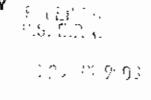


#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100 BOSTON, MASSACHUSETTS 02114-2023



December 27, 2005

### VIA EXPRESS MAIL

U.S. Environmental Protection Agency Ms. Eurika Durr, Clerk of the Board Environmental Appeals Board Colorado Building 1341 G Street, N.W., Suite 600 Washington, D.C. 20005

Re: Status Report, Notice of Withdrawal of Petition and Joint Motion to Dismiss Town of Belchertown, Massachusetts, Belchertown Water Reclamation Facility NPDES Appeal No. 05-10 NPDES Permit No. MA0102148

Dear Ms. Durr:

Please find an original and five (5) copies of a Status Report, Notice of Withdrawal of Petition and Joint Motion to Dismiss in connection with the above-referenced matter.

If you should have any questions, please do not hesitate to contact me at 617-918 1095.

Samir Bukhari Attorney Advisor

Office of Regional Counsel

US EPA-Region 1

Enclosures

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# BEFORE THE ENVIRONMENTAL APPEALS BOARD UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (1987) (

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In the Matter of:	)	
	)	
Town of Polokoutown Massaghusetts	)	
Fown of Belchertown, Massachusetts Belchertown Water Reclamation Facility	, )	NPDES Appeal No. 05-10
	)	
	)	

### STATUS REPORT, NOTICE OF WITHDRAWAL OF PETITION AND JOINT MOTION TO DISMISS

The New England Region of the Environmental Protection Agency ("EPA" or the "Region") and the Town of Belchertown, Massachusetts ("Town" or "Petitioner") (together, the "Parties") respectfully submit to the Environmental Appeals Board ("EAB" or "Board") this status report, notice of withdrawal and joint motion to dismiss the petition filed in connection with the above-captioned matter.

### BACKGROUND

On June 10, 2005, EPA reissued National Pollutant Discharge Elimination System Permit No. MA0102148 ("Permit") to the Petitioner, which authorized the discharge of treated wastewater effluent from the Belchertown Water Reclamation Facility to Lampson Brook in Massachusetts. On July 12, 2005, the Petitioner timely filed a petition for review ("Petition") with the Board contesting the Permit's (i) flow limit, (ii) mass loading limits (BOD<sub>5</sub>, TSS, and phosphorus), (iii) copper limit and (iv) Whole Effluent Toxicity limit. The Board directed the Region to submit a response by August 29, 2005 that addressed whether the Petitioner satisfied the requirements for obtaining review under 40 C.F.R. § 124.19(a).

On August 5, 2005, the Region and the Town filed a Joint Motion for Stay of the Proceedings. In the motion, the Parties reported that they had entered into settlement negotiations and, accordingly, requested a stay of the proceedings before the Board until September 30, 2005.

The Board granted the motion on August 9, 2005 and instructed the Parties to provide the Board with a report on the status of settlement negotiations and to suggest a future course of action by September 30, 2005.

On September 29, 2005, the Parties informed the Board that settlement discussions had led to an agreement by the Town to withdraw the Petition in its entirety if the Permit were modified (i) to measure compliance with the contested flow limit using a monthly average rather than a twelve month rolling average and (ii) to remove the contested mass loading limits, which were imposed by the Region as a result of the shift from the monthly to annual average.

Pursuant to 40 C.F.R. § 124.19(d), the Region notified the Board of its withdrawal of the flow and mass loading limits and its intention to issue a permit modification that reinstated a flow limit based on a monthly average. The Parties jointly motioned the Board to stay the proceedings to allow the permit modification process to conclude. On October 5, 2005, the Board issued an order granting the joint motion and staying the proceedings until January 15, 2006, by which time the Parties were to provide the Board with a status report.

## STATUS REPORT, NOTICE OF WITHDRAWAL OF PETITION AND GROUNDS FOR DISMISSAL

The Region issued a draft permit modification October 25, 2005. The modification was subject to public comment from October 29, 2005 to November 27, 2005. No comments or

requests for a public hearing were received. The final permit modification was issued on December 20, 2005.

The modified permit adequately addresses the issues raised in the Petition. Accordingly, the Petitioner hereby notifies the Board that it is withdrawing its Petition in its entirety as of the date hereof. The above-captioned matter is now moot.

### REQUESTED RELIEF

The Parties respectfully request the Board to dismiss the Petition in its entirety.

Respectfully submitted,

U.S. Environmental Protection Agency, New England Region

By its Attorney, Samir Bukhari Attorney Advisor U.S. Environmental Protection Agency One Congress Street, Suite 1100 (RAA) Boston, MA 02114 617-918-1095 Fax 617-918-0095

Dated: December 17, 2005

Town of Belchertown

By its Town Administrator, Gary Brougham One South Main Street, P.O. Box 670 Belchertown, MA 01007-0670 413-323-0403 Fax 413-323-0494

Dated: December 202005

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