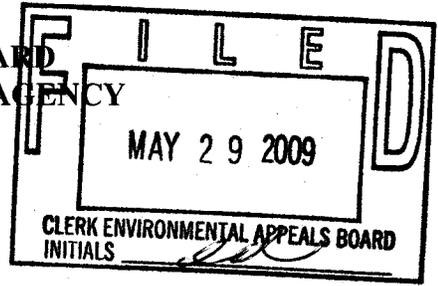


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



_____))
In re:))
City of Manchester, N.H.))
NPDES Permit No. NH0100447))
_____)

NPDES Appeal No. 08 – 21

ORDER GRANTING MOTION TO EXTEND STAY OF PROCEEDINGS

On September 25, 2008, the United States Environmental Protection Agency, Region 1 (“Region”) reissued National Pollutant Discharge Elimination System (“NPDES”) Permit No. NH0100447 (“Permit”) to Petitioner, the City of Manchester, New Hampshire (“City”). The City filed a Petition for Review on October 24, 2008, challenging the aluminum limit, the 7Q10 methodology used to calculate (low) flow, and the stated frequency of sludge testing contained within the Permit. Petition at 2. On November 26, 2008, the parties requested by joint motion a stay of the proceedings to allow them to enter into settlement negotiations. The Board has twice granted the parties’ requests to stay the proceedings pending settlement discussions, each time ordering the parties to submit a report updating the Board on the status of the permit modification negotiations, including a discussion of whether it is appropriate to continue the stay, dismiss the petition, or to establish a schedule for the Region to file a response to the petition. *See In re City of Manchester, New Hampshire*, NPDES Appeal No. 08-21, at 2 (EAB Dec. 3, 2008) (Order Granting Joint Motion to Stay Proceedings); *In re City of Manchester, New Hampshire*, NPDES Appeal No. 08-21, at 2 (EAB Mar. 24, 2009) (Order Granting Motion to Extend Stay of Proceedings).

With the assent of the City, the Region filed a Status Report and Motion to Extend Stay of Proceedings (“Motion”) on May 19, 2009, proposing an extension of the stay until July 1, 2009. Motion at 3. The Region avers that the parties have made substantial progress towards settlement, including resolution of the discrepancy in the frequency of sludge monitoring provision, which was corrected when the Region issued a minor permit modification on May 18, 2009, to amend a clerical error in the sludge monitoring condition. Motion at 2.

The parties, in conjunction with the New Hampshire Department of Environmental Services (“NHDES”), are also advancing towards settlement with respect to the aluminum limit. *Id.* On May 18, 2009, the Region sent the City, for its review, a draft administrative compliance order (“Draft Order”), which if finalized would require that the City conduct a twelve-month study of aluminum and hardness in the Merrimack River while complying with interim monitoring requirements. *Id.* The Draft Order also mandates that the City report on the findings of the study to the Region and NHDES, documenting the results of the study and proposing an implementation plan for further action based on those results. *Id.*

The parties further state that the extension of the stay of proceedings will likely allow them to conclude their negotiations and finalize the administrative compliance order within the proposed timeframe, obviating the need for further proceedings before the Board. Motion at 2-3. Allowing an extension of this length, the parties aver, would also conserve administrative and judicial resources and promote judicial economy because there is a high probability that the negotiated compliance order will resolve the remaining issues in the petition for review, negating the need for the Region and the Board to divert their time and effort to legal proceedings. Motion at 3.

For the reasons outlined above, the motion is GRANTED. Accordingly, the above-captioned matter is hereby STAYED until July 1, 2009. The parties are ordered to submit another status report no later than July 1, 2009, regarding the status of their permit modification negotiations, which shall include a discussion of whether the Board should further extend the stay, dismiss the petition, or establish a schedule for the Region to respond to the petition.

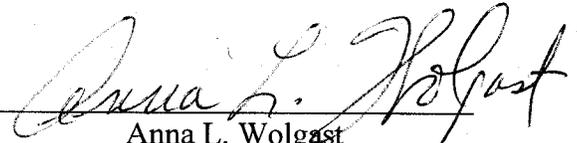
So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated:

May 29, 2009

By:



Anna L. Wolgast
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Motion to Extend Stay of Proceedings in the matter of City of Manchester, N.H., NPDES Appeal No. 08-21, were sent to the following persons in the manner indicated:

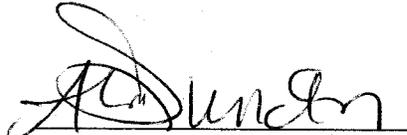
By Pouch Mail and FAX:

Ronald A. Fein
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300 Winston Street
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Fax: (603) 628-6234

Dated: MAY 29 2009


Annette Duncan
Secretary