste system commenced on December 1, 1971"; Noyes PFT, 6:19-20; and

accordance with the Adjudicatory Proceeding Rules at 310 CMR 1.01(13)(l), I take administrative notice of the undisputable fact that Mr. Weld served as the Commonwealth's Governor from 1991 to 1997, and accordingly, the pamphlet must have been published during that time period. See Order Taking Administrative Notice (October 23, 2025).

Boston Edison's revised Refuse Act application, submitted on September 30, 1971, which claims that a discharge was "present." HDI-STW-14, p. 5. These pieces of evidence are contradictory, as discharges could not have commenced on December 1, 1971, if they were already occurring as of September 30, 1971. This evidence is further contradicted by two more pieces of evidence claiming that Pilgrim had not even begun operating, let alone discharging, by December 8, 1971: Mr. Walker's testimony that electricity generation began at Pilgrim in June 1972; Walker PFT, 38:5-6; and Holtec's PSDAR stating that Pilgrim began operating on December 1, 1972, which Mr. Noyes admitted is accurate; HDI-DN-2, p. 10; Noyes, 274:2-9. Without any way of determining which of these four pieces of contradictory evidence is accurate, there is no way for me to determine whether a discharge occurred at Pilgrim as of December 8, 1971, and I accord them no weight. Holtec has therefore failed to meet its burden of proof.

The OSA requires discharges to have been occurring as of December 8, 1971, to qualify as an existing discharge, and Holtec has not met its burden of proving that discharges were occurring at Pilgrim by December 8, 1971. Accordingly, the proposed discharge is not an existing discharge under the OSA.

2. The proposed discharge is not an existing discharge because a discharge was not authorized at Pilgrim under the RAPP on December 8, 1971.

Even if the OSA does not require a discharge to have actually been occurring prior to December 8, 1971, to qualify as an existing discharge, the proposed discharge still does not qualify as an existing discharge because it was not authorized under the RAPP on December 8, 1971. The federal Refuse Act, 33 U.S.C. § 407, provides in relevant part:

> It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited . . . from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever . . . into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such

> navigable water . . . provided further, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful.

Boston Edison had applied for a permit from USACE under the RAPP, and that application was still pending on December 8, 1971. Holtec claims that the fact that Boston Edison had a permit application pending and that no proceedings for violations of the Refuse Act had been brought against Boston Edison means that it was authorized to discharge under the Refuse Act. However, the regulations under the Refuse Act that were in effect on December 8, 1971, state:

> All discharges or deposits to which the Refuse Act is applicable . . . are unlawful unless authorized by an appropriate permit issued under the authority of the Secretary of the Army. The fact that official objection may not have been raised with respect to past or continuing discharges or deposits does not constitute authority to discharge or deposit or to continue to discharge or deposit in the absence of an appropriate permit. Any such discharges or deposits not authorized by an appropriate permit may result in the institution of legal proceedings in appropriate cases for violation of the provisions of the Refuse Act. Similarly, the mere filing of an application requesting permission to discharge or deposit into navigable waters or tributaries thereof will not preclude legal action in appropriate cases for Refuse Act violations.

36 Fed. Reg. 6565 (April 7, 1971). These regulations make clear that discharges without a permit are illegal, even if the discharger has applied for a permit and even if no legal proceedings have yet been brought against the discharger. Thus, Boston Edison's discharges had not been authorized by one of the appropriate federal agencies on December 8, 1971, and therefore are not existing discharges.

Holtec claims that the RAPP was invalidated as beyond the authority of USACE in Kalur v. Resor, 335 F. Supp. 1 (D.D.C. 1971), on December 21, 1971, and that the permitting program

established under the CWA in 1972 retroactively authorized Boston Edison's discharges. Regarding the first argument, Holtec's characterization of the holding in Kalur is misleading. The Kalur court held that the RAPP was invalid to the extent that it allowed USACE to issue permits for the discharge of refuse into non-navigable waters and to the extent that it allowed USACE to issue permits without complying with the National Environmental Policy Act. Id., at 12, 15. The prohibition against discharging refuse into navigable waters (such as Cape Cod Bay) located in both the Refuse Act regulations and the Refuse Act itself was not affected by Kalur, nor was the statement in the Refuse Act regulations that "[t]he fact that official objection may not have been raised with respect to past or continuing discharges or deposits does not constitute authority to discharge or deposit or to continue to discharge or deposit in the absence of an appropriate permit."

Holtec further claims that Boston Edison was authorized to discharge by operation of the changes made to the CWA by the FWPCA Amendments in 1972. Holtec specifically cites to 33 U.S.C. § 1342(k), which provides in relevant part:

> Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of . . . section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

Boston Edison's application for a RAPP permit was converted to an application for an NPDES permit when the FWPCA Amendments were passed. 33 U.S.C. § 1342(a)(5) ("[e]ach application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section"). Holtec argues that because there is no dispute that Boston Edison did furnish all information reasonably required or requested to

process the application, Boston Edison was entitled to this safe harbor authorizing its discharges. Although the FWPCA Amendments were passed after December 8, 1971, Holtec argues that the safe harbor was intended to apply retroactively. In support, it points to § 4(a) of the FWPCA Amendments, the "Savings Provision," which provides in relevant part:

> No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act shall abate by reason of the taking effect of the amendment made by . . . this Act . . . .

86 Stat. 816, 896. This savings provision has been interpreted as nullifying the safe harbor in enforcement actions brought under the Refuse Act prior to the enactment of the FWPCA Amendments. See United States v. Rohm & Haas Co., 500 F.2d 167, 171 (5th Cir. 1974). Holtec argues that this savings provision would have been unnecessary if the safe harbor were not retroactive, and its existence therefore means the safe harbor must be retroactive.

Holtec's argument fails because it overlooks the plain language of the OSA. The OSA defines an existing discharge as a discharge authorized *on* December 8, 1971. The FWPCA Amendments had not been enacted on December 8, 1971; the active statutory and regulatory scheme on that day was the RAPP, which did not include a safe harbor provision. The safe harbor in § 1342(k) effectively added an exception to the Refuse Act that made previously illegal actions legal. This does not change the fact that those actions would still have been illegal, and thus unauthorized, prior to the enactment of the FWPCA Amendments.

To sum up, Boston Edison was not authorized to discharge under the RAPP on December

8, 1971. Accordingly, the proposed discharge does not qualify as an existing discharge.

III. The proposed discharge does not fall within the exception provided under G.L. c. 132A, § 16 for activities, uses and facilities that are "associated with" the generation, transmission, and distribution of electrical power.

The OSA provides:

> *Nothing in this act is intended to prohibit the following activities, uses or facilities*: In all ocean sanctuaries except the Cape Cod Ocean Sanctuary the planning, construction, reconstruction, operation and maintenance of industrial liquid coolant discharge and intake systems and *all other activities, uses and facilities associated with the generation, transmission, and distribution of electrical power*, provided that all certificates, licenses, permits and approvals required by law are obtained therefor, and provided, further, that such activities, uses and facilities shall not be undertaken or located except in compliance with any applicable general or special statutes, rules, regulations or orders lawfully promulgated . . . .

G.L. c. 132A, § 16 (emphasis added). Holtec argues that the proposed discharge falls within the exemption for activities associated with the generation, transmission, and distribution of electrical power, while MassDEP and the Intervenors argue that it does not.

From the outset, there is a major issue with Holtec's position, which is the use of the word "and" in the phrase "generation, transmission, and distribution." The word "and" implies that an activity must be associated with all three to qualify for the exemption, but by Holtec's own admission, "Pilgrim *never* transmitted or distributed power itself." Holtec Closing Brief, p. 73 (emphasis in original). Nonetheless, Holtec argues that the word "and" should be interpreted as "or" in this context because of how the electric utility industry has changed since the OSA was enacted. At the time the OSA added this phrase in 1977, electric companies in Massachusetts performed all three of these functions. See Town of Concord v. Boston Edison Co., 915 F.2d 17, 19 (1st Cir. 1990) ("The private firms that supply American homes and businesses with electricity are called 'investor-owned utilities.' Most of these firms are fully integrated, operating at all three levels of the electric power industry: (1) they *produce* (or generate) electricity,

(2) they *transmit* electricity from generators to local distributors, and (3) they *distribute* electricity at the local level." (Emphasis in original.)). However, in 1997, the Legislature passed an act restructuring the industry and separating out the three components. Northeast Energy Partners, LLC v. Mahar Regional School District, 462 Mass. 687, 696 (2012) ("[t]he restructuring act separated these three utility services and opened the supply of generation services to competition"). According to Holtec, the phrase "generation, transmission, and distribution of electrical power" was intended to include companies engaged in any step of the process, and it should be interpreted in the disjunctive to effectuate the legislature's intent.

Holtec's argument does have merit, as "[t]here is ample precedent for construing the word 'and' disjunctively in order to further a recognized legislative purpose." Town of Somerset v. Dighton Water District, 347 Mass. 738, 742-43 (1964). However, I decline to rule on this issue because, even assuming *arguendo* that an activity needs to be associated with only one of generation, transmission, or distribution to qualify for the exemption, the proposed discharge is not associated with any of them.[31]

1. An activity must occur contemporaneously with the generation, transmission, and distribution of electrical power to be "associated with" the generation, transmission, and distribution of electrical power.

First it must be determined what "associated with" means. Holtec argues that an activity needs to have only a causal nexus to the supply of electrical power to be "associated with" it, and there is no requirement for the activity to occur contemporaneously with the supply of electrical power. In support, Holtec points to three revisions of the OSA. The first is the 1971 revision,

[31] I refer to the combination of generation, transmission, and distribution of electrical power as the "supply of electrical power."

which provided:

> The following activities shall be prohibited in the Ocean Sanctuary . . . the dumping of any commercial or industrial wastes except such quantities of industrial liquid coolant wastes [permitted] to be dumped by the division of water pollution control on September the thirtieth, nineteen hundred and seventy-one, *in connection with* the public and private supply of electrical power . . . .

St. 1971, c. 742 (emphasis added). Next, Holtec points to the 1974 revision, which provided:

> Except as otherwise provided herein, the following activities shall be prohibited in the Ocean Sanctuary . . . the discharge of commercial or industrial wastes . . . provided, however, that nothing in this section shall be deemed to prohibit the construction, operation and maintenance of industrial liquid coolant discharge and intake systems *in conjunction with* the public and private supply of electrical power . . . .

St. 1974, c. 822, § 3 (emphasis added). Last, Holtec points to the 1977 revision, which added the language currently present in the OSA and provides:

> Nothing in sections fourteen, fifteen and section eighteen[32] is intended to prohibit the following activities, uses or facilities: In all ocean sanctuaries except the Cape Cod Ocean Sanctuary the planning, construction, reconstruction, operation and maintenance of industrial liquid coolant discharge and intake systems and all other activities, uses and facilities *associated with* the generation, transmission, and distribution of electrical power . . . .

St. 1977, c. 897, § 1 (emphasis added; footnote added). Citing to the principle that "an amendment to a statute presumably intends a change in the law"; Boyle v. Weiss, 461 Mass. 519, 525 (2012) (internal quotation marks omitted); Holtec contends that the changes from "in connection with" to "in conjunction with" to "associated with" were meant to loosen the nexus between the activity in question and the supply of electrical power required to qualify for the exemption, and specifically, to remove the requirement that the activity occur contemporaneously with the supply of electrical power.

[32] The text "sections fourteen, fifteen and section eighteen" has been replaced with the text "this act" in the modern OSA. G.L. c. 132A, § 16.

"Connection" means "the state of being connected,"[33] and "connected" means "united, joined, or linked."[34] This phrasing implies a causal nexus, but not a temporal nexus: the discharge of industrial liquid coolant waste is exempted when causally linked to the supply of electrical power even if not temporally combined with the supply of electrical power. "Conjunction" means "a combination of events or circumstances."[35] This phrasing adds a temporal nexus, but removes the causal nexus: the discharge of industrial liquid coolant waste is exempted when temporally combined with the supply of electrical power even if not causally linked with the supply of electrical power. "Associated" means "connected with something else so as to exist or occur along with it; accompanying or corresponding."[36] This definition specifically incorporates the word "connected" while also incorporating the temporal requirement with the phrase "exist or occur along with it." Therefore, the 1977 revision, which requires that an activity be "associated with" the supply of electrical power to qualify for the exemption, requires that the activity be both causally linked and temporally combined with the supply of electrical power. Rather than making the exemption broader, as Holtec suggests, the wording change actually made the exemption stricter. This makes logical sense, as the 1977 revision allows for a greater variety of activities to qualify for the exemption than the 1971 and 1974 revisions, which only allowed for the discharge of industrial liquid coolant waste to qualify. The Legislature would have wanted to tighten the requirements so as to prevent the exception from swallowing the rule. Accordingly, under the current provisions of the OSA, an activity must

[33] https://www.dictionary.com/browse/connection (last accessed November 3, 2025).

[34] https://www.dictionary.com/browse/connected (last accessed November 3, 2025).

[35] https://www.dictionary.com/browse/conjunction (last accessed November 3, 2025).

[36] https://www.dictionary.com/browse/associated (last accessed November 3, 2025).

occur contemporaneously with the supply of electrical power for the exemption for "all other activities, uses and facilities associated with the generation, transmission, and distribution of electrical power" to apply.

2. The proposed discharge will not occur contemporaneously with the generation, transmission, and distribution of electrical power.

The evidence presented at the Hearing demonstrates that the proposed discharge will not occur contemporaneously with the supply of electrical power. While Pilgrim may have engaged in the generation of electricity in the past while owned by Boston Edison and Entergy, it ceased doing so in May 2019. Noyes, 240:11-15. Holtec obtained the license to operate Pilgrim in August 2019. Noyes, 240:16-20. Both Mr. Twomey and Mr. Noyes stated on cross-examination that Pilgrim has not engaged in the generation, transmission, or distribution of electrical power since Holtec took ownership. Twomey, 62:7-12;[37] Noyes, 306:11-17.[38] Holtec has not indicated any intention to resume any of those activities by the time of its proposed discharge. The purpose of Holtec's acquisition of Pilgrim was to decommission it, not to generate, transmit, or distribute electricity. Noyes, 241:14-242:4. Accordingly, the proposed discharge is not associated with the generation, transmission, and distribution of electrical power.

Holtec argues that decommissioning should be bundled in with generation, transmission, and distribution of electrical power because the phrase "generation, transmission, and distribution of electrical power" is a term of art referring to the electric power industry in general

[37] Q: I just wanted to ring those three bells: generation, transmission, and distribution. I think you told me, to your knowledge, Holtec never did any of those three things?
A: That's my understanding.

[38] Q: Okay. But you would agree that in the decommissioning phase, the Pilgrim, now owned by Holtec, the nuclear power plant has not and is not generating electrical power that is then being transmitted and distributed. Would you agree with that?
A: I would.

and all phases in the life cycle of a power plant. For Holtec's decommissioning activities to fall within the scope of that phrase, the phrase would need to encompass activities performed by any entity in control of any infrastructure that is or once was used in connection with the electric power industry. The phrase's scope is not as broad as Holtec would like, however. The connection between generation, transmission, and distribution is that they are the three steps in providing electricity to customers. See Northeast Energy Partners, 462 Mass. at 696 ("These companies controlled *the entire process* from the generation of electricity to its final distribution to customers. They owned the electric generation facilities, high-voltage transmission networks, and low-voltage distribution networks *used to serve customers* in their service territories." (Emphasis added.)); Town of Concord, 915 F.2d at 19 ("The private firms that *supply American homes and businesses with electricity* are called 'investor-owned utilities.' Most of these firms are fully integrated, operating at *all three levels* of the electric power industry . . . ." (Emphasis added.)). Holtec has provided no evidence that the phrase "generation, transmission, and distribution of electrical power" has ever been used to describe activities performed by an entity that is not providing electricity to customers. If an entity is not engaged in providing electricity to customers, it is not engaged in the generation, transmission, or distribution of electrical power.

Finally, Holtec argues that it is arbitrary and capricious for MassDEP to separate decommissioning from the operations of a nuclear power plant. Holtec argues that federal NRC regulations require nuclear power plants to consider decommissioning throughout their lifecycles and do not allow for a nuclear power plant to not be decommissioned. Twomey PFT, 5:6-9, 6:2. Thus, according to Holtec, decommissioning cannot be separated from the other operations and should be considered associated with the supply of electrical power. Assuming *arguendo* that Holtec's analysis of federal NRC regulations is accurate, it is irrelevant. The interaction between

federal law and the OSA will be discussed *infra* in connection with Issue 4, which asks whether the OSA is preempted by the AEA. This Issue 3 pertains only to the meaning of a particular phrase used in the OSA. The OSA and its regulations govern this issue, not the AEA and its regulations, because the issue requires a determination of whether the proposed discharge is associated with the generation, transmission, and distribution of electrical power under G.L. c. 132A, § 16. The OSA should be interpreted in the context of the OSA, not in the context of other unrelated statutory and regulatory schemes. This is especially so for the NRC regulations, which regulate only nuclear power plants. Holtec's position would require either that all activities that could affect an ocean sanctuary be treated like a nuclear power plant or that the OSA be interpreted differently in different contexts. Either one would be an illogical result.

To summarize, the proposed discharge is not an activity, facility, or use associated with the generation, transmission, and distribution of electrical power and therefore does not qualify for the exemption under G.L. c. 132A, § 16.

IV. The Atomic Energy Act of 1954 does not preempt the Ocean Sanctuaries Act from prohibiting the proposed discharge.

"Federalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect. . . . From the existence of two sovereigns follows the possibility that laws can be in conflict or at cross-purposes. The Supremacy Clause [of the U.S. Constitution] provides a clear rule that federal law shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding. . . . Under this principle, Congress has the power to preempt state law." Arizona v. United States, 567 U.S. 387, 398-99 (2012) (citations and internal quotation marks omitted). However, "[w]hen Congress legislates in a field traditionally occupied by the States, we start with the assumption

that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." California v. ARC America Corp., 490 U.S. 93, 101 (1989) (internal quotation marks omitted). There are three types of preemption: "express," "field," and "conflict." Murphy v. National Collegiate Athletic Association, 584 U.S. 453, 477 (2018). I will examine each type of preemption to determine whether the OSA and the Final Determination are preempted by the AEA.

1. Express Preemption

"There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision." Arizona, 567 U.S. at 399. "When a federal law contains an express preemption clause, we focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent." Chamber of Commerce of U.S. v. Whiting, 563 U.S. 582, 594 (2011) (internal quotation marks omitted).

The AEA does not contain an express preemption provision, and Holtec does not argue otherwise. Accordingly, the OSA and the Final Determination are not expressly preempted by the AEA.

2. Field Preemption

It is well settled that "the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance. . . . The intent to displace state law altogether can be inferred from a framework of regulation so pervasive . . . that Congress left no room for the States to supplement it or where there is a federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." Arizona, 567 U.S. at 399 (citations and internal quotation marks omitted).

Holtec argues that the OSA and the Final Determination fall within the field occupied by the AEA. In analyzing this claim, I begin with the text of the statute. The division of authority between the federal government and the states is covered by 42 U.S.C. § 2021, which provides, "It is the purpose of this section (1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this chapter of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials . . . ." Id. § 2021(a). The statute goes on to describe areas in which the Nuclear Regulatory Commission ("NRC") has exclusive jurisdiction: the NRC "shall retain authority and responsibility with respect to regulation of (1) the construction and operation of any production or utilization facility or any uranium enrichment facility; (2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility; (3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission; (4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission." Id. § 2021(c). The statute also provides a carveout to allow for State regulation notwithstanding § 2021(c): "Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards." Id. § 2021(k).

The seminal case interpreting the scope of the field occupied by the AEA is Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission, 461 U.S. 190 (1983). That case involved a challenge to a California statute that placed a moratorium on the construction of nuclear power plants until a state agency determined that a demonstrated

technology or means for the disposal of high-level nuclear waste had been developed. Id., at 198. The legislative history of the California statute indicated that it was concerned with the economic problems that would arise if storage space for nuclear waste ran out, "leading to unpredictably high costs to contain the problem." Id., at 214. The Court rejected the argument that "the [AEA was] intended to preserve the federal government as the sole regulator of all matters nuclear." Id., at 205. Rather, the Supreme Court held that "the federal government has occupied the entire field of *nuclear safety concerns*, except the limited powers expressly ceded to the states." Id., at 212 (emphasis added). The Court held that because the California statute was motivated by economic concerns rather than safety concerns, it was not preempted by the AEA. Id., at 216.

The Supreme Court laid out a test to determine if a state statute is preempted by the AEA in English v. General Electric Co., 496 U.S. 72 (1990). That case involved a state-law claim for intentional infliction of emotional distress brought against a nuclear power plant by a former employee. Id., at 74. The former employee alleged that she had reported violations of nuclear safety protocols to her employer, and her employer retaliated by assigning her degrading work, deriding her as paranoid, placing her under surveillance, isolating her from coworkers, and conspiring to fraudulently charge her with illegal activities. Id., at 77. In discussing the scope of the field covered by the AEA, the Court began by clarifying that Pacific Gas had "defined the pre-empted field, in part, by reference to the motivation behind the state law." Id., at 84. However, the Court noted that "another part of the field is defined by the state law's actual effect on nuclear safety." Id. Thus, the Court held that a state law that is not motivated by nuclear safety concerns is nonetheless preempted by the AEA when it has "some direct and substantial effect on the decisions made by those who build or operate nuclear facilities concerning radiological safety levels." Id., at 85.

In applying the rule, the Court did not examine the effect of state law on the actual radiological safety policies at nuclear facilities. Rather, the Court examined the effect of state law on the resource allocation decisions made at nuclear facilities, under the assumption that a change to resource allocation decisions would affect radiological safety policies. The Court provided as an example that "the application of state minimum wage and child labor laws to employees at nuclear facilities would not be pre-empted, even though these laws could be said to affect tangentially some of the resource allocation decisions that might have a bearing on radiological safety." Id. Addressing the intentional infliction of emotional distress claim, the Court "recognize[d] that the claim for intentional infliction of emotional distress at issue here may have some effect on these decisions, because liability for claims like petitioner's will attach additional consequences to retaliatory conduct by employers. As employers find retaliation more costly, they will be forced to deal with complaints by whistle-blowers by other means, including altering radiological safety policies." Id. However, the Court ultimately held that "this effect is neither direct nor substantial enough to place petitioner's claim in the pre-empted field." Id. Therefore, the intentional infliction of emotional distress claim was not preempted by the AEA. Id., at 86.

From Pacific Gas and English, it can be ascertained that the test for whether a state law is preempted by the AEA under field preemption in light of § 2021(k) is as follows: first, if a state law has nuclear safety concerns as its motivation, it is preempted.[39] Second, if a state law has

[39] Whether an inquiry into the motivation behind a state law should be undertaken was questioned in Virginia Uranium, Inc. v. Warren, 587 U.S. 761 (2019) (Gorsuch, J.), which addressed whether a state law banning uranium mining was preempted by the AEA. The lead opinion, joined by three justices, stated that the Court should not inquire into the motivations behind a state law for purposes of the preemption analysis. Id., at 776-77 (Gorsuch, J.). However, the concurring opinion, joined by three justices, and the dissenting opinion, joined by three justices, both stated that an inquiry into the motivations behind a state law is at least sometimes proper. Id., at 788-89 (Ginsburg, J., concurring in judgment); 796-98 (Roberts, C.J., dissenting).

some direct and substantial effect on the resource allocation decisions made by those who build or operate nuclear facilities, it is preempted. I will now examine whether the OSA is preempted by the AEA under this framework.

Regarding the first prong, the OSA plainly does not have nuclear safety as its motivation. G.L. c. 132A, § 14 states, "All ocean sanctuaries as described in section thirteen shall be under the care, oversight and control of the office and shall be protected from any exploitation, development, or activity that would significantly alter or otherwise endanger ***the ecology or the appearance*** of the ocean, the seabed, or subsoil thereof, or the Cape Cod National Seashore." (Emphasis added.) This language makes clear that the purpose of the OSA is environmental protection; the word "safety" is not even used in the OSA, let alone nuclear safety. The Final Determination also did not have nuclear safety as its purpose; it mentions that the wastewater contains suspended solids, oil and grease, copper, zinc, lead, nickel, boron, and phenol, none of which are radioactive. Thus, the OSA and the Final Determination pass the first prong of the preemption test.

For the second prong, assuming *arguendo* that decommissioning is considered "operating a nuclear facility," Holtec would need to show that the OSA and the Final Determination have a direct and substantial effect on its resource allocation decisions. It has not done so. Holtec's submissions are replete with assertions that evaporation and offsite disposal will be more expensive than discharge because of the need to construct additional infrastructure.[40] Completely

[40] See, e.g., Noyes PFT, 30:1-9 ("Evaporation entails designing and operating heating systems . . . . This method would require installation of new infrastructure and would require significantly more energy and time . . . ."); 15-18 ("Offsite disposal entails shipping the plant water in small volumes by truck . . . . The infrastructure to accomplish this would have been to be designed, procured, and constructed at significantly increased cost and time involved."); Ex. HDI-DN-10, p. 5 ("The infrastructure needed to implement large scale distillation/evaporation of the wastewater is not in place at PNPS and would require design, procurement, installation, and testing before use; thus this alternative would require increased effort, time and cost to implement."); p. 6 ("This alternative requires the development of procedures for bulk loading of liquid radioactive effluents for transportation and disposal, and will

absent from Holtec's evidence, however, is an actual estimate of the costs of evaporation and offsite disposal. Holtec has the burden of proof in this proceeding, and that means it must show by a preponderance of the evidence that the OSA and the Final Determination will have a substantial effect on its resource allocation decisions. Without any evidence of the cost of the alternative disposal options, Holtec's bald assertions that they will be more expensive are not sufficient to satisfy this burden. Even accepting that constructing the additional infrastructure will increase costs, there is no evidence in the record that would allow me to determine whether these increases would qualify as "substantial." Holtec has failed to meet its burden of proving that the OSA and the Final Determination would have a substantial effect on its resource allocation decisions, and therefore has failed to prove that the OSA and the Final Determination are preempted by the AEA under field preemption.

Holtec argues that a comparison of costs is not actually an element of the preemption test, citing to Skull Valley Band of Goshute Indians v. Nielson, 376 F.3d 1223 (10th Cir. 2004). Holtec specifically points to the court's statement that "Pacific Gas, Silkwood, and English do not turn the preemption inquiry upon a precise determination of costs imposed upon the operators of nuclear facilities by the application of state law." Id., at 1246. This selective quotation is misleading. Skull Valley involved Utah state statutes that, among other things, prohibited counties from providing municipal services such as fire protection, garbage disposal, water, electricity, and law enforcement to spent nuclear fuel transportation and storage facilities. Id., at 1245. In holding that this statute was preempted, the court stated,

require design, procurement, and construction of facilities at PNPS for loading, and the associated costs and time for these activities. The cost for shipping and disposal will be significantly higher than the discharge and evaporation alternatives.").

> Pacific Gas, Silkwood, and English do not turn the preemption inquiry upon a precise determination of costs imposed upon the operators of nuclear facilities by the application of state law. Although there may be some costs imposed by a statutory scheme that are so minimal that they could not have a "direct and substantial effect" on decisions made by those who operat[e] SNF facilities . . . that argument cannot save the pervasive ban on providing municipal services here at issue. That ban targets only those engaged in [spent nuclear fuel] transportation and storage ***and does so for safety reasons***. Those factors are sufficient to ***render a precise determination of the relative costs unnecessary***.

Id., at 1246 (emphasis added; citation omitted). Thus, the court was not saying that a comparison of costs is irrelevant to determining whether state law is preempted. Rather, it was saying that the state statute in question failed the first prong of the preemption test because it was motivated by nuclear safety concerns. Therefore, analyzing the second prong of the preemption test, which involves a comparison of costs, was unnecessary because the statute was preempted regardless.

Holtec points to four other cases in which a state statute, permit, or consent decree regulating waste disposal was struck down as preempted by the AEA under field preemption: United States v. Manning, 527 F.3d 828 (9th Cir. 2008); United States v. Kentucky, 252 F.3d 816 (6th Cir. 2001); Northern States Power Co. v. Minnesota, 447 F.2d 1143 (8th Cir. 1971); and Missouri v. Westinghouse Electric, LLC, 487 F. Supp. 2d 1076 (E.D. Mo. 2007). These cases are easily distinguishable, as all four involved the state attempting to directly regulate the radioactive component of the waste for health and safety purposes, and therefore failed the first prong of the preemption test.[41] The OSA and Final Determination make no mention of radioactivity or nuclear safety; they are motivated by environmental concerns.

[41] Manning, 527 F.3d at 839 ("[a] key purpose of the CPA is to regulate the radioactive component of mixed waste"); Kentucky, 252 F.3d at 823 ("the challenged permit conditions specifically limit the amount of 'radioactivity' and 'radionuclides' that DOE may place in its landfill"); Northern States Power Co., 447 F.2d at 1145 ("[the permit] was issued May 20, 1969, subject to specified conditions regulating the level of radioactive liquid and gaseous discharges"); Westinghouse Electric, LLC, 487 F. Supp. 2d at 1088 ("this Consent Decree squarely addresses the State's health and safety concerns from radiological contamination").

Finally, I address Holtec International v. New York, No. 24-CV-2929, 2025 WL 2721020 (S.D.N.Y. September 24, 2025). In that case, Holtec sought a declaratory judgment that a New York statute preventing it from dumping tritium-containing water into the Hudson River was preempted by the AEA under field preemption. The statute provided, "To the extent not subject to preemption by federal law, and notwithstanding any other state or local law, rule, or regulation to the contrary, it shall be unlawful to discharge any radiological substance into the Hudson River in connection with the decommissioning of a nuclear power plant." Id., at *3. The court examined the legislative history behind the statute and concluded that it was primarily motivated by economic concerns, and therefore passed the first prong of the test. Id., at *11. The court then held that the statute failed the direct and substantial effect prong because "[b]y requiring Holtec to change the method by which it disposes of tritiated water, the Statute directly and substantially effects [sic] decisions concerning radiological safety levels." Id., at *12. The court specifically noted that "foreclosing disposal of tritiated water via the Hudson River requires Holtec to investigate alternative methods of disposal, choose one, ensure compliance with NRC regulations, and then execute on its choice. The chain of events that the Discharge Statute necessarily sets off clearly has a direct and substantial effect on those operating nuclear facilities." Id., at *13. Accordingly, the court held that the statute was preempted.

The case at hand involving Holtec's appeal of MassDEP's Final Determination is distinguishable from Holtec International on two grounds. First, the "chain of events" that the OSA will "set off" is drastically shorter here than in Holtec International, because Holtec has already investigated alternative methods of disposal and ensured compliance with NRC regulations. See HDI-DN-10 (analyzing the alternative methods of disposal). Second, the Holtec International court applied the direct and substantial effect test incorrectly because it did not

analyze the costs of the alternative methods of disposal.[42] The court took the Tenth Circuit's statement in Skull Valley that "Pacific Gas, Silkwood, and English do not turn the preemption inquiry upon a precise determination of costs imposed upon the operators of nuclear facilities by the application of state law" out of context in the same way that Holtec does here. This statement was clarifying that a statute that passes the direct and substantial effect test is nonetheless preempted if it is motivated by nuclear safety concerns; it was not stating that costs are irrelevant to the direct and substantial effect test. To the contrary, English makes clear that costs are the most important factor in determining direct and substantial effect. Determining whether one decision is "substantially different" from another would require comparing apples to oranges (or rather, it would require determining if an apple is "substantially different" from an orange). English instructs courts to not undertake this analysis and instead use costs as a proxy. Accordingly, Holtec International does not affect the outcome of the present case.

In brief, Holtec has not met its burden of proving that the OSA and the Final Determination are preempted by the AEA under field preemption.

3. Conflict Preemption

The U.S. Supreme Court has ruled that "[S]tate law is naturally preempted to the extent of any conflict with a federal statute . . . [and the Court] will find preemption where it is impossible for a private party to comply with both state and federal law . . . and where under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. . . . What is a

[42] It is also important to note that the court's ruling in Holtec International, which was made by a U.S. District Court in New York within the federal appellate jurisdiction of the U.S. Court of Appeals of the Second Circuit, does not bind federal courts in Massachusetts, which are within the federal appellate jurisdiction of the U.S. Court of Appeals for the First Circuit.

sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects . . . ." Crosby v. National Foreign Trade Council, 530 U.S. 363, 372-73 (2000) (citations and internal quotation marks omitted). Here, all the Parties agree that it is not impossible for Holtec to comply with both federal and state law, as it has other methods of disposal permitted under the AEA that are not prohibited by the OSA. It must still be determined whether the OSA "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of the AEA, which is known as obstacle preemption.

The case Brown v. Kerr-McGee Chemical Corp., 767 F.2d 1234 (7th Cir. 1985), involved very similar circumstances to the present case and analyzed the application of obstacle prevention to the AEA. In that case, the plaintiffs sought an injunction under state law for the removal of waste containing a mixture of radioactive and non-radioactive materials that could not be separated. Id., at 1236. The state laws under which the plaintiffs sought removal of the waste included pollution standards, building codes, and public nuisance relating to the non-radioactive materials. Id., at 1241. Additionally, the NRC had recommended on-site encapsulation as the best disposal method but had not yet decided which alternative to license. Id., at 1242. The court held that the state laws were not preempted under field preemption, because they were not regulating radiation hazards and "Congress clearly did not intend federal law to 'occupy the field' of nonradioactive hazardous waste disposal." Id., at 1241. However, the court held that, in light of the radioactive and non-radioactive material being inseparable, an injunction requiring removal of the waste would pose an obstacle to the objectives of the AEA because it would "substitute the judgment of the district court for that of the NRC as to whether on-site encapsulation is the best method of storing this byproduct material" and would "interfere

with the NRC's ability to choose the method of disposal that, in light of radiation, nonradiation, and economic considerations, is the most appropriate." Id., at 1242. Accordingly, such an injunction would be preempted under obstacle preemption. Id., at 1243.

An important distinction between the present case and Brown is that in the present case, the NRC has already approved three methods of disposal, whereas in Brown, the NRC had not yet approved a method of disposal. Holtec argues that this is a distinction without a difference, yet this distinction is crucial to the Brown court's holding. The Brown court was concerned that the NRC's judgment regarding the "best" and "most appropriate" method of disposal would be displaced. In the present case, the NRC has approved three methods of disposal *and expressed no preference among the three*. See, e.g., MassDEP Ex. 14, NRC Letter, p. 1 ("[Holtec] is responsible for determining how it will dispose of the liquid effluents from Pilgrim decommissioning work in accordance with the methods allowed under NRC's regulations, which allow discharge, shipment for disposal, or evaporation of the liquid and disposal of the resulting solid waste"). If multiple methods of disposal are equally appropriate, then the NRC's judgment as to the most appropriate method of disposal has not been displaced as long as at least one is available to Holtec. If all three methods of disposal approved by the NRC were prohibited by state law, this case may have a different outcome. However, that is not the case I have before me.

The OSA and the Final Determination do not pose an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Accordingly, they are not preempted under obstacle preemption, and by extension, under conflict preemption. Given that the OSA and the Final Determination are not preempted under express preemption, field preemption, or conflict preemption, they are not preempted by the AEA.

CONCLUSION

Based on a preponderance of the evidence presented at the Hearing, the governing environmental statutory and regulatory requirements as set forth in the OSA and the OSA Regulations, and the federal preemption principles discussed above, I find that: (1) the proposed discharge constitutes the discharge of industrial waste under the OSA; (2) the proposed discharge does not qualify for the exemption for existing discharges under the OSA; (3) the proposed discharge does not qualify for the exemption for discharges associated with the generation, transmission, and distribution of electrical power; and (4) the AEA does not preempt the OSA from prohibiting the proposed discharge. Therefore, MassDEP correctly determined that the proposed discharge is prohibited by the OSA in its Final Determination. Accordingly, I recommend that MassDEP's Commissioner issue a Final Decision affirming the Final Determination and dismissing this appeal.

Salvatore M. Giorlandino

Date: November 6, 2025

Salvatore M. Giorlandino
Chief Presiding Officer

NOTICE OF RECOMMENDED FINAL DECISION

This decision is a Recommended Final Decision of the Chief 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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