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& Dewey*  
ATTORNEYS

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October 21, 2013

**Via Electronic Filing**

Eurika Durr  
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1200 Pennsylvania Avenue, NW  
Mail Code 1103M  
Washington, DC 20460-0001

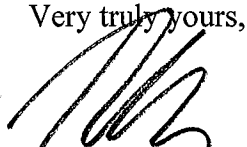
**Re: Town of Concord, Department of Public Works  
NPDES Permit No. MA0100668  
NPDES Appeal No. 13-08**

Dear Ms. Durr:

With respect to the above-referenced matter, please find the Opposition to Region 1's Motion for Extension of Time to Submit Response to Petition.

Thank you.

Very truly yours,



Robert D. Cox, Jr.

RDCjr/igm  
Enclosure

{Client Files/ENV/310852/0001/COR/02847296.DOCX;1}



**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	)	
	)	

**OPPOSITION TO REGION 1'S MOTION FOR EXTENSION OF TIME TO SUBMIT  
RESPONSE TO PETITION**

Town of Concord, Department of Public Works, ("Town") objects to Region 1 of the United States Environmental Protection Agency's ("Region") request for an extension; not to the extension itself, but rather to the 3 week period the Region now requests to provide its response to the above-referenced petition for review, for the following reasons.

1. The Region's response to the Town's petition was originally due 30 days from the date the Town timely petitioned the Environmental Appeals Board ("Board") to review the National Pollutant Discharge Elimination System ("NPDES") Permit issued by the Region to the Town: October 9, 2013. As of the date of the government shutdown on October 1, 2013, 9 days remained for the Region to submit its response. That response obviously was not provided because of the government shutdown and the Board provided a notice on its website that extension motions in advance of the potential shutdown were not needed and that the Board would consider motions for extensions "commensurate with the circumstances presented" when the shutdown ends.

2. The Region does not seek an extension of time commensurate with the 9 day period lost by the government shutdown, but rather for a period of 21 days.

3. The Board's Rules, amended March 26, 2013, set a date certain by which the Region's filing must be made: "within 30 days after the filing of a petition." 40 CFR 124.19(b)(2). By its motion, the Region asks the Board to modify its 30 day "date certain" rule<sup>1</sup> to allow the Region to have 43 days to prepare a response to the Town's petition for review. (21 days before the government shutdown (September 9, 2013 to October 1, 2013) and then 22 days after the shutdown was lifted (October 17, 2013 to November 8, 2013)).

4. While the Town, a governmental agency, is sympathetic to the Region's position and understands that the shutdown has "disrupted planning in the Region to a significant degree," the Town was afforded no opportunity to extend time to prepare and submit its petition. As a matter of fairness, the Region should not be granted a time period to prepare its response to the Town's petition greater than that afforded under the Board's Rules absent more compelling and specific circumstances.

5. In its motion, the Region references only non-specific circumstances in support of its request for a 21 day extension. The Region refers to "other existing commitments that have matured over the course of the shutdown," and the need to "triage new obligations that have accrued during [the period of the shutdown]." Further, the Region then says pre-existing vacation plans of certain unspecified Region and Headquarters staff may interfere with the ability of the Region to provide a response to the Town's petition. The Region notes it may file its response earlier, if feasible. If the Board is to grant an extension greater than the 30 day

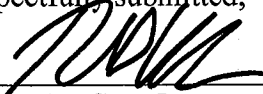
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<sup>1</sup> In explaining its March 26, 2013 change to Rule 124.19(b)(2), the Board said: "The rule also requires the permit issuer to submit a response to the petition, as well as a certified index of the administrative record and relevant portions of the record, **by a date certain**. This eliminates the need for the Board to notify the permit issuer and **facilitates an earlier response deadline**, making the process more efficient for the permit issuer and the Board." (emphasis supplied). 78 FR 5283 (Jan. 25, 2013).

period provided by Rule 124.19(b)(2),<sup>2</sup>more information should be demanded of the Region to justify such an extension.

For these reasons, the Town objects to the Region's request for an extension to the extent that the Region seeks a 21 day extension, and asks the Board to consider, consistent with the Board's posting on October 1, 2013, that it grant any extension only as "commensurate with the circumstances presented."

Respectfully submitted,



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Date: October 21, 2013

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<sup>2</sup> As of October 1, 2013, 9 days remained to the 30 day period for a response by the Region to the Town's Petition. An extension commensurate with the period of time lost due to the government shutdown would set a new date of October 26, 2013. (Date government reopened, October 17, 2013, plus 9 days is October 26, 2013. Because that date is a Saturday, the effective new due date would be Monday, October 28, 2013). The Town notes the recently filed "Motion of the Environmental Protection Agency Office of Air and Radiation for a Revised Due Date for Response to the Petition," dated October 17, 2013, In the Matter of Stericycle, Inc., Utah Title V Permit, No. 1100055002, EAB Appeal No. CAA 13-01. In that matter, OAR requests a revised due date of October 31, 2013 for OAR's response. The original due date was October 15, 2013, during the period of the government shutdown. While 15 days were lost to OAR to prepare its response due to the government shut down, OAR seeks only a 14 day extension.

## CERTIFICATE OF SERVICE


I certify that a copy of the foregoing Opposition to Region 1's Motion for Extension of Time to Submit Response to Petition in connection with In re Town of Concord, Department of Public Works, NPDES Appeal No. 13-08, was sent to the following persons in the manner indicated:

**By Electronic Filing:**

Ms. Eurika Durr  
Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
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Robert D. Cox, Jr.