

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

\_\_\_\_\_ )  
In re: )  
Town of Newmarket )  
 ) NPDES APPEAL No. \_\_\_\_\_ -  
NPDES Permit No. NH0100196 )  
\_\_\_\_\_ )

**MOTION FOR EXTENSION OF TIME TO  
FILE A SUPPLEMENTAL PETITION FOR REVIEW**

Pursuant to 40 C.F.R. § 124.19(a) the Great Bay Municipal Coalition (“Petitioner” or “the Coalition”) representing the municipalities of Dover and Rochester, petitions for review of the conditions of NPDES Permit No. NH0100196, which was issued to the Town of Newmarket Wastewater Treatment Plant (“Permittee” or “Newmarket”) on November 15, 2012, by the United States Environmental Protection Agency (“EPA”), Region 1 (“the Region” or “Region 1”). The New Hampshire Department of Environmental Services (“DES”) provided a Section 401 Certification, approving the permit. The permit at issue in this proceeding reauthorizes Newmarket to discharge treated wastewater effluent from the Town of Newmarket, New Hampshire’s Wastewater Treatment Plant (“facility”) to the Lamprey River. Petitioner requests permission to file the petition for review on the current due date, December 15, 2012, followed by supplemental briefs on January 15, 2013.

## Introduction

On November 15, 2012, EPA issued the final NPDES Permit No. NH0100196 for Newmarket. The final decision is lengthy (exceeding 150 pages) and is accompanied by an extensive administrative record involving highly technical and disputed data and analyses. The Petition for Review of the final permit is due December 15, 2012. *See* 40 C.F.R. § 124.19(a). Petitioners are able to file a timely petition on or before the December 15, 2012 deadline outlining the legal, procedural, and scientific issues on appeal, however, due to the complex and controversial nature of the effluent limitations issued in the permit, Petitioners ask for additional time to file a supplemental petition for review.

The Board will in certain cases, where good cause is shown, allow supplemental petition for review to be filed. *See In re Town of Marshfield Mass.*, Order Denying Review at 8 n. 10, NPDES 07-03 (EAB, March 27, 2007) (“The Town could have filed a timely petition identifying all the issues on appeal and moved for an extension of time to file a supplemental brief to support the issues raised in the petition. The Board has, on occasion and for good cause shown, granted this kind of motion and entertained such supplemental briefs.); *In re City and County of Honolulu’s Sand Island Wastewater Treatment Plant and Honouliuli Wastewater Treatment Plant*, Order Granting Alternative Motion for Extension of Time to File Petitions for Review, NPDES 09-01 (EAB, April 27, 2009) (granting petitioners 30 day extension to file supplemental briefs where appealing two final agency decisions issued on the same day “exceed 100 pages in length and [ ]accompanied by extensive administrative records containing highly technical and disputed data.”), *In Re Guam Water Works Authority’s Northern District Sewage Treatment and Guam Waterworks Authority’s Agana Sewage Treatment Plant*, Order Granting Motion in the Alternative to Timely File Summary Petitions with Extension of Time to File Supplemental

Briefs, NPDES 09-15 and 09-16 (consolidated) (EAB, November 3, 2009) (granting petitioners 30 day extension to file supplemental briefs where two final agency decisions issued on the same day were lengthy- exceeded 60 pages and were “accompanied by extensive administrative records involving highly technical and disputed data.”).

### **Argument**

Following the same procedures discussed in the cases above, the Board should give Petitioners until January 15, 2013 to file a supplemental brief that supports the issues identified in the timely-filed petition for review. This case involved several thousand pages of highly technical information and regulatory studies affecting multiple discharges to Great Bay Estuary. The Petitioner dispute virtually every major technical finding made by EPA in this matter. Petitioners will suffer prejudice if not granted the motion to file a supplemental brief because they will not have adequate time to prepare a petition sufficiently outlining the major legal, procedural, and scientific issues in enough details to satisfactorily demonstrate the Region failed to respond to comments submitted by the Petitioner.

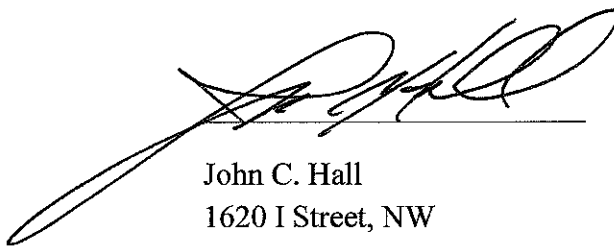
Moreover, for the past two years, Petitions, EPA, and DES have been engaged in discussions, meetings, and an exchange of information all of which for the most part EPA is arguing is not part of the administrative record for this permit. *See* Response to Comments n.1 at 2. These hundreds of pages of supplemental data and analyses submitted by the Petitioners, which the Region has chosen to ignore when submitted by the Coalition. EPA accepted other “late filed” information from other parties on the identical issues. The Coalition’s documents are all relevant to the permit and will need to be outlined, in detail, for the Board to show the deficiencies in EPA’s Response to Comments and ultimately, the science underlying EPA’s permit. The Petitioners are making a good faith effort to make sure such detailed analysis occurs

by December 15, 2012, however, the record is lengthy and the issues are complex. It is in the interest of justice, the Board should all parties sufficient time to identify all the issues including time to sufficiently brief the complex and regulatory issues at play in this case.

### Conclusion

Because the Petitioner has good cause to request a one-month time frame to submit supplemental brief, and because EPA will not suffer prejudice by it, the EAB should grant the Petitioner's request to file the petition for review on the current due date, December 15, 2012, followed by supplemental briefs on January 15, 2013 that presents complete arguments in support of the issues identified in timely-filed, petition for review. This would greatly reduce the risk of prejudice to the Petitioners presented by the current schedule.

RESPECTFULLY SUBMITTED this 14 day of December 2012.



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