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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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ENVIR. APPEALS BOARD

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: NPDES Appeal No. 07-03
NPDES Permit No. MA0101737
Town of Marshfield, Massachusetts

March 5, 2007

Dear Ms. Durr,

Enclosed please find the original of Respondent's Motion to Dismiss Petition for Review and to Stay Production of Administrative Record in the above-captioned case, as well as a certificate of service. The motion and the certificate of service have also been mailed to counsel of record today. In lieu of five additional paper copies for the Board, electronic copies of each document have been posted to the CDX system.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Fein", is written over the typed name.

Ronald A. Fein, Assistant Regional Counsel
U.S. Environmental Protection Agency Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114
617-918-1040
Fax: 617-918-0040

cc: Robert L. Marzelli, Esq.
P.O. Box 967
Marshfield, MA 02050
Fax: (781) 826-5750

In re: Town of Marshfield, Massachusetts
NPDES Appeal No. 07-03

CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that copies of the foregoing Respondent's Motion to Dismiss Petition for Review and to Stay Production of Administrative Record were sent on this 5th day of March 2007 to the following persons in the manner described below:

Original by first class mail

Copy posted to CDX electronic system

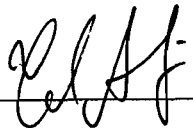
Eurika Durr, Clerk of the Board
Environmental Appeals Board (MC 1103B)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Copy by first class mail, postage prepaid
Copy by facsimile

Robert L. Marzelli, Esq.
P.O. Box 967
Marshfield, MA 02050

Fax: (781) 826-5750

Dated: March 5, 2007



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

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ENVIR. APPEALS BOARD

In re:)
)
)

Town of Marshfield, Massachusetts)

NPDES Appeal No. 07-03

Permit No. MA0101737)
_____)

**RESPONDENT'S MOTION TO DISMISS PETITION FOR REVIEW
AND TO STAY PRODUCTION OF ADMINISTRATIVE RECORD**

The New England Region of the Environmental Protection Agency ("Region") requests that the Environmental Appeals Board ("Board") dismiss the petition filed by the Town of Marshfield, Massachusetts ("Town") as untimely. The Region also requests that the Board stay its requirement that the Region submit relevant portions of the administrative record and a certified index of the entire administrative record, pending its decision on the request to dismiss the petition.

BACKGROUND

On November 9, 2006, the Region reissued a National Pollutant Discharge Elimination System (NPDES) permit, No. MA0101737 ("Permit"), to the Town for its municipal wastewater discharge. Petitioner's Exhibit ("Pet. Ex.") 7A, at 3 (Page 1 of the Permit); Petition ("Pet.") at 1, 4. The Region mailed the Permit on November 14, 2006. Pet. Ex. 7A, at 1 (cover letter). By its own admission, the Town received the Permit on November 16, 2006. Pet. at 4.

The Town filed with the Board a petition for review dated February 1, 2007. See Docket No. 1, at 1 (cover letter to Petition). The Board received the Petition on February 5, 2007. See id. at 1, 2 (received stamps on cover letter and Petition).

ARGUMENT

The Petition should be denied as untimely. A petition for review of an NPDES permit must be filed “[w]ithin 30 days after . . . [the] final permit decision.” 40 C.F.R. § 124.19(a). “The 30-day period within which a person may request review . . . begins with the service of notice of the Regional Administrator’s action unless a later date is specified in that notice.” Id.; see also In re Town of Hampton, 10 E.A.D. 131, 132-33 (EAB 2001). A petition for review is “considered filed on the date [it is] received by the Board.” Town of Hampton, 10 E.A.D. at 132 n.2 (internal quotation marks and citation omitted).

As noted above, the Region mailed the Permit on November 14, 2006. The notice of the decision did not specify a later date for the beginning (or end) of the ordinary filing period. See generally Pet. Ex. 7A, at 1. To the contrary, an attachment included with the final permit decision, entitled “Appealing an NPDES Permit,” begins as follows: “If you wish to contest any of the provisions of this permit, you must petition the Environmental Appeals Board (EAB) within thirty (30) days.” Pet. Ex. 7A, at 45 (captioned “Appealing an NPDES Permit” and numbered “Page 1 of 6”).

The Town does not challenge the sufficiency of the Region’s service by mail; to the contrary, the Town concedes that it received the Permit on November 16, 2006. Pet. at 4. The Town’s Petition was not mailed until February 1, 2007 and not filed until

February 5, 2007, a month and a half late. Because the Petition was untimely, it does not satisfy the requirements for Board review. See Town of Hampton, 10 E.A.D. at 134.¹

Finally, the Region requests relief from the Board's requirement that the Region include with its response "relevant portions of the administrative record . . . together with a certified index of the entire administrative record." Docket No. 2, at 1 (Letter from Eurika Durr, Clerk of the Board, to Carl Dierker, Regional Counsel, EPA Region 1, dated Feb. 7, 2007); see also Environmental Appeals Board Practice Manual at 36. In light of the clear threshold basis for dismissal, compiling and certifying the administrative record would serve little purpose and be unduly burdensome. The Region therefore requests that the Board stay this requirement pending its decision on dismissing the Petition on the grounds of timeliness.

REQUESTED RELIEF

The Board should dismiss the Petition as untimely. If the Board declines to do so, the Region requests 45 days from the date of notice of the Board's decision to prepare a response to the Petition.

The Region also requests that, pending the Board's decision on whether to dismiss the Petition as untimely, the Board stay its requirement that the Region submit relevant portions of the administrative record and a certified index of the entire administrative record. If the Board declines to dismiss the Petition as untimely, the Region requests 45 days from the date of notice of the Board's decision to prepare the relevant portions of the administrative record and a certified index of the entire

¹ Even assuming that an argument for tolling or extending the filing deadline could be raised, the Town has forfeited any such argument by failure to raise it in the Petition. See In re Prairie State Generating Co., PSD Appeal No. 05-05, slip op. at 137 (EAB Aug. 24, 2006).

administrative record.

Respectfully submitted,



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Date: March 5, 2007