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ENVIR. APPEALS BOARD

Date: September 26,  
2007

**U.S. Environmental Protection Agency  
Office of Regional Counsel  
One Congress Street, Suite 1100  
Boston, MA 02114-2023  
Phone: (617) 918-1148  
Fax: (617) 918-1029**

**PLEASE DELIVER TO:**

**Eurika Durr  
Clerk, EPA Environmental Appeals Board  
(202) 233-0121**

**From: Samir Bukhari  
Attorney, Office of Regional Counsel  
EPA, Region 1**

**Number of Pages to Follow: 6**

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**RE: Joint Status Report and Third Motion to Extend Stay of the Proceedings  
Town of North Attleborough Wastewater Treatment Facility  
NPDES Appeal Nos. 07-02 and 07-04  
NPDES Permit No. MA0101036**

**Original will follow via First Class Mail.**



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

September 26, 2007

**VIA FACSIMILE AND FIRST CLASS MAIL**

U.S. Environmental Protection Agency  
 Environmental Appeals Board (MC1103B)  
 Attn: Eurika Durr, Clerk of the Board  
 Ariel Rios Building  
 1200 Pennsylvania Avenue, NW  
 Washington, DC 20460-0001

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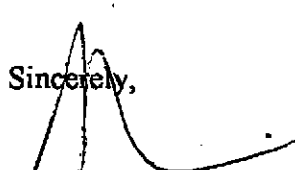
**Re: Joint Status Report and Third Motion to Extend Stay of the Proceedings**  
**Town of North Attleborough Wastewater Treatment Facility**  
**NPDES Appeal Nos. 07-02 and 07-04**  
**NPDES Permit No. MA0101036**

Dear Ms. Durr:

In connection with the above-referenced permit appeals, please find enclosed for docketing and review by the EPA Environmental Appeals Board an originally executed copy of a Joint Status Report and Third Motion to Extend Stay of Proceedings, as well as a Certificate of Service. The Region has provided five additional paper copies.

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

Sincerely,

  
 Samir Bukhari  
 Assistant Regional Counsel  
 Office of Regional Counsel  
 US EPA-Region 1

Enclosures

cc:

Recipients Listed on Enclosed Certificate of Service

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

In the Matter of: )

Town of North Attleborough )  
 Wastewater Treatment Facility )  
 NPDES Permit No. MA0101036 )

NPDES Appeal No. 07-02  
 NPDES Appeal No. 07-04

**JOINT STATUS REPORT AND  
 THIRD MOTION TO EXTEND THE STAY OF PROCEEDINGS**

**BACKGROUND**

By order dated June 21, 2007, the U.S. EPA Environmental Appeals Board ("Board") stayed proceedings in the above-captioned matter until September 28, 2007, to allow the parties to explore the possibility of settlement. *See* Second Order Staying Proceedings and Order Scheduling Status Conference. By such date, U.S. EPA Region 1 ("Region") was directed to respond to the petitions for review of the permit filed by the Town of North Attleborough ("Town") and the Rhode Island Department of Environmental Management ("RI-DEM").

On August 15, 2007, the parties participated in an EAB status conference to update the Board on the progress of settlement discussions. The Town and RI-DEM each concurred with the Region's assessment that the parties had reached an agreement in principle with respect to the nutrient issues on appeal, but that the agreement was contingent on RI-DEM withdrawing its challenge to the metals limits in the permit. *See*

Transcript of August 15, 2007, EAB Status Conference at 5-9, 12 and 16. Several weeks after the status conference, RI-DEM notified the Region and the Town that it would be prepared to drop its challenge to the metals limits in order to settle the outstanding petitions for review. RI-DEM cautioned that its offer depended on the limits for phosphorus and nitrogen being subject to a reasonable compliance schedule.<sup>1</sup>

#### GROUNDNS FOR CONTINUANCE OF STAY

In light of the progress made toward final settlement, the parties believe that the pending appeals can be satisfactorily resolved without further litigation. In accordance with the terms of the settlement agreement, EPA hereby notifies the Board that it intends to withdraw the contested phosphorus effluent limit pursuant to 40 C.F.R. § 124.19(d) and to modify the permit to include a phosphorus limit of 0.1 mg/l. The modified permit will be subject to public notice and comment. Upon the effective date of the permit modification, or as soon as possible thereafter, the Town and RI-DEM agree to withdraw their petitions for review before the Board and join the Region in motioning the Board to dismiss the above-referenced appeals in their entirety.

In the interests of judicial economy and to conserve resources, the parties believe

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<sup>1</sup> The North Attleborough WWTP will not be able to immediately achieve the new effluent limitations for phosphorus and nitrogen. In this case, EPA cannot include a compliance schedule to meet the total nitrogen limit in the permit. Compliance schedules to meet water quality-based effluent limits may be included in permits only when the state's water quality standards clearly authorize such schedules. The total nitrogen limit is based on Rhode Island's water quality standards. Rhode Island's standards, in turn, do not allow for schedules in permits. While a schedule for phosphorus could be included in the permit, there are many overlapping issues related to the planning, design and construction of the necessary upgrades to meet the limits for phosphorus and nitrogen. In light of these overlapping issues and the fact that EPA cannot include a schedule for nitrogen in the permit itself, EPA intends to include a reasonable compliance schedule to meet both the phosphorus and nitrogen limits in a separate administrative order. Such a schedule will be developed in consultation with the Town and RI-DEM over the next 90 days and will be finalized prior to issuance of the final permit modification. The Town has already proposed a compliance schedule, which is under consideration by both the Region and RI-DEM and which appears promising. Accordingly, it is expected that this issue will be resolved expeditiously and to the satisfaction of all parties.

a continuance of the stay for 120 days is warranted to implement the settlement through a permit modification. The 120 day stay will allow sufficient time to accommodate the following steps necessary to enact the settlement: (1) negotiation of a mutually satisfactory administrative compliance schedule to meet the nutrient limits; (2) preparation of a draft permit and fact sheet in accordance with 40 C.F.R. §§ 124.6 and .8, respectively; (3) a 30 day public comment period, as required by 40 C.F.R. §§ 124.19(d) and .10(b); (4) consideration of comments, if any, submitted on the draft modification and preparation of a response; and (3) a 30 day period to ensure that no appeals of the modification are filed.<sup>2</sup>

#### RELIEF REQUESTED

Accordingly, the parties respectfully request that the Board continue the existing stay of proceedings in this matter for an additional 120 days.<sup>3</sup> If at any time during the stay it appears that the prospects for settlement of this matter have materially diminished, the parties will promptly inform the Board of that fact and suggest an alternative course of action.

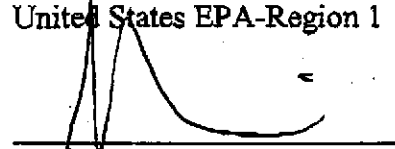
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<sup>2</sup> The Region has no way to accurately predict whether the modification will be appealed by a party that is not subject to the settlement agreement. The Region does not expect an appeal from any party that commented on the draft permit, which included the two petitioners, a Massachusetts' state agency and Save the Bay (the latter commended EPA for including a nitrogen limit in the permit). The Region's response to an appeal, if any, will depend on the party involved and the nature of the appeal.

<sup>3</sup> Petitioners, though their respective counsel, have informed the Region that they assent to this Joint Status Report and Third Motion to Extend the Stay of Proceedings and have authorized the Region to file it on its behalf.

Respectfully submitted,

United States EPA-Region 1

A handwritten signature in black ink, appearing to read 'Samir Bukhari', is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

Samir Bukhari, Esq.  
Assistant Regional Counsel  
US EPA Region 1 (RAA)  
One Congress St. - Suite 1100  
Boston, MA 02114-2023  
Phone: (617) 918-1095  
Fax: (617) 918-0095

Dated: September 26, 2007

In the Matter of:  
Town of North Attleborough Wastewater Treatment Facility  
NPDES Appeals Nos. 07-02 and 07-04

CERTIFICATE OF SERVICE

I, Samir Bukhari, hereby certify that copies of a Status Report in connection with above-referenced appeals were sent on September 26, 2007 to the following persons in the manner described below:

By Facsimile  
Original by First Class Mail

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, DC 20460-0001

Copy by First Class Mail

Jeffrey T. Blake, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
12<sup>th</sup> Floor  
Boston, MA 02110-1109

Susan B. Wilson, Esq.  
Rhode Island Department of Environmental  
Management  
Office of Legal Services  
235 Promenade Street, 4<sup>th</sup> Floor  
Providence, RI 02908-5767

Dated: September 26, 2007



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Samir Bukhari, Esq.  
Office of Regional Counsel  
US EPA Region 1 (RAA)  
One Congress St. - Suite 1100  
Boston, MA 02114-2023