

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

In re:)	
)	
TOWN OF CONCORD, DEPARTMENT)	
OF PUBLIC WORKS)	NPDES APPEAL NO. 13-08
)	
NPDES Permit No. MA0100668)	
)	

JOINT MOTION TO POSTPONE ORAL AGRUMENT

Region 1 of the United States Environmental Protection Agency (“Region”) and the Town of Concord, Massachusetts (“Town”), respectfully request that the Environmental Appeals Board (“Board”) postpone oral argument in the above matter currently scheduled for March 26, 2014 for a period of 30 days in order to allow the parties to complete settlement negotiations.

Background

On September 9, 2013, the Town filed a petition for review with the Board challenging a National Pollutant Discharge Elimination System (“NPDES”) permit the Region issued to the Town. The Town simultaneously commenced an administrative appeal of a Surface Water Discharge Permit (“SWDP”) issued by the Massachusetts Department of Environmental Protection (“MassDEP”) for the same discharge on August 2, 2013 pursuant to M.G.L. c. 21, §§ 26-53 and 314 CMR 3.00.¹ On October 31, 2013, the Region filed its Response to the Petition for Review and a Certified Index to the Administrative Record.

On November 15, 2013, the Town submitted its Reply to the Region’s Response to Petition for Review. On November 21, 2013, the Region filed a Notice of Uncontested and Severable Conditions in connection with NPDES Appeal No. 13-08.

¹ On October 2, 2013, MassDEP’s Office of Appeals and Dispute Resolution stayed the Town’s appeal of the SWDP pending resolution of this appeal.

The Region filed a motion requesting it be allowed to file a sur-reply which the Town opposed. By Order dated January 6, 2014, the Board denied the Region's motion and stated it determined that oral argument would assist the Board in its deliberations and requested the parties to participate in oral argument on Wednesday, March 26, 2014. The January 6, 2014 Order further required the parties to notify the Clerk of the Board in writing by March 5, 2014 of the name of counsel who will argue and if argument would be conducted through use of video conferencing equipment.

Grounds for Request to Postpone Oral Argument

In January, 2014, the Town, the Region and MassDEP made arrangements to meet and discuss potential settlement of issues raised by the Town in its Petition for Review. On January 29, 2014, the Town, the Region and MassDEP met at the Region's office in Boston, discussed potential settlement scenarios and agreed that by February 28, 2014, the Town would submit a settlement proposal in writing to the Region and MassDEP.

On February 27, 2014, the Town submitted its written proposal to EPA and MassDEP. On March 4, 2014, the Town, the Region and MassDEP met at the Region's office to review and discuss the Town's proposal and made significant progress in reaching a potential resolution on key aspects of settlement. The parties, however, agreed that further time is needed to consider and review terms of a settlement proposal and to seek postponement of oral argument, scheduled for March 26, 2014, so as to allow the parties to devote their resources exclusively toward settlement.

A negotiated resolution between the parties would conserve administrative resources by avoiding unnecessary oral argument and a decision by the Board on issues that the parties seek to resolve by settlement. Absent postponement of oral argument, the parties (and the Board) would be forced to divert their time and effort to oral argument in these proceedings on topics that the

parties presently anticipate they can resolve. While recognizing that the Board has devoted resources in preparing this matter for oral argument and a decision, a settlement of this matter will result in a motion requesting the Board to dismiss this appeal.

Requested Relief

For the foregoing reasons, the parties jointly request that the Board postpone oral argument currently scheduled for March 26, 2014 for a period of 30 days and that the Board set a new date for oral argument after April 25, 2014. The parties anticipate that if they are successful in resolving this matter, a motion to dismiss will be filed before the new date for oral argument to be established by the Board. If the parties are not successful in resolving this matter, then the undersigned counsel will present argument and participate in oral argument through the use of video conferencing equipment via the Region's office in Boston on the newly scheduled date for oral argument.

Respectfully submitted,

THE TOWN OF CONCORD, DEPARTMENT
OF PUBLIC WORKS

/s/

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