



TOWN OF WAYLAND

MASSACHUSETTS
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December 18, 2008

VIA FIRST CLASS MAIL

Eurika Durr, Clerk of the Board
Environmental Appeals Board (MC 1103B)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Re: In re Town of Wayland Wastewater Management District
Commission; NPDES Permit No. MA0039853;
NPDES Appeal No.'s 08-26 and 08-27

Dear Ms. Durr:

Enclosed with respect to the above referenced appeals please find the original and five copies of the Town of Wayland's Motion to Intervene, File a Response to the Petitions and Participate as a Party in these Appeals. Kindly docket and file these documents and forward them to the Environmental Appeals Board.

Thank you for your attention to this matter.

Very truly yours,

Mark J. Lanza
Town Counsel

MJL/ms

Enclosures

cc Counsel for Parties (w/ encl.)

Town Administrator (by hand, w/ encl.)

Wastewater Mgmt. Dist. Comm. (by hand, w/ encl.)

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

ENVIRONMENTAL APPEALS BOARD

_____)
In re: Town of Wayland Wastewater)
Management District Commission) NPDES Appeal No. 08-26
NPDES Permit No. MA0039853) and
_____) NPDES Appeal No. 08-27
_____)

**TOWN OF WAYLAND WASTEWATER MANAGEMENT DISTRICT COMMISSION'S
MOTION FOR LEAVE TO INTERVENE, FILE A RESPONSE TO PETITIONS AND
PARTICIPATE AS A PARTY**

The Town of Wayland, acting by and through its Wastewater Management District Commission ("WWMDC"), the permittee in the above-captioned appeals, respectfully moves that the Environmental Appeals Board ("Board") issue an order granting the WWMDC leave to intervene, file a response to the petitions and participate as a party in these appeals.

BACKGROUND

Region I of the U. S. Environmental Protection Agency (the "Respondent") reissued NPDES Permit No. MA0039853 ("Permit") to the WWMDC on September 30, 2008. Thomas Arnold, the Petitioner in NPDES Appeal No. 08-26, filed an Initial Petition for Review dated November 17, 2008 contesting certain conditions of the Permit. Mr. Arnold later filed a supplemental Petition for Review dated November 27, 2008 also contesting certain

conditions of the Permit. The U.S. Department of the Interior ("DOI"), the Petitioner in NPDES Appeal No. 08-27, filed a Petition for Review dated November 14, 2008 contesting certain conditions of the Permit. Mr. Arnold did not serve a copy of his Initial Petition or his supplemental Petition on the WWMDC. The Town obtained a copy of Mr. Arnold's Petitions from the Respondent and the Board. The DOI sent a courtesy copy of its Petition to the WWMDC under cover of a letter dated November 15, 2008. By letter dated November 25, 2008, the Board directed the Respondent to prepare a response addressing Mr. Arnold's contentions (as set forth in his Initial Petition for Review) by January 8, 2009. Also, by letter dated November 25, 2008, the Board directed the Region to prepare a response addressing Petitioner U.S. Department of the Interior's contentions by January 8, 2009.

On December 12, 2008, the Respondent, DOI and Mr. Arnold filed a Joint Motion to Consolidate Appeals, Stay Proceedings and Include Supplemental Material in the Record, a copy of which was provided to the WWMDC by the Respondent. No action has been taken on their joint motion.

REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF

The WWMDC is the permittee under the Permit. It is the sole governmental body authorized to operate and discharge from the

Town-owned wastewater treatment plant under the Permit. 1996 Mass. Acts c. 461. In their respective petitions, the DOI and Mr. Arnold seek major revisions to the Permit. Such amendments, if granted, will have a significant financial impact on the WWMDC. The WWMDC has a substantial interest in the subject matter and outcome of these two appeals.

The current regulations governing NPDES permit appeals do not expressly provide for intervention. See 40 C.F.R. part 124. The former part 124 regulations did, however, expressly allow for intervention in the evidentiary hearing phase of the proceedings. See 40 C.F.R. §129.79 (1999). Under the current regulations, the Board has the discretion, where appropriate, to allow intervention and typically allows permittees to participate as interveners when supported by an appropriate motion. See, e.g., In re Phelps Dodge Corp., NPDES Appeal No. 01-07, slip op. at 15 (EAB, May 21, 2002) (permittee's motion to intervene and file a response to the petition granted); In re Aurora Energy, L.L.C., NPDES Appeal No. 03-11, at 1 (EAB Oct. 21, 2003) (permittee's motion for leave to intervene granted); and In re Haw. Elec. Light Co., PSD Appeal No.'s 01-24-01-29, at 1 (EAB, Oct. 18, 2001) (permittee's motion to intervene and file a response to petitions granted). The Board's practice of allowing permittees to intervene and participate should be followed in these appeals.

The factual and legal issues raised in the DOI's and Mr. Arnold's respective petitions affect the WWMDC's operations. Except for the order to the Respondent to address the Petitioners' contentions, no other orders have been issued and no stipulations between have been entered into in these appeals. The WWMDC's intervention and participation will promote the interests of justice by allowing the WWMDC to represent its interests. Allowing the WWMDC to intervene will not cause any undue delay in the proceedings which have only recently begun. The rights of the existing parties will not be prejudiced by the WWMDC's intervention. On the other hand, the WWMDC will be prejudiced if it is not allowed to intervene and participate in these appeals.

CONCLUSION

For all of the foregoing reasons, the WWMDC's Motion to Intervene, File a Response to the Petitions and Participate as a Party in these Appeals should be allowed.

Respectfully submitted,
the WWMDC, by its attorney,



Mark J. Lanza, BBO# 549994
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Wayland, Massachusetts 01778
(508) 358-3624/(978) 369-9100

DATED: December 18, 2008

CERTIFICATE OF SERVICE

I, Mark J. Lanza, hereby certify that copies of the foregoing Motion to Intervene, File a Response to Petitions and Participate as a Party were sent on the 18th day of December 2008 to the following persons in the manner described below:

Original and five copies by first class mail to:

Eurika Durr, Clerk of the Board
Environmental Appeals Board (MC 1103B)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Copy by first class mail to:

Ronald A. Fein, Assistant Regional Counsel and
Jeffrey Fowley, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100
Boston, MA 02114

Copy by first class mail to:

Deidre C. Menoyo
Attorney at Law
388 Willis Road
Sudbury, MA 01776

Copy by first class mail to:

Robin Lepore, Staff Attorney
Office of the Regional Solicitor
Department of Interior
One Gateway Center, Suite 612
Newton, MA 02458

Signed: December 18, 2008


