



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
ONE CONGRESS STREET SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

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ENVIR. APPEALS BOARD

**VIA OVERNIGHT DELIVERY**  
**VIA FACSIMILE**

Eurika Durr, Clerk of the Board, Environmental Appeals Board  
U.S. Environmental Protection Agency  
1341 G Street, N.W., Suite 600  
Washington, D.C. 20005

Re: NPDES Appeal No. 05-14  
NPDES Permit No. MA0005282  
Texon USA  
Russell, Massachusetts

Date: January 27, 2006

Dear Ms. Durr,

Enclosed please find an original and five copies of the Agency's Motion to Dismiss in the above-captioned case.

Sincerely,

A handwritten signature in cursive script, likely belonging to Ronald A. Fein, is positioned above the typed name.

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

cc: Jeffrey P. Bibeau, Tighe & Bond, Inc.  
Mark S. Stupak, Texon USA

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

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ENVIR. APPEALS BOARD

In re:

Texon USA  
Russell, Massachusetts

NPDES Appeal No. 05-14

**MOTION TO DISMISS**

The New England Region of the Environmental Protection Agency ("Region") respectfully submits to the Environmental Appeals Board ("Board") this motion to dismiss NPDES Appeal No. 05-14.

**GROUND FOR DISMISSAL**

On September 9, 2005, the Region reissued a National Pollutant Discharge Elimination System Permit, No. MA0005282 ("Permit"), to Texon USA ("Petitioner"). On October 6, 2005, the Petitioner timely filed a petition for review with the Board contesting a single condition in the Permit ("Contested Condition").

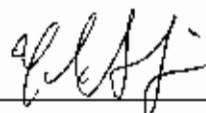
On December 19, 2005, after consultation with Petitioner, the Region issued for public comment a draft permit modification that withdrew the Contested Condition and replaced it with an alternative requirement. On January 21, 2006, having received no comments during the comment period, the Region issued a final permit modification that withdrew the Contested Condition and replaced it with an alternative requirement.

Because the Petition only challenged the Contested Condition, the withdrawal and replacement of that condition has rendered the Petition moot. See, e.g., In re City of Port St. Joe, Florida, 5 E.A.D. 6, 8 (1994).

**REQUESTED RELIEF**

The Region respectfully requests that the Board dismiss the Petition in its entirety. As noted in a letter dated January 26, 2006 that Petitioner recently filed with the Board, Petitioner assents to this disposition.

Respectfully submitted,



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U.S. Environmental Protection Agency,  
New England Region

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

Dated: January 27, 2006

In re: Texon USA (Russell, Massachusetts)

NPDES Appeal No. 05-14

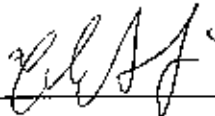
CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that one original and five copies of the foregoing Motion to Dismiss were transmitted by overnight delivery on this 27<sup>th</sup> day of January, 2006 to the Clerk of the Board, Environmental Appeals Board, 1341 G Street, N.W., Suite 600 Washington, D.C. 20005, and that copies of the foregoing were sent by First Class Mail, postage prepaid, to the following persons:

Jeffrey P. Bibeau, Project Manager, Industrial Services Group  
Tighe & Bond, Inc.  
53 Southampton Road  
Westfield, MA 01085

Mark S. Stupak, General Manager  
Texon USA  
1190 Huntington Road  
P.O. Box 365  
Russell, MA 02114-2023

Dated: January 27, 2006

  
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