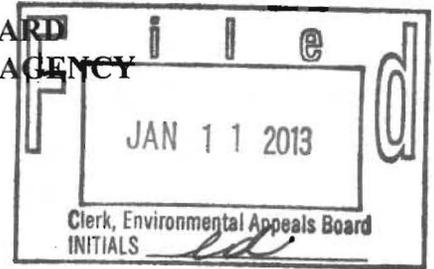


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC



\_\_\_\_\_) )  
In re: ) )  
Town of Newmarket ) )  
Wastewater Treatment Plant ) )  
Permit No. NH0100196 ) )  
\_\_\_\_\_)

NPDES Appeal No. 12-05

**ORDER DENYING MOTION TO FILE SUPPLEMENTAL BRIEF  
AND ALLOWING REPLY BRIEFS**

On December 14, 2012, the Great Bay Municipal Coalition (“Coalition”), representing the municipalities of Dover and Rochester, NH, timely filed a petition requesting that the Environmental Appeals Board (“Board”) review a National Pollutant Discharge Elimination System (“NPDES”) permit that the U.S. Environmental Protection Agency, Region 1 (“Region”) issued to the Town of Newmarket, NH. *See* Petition for Review of a NPDES Permit Issued by EPA Region 1 (“Petition”) (Dec. 14, 2012). The permit reauthorizes discharges from the Town of Newmarket’s wastewater treatment plant to the Lamprey River.

Simultaneously with the Petition, the Coalition filed a motion seeking an extension of time, until January 15, 2013, to submit a supplemental petition for review. *See* Motion for Extension of Time to File a Supplemental Petition for Review (“Motion”) (Dec. 14, 2012). In essence, the Coalition’s Motion seeks an extension of the 30-day appeal period provided in 40 C.F.R. § 124.19 in order to allow it “adequate time to prepare a petition sufficiently outlining the

major legal, procedural, and scientific issues in enough details [sic] to satisfactorily demonstrate the Region failed to respond to comments submitted by the Petitioner.” Motion at 3. The Region opposes this Motion. See Region 1's Opposition to Petitioner's Motion for Extension of Time to File a Supplemental Petition for Review (Jan. 4, 2013) (“Region's Opposition”); see also Petitioner's Reply to EPA Region 1's Opposition to Petitioner's Motion for Extension of Time to File a Supplemental Petition for Review (Jan. 8, 2013) (“Coalition's Reply”). For the reasons that follow, the Board denies this Motion.

Generally, the Board strictly construes procedural requirements and “will relax a filing deadline only where special circumstances exist.” *In re AES Puerto Rico, L.P.*, 8 E.A.D. 324, 329 (EAB 1999) (*aff'd sub nom. Sur Contra la Contaminacion v EPA*, 202 F.3d 443 (1st Cir. 2000)). The 30-day deadline for filing an appeal provided in 40 C.F.R. § 124.19 is not an unreasonable deadline and, indeed, is routinely met by parties before the Board, even in complex matters. The Board has, however, in appropriate circumstances, extended the 30-day filing deadline.<sup>1</sup> In particular, the Board has found “special circumstances” to exist in cases where the permitting authority has made mistakes or provided misleading information that directly led to delays. See e.g., *In re Hillman Power Co., LLC*, 10 E.A.D. 673, 680 n.4 (EAB 2002) (final permit decision not served properly); *In re Kawaihae Cogeneration Project*, 7 E.A.D. 107, 123-24 (EAB 1997) (appeal filing instructions incorrect). The Board has also relaxed the deadline

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<sup>1</sup> The Board has the discretion to relax or modify its procedural rules to facilitate an orderly decision making process. See, e.g., *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970); see also *In re Marine Shale Processors, Inc.*, 5 E.A.D. 751, 763 n.11 (EAB 1995), *aff'd*, 81 F.3d 1371 (5th Cir. 1996); *In re Genesee Power Station*, 4 E.A.D. 832, 837 n.6 (EAB 1993).

where the delay “stemmed from extraordinary events, such as natural disasters and response to terrorist threats, or from causes not attributable to the petitioner, such as problems with the delivery service.” *In re Town of Marshfield*, NPDES Appeal No. 07-03, at 5 (EAB Mar. 27, 2007) (Order Denying Review); *In re Avon Custom Mixing Servs., Inc.*, 10 E.A.D. 700, 703 n.6 (EAB 2002) (delivery delay due to U.S. Postal Service anthrax sterilization procedures). The Coalition does not assert that any such “special circumstances” or “extraordinary events” are present in this matter.

Additionally, the Board on occasion and for good cause shown has granted motions seeking leave to file supplemental briefs to support issues identified in timely petitions for review. For example, in *In re City & County of Honolulu*, NPDES Appeal No. 09-01 (EAB Feb. 2, 2009) (Order Granting Alternative Motion for Extension of Time to File Petitions for Review), the Board granted a petitioner’s motion to file a summary petition for review by the filing deadline identifying the issues to be raised on appeal, followed by a substantive supplemental brief approximately 30-days later. The Board determined that good cause for the extension existed in that case because petitioners were seeking review of two complex permit decisions that had been issued on the same day and, as a result, Petitioners were preparing two permit appeals simultaneously. *City & County of Honolulu*, at 2-3; *see also, In re Guam Waterworks Auth.*, NPDES Appeal Nos. 09-16 & 09-16 (EAB Nov. 3, 2009) (Order Granting Motion in the Alternative to Timely File Summary Petitions with Extension of Time to file Supplemental Briefs) (Nov. 3, 2009) (same); *In re Desert Rock Energy Co., LLC*, PSD Appeal Nos. 08-03 & 08-04 (EAB, Aug. 21, 2008) (Order Granting, inter alia, Desert Rock’s motion for

extension of time to file brief in support of petition for review where the Region's response to comments document was 220 pages long, not including the 42 attachments).

The Coalition, relying on the Board's determination in *City & County of Honolulu* and *Guam Waterworks*, urges this Board to extend the time period for filing a petition so as to allow the Coalition to file a supplemental brief by January 15, 2013. The Coalition's justification for that extension is that, given the length of the record, the complexity of the issues, and the "controversial nature" of the permit's effluent limitations, additional time is needed to allow sufficient time to identify the issues in dispute and "to sufficiently brief the complex and regulatory issues at play in this case." Motion at 2-4.

Upon consideration of the Motion, the Region's Opposition, and the Coalition's Reply, the Motion is denied. Unlike *City & County of Honolulu* and *Guam Waterworks*, this is not a case in which a petitioner seeks permission to submit a bare-bones, summary petition identifying all of the issues to be raised by the filing deadline, followed by a substantive brief. On the contrary, the Coalition has submitted a one hundred and one page petition for review (including the table of contents),<sup>2</sup> accompanied by fifty-three exhibits, detailing its objections to the

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<sup>2</sup> The Board notes that the Coalition's one hundred and one page brief more than doubles what the Board's Practice Manual suggests is an appropriate length for a brief. See Environmental Appeals Board, U.S. EPA, Practice Manual at 17 (June 2012), available at <http://www.epa.gov/eab> (click on EAB Guidance Documents) ("The parties are strongly encouraged to limit briefs to 50 pages (including the certificate of service, table of contents, and table of authorities). 'To assure the efficient use of Agency resources,' the EAB has the discretion to reject a brief on the ground that it is unduly long. *In re Rocky Well Service, Inc.*, SDWA Appeal Nos. 08-03 & 08-04, at 1 (EAB Dec. 15, 2008) (Order Rejecting Brief Because of Excessive Length and Requiring Revised Brief)."

Region's permit determination and the Coalition's rationale for Board review. As reflected in the table of contents, twenty-seven pages of the petition are devoted to detailing the Coalition's legal and procedural objections. Another thirty-nine pages are devoted to what the Coalition labels as "scientific" arguments supporting Board review. The Board is not persuaded that the Coalition has not had sufficient time to identify the issues and to substantively support its arguments or that additional time is warranted based on the circumstances presented. The Motion is therefore **DENIED**.

Notwithstanding the Board's denial of this motion, the Coalition may file a reply<sup>3</sup> to the Region's response to the petition for review (due on February 8, 2013). Any such reply must be filed no later than February 22, 2013, and is limited to twenty-five (25) double-spaced pages. The Region may file a sur-reply no later than March 8, 2013. The Region's sur-reply is also limited to twenty-five (25) double-spaced pages.

So ordered.

Dated:

January 11, 2013

ENVIRONMENTAL APPEALS BOARD

By: Kathleen A. Steiner for Catherine R. McCabe

Catherine R. McCabe  
Environmental Appeals Judge

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<sup>3</sup> Documents are "filed" with the Board on the date they are *received*.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Denying Motion to File Supplemental Brief and Allowing Reply Briefs in the matter of Town of Newmarket Wastewater Treatment Plant, NPDES Appeal No. 12-05, were sent to the following persons in the manner indicated:

By First Class Mail and Facsimile:

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Dated: 1/11/2013

  
Annette Duncan  
Secretary