



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
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VIA ELECTRONIC FILING

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. 10-17
NPDES Permit No. MA0003697
Barnhardt Manufacturing Company (Colrain, Massachusetts)

December 13, 2010

Dear Ms. Durr,

Enclosed please find the parties' Joint Motion to Stay Proceedings in the above-captioned case, with an attached certificate of service. The motion and the certificate of service have also been mailed to counsel of record today.

Sincerely,

Ronald A. Fein
Ronald A. Fein, Assistant Regional Counsel
U.S. Environmental Protection Agency Region 1
5 Post Office Square, Suite 100 (Mailcode ORA18-1)
Boston, MA 02109-3912
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cc: Peter J. Feuerbach, Esq.
Keren Schlomy, Esq.

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

In re: Barnhardt Manufacturing Company)	
Colrain, Massachusetts)	NPDES Appeal No. 10-17
)	
NPDES Permit No. MA0003697)	
)	

JOINT MOTION TO STAY PROCEEDINGS

Region 1 (“Region”) of the United States Environmental Protection Agency (the Respondent), and the Barnhardt Manufacturing Company (“Barnhardt,” the permittee and petitioner), respectfully request that the Environmental Appeals Board (“Board”) stay the proceedings in the above-captioned matter until April 11, 2011, to allow the parties to explore settlement negotiations.

BACKGROUND

The Region reissued NPDES Permit No. MA0003697 (“Permit”) to Barnhardt on October 26, 2010. On November 24, 2010, Barnhardt filed a petition for review (“Petition”) with the Board contesting certain conditions of the Permit. By letter dated November 24, 2010, the Board directed the Region to prepare a response that addresses Barnhardt’s contentions and whether Barnhardt has satisfied the requirements for obtaining review.

Upon consideration of the permitting documents and the Petition, as well as subsequent developments after the filing of the Petition, the parties believe that resolution of at least some of the issues in this appeal is possible, and have agreed to enter into settlement discussions to explore that possibility.

REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF

The parties request that the Board rescind the January 11, 2011 deadline for filing of the Region's response to the petition for review and stay the proceedings by three months to April 11, 2011. The parties propose to submit a status report no later than April 1, 2011, advising whether the Board should further extend the stay, establish a revised schedule for the litigation, or take other appropriate action.

An extension of this length is reasonable and necessary given the need to develop technical information to resolve the issues presented. In particular, although Barnhardt maintains its challenge to the limits and conditions of the Permit, as set forth in its Petition, and reserves all rights relative to the same, Barnhardt plans to conduct trials at the facility in an effort to address certain aspects of its effluent discharge. In particular, in December 2010 and January 2011, Barnhardt plans to conduct two separate trials regarding modified facility methods that may reduce the acute toxicity and/or ammonia nitrogen in the discharge. At the present time, Barnhardt is not able to predict the results of the two trials on the overall levels of the effluent discharge. Barnhardt anticipates having data and information from the trials, without which it would not be productive to conduct settlement discussions, by the beginning of February 2011. Barnhardt and the Region presently plan to meet in February 2011 to discuss Barnhardt's data and information as well as the Petition. Depending on the outcome of Barnhardt's trials and of the parties' discussions over the course of February and, if necessary, March 2011, it may be possible for the parties to narrow or resolve some or all of the issues raised in the Petition.

If a stay is not granted, the parties will be forced to divert their time and effort to the proceedings before this Board, when there is a substantial possibility that at least some of the issues raised in the Petition may be resolved through settlement discussions. Accordingly, in an effort to conserve administrative and judicial resources, and to encourage efficiency and promote

judicial economy, the parties request that the Board grant this motion and stay all proceedings in this matter until April 11, 2011.

Respectfully submitted,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1

By its attorney,

Ronald A. Fein
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Date: December 13, 2010

BARNHARDT MANUFACTURING COMPANY

By its attorney,

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Date: December 13, 2010

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to Stay Proceedings were sent on December 13, 2010 to the following persons in the manner described below:

Posted to CDX electronic system

Eurika Durr, Clerk of the Board
Environmental Appeals Board (MC 1103B)
U.S. Environmental Protection Agency
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Signed: December 13, 2010

Ronald A. Fein
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