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February 25, 2013

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board 1103M
1200 Pennsylvania Avenue, N.W.
East Building
Washington, D.C. 20460-0001

Re: Town of Newmarket Wastewater Treatment Plant
Permit Number: NH0100196
Appeal Number: NPDES 12-05

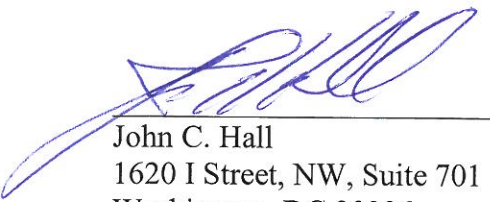
Dear Ms. Durr,

Please find attached the Petitioners Motion Requesting Permission to File a Reply to EPA Region 1's Objection to Petitioner's Motion to Suspend the Briefing Schedule, Strike Appendices A and B of Respondent's Memorandum in Opposition to the Petition for Review, and Amend the Briefing Schedule and Page Length and accompanying Certificate of Service regarding NPDES Appeal No. 12-05.

Sincerely,

Date :

Feb 23, 2013



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Attorney for Petitioner

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

)	
In re:)	
Town of Newmarket)	
)	NPDES APPEAL No. 12-05
NPDES Permit No. NH0100196)	
)	

**PETITIONERS MOTION REQUESTING PERMISSION TO FILE A REPLY TO EPA
REGION 1’S OBJECTION TO PETITIONER’S MOTION TO SUSPEND THE
BRIEFING SCHEDULE, STRIKE APPENDICES A AND B OF RESPONDENT’S
MEMORANDUM IN OPPOSITION TO THE PETITION FOR REVIEW, AND AMEND
THE BRIEFING SCHEDULE AND PAGE LIMIT**

Petitioners, the Great Bay Municipal Coalition (“the Coalition”), for good cause and in the interest of justice, respectfully request permission from the Environmental Appeals Board (“EAB” or “the Board”) to file a reply to EPA Region 1’s Objection to Petitioner’s Motion to Suspend the Briefing Schedule, Strike Appendices A and B of Respondent’s Memorandum in Opposition to the Petition for Review, and Amend the Briefing Schedule and Page Limit (“EPA’s Objection”). For the reasons specified below, the Board should allow consideration of the reply filed, without leave, on February 22, 2013.

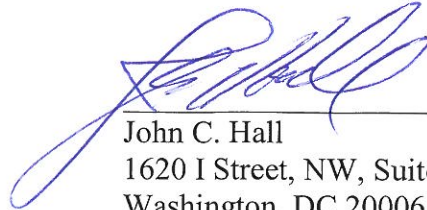
Petitioners request permission to file a reply to EPA’s Objection in order to, clarify misstatements and misrepresentations made by EPA regarding the scope and basis of the relief requested by the Petitioners. In particular, with regards to the administrative record issues, EPA claims that the Board should be unconcerned about any prejudicial impact of its prior rulings on the administrative record because Petitioners have noted other documents may be referenced as the basis for challenging EPA’s actions as “clear error” instead of the deposition testimony. EPA

Obj. at 4. Additionally, EPA materially misrepresents the scope and basis of the stay request and the number of, and importance of, the records at issue (9 records versus a 1,000 pages of documentation). *Id.* at 2. EPA further claimed that record uncertainty is a “commonplace” issue faced by litigants during merits briefing. *Id.* at 4. Petitioners’ reply further clarifies the harm that would occur if the motion is not granted and addresses specific case law confirming EPA’s assertion about the commonplace issue of briefing while the record is unsettled, is plainly in error.

With regards to striking Appendices A and B, EPA misstated the “primary” rationale underlying the Board’s prior order. *Id.* at 7. Consequently, EPA also argues that the Board should apply a lesser standard to EPA’s over length and non-conforming filings than what the Board applied in restricting the Petitioners brief. *Id.* at 6-9. These arguments raised additional due process concerns that needed to be brought to the attention of the Board. Finally, EPA claims the *Daubert* issues were never preserved and do not apply in this context. *Id.* at 4-6. EPA has misstated Petitioners application of the *Daubert* test, thus, Petitioners wish to submit a clarification on how the *Daubert* test would apply in this case. Thus, Petitioners’ Reply is needed to avoid confusion and address EPA’s claims that are new and inconsistent with the arguments EPA presented in the earlier motion that prevent Petitioners supplement. Therefore, since Petitioners never had a chance to respond to these arguments, in the interest of justice, Petitioners request permission to file a reply to EPA’s Objection.

Respectfully submitted,

Date : Feb 25, 2013



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CERTIFICATION OF SERVICE

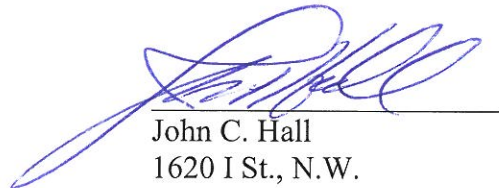
I hereby certify the copies of Petitioners Motion Requesting Permission to File a Reply to EPA Region 1's Objection to Petitioner's Motion to Suspend the Briefing Schedule, Strike Appendices A and B of Respondent's Memorandum in Opposition to the Petition for Review, and Amend the Briefing Schedule and Page Length in connection with NPDES Appeal No. 12-05, were sent to the following persons in the manner indicated:

By Electronic Filing:

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board 1103M
1200 Pennsylvania Avenue, N.W.
East Building
Washington, D.C. 20460-0001

By First Class U.S. Mail:

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