



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
FIVE POST OFFICE SQUARE – SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912

**VIA ELECTRONIC FILING**

Eurika Durr, Clerk of the Board  
Environmental Appeals Board (MC 1103B)  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

Re: NPDES Appeal No. 10-14  
NPDES Permit No. MA0100986  
City of Fitchburg (Massachusetts) Wastewater Treatment Facilities Commission

January 4, 2011

Dear Ms. Durr,

Enclosed please find the original of the Region's assented-to Status Report and Motion to Extend Stay in the above-captioned case, with an attached certificate of service. The motion and the certificate of service have been posted electronically to the CDX system, and a paper copy has been mailed to counsel of record today.

Sincerely,

*Ronald A. Fein*

Ronald A. Fein, Assistant Regional Counsel  
U.S. Environmental Protection Agency Region 1  
5 Post Office Square, Suite 100 (Mailcode ORA18-1)  
Boston, MA 02109-3912  
617-918-1040  
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cc: David E. Evans, Esq.

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

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In re: City of Fitchburg	)	
Wastewater Treatment Facilities Commission	)	
	)	NPDES Appeal No. 10-14
NPDES Permit No. MA 0100986	)	
	)	

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**STATUS REPORT AND  
MOTION TO EXTEND STAY**

Region 1 (“Region”) of the United States Environmental Protection Agency (the Respondent), with the assent of the City of Fitchburg (Massachusetts) Wastewater Treatment Facilities Commission (the permittee and Petitioner), respectfully requests that the Environmental Appeals Board (“Board”) stay the proceedings in the above-captioned matter for an additional ninety days to April 14, 2011, so that the parties may continue settlement negotiations that have begun constructively.

**BACKGROUND**

On July 22, 2010, the Region issued a final National Pollutant Discharge Elimination System (“NPDES”) permit to the City of Fitchburg Wastewater Treatment Facilities Commission (“City”) for the Fitchburg East Wastewater Treatment Facility and certain combined sewer overflows, NPDES Permit No. MA0100986 (“Permit”). On August 26, 2010, the City filed a Petition for Review of the Permit. On September 21, 2010, the Region, with the assent of the City, filed a motion to stay the proceedings to allow the parties to undertake settlement negotiations. On September 23, 2010, the Board issued an amended order staying the proceedings until January 14, 2011, and requiring a

status report no later than January 7, 2011, to advise the Board whether the stay should be extended, whether a revised scheduling order should be entered, or whether some other Board action is appropriate.

### **STATUS REPORT**

The parties have engaged in initial settlement discussions and believe that further such discussions will likely be productive. In December 2010, the Region and the City discussed potential actions that the City could take to comply with the contested permit limits, as well as an approximate timeframe for compliance. The City also informed the Region that in the coming weeks its consultants will engage in a more detailed study of the steps needed for compliance and more detailed timeframes. In early 2011, the City and the Region intend to engage in more detailed discussions regarding a potential resolution of this appeal through a compliance schedule.

### **REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF**

The Region, with the assent of the City, requests that the Board extend the stay of proceedings by ninety days to April 14, 2011. The Region proposes to submit a status report no later than April 7, 2011, advising whether the Board should further extend the stay, establish a revised schedule for the litigation, or take other appropriate action.

An extension of this length is reasonable and necessary given (1) the need to develop technical information to resolve the issues presented, and (2) the need to coordinate any facility improvements undertaken to comply with the contested permit limits with other significant, integrally related work that the City will likely need to undertake in the near future.

If a stay is not granted, the parties will be forced to divert their time and effort to the proceedings before this Board, when there is a reasonable possibility that the issues raised in the Petition may be resolved through settlement discussions. Accordingly, in an effort to conserve administrative and judicial resources, and to encourage efficiency and promote judicial economy, the Region, with the assent of the City, requests that the Board grant this motion and stay all proceedings in this matter until April 14, 2011.

The Region represents that its undersigned counsel has discussed this Motion to Stay Proceedings with the City's counsel and that the City assents to the motion.

Respectfully submitted,

*Ronald A. Fein*

Ronald A. Fein, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mailcode ORA18-1)  
Boston, MA 02109-3912  
617-918-1040  
Fax: 617-918-0040  
Date: January 4, 2011

CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that copies of the foregoing Status Report and Motion to Extend Stay were sent on the 4th day of January 2011 to the following persons in the manner described below:

Electronic posting to CDX system

Eurika Durr, Clerk of the Board  
Environmental Appeals Board

Copy by first class mail

David E. Evans, Esq.  
McGuireWoods LLP  
One James Center  
Richmond, VA 23219

Signed: January 4, 2011

*Ronald A. Fein*