



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

1/12/06

BY FAX

January 12, 2006

Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
Ariel Rios Building,
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: City of Newburyport Wastewater Treatment Facility
NPDES Appeal No. 04-05 and 04-06

Dear Ms. Durr:

Enclosed please find an original and five copies of a Status Report Responding to Order Lifting Stay on NPDES Appeal Nos. 04-05 and 04-06.

Sincerely,

A handwritten signature in black ink, appearing to read "Tonia Bandrowicz".

Tonia Bandrowicz
Senior Enforcement Counsel

cc: Barry P. Fogel, Esq.,
Maria R. Eigerman
David McFarlane
John A. Pike, Esq.

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

In the Matter of:)

City of Newburyport, Wastewater)
Treatment Facility)

Permit Number: MA0101427)
_____)

NPDES Appeal Nos. 04-05 and 04-06

STATUS REPORT RESPONDING TO ORDER LIFTING STAY

On May 7, 2004, the Region 1 Office of the U.S. Environmental Protection Agency (the "Region"), issued a Final Permit to the City of Newburyport (the "City") for renewal of its National Pollutant Discharge Elimination ("NPDES") Permit No. MA 0101427 (the "Permit"). On June 7 and 9, 2004, the Environmental Appeals Board (the "Board") received petitions for review of the Permit (NPDES Appeal Nos. 04-05 and 04-06) from the City and Island Futures Group ("IFG"), respectively.

By Joint Motion filed on July 6, 2004, the Region and the City sought a stay of the proceedings in Appeal No. 04-05 to pursue settlement. The Stay was extended on several occasions to allow the Region and the City to complete settlement discussions pending the Board's decision on the petition for review filed by IFG. The most recent *Order Extending Stay* was issued on November 28, 2005, extending the Stay until December 30, 2005.

On December 8, 2005, the Board issued an *Order Denying Review In Part and Remanding In Part* (the "Remand Order") in IFG's permit appeal. On December 8, 2005, the

Board also issued an *Order Lifting Stay* that lifted the stay in Appeal No. 04-05 filed by the City, directing the Region and the City to advise the Board by no later than January 13, 2006, as to whether they plan to finalize their settlement agreement and whether the City plans to withdraw its Petition for Review with the Board.

The Region submits this status report in response to the Board's *Order Lifting Stay*, with the assent of the City with respect to matters involving the City's appeal and the settlement agreement between the City and the Region. This status report also summarizes the proceedings that the Region proposes to follow in connection with the Remand Order.

As an initial matter, pursuant to 40 C.F.R. §§ 124.16(a)(2)(i) and (ii), the Region will be putting into effect those provisions of the Permit that were not the subject of either the City's or IFG's permit appeal. Specifically, the Region will be issuing a letter (the "Uncontested Provisions Letter") notifying the parties of the Region's determination that only the appealed provisions relating to flow, TRC, DO, Fecal Coliform, TKN and Nitrite/Nitrate limitations are stayed, and that all other conditions of the Permit that are uncontested and severable from these provisions are not stayed and will become fully effective and enforceable obligations of the Permit thirty (30) days from the date of notice of the Uncontested Provisions Letter.

The Remand Order requires the Region to: (1) either restore the DO limitation and monitoring requirement in the Permit or publicly notice the removal of these provisions from the final Permit and allow IFG and other interested parties the opportunity to submit comments; (2) publicly notice the Region's proposal to required DO monitoring 5 days per week if a modification along these lines is pursued; (3) remove the Permit's four-month schedule of compliance for fecal coliform limitations; and (4) provide a direct response to Mr.

McFarlane's comments relating to the Permit's TRC limitations or revise the Permit accordingly.

In order to address the Remand Order, the Region intends to issue for public comment a draft permit modification that will include the following: (1) withdrawal of the four-month schedule of compliance for the fecal coliform effluent limitations in the Permit; and (2) supplements the record and solicits public comment on the prior removal of a DO limitation in the Permit and the addition of a 5 day per week DO monitoring requirement.¹ In addition, the Statement of Basis accompanying the permit modification will provide a direct response to Mr. McFarlane's comments relating to the Permit's TRC limitations. It is the Region's intention to also include the direct response to Mr. McFarlane's comments relating to the Permit's TRC limitations at the time that it responds to comments it receives, if any, on the draft permit modification.

Upon completion of the permit modification process implementing the settlement between the City and the Region and the remand proceedings, and after resolution of any administrative appeal of the Region's determination regarding the permit modification, the Region intends to issue, pursuant to 40 C.F.R. § 124.19(f)(1), a final permit decision that will put into effect the other provisions contested by IFG for which the EAB denied review.

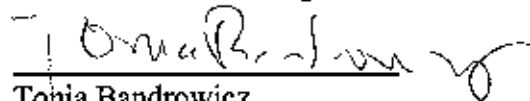
¹ In addition, as previously indicated in a March 3, 2005 letter to IFG, and as part of a settlement agreement between the City and Region, the Region will be withdrawing the following Permit provisions, as appropriate, and making the following changes in the proposed permit modification under Section 124.19(d): (1) correcting an error in the final Permit by removing the mass limits for total residual chlorine (TRC); (2) changing the testing method for fecal coliform bacteria from multiple tube fermentation to membrane filtration; (3) requiring that a bacteria limit of 400 cfu/100 ml not be exceeded at any time and that no more than 10% of samples exceed the limit of 260 cfu/100 ml as provided for in the relevant Massachusetts Surface Water Quality Standards; (4) reducing the frequency of flow meter calibration from monthly to quarterly with the possibility of going to semi-annually if no significant discrepancies are observed in the first year of calibration; and (5) modifying the monitoring requirements for TRC to better fit with the requirements for an immediate warning system with the Division of Marine Fisheries (DMF). As part of the permit modification, these provisions will also be open to public comment.

Any provisions that had been contested by the City and not addressed by the permit modification will become effective upon the City's withdrawal of its Petition for Review under the terms of the settlement agreement between the Region and the City, which will occur when the Region issues the final permit modification.

In light of the schedule and proceedings proposed above for the permit modification, the City and Region request a further extension of the Stay of the date by which the Region has to respond to the City of Newburyport's appeal. The City and Region request that this Stay be granted to extend until the final permit modification is issued by the Region, thus ensuring that the City will retain its standing to seek review of any terms within the final permit modification that differ from the terms agreed upon in the settlement agreement and presented by the Region for public comment in the draft permit modification.

Respectfully submitted,

United States EPA/Region I



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US EPA Region 1 (SEL)
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Fax: (617) 918-1809

Dated: January 2, 2006

In the Matter of:
City of Newburyport Wastewater Treatment Facility
NPDES Appeal No. 04-05

CERTIFICATE OF SERVICE

I, Tonia Bandrowicz, hereby certify that one original and five copies of the foregoing Status Report Responding to December 8, 2005 EAB Order Lifting Stay were mailed by First Class Mail on this 12th day of January, 2006 to the Environmental Appeals Board 1103B, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, and that a copy of the foregoing was sent by First Class Mail, postage prepaid, to the following person:

Barry P. Fogel, Esq.
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Maria R. Eigerman, President
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Dated: Jan 12th, 2006

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Eurika Durr, Clerk of the Board
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