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To:

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Office of the Regional Solicitor, Department of Interior

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From: Ronald Fein, Assistant Regional Counsel**Date:** June 10, 2009**Number of pages including cover:** 10**Return Fax:** 617-918-0040**Message:**

In re Town of Wayland Wastewater Management District Commission
NPDES Appeal Nos. 08-26, 08-27
Second Status Report and Motion to Extend Stay of Proceedings

RECEIVED
U.S. E.P.A.**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I****ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023**

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ENVIR. APPEALS BOARD

VIA FAX AND 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 Nos. 08-26, 08-27
NPDES Permit No. MA0039853
Town of Wayland Wastewater Management District Commission

June 10, 2009

Dear Ms. Durr,

Enclosed please find the original of the Region's Second Status Report and Motion to Extend Stay of Proceedings in the above-captioned case, with an attached certificate of service. The motion and the certificate of service have also been mailed to the Board and to counsel of record today. In lieu of five additional paper copies for the Board, an electronic copy has been posted to the CDX system.

Sincerely,

A handwritten signature in black ink, appearing to read "R. 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: Adam P. Kahn, Esq.
Robin Lepore, Esq.
Deirdre C. Menoyo, Esq.

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

JUN 10 2009 AM 11:02
ENVIR. APPEALS BOARD

In re: Town of Wayland,)	
Wastewater Management District Commission)	NPDES Appeal Nos.
NPDES Permit No. MA0039853)	08-26, 08-27

SECOND STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDINGS

Respondent Region 1 of the U.S. Environmental Protection Agency ("Region"), with the assent of the Town of Wayland Wastewater Management District Commission ("Town"), Thomas Arnold (the Petitioner in NPDES Appeal No. 08-26), and the U.S. Department of the Interior (the Petitioner in NPDES Appeal No. 08-27), respectfully requests that the Environmental Appeals Board ("Board") extend the stay of proceedings as indicated below to 1) allow for the formalization of a settlement agreement reached between the Department of the Interior, the Region, and the Town on June 8, 2009, 2) allow for the conclusion of settlement negotiations between Petitioner Arnold and the other parties, and 3) allow the Region to modify the appealed NPDES permit based on the final settlement agreement.

BACKGROUND

The Region reissued NPDES Permit No. MA0039853 ("Permit") to the Town of Wayland Wastewater Management District Commission on September 30, 2008. In November 2008, Thomas Arnold ("Arnold") filed initial and supplemental Petitions for Review contesting certain conditions of the Permit (Appeal No. 08-26). The U.S.

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Department of the Interior ("DOI") filed a Petition for Review dated November 14, 2008, also contesting certain conditions of the Permit (Appeal No. 08-27).

On December 10, 2008, the Region and both Petitioners filed a joint motion requesting that both proceedings be stayed so that the parties could explore resolution through settlement, that the two proceedings be consolidated, and that certain supplemental materials be allowed before the Board. On December 24, 2008, the Board stayed both proceedings until April 8, 2009, but reserved decision on consolidation and the other requested relief. *See In re Town of Wayland Wastewater Dist. Mgmt. Comm'n*, NPDES Appeal Nos. 08-26, 08-27 (EAB, Dec. 24, 2008) (Order Granting Joint Motion to Stay the Petition). On February 6, 2009, the Board granted the Town's motion to intervene, file a response to the petitions, and participate as a party in these appeals. *See In re Town of Wayland Wastewater Dist. Mgmt. Comm'n*, NPDES Appeal Nos. 08-26, 08-27 (EAB, Feb. 6, 2009) (Order Granting Motion to Intervene). On April 7, 2009, the Region, with the assent of Petitioners Arnold and DOI, filed a Status Report and Motion to Extend Stay of Proceedings until June 10, 2009. On May 6, 2009, the Board convened a teleconference to assess the status of the settlement negotiations. Also on May 6, 2009, the Board issued an order extending the stay of proceedings until June 10, 2009 and requiring a status report from the parties to be filed by that date. *See In re Town of Wayland Wastewater Dist. Mgmt. Comm'n*, NPDES Appeal Nos. 08-26, 08-27 (EAB, May 6, 2009) (Order Granting Motion to Extend Stay of Proceedings).

STATUS REPORT

All four parties—the Town, the Region, DOI and Arnold—have engaged in settlement discussions since the May 6, 2009 teleconference. Mr. Douglas A. Thompson,

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a Senior Mediator from the Keystone Center, was engaged through the Region's Alternative Dispute Resolution program to assist the parties. The discussions since May 6, 2009 have included consultations with Mr. Thompson, further exchange of information among the parties pertaining to the design of the wastewater treatment plant and its outfall, phosphorus discharge limits, monitoring proposals, and further refinement of settlement positions. These discussions concluded with an in-person meeting on June 8, 2009; moderated by Mr. Thompson and attended by the Region, the Massachusetts Department of Environmental Protection ("MassDEP"), the Town, and counsel for Petitioners Arnold and DOI.

NPDES Appeal No. 08-27, Petitioner U.S. Department of the Interior

At the June 8, 2009 meeting, the Region, the Town and DOI reached an agreement that, once formalized, will resolve the DOI appeal. This agreement involves several elements, including a modification to the Permit's phosphorus effluent limit, an agreement regarding the design of the outfall to the Sudbury River, a commitment by the Town to reduce phosphorus use on Town lands, and an in-stream sampling protocol (hereinafter "Agreement in Concept").

As between DOI, the Region and the Town, these substantive issues would be resolved by implementation of the Agreement in Concept, but two procedural steps remain. First, these parties intend to formalize the Agreement in Concept in a final settlement agreement (hereinafter "Three Party Agreement"). The parties expect that a Three Party Agreement can be completed by July 10, 2009. Second, the Region will submit for public comment a draft Permit modification consistent with the Agreement in Concept and the Three Party Agreement. The Region requires sufficient time to prepare

In re Town of Wayland Wastewater Management District Commission
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the draft Permit modification and accompanying statement of basis, to conduct appropriate notice and comment procedures as required by 40 C.F.R. part 124, and to review any comments received. The Region expects that this work can be completed within 120 days of June 10, 2009, or by October 8, 2009.

NPDES Appeal No. 08-26, Petitioner Thomas Arnold

Petitioner Thomas Arnold did not sign the Agreement in Concept on June 8, 2009. However, his counsel indicated he will join the agreement if all of the parties consent to some variation in the sampling protocol described in the Agreement in Concept.

The parties have agreed to share information and evaluate sampling options during the 30 days following June 8, 2009. If an agreement is reached on a revised sampling protocol by July 10, 2009, the parties will complete a final settlement agreement, based on the Agreement in Concept, that includes Petitioner Arnold (hereinafter "Four Party Agreement"). If an agreement is not reached regarding the sampling protocol by July 10, 2009, the Region, the Town and DOI will proceed as described above with respect to NPDES Appeal No. 08-27.

REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF

NPDES Appeal No. 08-27, Petitioner U.S. Department of the Interior

The Region, with the assent of the Town and Petitioner DOI, respectfully requests that the Board extend the stay of the proceedings for Appeal No. 08-27 by 120 days to allow the Region, DOI and the Town to formalize the Agreement in Concept signed June 8, 2009 in a final Three Party Agreement and to allow the Region to prepare and submit for public notice a draft permit modification based on that agreement.

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The parties propose to submit a status report to the Board no later than July 10, 2009, advising whether the Three Party Agreement has in fact been executed.

The Region will proceed with issuing the draft Permit modification and will conduct appropriate notice and comment procedures following the execution of the Three Party Agreement.

DOI anticipates promptly submitting a notice dismissing NPDES Appeal No. 08-27 to the Board upon finalization of the permit modification, assuming that the final permit modification is substantially similar to the draft permit modification.

Granting the stay would allow the Region, the Town, and DOI to memorialize their agreement. The stay would avoid further litigation and conserve administrative and judicial resources. An extension of the stay for 120 days is reasonable and necessary to allow the Region to prepare a draft Permit modification, conduct appropriate notice and comment procedures, and to review comments received. The Region may request a further extension of the stay if additional time is required to respond to comments and issue a final permit modification.

NPDES Appeal No. 08-26, Petitioner Thomas Arnold

The Region, with the assent of the Town, Petitioners Arnold and Petitioner DOI, respectfully requests that the Board extend the stay of the proceedings for Appeal No. 08-26 until July 10, 2009 to allow the parties to determine if a settlement can be reached acceptable to all parties.

The parties propose to submit a status report to the Board no later than July 10, 2009, advising the Board as to whether all of the parties have agreed to some variation of the sampling program described in the Agreement in Concept. If all parties reach such an

In re Town of Wayland Wastewater Management District Commission
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agreement regarding sampling, the parties will conclude a Four Party Agreement that includes Petitioner Arnold. If a Four Party Agreement is reached, the parties anticipate requesting an additional stay of NPDES Appeal No. 08-26, coterminous with the end of the 120 day stay requested for NPDES Appeal No. 08-27. The Region would then proceed with submitting for public comment the draft Permit modification that reflects the Four Party Agreement.

An extension of the stay until July 10, 2009 is reasonable and necessary to allow the parties to exchange information regarding sampling options. The parties believe that it is possible to agree on a protocol that is acceptable to all parties, but this will require obtaining and evaluating, among other things, monitoring proposals, technical reports from past monitoring efforts, quality control and quality assurance standards, and cost information. If a stay is not granted, the Region and the Board will be forced to divert their time and effort to legal proceedings, when there is a substantial possibility that the issues raised in Petitioner Arnold's appeal can be resolved through settlement.

If a Four Party Agreement is not reached by July 10, 2009, the Region, the Town and DOI will conclude a Three Party Agreement as described above for Appeal No. 08-27, and Mr. Arnold and any other parties that so desire will request a briefing schedule from the Board with respect to NPDES Appeal No. 08-26.

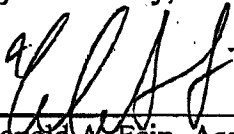
In re Town of Wayland Wastewater Management District Commission
NPDES Appeal Nos. 08-26, 08-27

For the reasons stated above, the Region, with the assent of the Town and DOI, requests that the Board grant this motion to extend the stay for 120 days with respect to NPDES Appeal No. 08-27. With the assent of the Town and Petitioners Arnold and DOI, the Region requests that the Board extend the stay until July 10, 2009 with respect to NPDES Appeal No. 08-26.

Respectfully submitted,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1

By its attorney,



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
Date: June 10, 2009

In re Town of Wayland Wastewater Management District Commission
NPDES Appeal Nos. 08-26, 08-27

CERTIFICATE OF SERVICE

I, Sally Burt, hereby certify that copies of the foregoing Second Status Report and Motion to Extend Stay of Proceedings were sent on the 10th day of June 2009 to the following persons in the manner described below:

Original by first class mail
Copy by fax
Copy posted to CDX electronic system

Eurika Durr, Clerk of the Board
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Signed: June 10, 2009

Sally Burt