

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

In re: City of Fitchburg)	
Wastewater Treatment Facilities Commission)	
)	NPDES Appeal No. 10-14
NPDES Permit No. MA 0100986)	

**STATUS REPORT AND
MOTION TO EXTEND STAY**

Region 1 (“Region”) of the United States Environmental Protection Agency (the Respondent), with the assent of the City of Fitchburg (Massachusetts) Wastewater Treatment Facilities Commission (the permittee and Petitioner), respectfully requests that the Environmental Appeals Board (“Board”) stay the proceedings in the above-captioned matter for an additional ninety days to July 13, 2011, so that the parties may continue settlement negotiations that are proceeding constructively and which may lead to a resolution of this appeal without the need for litigation before the Board.

BACKGROUND

On July 22, 2010, the Region issued a final National Pollutant Discharge Elimination System (“NPDES”) permit to the City of Fitchburg Wastewater Treatment Facilities Commission (“City”) for the Fitchburg East Wastewater Treatment Facility and certain combined sewer overflows, NPDES Permit No. MA0100986 (“Permit”). On August 26, 2010, the City filed a Petition for Review of the Permit. On September 23, 2010, the Board granted the Region’s motion to stay the proceedings until January 14, 2011 to allow the parties to undertake settlement negotiations. On January 4, 2011, the

Region moved for an extension of the stay to April 14, 2011. On January 7, 2011, the Board issued an order that (1) extended the stay of proceedings to April 14, 2011, and (2) required a status report no later than April 7, 2011, advising the Board as to whether the stay should be extended, whether a revised scheduling order should be entered, or whether some other Board action is appropriate

STATUS REPORT

Over the past three months, the City and the Region have engaged in frank discussions regarding a potential resolution of this appeal through a compliance schedule. Toward that end, the City has recently presented the Region with a settlement proposal to upgrade the permitted facility in order to meet interim limits that are more stringent than its current permit limits, and, later, more substantial upgrades that will enable the facility to meet the contested permit limits. The Region is now reviewing that proposal. While many issues remain to be resolved, the Region believes that negotiations are proceeding constructively, and that further negotiations are reasonably likely to result in a mutually acceptable compliance schedule.

REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF

The Region, with the assent of the City, requests that the Board extend the stay of proceedings by ninety days to July 13, 2011. The Region proposes to submit a status report no later than July 6, 2011, advising whether the Board should further extend the stay, establish a revised schedule for the litigation, or take other appropriate action.

An extension of this length is reasonable and necessary given (1) the need for both the City and the Region to explore the engineering and cost aspects of the City's proposed compliance schedule, and (2) the need to coordinate the facility improvements

undertaken to comply with the contested permit limits with other significant, integrally related work that the City will likely need to undertake over the next five years.

If a stay is not granted, the parties will be forced to divert their time and effort to the proceedings before this Board, when there is a reasonable possibility that the issues raised in the Petition may be resolved through settlement discussions. Accordingly, in an effort to conserve administrative and judicial resources, and to encourage efficiency and promote judicial economy, the Region, with the assent of the City, requests that the Board grant this motion and stay all proceedings in this matter until July 13, 2011.

The Region's undersigned counsel has discussed this Status Report and Motion to Extend Stay with the City's counsel and represents that the City assents to the motion.

Respectfully submitted,

Ronald A. Fein

Ronald A. Fein, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mailcode ORA18-1)
Boston, MA 02109-3912
617-918-1040
Fax: 617-918-0040
Date: April 7, 2011

CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that copies of the foregoing Status Report and Motion to Extend Stay were sent on the 7th day of April 2011 to the following persons in the manner described below:

Electronic posting to CDX system

Eurika Durr, Clerk of the Board
Environmental Appeals Board

Copy by e-mail

David E. Evans, Esq.
McGuireWoods LLP

Signed: April 7, 2011

Ronald A. Fein