

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

In the Matter of:)
CSX Transportation, Inc.)
_____)

NPDES Appeal No. 05-13

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**STATUS REPORT AND
MOTION FOR AN ADDITIONAL EXTENSION OF TIME**

Region 1 of the Environmental Protection Agency ("EPA" or the "Region"), Respondent in the above-referenced appeal, respectfully submits to the Environmental Appeals Board ("Board") this status report and motion for an additional extension of time. As discussed below, both EPA and CSX Transportation, Inc. ("CSXT"), Petitioner, expect the most significant issue raised on appeal to be resolved by a permit modification that EPA will soon propose for public comment. The remainder of the issues raised in CSXT's petition have been resolved. The basis for this motion for an additional extension of time is to allow the proposed permit modification to become final.

BACKGROUND

In its petition for review, CSXT challenged two permit requirements for outfall 001A: a revised flow limit of 130,000 gallons per day (gpd) and a new temperature monitoring requirement. CSXT also requested additional time to comply with four other permit requirements at Outfall 001A and Outfall 002A, citing the need to install new equipment to meet these new requirements. After preliminary settlement negotiations, EPA agreed to reconsider the flow limit of 130,000 gpd at Outfall 001A. EPA also agreed to eliminate the new temperature monitoring requirement for Outfall 001A, based on new information that CSXT would not use steam for floor cleaning purposes and, therefore, would not discharge heat at Outfall 001A.

Finally, EPA agreed to issue an Administrative Order establishing a reasonable schedule for CSXT to comply with the four permit requirements for which it had requested additional time. On September 21, 2005, the parties sought a stay of the proceedings to provide time for the Region to: (1) consider modifying the permit's flow limit for Outfall 001A, (2) withdraw the temperature monitoring requirement for Outfall 001A, and (3) issue an Administrative Order. CSXT agreed that these steps appeared likely to address the concerns raised in its petition. The Board granted the stay until December 8, 2005.

CURRENT STATUS

On December 1, 2005, EPA withdrew the flow limit and temperature monitoring requirement for Outfall 001A in CSXT's permit. See Attachment 1. Within the next week, the Region will issue for a 30-day comment period a draft permit modification that would establish a new flow limit of 225,000 gpd for Outfall 001A and require CSXT to monitor the temperature of the effluent at Outfall 001A *if and when* it uses steam or another process that would add heat to its waste water effluent for cleaning purposes. EPA believes the proposed increase in flow limit is appropriate because it will enable the facility to adequately treat its effluent during heavy storm water events. Importantly, the proposed increase in flow limit will not result in a relaxation of any effluent limits, a violation of state water quality standards, or an increase in overall pollutant loadings to the receiving waters. The proposed temperature monitoring requirement is appropriate because it will apply during any time that CSXT discharges heat at Outfall 001A.

Also on December 1, 2005, CSXT submitted a letter notifying EPA that it had temporarily ceased all discharges at Outfall 002A as of November 18, 2005, and that it would not resume any discharges at that outfall until it had installed the necessary equipment to meet all

permit requirements and notified EPA and the Massachusetts Department of Environmental Protection in advance of such discharge. *See Attachment 2.* According to counsel for CSXT, because CSXT has now installed the necessary monitoring equipment to meet the permit requirements at Outfall 001A and is not currently discharging from Outfall 002A, there is no need for an Administrative Order establishing a compliance schedule.

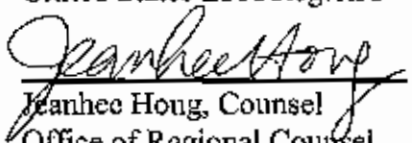
By letter dated December 1, 2005, EPA notified CSXT of the Region's intent to issue the requisite public notice for the proposed permit modification. *See Attachment 3.* EPA also stated that, in the absence of significant comments warranting a different flow limit at Outfall 001A, the Region would modify the permit upon CSXT's withdrawal of its August 10, 2005 petition.

MOTION FOR AN ADDITIONAL EXTENSION OF TIME

The proposed permit modification addresses the one issue raised in CSXT's appeal that remains unresolved (the flow limit at Outfall 001A). Therefore, EPA now respectfully requests an additional extension of time until February 10, 2006, to allow the permit modification to become final, upon which event CSXT will withdraw its appeal before the Board. Counsel for CSXT concurs in this motion.

Respectfully submitted,

United States EPA/Region I


Jeanhee Hong, Counsel
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US EPA Region 1 (RAA)
One Congress St. - Suite 1100
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Dated: December 6, 2005



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

Attachment 1

December 1, 2005

Thomas Anderson, Esq.
CSX Transportation, Inc.
500 Water Street, J-150
Jacksonville, FL 32202

RE: CSX Transportation, Inc., NPDES Permit No. MA 0025704
Appeal No: NPDES 05-13

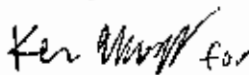
Dear Mr. Anderson,

In the interest of resolving the above-referenced appeal of NPDES Permit No. MA 0025704 ("Permit"), and pursuant to 40 CFR 124.19(d), EPA hereby withdraws the Permit's maximum daily flow limit of 130,000 gpd at Outfall 001A and the requirement to continuously monitor the effluent temperature at Outfall 001A.

All requirements of the Permit are in effect with the exception of the flow limit and temperature monitoring requirement discussed above. Until a new flow limit is established, CSX Transportation, Inc. ("CSXT") must comply with the flow limit of 144,000 gpd in the permit issued to its predecessor, Consolidated Rail Corporation, on September 30, 1987, as required by *In the Matter of Consolidated Rail Corporation*, Findings of Violation and Order for Compliance, docket no. 96-15, at section III.3.

If you have any questions, please contact Steve Calder at (617) 918-1744 or Jeanhee Hong at (617) 918-1787.

Sincerely,


Linda M. Murphy
Director, Office of Ecosystem Protection
EPA Region 1

cc: Wanda Rivera, Regional Hearing Clerk (RAA)
Ann Williams, EPA (RAA)
Steve Calder, EPA (CIP)
Paul Hogan, MA DEP



Carl A. Gerhardtstein, P.E.
Director Environmental Systems

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Jacksonville, FL 32202
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December 1, 2005

Stephen Calder
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One Congress Street
Suite 1100 (CMA)
Boston, MA 02114-2023

Jeanhee Hong
Office of Regional Counsel
United States EPA, Region 1
One Congress Street
Suite 1100
Boston, MA 02114-2023

Re: NPDES Permit No. MA0025704 - Allston, MA
CSX Transportation, Inc. (CSXT), Beacon Park Shop

Dear Mr. Calder and Ms. Hong:

I am in receipt of the draft Statement of Basis for proposed modification of the above referenced permit. Thank you for the opportunity to offer comments regarding this draft document. We only note that, on page 1, the Address of Facility should be changed to 170 Cambridge Street, Allston, MA 02134.

As we have recently discussed, CSXT has, as of November 18, 2005, temporarily ceased discharging through Outfall 002A. CSXT will not resume discharge from Outfall 002A unless and until it has installed necessary equipment to meet all permit requirements, and CSXT will notify the EPA and Massachusetts DEP before resuming discharge from Outfall 002A. Although it is unknown at this time when CSXT will resume discharge from Outfall 002A, it is not anticipated that the Outfall will be used before May 1, 2006. This date is subject to change, and, as noted above, CSXT will notify EPA and Massachusetts DEP of any intent to resume discharge from this outfall.

CSXT thanks you again for your help and cooperation in resolving this matter. CSXT is committed to maintaining the highest standards of environmental compliance and awareness; we appreciate your willingness to work with CSXT in achieving our shared goals. If you have any questions or comments, please do not hesitate to contact me at (904) 366-4303.

Sincerely,

Carl A. Gerhardtstein



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

Attachment 3

December 1, 2005

Thomas Anderson, Esq.
CSX Transportation, Inc.
500 Water Street, J-150
Jacksonville, FL 32202

RE: CSX Transportation, Inc., NPDES Permit No. MA 0025704
Appeal No: NPDES 05-13

Dear Mr. Anderson,

As we discussed, EPA has agreed to propose modifying NPDES Permit No. MA0025704 (the "Permit") to: (1) increase the maximum daily flow limit at Outfall 001A to 225,000 gpd, and (2) eliminate the requirement to continuously monitor temperature at Outfall 001A, except that such monitoring is required *if and when* the permittee uses steam or another process that adds heat to its waste water effluent for floor cleaning purposes. The proposed modifications are subject to public comment and state certification. By separate letter dated December 1, 2005, EPA notified you of its withdrawal of the Permit's maximum daily flow limit of 130,000 gpd at Outfall 001A and the requirement to continuously monitor the effluent temperature at Outfall 001A.

We are in receipt of Carl Gerhardstein's December 1, 2005 letter confirming that CSX Transportation, Inc. ("CSXT" or the "facility") has ceased all discharges from Outfall 002A and will not discharge any effluent from that outfall unless and until it has: (1) installed the necessary equipment to meet all requirements of the Permit, and (2) notified EPA and the State in advance of the date upon which it intends to resume the Outfall 002A discharge. The letter also confirmed CSXT's approval of EPA's Statement of Basis for the proposed permit modification, a copy of which is enclosed (with minor revisions).

In accordance with our agreement, EPA will now proceed to (1) motion the Environmental Appeals Board for an extension of time to enable EPA to modify the Permit, and (2) issue the requisite public notice for the proposed permit modification. After the public comment period has expired and the State has certified the modification, unless EPA receives significant comments warranting a different flow limit at Outfall 001A, the Agency will be in a position to modify the Permit upon CSXT's withdrawal of its August 10, 2005 petition for review. EPA will issue the modification upon receiving notice of CSXT's withdrawal of the petition.

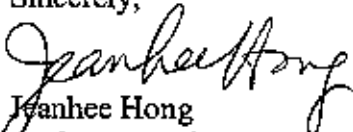
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Thank you for your continued assistance in this matter. If you have any questions, please call me at (617) 918-1787.

Sincerely,


Jeanhee Hong
Assistant Regional Counsel

Enclosure

cc: Wanda Rivera, Regional Hearing Clerk (RAA)
Ann Williams, EPA (RAA)
Steve Calder, EPA (CIP)
Paul Hogan, MA DEP