

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

In the Matter of	)	Docket No. CWA-01-2009-0071
	)	
TOWN OF CONCORD	)	Proceeding Under Section 309(g)
Town House	)	of the Clean Water Act
22 Monument Square	)	
Concord, Massachusetts 01742	)	
	)	
Respondent.	)	

**RESPONDENT'S EIGHTH MOTION FOR EXTENSION OF TIME  
TO ANSWER THE ADMINISTRATIVE COMPLAINT**

The Respondent Town of Concord moves to extend the time to file an Answer to the Administrative Complaint by 12 days, to June 1, 2010. As grounds for this motion, the Town states as follows:

1. On August 13, 2009, the U.S. Environmental Protection Agency ("EPA") filed an Administrative Complaint alleging that the Town had failed to comply with its National Pollutant Discharge Elimination System General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems ("Permit").
2. The Complaint was served on the Town on August 24, 2009.
3. Under the Consolidated Rules of Practice, 40 C.F.R. §§ 22.1 - 22.52, the Answer was due within 30 days of receipt of the Complaint, *i.e.*, September 23, 2009.
4. On September 17, 2009, the Town moved for an extension of time to file the Answer to October 7, 2009. Kathleen Woodward, EPA enforcement counsel in this matter, assented to the motion. The Acting Regional Judicial Officer granted that extension on September 22, 2009.

5. The Town and EPA met to discuss the matter on September 21, 2009. On September 29, 2009, the Town submitted additional documents to EPA regarding activities conducted pursuant to the Permit.

6. On September 30, 2009, the Town filed another assented-to motion for an extension of time to file the Answer, to November 6, 2009. The Acting Regional Judicial Officer granted that extension on October 1, 2009.

7. The Town and EPA met again on October 15, 2009. At that meeting, the Town submitted additional documents responding to EPA's questions regarding activities conducted pursuant to the Permit. On October 19, 2009, the Town submitted a letter to EPA responding to questions raised by EPA at the October 15 meeting.

8. The Town has explained to EPA that it has been in compliance with the Permit since it received discharge authorization in March 2004; thus, the Complaint is baseless. Except to raise questions that the Town has answered, EPA has not responded to that position.

9. On November 2, 2009, the Town filed another assented-to motion for an extension of time to file the Answer, to December 7, 2009. The Acting Regional Judicial Officer granted that extension on November 3, 2009.

10. On November 25, 2009, the Town filed another assented-to motion for an extension of time to file the Answer, to January 6, 2009. The Acting Regional Judicial Officer granted that extension on December 1, 2009.

11. In a telephone conversation with Rebekah Lacey on December 17, 2009, Ms. Woodward stated that she expected to provide the Town with a response by the second week of January to its argument that the Complaint has no factual basis. Based on that time frame, she agreed to assent to a 45-day extension. On December 21, 2009, the Town filed another assented-

to motion for an extension of time to file the Answer, to February 19, 2010. The Acting Regional Judicial Officer granted that extension on December 29, 2009.

12. In response to voice mails left on January 25, 2010, and February 1, 2010, Ms. Woodward sent Rebekah Lacey an e-mail on February 5, 2010, stating that EPA was not yet prepared to provide a response, and that she would assent to another extension.

13. On February 10, 2010, the Town filed another assented-to motion for an extension of time to file the Answer, to April 5, 2010. The Acting Regional Judicial Officer granted that extension on February 11, 2010.

14. Ms. Woodward called Ms. Lacey the afternoon of March 19, 2010. She stated that EPA continued to take the position that the Town had not been in compliance with its permit and provided a settlement offer. Ms. Lacey and Ms. Woodward spoke by telephone on March 25, 2010, regarding the Town's response to EPA's settlement offer. While they did not reach agreement, they believed that the parties would be able to reach an agreement in principle within the next ten days. Therefore, Ms. Woodward agreed to assent to a 45-day extension to allow time to achieve and finalize a settlement.

15. On March 26, 2010, the Town filed another assented-to motion for an extension of time to file the Answer, to May 20, 2010. The Acting Regional Judicial Officer granted that extension on April 1, 2010.

16. Ms. Woodward called Ms. Lacey on March 29, 2010, to provide a response to the Town's counterproposal. After discussion at a meeting of the Board of Selectmen, the Town agreed to accept EPA's modified settlement offer. Ms. Lacey spoke with Ms. Woodward on April 14, 2010, to communicate the Town's acceptance.

17. Ms. Woodward e-mailed a draft Consent Agreement and Final Order (“CAFO”) to Ms. Lacey on April 30, 2010. Ms. Lacey replied to Ms. Woodward on May 4, 2010 that the draft CAFO was acceptable to the Town with some minor edits for clarity. Ms. Woodward e-mailed a final version of the CAFO to Ms. Lacey on May 12, 2010. Ms. Woodward stated that EPA would assent to a 12-day extension of the deadline to answer the Complaint if she received a signed copy of the CAFO from the Town by May 17, 2010. Ms. Lacey e-mailed Ms. Woodward a signed copy on May 14, 2010.

18. This extension would not prejudice EPA, whereas forcing the Town to file an Answer in order to preserve its rights during settlement finalization due to delay by EPA would be unfair to the Town. Moreover, Ms. Woodward has assented to the extension.

For these reasons, the Town requests a 12-day extension of time to file its Answer, to June 1, 2010.

By its attorneys,



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Dated: May 14, 2010

**In the Matter of: Town of Concord**

**Docket No. CWA-01-2009-0071**

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing RESPONDENT'S EIGHTH MOTION FOR EXTENSION OF TIME TO ANSWER THE ADMINISTRATIVE COMPLAINT in the matter of Town of Concord, CWA-01-2009-0071 were sent to the following persons in the manner indicated:

Original and one copy by mail:

Ms. Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency – Region I  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

Copy by mail and e-mail:

Kathleen E. Woodward, Senior Enforcement Counsel  
U.S. Environmental Protection Agency – Region I  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912  
Woodward.Kathleen@epa.gov

Date: May 14, 2010

  
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