

In re Lee Wastewater Treatment Facility
NPDES Appeal No. 08-22

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To: Eurika Durr, Clerk of the Board
Fax: 202-233-0121

Jeremia A. Pollard, Esq.
Fax: 413-243-4919

From: Ronald Fein, Assistant Regional Counsel *RF*

Date: June 9, 2009

Number of pages including cover: 6

Return Fax: 617-918-0040

Message:

NPDES Appeal No. 08-22
NPDES Permit No. MA0100153
Lee Wastewater Treatment Facility (Lee, Massachusetts)
Status Report and Joint Motion to Extend Stay of Proceedings



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

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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 No. 08-22
NPDES Permit No. MA0100153
Lee Wastewater Treatment Facility (Lee, Massachusetts)

June 9, 2009

Dear Ms. Durr,

Enclosed please find the original of the parties' Status Report and Joint 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,

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: Jeremia A. Pollard, Esq.

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

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ENVIR. APPEALS BOARD

In re: Lee Wastewater Treatment Facility
Lee, Massachusetts
NPDES Permit No. MA0100153

NPDES Appeal No. 08-22

**STATUS REPORT AND
JOINT MOTION TO EXTEND STAY OF PROCEEDINGS**

Region 1 ("Region") of the United States Environmental Protection Agency (the Respondent) and the Town of Lee, Massachusetts (the permittee and Petitioner) submit this status report and respectfully request that the Environmental Appeals Board ("Board") extend the stay of proceedings in the above-captioned matter until September 23, 2009, to enable the parties to continue settlement negotiations.

BACKGROUND

The Region reissued NPDES Permit No. MA0100153 ("Permit") to Petitioner on September 23, 2008. On October 27, 2008, Petitioner filed a petition for review with the Board contesting certain conditions of the Permit. By letter dated November 5, 2008, the Board directed the Region to prepare a response that addresses Petitioner's contentions and whether Petitioner has satisfied the requirements for obtaining review.

On November 26, 2008, the parties filed a Joint Motion to Stay Proceedings so that the parties could explore the possibility of settlement. On December 10, 2008, the Board issued an order staying the due date for the Region's response to the Petition until April 22, 2009. See *In re Lee Wastewater Treatment Facility*, NPDES Appeal No. 08-22 (EAB,

In re Lee Wastewater Treatment Facility
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Dec. 10, 2008) (Order Granting Stay). On March 24, 2009, the parties filed a Status Report and Joint Motion to Extend Stay of Proceedings, reporting the progress in settlement discussions and requesting a further extension of the stay to July 22, 2009. On March 31, 2009, the Board granted the parties' request and extended the stay of proceedings to July 22, 2009, and ordering that any motion for a further extension "should be made in sufficient time to afford the Region an opportunity to prepare and file its response before the July 22, 2009 due date, in the event that the Board denies a further extension of the stay." See *In re Lee Wastewater Treatment Facility*, NPDES Appeal No. 08-22 (EAB, Mar. 31, 2009) (Order Granting Second Motion for a Stay).

STATUS REPORT

The parties have discussed a compliance schedule, and believe that all the issues presented in the petition for review can be resolved through an agreed-upon administrative compliance order. On May 20, 2009, the Region transmitted to Petitioner a draft administrative compliance order ("Draft Order") for Petitioner's review and comment. At present, Petitioner—which is a town organized under Massachusetts law and must make certain decisions, including whether to agree to a proposed administrative enforcement action, through a vote of its Board of Selectmen—is still reviewing the Draft Order.

REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF

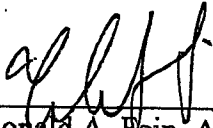
The parties request that the Board further stay the proceedings by approximately two months, and extend the due date for the Region's response to the petition to September 23, 2009. During this time, the parties expect to complete negotiations on the terms of an administrative compliance order. An extension of this length is reasonable and necessary to negotiate the final terms of an administrative compliance order.

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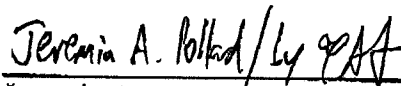
An agreed-upon administrative compliance order would resolve all issues presented in the petition for review, and, upon concluding such an agreement, Petitioner would voluntarily withdraw its petition. Therefore, both parties believe that they can settle this matter without the need for litigation before the Board.

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 substantial likelihood that all of the issues raised in the petition for review may be resolved through settlement. Accordingly, in an effort to conserve administrative and judicial resources, and to encourage efficiency and promote judicial economy, the parties jointly request that the Board grant this motion.

Respectfully submitted,



Ronald A. Fein, Assistant Regional Counsel
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617-918-1040
Fax: 617-918-0040
Date: June 9, 2009



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Fax: 413-243-4919

Date: June 9, 2009

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CERTIFICATE OF SERVICE

I, Ronald A. Fern, hereby certify that copies of the foregoing Status Report and Joint Motion to Extend Stay of Proceedings were sent on the 9th 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
Environmental Appeals Board (MC 1103B)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

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Signed: June 9, 2009

