



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

ONE CONGRESS STREET SUITE 1100
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ENVIR. APPEALS BOARD

VIA FIRST CLASS MAIL

Eurika Durr, Clerk of the Board
Environmental Appeals Board (MC 1103B)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Re: NPDES Appeal No. 05-17
NPDES Permit No. MA0000272
Boston & Maine Corporation
East Deerfield, Massachusetts

Date: March 17, 2006

Dear Ms. Durr,

Enclosed please find the original and five copies of a Status Report and Motion to Extend Stay of Proceedings in the above-captioned case, as well as a certificate of service. The Status Report and Motion and the certificate of service were sent to you via facsimile earlier today.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald A. Fein".

Ronald A. Fein, Assistant Regional Counsel
U.S. Environmental Protection Agency Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114
617-918-1040
Fax: 617-918-0040

cc: Jamison E. Colburn, Western New England College School of Law
John Curtin, Boston & Maine Corporation

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

ENVIR. APPEALS BOARD

In re: _____)
)
Boston & Maine Corporation)
East Deerfield, Massachusetts)
)
_____)

NPDES Appeal No. 05-17

STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDINGS

The New England Region of the Environmental Protection Agency ("Region"), after consultation with the Connecticut River Watershed Council, Inc., and Jamison E. Colburn ("Petitioners"), hereby submits this status report and moves to extend the stay of proceedings by an additional sixty days.

BACKGROUND

On September 23, 2005, EPA reissued a National Pollutant Discharge Elimination System Permit, No. MA0000272 ("Permit"), to the Boston & Maine Corporation ("Permittee"). On October 27, 2005, Connecticut River Watershed Council, Inc., and Jamison E. Colburn ("Petitioners") filed a petition for review with the Environmental Appeals Board ("Board") contesting various aspects of the Permit and the process leading to its issuance. On November 2, 2005, the Board directed the Region to submit a response by December 20, 2005. On December 2, 2005, the Region requested a forty-five day extension of time in light of the fact that the parties had entered into settlement negotiations and anticipated resolving the issues raised by the petition through a permit modification. On December 7, 2005, the Board granted the Region's request and extended the deadline for the Region's response to February 3, 2006.

On January 18, 2006, the Region moved for a 90-day stay of proceedings to (1) consult with the Permittee, (2) conclude final discussions with Petitioners, and (3) issue a permit modification that would resolve the issues raised by the Petition. On January 23, 2006, the Board issued an order staying the proceedings in this matter until May 3, 2006, and directing the parties to submit a status report on March 17, 2006 to advise the Board whether it is appropriate to continue the stay, dismiss the Petition, or to schedule EPA's response to the Petition.

STATUS REPORT

Since the issuance of the stay, the Region has consulted with the Permittee and Petitioners regarding a permit modification. The Region and Petitioners have tentatively agreed upon the terms of a permit modification that would resolve the claims in the petition, and the Region has not received any information from the Permittee suggesting that the Region should not proceed to issue a draft permit modification upon such terms.

Between now and May 3, 2006, the Region expects to (1) issue a draft permit modification, and (2) initiate consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service under Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. § 1536(a)(2). However, because of the required public comment period for the draft permit modification, and the time required for the aforementioned agencies to discharge their consultation obligations under Section 7(a)(2) of the Endangered Species Act, the Region will not be able to issue a final permit modification before May 3, 2006.

GROUND FOR CONTINUANCE OF STAY

In light of the above progress, and in the interests of judicial economy and to conserve resources, the Region requests that these proceedings be stayed for an additional sixty days beyond May 3, 2006 in order to allow the Region sufficient time to (1) conclude consultation

with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service under Section 7(a)(2) of the Endangered Species Act, and to (2) receive public comments on the draft permit modification, make any required changes, and issue a final permit modification. Absent a continuance of the stay, the parties will be required to divert their time and effort from an ongoing permit modification process to litigation before the Board.

REQUESTED RELIEF

Accordingly, the Region requests that the Board extend the stay of proceedings until July 3, 2006 to allow the Region to resolve the issues raised in the petition through a final permit modification. The Region represents that its undersigned counsel has discussed this motion with Petitioners' counsel, and that Petitioners concur in this status report and assent to the motion to extend the stay of proceedings.

Respectfully submitted,



Ronald A. Fein, Assistant Regional Counsel
U.S. Environmental Protection Agency Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114
617-918-1040
Fax: 617-918-0040

Date: March 17, 2006