



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100  
Boston, MA 02109-3912

VIA ELECTRONIC FILING

April 14, 2015

Ms. Eurika Durr  
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
U.S. EPA East Building, Room 3334  
Washington, DC 20004

**RE:** In the Matter of General Electric Aviation (NPDES Permit No. MA0003905);  
NPDES Permit Appeal No. 14-03;

Dear Ms. Durr:

Please find enclosed EPA Region 1 and General Electric Aviation's, "Third Joint Settlement Negotiations Status Report and Motion to Continue the Stay of Permit Appeal Proceeding," and an accompanying Certificate of Service in connection with NPDES Appeal No. 14-03.

Thank you for your assistance with the filing of this pleading with EPA's Environmental Appeals Board.

Sincerely,

A handwritten signature in black ink that reads "Mark A. Stein".

Mark A. Stein  
Senior Assistant Regional Counsel  
US Environmental Protection Agency  
Office of Regional Counsel, Region 1  
5 Post Office Square - Suite 100  
Mail Code: ORA 18-1  
Boston, MA 02109-3912  
Tel: (617) 918-1077  
Fax: (617) 918-0077  
Email: stein.mark@epa.gov

Enclosures

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

In the Matter of: )  
)

General Electric Aviation )

NPDES Permit No. MA0003905 )  
)

NPDES Appeal No. 14-03

**THIRD JOINT SETTLEMENT NEGOTIATIONS STATUS REPORT AND  
MOTION TO CONTINUE THE STAY OF PERMIT APPEAL PROCEEDING**

In accordance with the Environmental Appeals Board's ("Board") Order dated February 20, 2015, Region 1 of the United States Environmental Protection Agency ("Region 1" or "the Region") and General Electric Aviation ("GE") respectfully submit this Third Joint Settlement Negotiations Status Report and Motion to Continue the Stay of Permit Appeal Proceeding. In light of substantial additional progress in the parties' settlement negotiations, as detailed below, the parties jointly move that the Board:

(a) extend the current stay of this permit appeal proceeding until July 6, 2015 (*i.e.*, by sixty days, plus three additional days to avoid the national holiday that falls on July 3 and the following weekend)), to allow the parties to pursue completion of their plan for settling this permit appeal without further litigation; and

(b) require the parties to submit another settlement negotiations status report by no later than June 23, 2015.

The bases for this motion are set forth below.

## BACKGROUND

A chronology of key events in this proceeding is presented below.

- 1) On September 30, 2014, Region 1 issued National Pollutant Discharge Elimination System (“NPDES”) Permit No. MA0003905 to GE (the “2014 Final Permit”).
- 2) On October 30, 2014, GE filed a petition with the Board requesting review of certain conditions of the 2014 Final Permit.
- 3) On November 7, 2014, Region 1 and GE jointly moved the Board to stay the proceeding to allow the parties time to pursue settlement negotiations.
- 4) On November 13, 2014, the Board issued an Order staying the proceeding until January 2, 2015, and directing the Region, in consultation with GE, to file a report on the status of settlement negotiations by December 15, 2014.
- 5) On December 15, 2014, the parties filed the required status report and requested an extension of the stay to allow continued focus on settlement negotiations.
- 6) On December 16, 2014, the Board extended the stay of the proceeding until March 3, 2015, and directed the Region, in consultation with GE, to report on the status of settlement negotiations by February 13, 2015.
- 7) On February 13, 2015, the parties jointly filed the required Status Report and moved that the Board continue the stay of the permit appeal proceeding so that the parties could continue to pursue promising settlement negotiations.
- 8) On February 20, 2015, the Board issued its Second Order Extending Stay of Proceedings in which it both extended the stay of proceedings until May 4, 2015, and

ordered the parties to report on the status of settlement negotiations by April 15, 2015.

### **STATUS OF SETTLEMENT NEGOTIATIONS**

Since the Board extended the stay of these proceedings on February 20, 2015, Region 1 and GE, together with the Massachusetts Department of Environmental Protection (“MassDEP”) and Lynnway Associates, LLC (Lynnway),<sup>1</sup> have continued efforts to negotiate full resolution of this permit appeal without further litigation. More specifically, Region 1 and MassDEP have continued settlement negotiations with GE, while Lynnway has been brought into the discussions with respect to particular issues that involve its property and activities.

Settlement negotiations have made substantial progress since the parties’ previous status report. The parties can now report that they have agreed on how to settle nearly all of the many issues raised in this permit appeal. For some issues, the permit will remain as is. For other issues, as discussed below, the agencies will make (or propose) certain permit modifications. The sole remaining unresolved issues are the permit requirements pertaining to Outfalls 028, 030 and 031. Resolution of these issues has proven complicated and also involves Lynnway. That said, EPA, MassDEP, GE and Lynnway are currently in discussions about options for resolving these issues and EPA and GE believe that we are nearing a resolution.

The parties’ current plan for settlement is outlined below.

1. First, one subset of issues raised in this permit appeal will be resolved by Region 1 and MassDEP issuing a set of “minor” permit modifications pursuant to 40 C.F.R. §

---

<sup>1</sup> As reported in the Status Report of February 13, 2015, Lynnway purchased part of the GE property after Region 1 issued GE the NPDES permit that is at issue in this appeal.

122.63. These minor modifications have been agreed upon by GE, Region 1 and MassDEP, and they will make certain changes to the text of the (currently stayed) 2014 Final Permit. Once issued, GE will withdraw its appeal as to the corresponding terms of the 2014 Final Permit.

2. Second, the parties plan to resolve a second subset of the issues raised in this appeal by Region 1 and MassDEP making a set of (non-minor) permit modifications to the 2014 Final Permit pursuant to 40 C.F.R. § 122.62. The regulatory agencies' agreement to make these modifications is necessarily preliminary or tentative in nature, however, because they must publish the proposed modifications for public review and comment and then consider any public comments before they can finalize the proposed modifications. Region 1 and MassDEP expect to hold a 30-day public comment period on the proposed, non-minor permit modifications. *See* 40 C.F.R. § 124.10(b) (minimum public comment period of 30 days). In accordance with 40 C.F.R. § 122.62 (introductory paragraph), only the permit conditions proposed for modification will be reopened for comment. GE agrees that it will not submit adverse comments on the proposed, agreed-upon permit modifications, but the parties acknowledge that third parties could submit adverse comments for the agencies to consider.

3. If Region 1 decides *not* to finalize the permit modifications as agreed upon – either by altering terms of the modifications or by deciding to retain existing provisions of the 2014 Final Permit – then GE has the option of appealing, either the altered terms of the modifications or the retained terms of the 2014 Final Permit, as appropriate.

4. If Region 1 does issue the final permit modifications as agreed upon with GE, then GE will withdraw its appeal of the corresponding provisions of the 2014 Final

Permit. If a third party appeals the final modifications, however, then not only will Region 1 respond to the appeal, *see* 40 C.F.R. § 124.19(b)(2), but GE also has the option of responding to the appeal in defense of the modifications. *See* 40 C.F.R. §§ 124.19(b)(3).

5. To the extent that the non-minor modifications are *not* challenged by a third party, then those modifications could go into effect, along with the rest of the 2014 Final Permit (as earlier modified by the minor modifications). If a third party does appeal one or more of the non-minor modifications, however, then the challenged modifications would be stayed along with any other permit provisions that are not yet in effect and are inseverable from the contested, stayed modifications. *See* 40 C.F.R. §§ 124.16(a) and 124.60(b). For any such stayed permit provisions, the corresponding permit provisions from the currently effective 1993 permit would remain effective.

As stated above, the sole issues raised in this permit appeal for which the parties have not yet finalized a plan for resolution pertain to the permit requirements for Outfalls 028, 030 and 031. Resolution of these issues has proven difficult, in part, because these outfalls are on land that Lynnway purchased from GE after EPA and MassDEP issued the 2014 Final Permit. That said, EPA, MassDEP, GE and Lynnway are currently involved in discussions and information gathering pertaining to possible solutions for how to regulate these outfalls going forward and how to transition to that state of affairs. In particular, the parties are discussing specific additional modifications that could be made to the 2014 Final Permit to resolve these issues for the purposes of the GE's permit and the current permit appeal. The agencies would then also need to undertake certain additional permitting activities with regard to Lynnway outside of GE's permit and this

permit appeal proceeding. The parties are hopeful of resolving this set of issues in the immediate future.

In order to provide the parties additional time to try to complete these complicated negotiations and then carry out the steps (described above) that have been agreed upon involving the issuance of various permit modifications, Region 1 and GE jointly move that the Board extend the current stay until July 6, 2015. (This works out to an extension of 63 days; 60 days plus 3 additional days so that the stay would expire on a business day.) Conversely, the parties believe that lifting the stay, which would require the Region to focus its effort on responding to the petition, would interfere with the parties' ability to resolve these issues and carry out the settlement steps agreed to thus far.

While the issues involving Outfalls 028, 030 and 031, have proven more difficult to resolve than originally anticipated, the parties believe resolution is likely and close at hand. Furthermore, given that the parties have agreed on how to resolve the large number of other issues raised in this appeal, we remain optimistic that a full settlement of this permit appeal can be achieved and that the expenditure of the Board's adjudicative resources and the parties' litigation resources can be avoided.

### **CONCLUSION**

For the reasons set forth above, and in the interest of promoting judicial economy

and conserving public and private resources, the parties respectfully request that the Board order:

- (1) a continued stay of these proceedings until July 6, 2015; and
- (2) the parties to jointly or independently file a settlement negotiations status report(s) with the Board by June 23, 2015.


Respectfully submitted,

U.S. EPA – Region 1

General Electric Aviation



Mark A. Stein  
Senior Assistant Regional Counsel  
5 Post Office Square, Suite 100  
Mailcode: ORA18-1  
Boston, MA 02109-3912  
Tel: (617) 918-1077  
Fax: (617) 918-0077  
E-mail: stein.mark@epa.gov



Brooks M. Smith, Esq.  
Troutman Sanders LLP  
1001 Haxall Point  
Richmond, VA 23219  
Tel: (804) 697-1414  
401 9th Street, NW  
Washington, DC 20004  
(202) 274-2991  
brooks.smith@troutmansanders.com

Dated: April 14, 2015



## CERTIFICATE OF SERVICE

I, Mark A. Stein, hereby certify that on April 14, 2015, a copy of EPA Region 1 and General Electric Aviation's "Third Joint Settlement Negotiations Status Report and Motion to Continue the Stay of Permit Appeal Proceeding," in the matter of General Electric Aviation (NPDES Permit No. 0003905), NPDES Appeal No. 14-03, was served on the following persons in the manner indicated:

By Electronic Filing:

Ms. Eurika Durr  
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
U.S. EPA East Building, Room 3334  
Washington, DC 20004

By Electronic Transmission (as agreed upon):

Brooks M. Smith  
Troutman Sanders LLP  
1001 Haxall Point  
Richmond, VA 23219  
Tel: (804) 697-1414  
401 9th Street, NW  
Washington, DC 20004  
(202) 274-2991  
brooks.smith@troutmansanders.com

Dated: April 14, 2015

Mark A. Stein /s/  
Mark A. Stein  
Senior Assistant Regional Counsel  
US Environmental Protection Agency  
Office of Regional Counsel, Region 1  
5 Post Office Square - Suite 100  
Mail Code: ORA 18-1  
Boston, MA 02109-3912  
Tel: (617) 918-1077  
Fax: (617) 918-0077  
Email: stein.mark@epa.gov