



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 1 – New England**  
**5 Post Office Square, Suite 100**  
**Boston, MA 02109-3912**

**VIA ELECTRONIC FILING**

January 8, 2018

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 re Town of Fairhaven  
NPDES Permit No. MA0100765; NPDES Appeal No. 17-08

Dear Ms. Durr:

Please find the attached Second Joint Status Report and Motion to Continue the Stay, and accompanying Certificate of Service, in connection with NPDES Appeal No. 17-08.

Thank you for your assistance with this matter.

Sincerely,

/s/ Michael Curley  
Michael Curley  
US EPA – Region 1  
Office of Regional Counsel  
5 Post Office Square  
Mail Code: ORC 04-6  
Boston, MA 02109-3912  
Tel: (617) 918-1623  
Fax: (617) 918-0623  
Email: curley.michael@epa.gov

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

_____	)	
In the Matter of:	)	
	)	
Town of Fairhaven	)	NPDES Appeal No. 17-08
	)	
NPDES Permit No. MA0100765	)	
_____	)	

**SECOND JOINT STATUS REPORT AND MOTION TO CONTINUE THE STAY**

**I. Background**

On September 27, 2017, Region 1 of the United States Environmental Protection Agency (“Region”) issued National Pollutant Discharge Elimination System Permit No. MA0100765 (“NPDES Permit”) to the Town of Fairhaven, Massachusetts (“Fairhaven”), authorizing discharges of wastewater effluent from the Town’s Wastewater Pollution Control Facility to the Acushnet River. Fairhaven filed a Petition for Review (“Petition”) with the Environmental Appeals Board (“EAB” or “Board”) requesting review of certain conditions of the NPDES Permit. The Board granted the parties’ joint motion requesting a stay until January 12, 2018, to allow the parties to pursue settlement discussions and ordered the parties to file this second joint status report by January 8, 2018. *See* Order Granting Joint Motion for Stay of Proceedings (Nov. 13, 2017).

## **II. Status Report and Motion to Extend the Stay**

The parties continue to make progress on a potential settlement since the filing of the first joint status report. The Region reviewed Fairhaven's proposed revisions to the draft Administrative order on Consent ("Draft Order") and, on December 19, 2017, provided the Town with a revised Draft Order for review. In addition, on December 22, 2017, representatives from Fairhaven, the Region, and the Massachusetts Department of Environmental Protection convened by telephone to further discuss the terms of the Draft Order. Attorneys for the Town and the Region also convened by telephone on several additional occasions. As a result of these discussions, the parties have agreed on a significant portion of the details of the Draft Order, although some important provisions remain to be resolved. The parties believe that, with the benefit of more time, they should be able to come to agreement on those provisions and reach a settlement that avoids litigation before the Board. Consequently, the parties respectfully request that the Board continue the stay for an additional 60 days, with a briefing schedule on the merits of the appeal to be set upon the expiration of the stay. During the extended stay, the parties would, similar to the initial period of the stay, update the Board via two status reports describing the progress of negotiations and, in the case of the second report, advising the Board whether it would be appropriate to continue the stay to allow further settlement negotiations, to assign an EAB Settlement Judge pursuant to the Board's ADR program, to dismiss the Petition, or to allow the stay to expire and set a briefing schedule.

## **III. Conclusion**

For these reasons, and to conserve administrative and judicial resources, the parties respectfully request that the Board issue an order that: (1) continues the stay for an

additional 60 days, with two status reports due to the Board at regular intervals; and (2) delays setting a briefing schedule on the merits of the appeal until the stay expires.

Dated: January 8, 2018

Respectfully submitted,

U.S. EPA – Region 1

Town of Fairhaven

/s/ Michael Curley  
Michael Curley  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
5 Post Office Square, Suite 100  
Mailcode: ORC 04-6  
Boston, MA 02109-3912  
Tel: (617) 918-1623  
Fax: (617) 918-0623  
E-mail: [curley.michael@epa.gov](mailto:curley.michael@epa.gov)

/s/ Michael Curley for William E. Taylor  
William E. Taylor, Esq.  
Brian M. Rayback, Esq.  
Pierce Atwood LLP  
254 Commercial St.  
Portland, ME 04101  
Tel: (207) 791-1213  
Fax: (207) 791-1350  
E-mail: [wtaylor@pierceatwood.com](mailto:wtaylor@pierceatwood.com)

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Second Joint Status Report and Motion to Continue the Stay, in connection with *In re Town of Fairhaven*, NPDES Appeal No. 17-08, was sent to the following persons in the manner indicated:

By Electronic Filing:

Ms. Eureka 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 email:

Mr. William Taylor, Esq.  
Pierce Atwood LLP  
254 Commercial St.  
Portland, ME 04101  
E-mail: [wtaylor@pierceatwood.com](mailto:wtaylor@pierceatwood.com)

Dated: January 8, 2018

/s/ Michael Curley  
Michael Curley  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Office of Regional Counsel, Region I  
5 Post Office Square - Suite 100  
Mail Code: ORC 04-6  
Boston, MA 02109-3912  
Tel: (617) 918-1623  
Fax: (617) 918-0623  
E-mail: [curley.michael@epa.gov](mailto:curley.michael@epa.gov)