

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

_____)	
In re:)	
)	
Borough of Naugatuck)	CWA Appeal No. 98-9
)	
Docket No. CWA-2-I-97-1017)	
_____)	

ORDER DENYING MOTION FOR INTERLOCUTORY REVIEW

The Borough of Naugatuck ("Borough"), has filed a motion pursuant to 40 C.F.R. § 22.29(c) asking the Board to review an interlocutory ruling by Administrative Law Judge Andrew S. Pearlstein ("Presiding Officer"). See Motion in Appeal of the Presiding Officer's Decision to Refuse Certification for Interlocutory Appeal ("Motion") (September 21, 1998). In particular, the Borough seeks review "of the issue of whether the Borough received requisite notice of the Connecticut Department of Environmental Protection's (DEP's) intent to interpret the chlorine limit in the Borough's 1991 NPDES permit * * * as an 'instantaneous maximum' limit [as opposed to a limit based on weekly or monthly averaging]." Motion at 1.

In his ruling, the Presiding Officer rejected the Borough's assertion that it lacked fair notice of the DEP's intent in this regard, and concluded that the Borough had actual or constructive notice of the instantaneous effluent limits for total residual chlorine ("TRC") in its NPDES permit. See Order Granting

Complainant's Motion for Partial Accelerated Decision and Denying Respondent's Motion at 16 (Aug. 26, 1998). The Presiding Officer reasoned, *inter alia*, that "the plain meaning of the language in the [Borough's NPDES permit] [stating that the TRC limitation shall be exceeded "at no time"] * * * is that the limit is never to be exceeded, or 'instantaneous.'" *Id.* at 11. On September 8, 1998, the Presiding Officer denied the Borough's motion to certify this issue for interlocutory appeal. See Order Denying Certification for Interlocutory Appeal.

The Borough now asks that the Board grant review on this issue. However, pursuant to 40 C.F.R. § 22.29(c), where a Presiding Officer's denies certification, interlocutory review will be granted only in exceptional circumstances where to delay review would be contrary to the public interest. Although the Borough asserts that the Board should take review now, the Borough has failed to convince us that delaying review until after the Presiding Officer issues an initial decision at the conclusion of the proceeding would be contrary to the public

interest. The Borough's motion for interlocutory review is therefore denied.

So ordered.

Dated: 10/19/98

ENVIRONMENTAL APPEALS BOARD

By: _____/s/_____
Ronald L. McCallum
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Motion for Interlocutory Review in the matter of Borough of Naugatuck, CWA Appeal No. 98-9, were sent to the following persons in the manner indicated:

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Dated: 10/19/98

/s/
Annette Duncan
Secretary