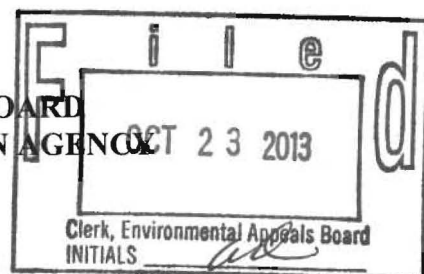


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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In re: )  
)  
)  
Town of Concord ) NPDES Appeal No. 13-08  
)  
)  
NPDES Permit No. MA0100668 )  
)  

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**ORDER GRANTING, IN PART, MOTION FOR EXTENSION OF TIME  
AND ESTABLISHING OCTOBER 28, 2013, AS NEW DEADLINE  
FOR RESPONSE TO PETITION**

On September 9, 2013, the Town of Concord, Massachusetts (“Town”), filed a petition for review with the Environmental Appeals Board (“Board”) challenging a National Pollutant Discharge Elimination System (“NPDES”) permit U.S. Environmental Protection Agency (“EPA”) Region 1 (“Region”) issued to the Town. Under EPA permitting regulations, “the Regional Administrator is required to file “a response to the petition, a certified index of the administrative record, and the relevant portions of the administrative record within 30 days after the filing of a petition.” 40 C.F.R. § 124.19(b)(2). Thus, in this case, the Region’s deadline for filing these documents was October 9, 2013.

Due to a lapse in appropriations, the U.S. government was partially shut down from October 1, 2013, through October 16, 2013, reopening on October 17, 2013. The Board was closed during the shutdown, as was the majority of EPA.

On October 18, 2013, the Region filed a motion requesting the Board establish a new deadline, November 8, 2013, for the Region’s response and associated filings. Motion for

Extension of Time to File Region 1's Response to Petition due to the Government Shutdown at 2. Counsel for the Region provides several reasons for this request. First, he indicates that he was prohibited from working during the shutdown. *Id.* at 2. He also states that “[g]oing forward, EPA staff will be required to address not only this pending matter, but to attend to other existing commitments that matured over the course of the shutdown, and to triage new obligations that have accrued during that period.” *Id.* He further explains that “critical staff in both the Region and Headquarters will be unavailable for periods between now and the proposed extension date due to the pre-existing vacation plans that were previously presumed to fall after the original filing date for the Region’s response.” *Id.* at 3. The Region further notes that it “will endeavor to file its response earlier if that should prove feasible.” *Id.*

On October 21, 2013, the Town filed an opposition to the Region’s motion. *See* Opposition to Region 1’s Motion for Extension of Time to Submit Response to Petition. The Town argues that, as a matter of fairness, the Region should be granted an extension of time commensurate with the 9-day period lost during the shutdown. *Id.* at 1-2. The Town also contends that the Region “references only non-specific circumstances in support of its request.” *Id.* at 2.

Upon consideration of the motion and the opposition, the Board GRANTS IN PART the Region’s motion for a new deadline. The shutdown began 9 days before the original deadline, and thus 9 additional days from the date of the government’s reopening would be equivalent to the amount of time lost because of the shutdown. The Region, however, requests an extension of 22 days – or an additional 13 days beyond those days lost due to the shutdown – to file its response and associated documents. In light of the lack of specificity regarding the

circumstances described in the Region's request and the fact that, at the time the Region filed its request for an extension, it appeared to have been in the "triage stage" of startup and may not have had a clear idea of exactly how much time it would need to file its response, the Board grants the Region 11 additional days from the date of reopening to file its response. The Region's response and associated documents is therefore due on Monday, October 28, 2013. The Board will, however, consider a further request for an extension of time from the Region, if it finds that it needs additional time beyond the 11 days and provides more specific information justifying such extension.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: October 23, 2013

By: 

Randolph L. Hill  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Order Granting, in Part, Motion for Extension of Time and Establishing October 28, 2013, as New Deadline for Response to Petition* in the matter of Town of Concord, NPDES Appeal No. 13-08, were sent to the following persons in the manner indicated:

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Annette Duncan  
Secretary

Date:           OCT 23 2013