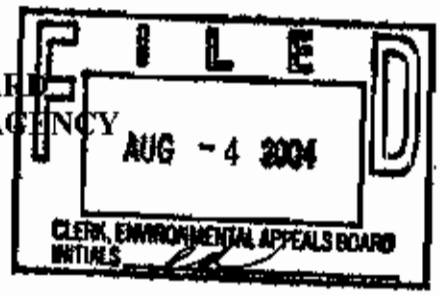

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:	)	
	)	
City of Newburyport, Wastewater Treatment Facility	)	NPDES Appeal No. 04-05
	)	
	)	

ORDER EXTENDING TIME TO FILE A RESPONSE AND DENYING REQUEST FOR CONSOLIDATION

By motion filed on July 16, 2004, U.S. EPA Region I requested that the Board "consolidate the proceedings in connection with the Island Futures Group, Inc.'s ("IFG") June 9, 2004 Petition for Review * * * and the City of Newburyport's ("City") June 7, 2004 Petition for Review * * *." Motion to Consolidate Proceedings and for Stay of Proceedings and an Extension of the Response Date at 1. The Region also sought a stay of the proceedings and an extension of time to file its response to IFG's petition from July 30, 2004, to October 29, 2004. The Board had previously granted a joint motion to extend the deadline for the Region to respond to the City's petition until October 29, 2004, to allow the parties to engage in settlement negotiations.

By order dated July 20, 2004, the Board extended the time for the Region to respond to IFG's petition until August 6, 2004. The July 20 order also stated that the Board would await a reply from IFG before ruling on the Region's request for consolidation or any further extensions of time. *See* Order Extending Time to File a Response and Setting Deadline for Responding to the Region's Motion to Consolidate Proceedings (July 20, 2004).

On July 29, 2004, IFG filed a reply to the Region's Motion to Consolidate Proceedings and for Stay of Proceedings and an Extension of the Response Date. Letter from M.R. Eigerman, IFG, to Judge Edward E. Reich. In its reply, IFG objects to any consolidation of the appeals in this matter if such consolidation would result in a delay in consideration of its petition. On August 3, 2004, the Region filed a renewed motion to consolidate proceedings in this matter and to extend the date for filing a reply to IFG's petition until October 29, 2004. The Region states, in part:

> The Board has already granted an extension until October 29, 2004 for the Region to respond to the City's petition. Since the City and IFG have both challenged various aspects of the same permit's effluent limitations for total residual chlorine and fecal coliform bacteria, it does not seem to make sense to require the Region to rush out a response to IFG's criticisms of the permit by August 6th, while at the same time allowing a longer time and more appropriate period of time until October 29th to respond to the City's challenge. Granting an extension until October 29, 2004 for the Region to respond to IFG's petition will ensure that the Region has enough time to respond fully and carefully to the issues raised by IFG and provide the Board with the Agency's considered views. It will also ensure that the Region and the City have sufficient time to explore possible settlement of part, if not all, of the issues raised by the City, thereby reducing the number of issues before the Board.

Motion to Renew Request to Consolidate Proceedings and Extend the Response Date (Aug. 3, 2004) at 2. In the alternative, the Region seeks an extension of time until August 27, 2004, in which to submit its response to IFG's petition for review. The Region states that such an extension is necessary:

> in light of absences from the office of key personnel involved with the permit in July, as well as the disruption caused by having the Democratic National Convention, together with the time EPA Regional staff need to develop a draft brief responding to the eight issues raised by IFG, circulate the draft to appropriate Regional and Headquarters personnel for review and comment, incorporate the

comments into a final brief, and assemble the considerable administrative record in this matter * * *.

Upon review, the Region's request to consolidate proceedings in this matter and to extend the time for filing its reply to IFG's petition until October 29, 2004, is denied. The Region's alternative request to extend the deadline for filing a reply to IFG's petition until August 27, 2004, is granted. Absent a joint motion, the Board will not consider any future requests for extensions or consolidation in this matter. [1]

So ordered.

Dated: 8/4/04

ENVIRONMENTAL APPEALS BOARD

By: _____

Edward E. Reich
Environmental Appeals Judge

[1] We note that in prior submissions, the Region has suggested that it has been pursuing settlement negotiations with both the City and IFG. If, during the next three weeks, the Region and IFG are satisfied with the progress of negotiations, the Board will entertain a joint motion to further extend the deadline for the Region to file its response and/or to consolidate the proceedings.

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Extending Time to File a Response and Denying Request for Consolidation in the matter of City of Newburyport, Wastewater Treatment Facility, NDPES Appeal No. 04-05, were sent to the following persons in the manner indicated:

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Dated: AUG - 4 2004

Mildred Johnson for
Annette Duncan
Secretary