

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

ENVIRONMENTAL APPEALS BOARD

RECEIVED
U.S. E.P.A.

2007 AUG -3 PM 2:56

ENVIR. APPEALS BOARD

-----X

In re :

:

LEOMINSTER WATER POLLUTION : Appeal No. 06-16

CONTROL FACILITY :

:

-----X

1140 Connecticut Avenue, NW.

Washington, D.C.

Thursday, June 21, 2007

The HEARING in this matter began at
approximately 11:00 a.m. pursuant to notice.

BEFORE:

JUDGE SCOTT FULTON

1 APPEARANCES:

2 On behalf of Environmental Protection Agency:

3 EURIKA DURR, Clerk of the Board
4 Environmental Appeals Board
5 Environmental Protection Agency
6 1341 G Street, NW., Suite 600
7 Washington, D.C. 20005
8 (202) 233-0122

9
10 On behalf of EPA Region 1:

11
12 JOSHUA CADITZ, ESQUIRE
13 Environmental Protection Agency, Region 1
14 1 Congress Street, Suite 1160
15 Boston, Massachusetts 02114
16 (617) 918-1787

17
18 On behalf of City of Leominster:

19
20 JEFFREY BLAKE, ESQUIRE
21 Kopelman & Paige
22 101 R Street
Boston, Massachusetts 02110
(617) 556-0007

* * * * *

1 P R O C E E D I N G S

2 JUDGE FULTON: Gentlemen, welcome
3 to you. We're going to be doing this on the
4 record this morning. Mr. Bryce will be
5 serving us, our court reporter. And we're
6 here today pursuant to the Board's order of
7 May 4 of this year, and the purpose of this
8 status conference is twofold.

9 First, we want to hear from the
10 parties regarding the current status of your
11 settlement negotiations. And, second, we
12 want to determine whether additional time
13 here is likely to lead to resolution of this
14 matter.

15 We're coming up on the anniversary
16 date for this permit, and are thus interested
17 in seeing whether it can expeditiously be
18 resolved through settlement or whether we
19 need to move it on to a path that allows for
20 resolution by the Board.

21 I want to thank -- thank you all
22 for your flexibility and -- and working with

1 our systems difficulties. It is our
2 preference to do the status calls through
3 video conferencing or in person so that we
4 can see one another, but in view of the fact
5 that the system's down, this is the best --
6 the best we can do today, so thank you for
7 your flexibility and -- and working with
8 those difficulties.

9 The way that I'd like to proceed is
10 just to simply hear from the parties in turn.
11 I think maybe starting with the Petitioner,
12 the City of Leominster, and then I would like
13 to hear from the Region -- and, so perhaps
14 then, Mister -- Mr. Blake, you can start us
15 off, and if you could speak to those two
16 questions. One being the current status of
17 the negotiations as you see it, and, second,
18 whether this is on a promising track for
19 resolution and how much time will be needed
20 to accomplish that.

21 MR. BLAKE: Yes, Your Honor.
22 Jeffrey Blake for the City of Leominster.

1 And with -- with respect to the
2 status of -- of the matter, we are -- I think
3 I can report that we have reached an
4 agreement in principal, and there's some
5 minor -- minor points in language in -- in
6 certain clauses of a -- of a compliance order
7 and a compliance schedule that need to be
8 worked out, but I -- I can -- I think I can
9 report with confidence that we will work
10 these things out, and it looks like we will
11 have this -- we will have reached an
12 agreement probably -- I would like until the
13 end of July only because of the -- the next
14 coming month being a summer month, I -- I
15 anticipate that we will have -- it will flow
16 down in some of my approval since there's
17 probably vacations going on.

18 JUDGE FULTON: Very well, Mr.
19 Blake. Anything else you -- you want to add?

20 MR. BLAKE: I don't think so, Your
21 Honor.

22 JUDGE FULTON: Okay. Mister -- Mr.

1 Caditz?

2 MR. CADITZ: Yeah, Mr. Blake
3 accurately described the matter we have made
4 considerable progress and there's just a
5 handful of aspects of the administrative
6 order that remain to be resolved.

7 JUDGE FULTON: Can you give me a --
8 a flavor of the types of issues we're talking
9 about with the form of the order?

10 MR. CADITZ: We're still in the
11 progress of discussing interim measures that
12 would apply before the end of the compliance
13 schedule when the 2006 limits would go into
14 effect or it would be enforced. We have been
15 discussing essentially some re-opener
16 language that we came to a resolution early
17 this morning. Those are the -- the sort of
18 matters we'll be working with.

19 JUDGE FULTON: So, the interim
20 measures -- or that's the feature of the
21 compliance schedule that -- that you're
22 developing?

1 MR. CADITZ: Yes.

2 JUDGE FULTON: I see. And the
3 issues that divide the parties are really
4 just a question of drafting or do you think
5 there -- there are conceptual difficulties
6 still?

7 MR. CADITZ: In terms of the
8 interim measure, we -- it remains to be seen
9 whether or not the -- the issues will be
10 substantive. It -- it -- I think will
11 primarily be of drafting, but there -- there
12 could be some -- some issues with the types
13 of measures applied, as well.

14 JUDGE FULTON: Okay. And the
15 timeframe that Mr. Blake mentioned, is this
16 one that would work, for the region, as well?

17 MR. CADITZ: Yes, I -- I'm very
18 hopeful that we will come to a resolution on
19 the issue that I've been describing in the
20 next few weeks. And then it would be a
21 matter of -- of Mr. Blake being able to get
22 approval from the town council. City

1 council, excuse me.

2 JUDGE FULTON: Okay. Yeah, I noted
3 that in your status report, you were asking
4 until July 13. I guess what -- what Mr.
5 Blake is saying is that even after you all
6 have arrived at what you think is a workable
7 resolution here, the -- the approval process
8 for the -- for the city is -- yeah. The city
9 might take a few more weeks beyond that time.

10 MR. BLAKE: That's -- that's true,
11 Your Honor. What -- what -- I -- I've kept
12 the city apprised and the plant manager has
13 been involved in the negotiations all the way
14 through, and he kept city council apprised,
15 but when we get a final agreement, I need to
16 bring it to the city council for their final
17 approval.

18 And, like I said before, I'm just a
19 little worried that during July, I may have
20 trouble getting a quorum together, especially
21 early in the month of July, being the Fourth
22 of July holiday. And that's why I'm -- just

1 would like the additional couple of weeks
2 just to be sure that I can have everything
3 buttoned up.

4 JUDGE FULTON: Okay. And, Mr.
5 Blake, is -- I don't want to push beyond the
6 bounds of your representational limits here,
7 but if -- if we were to establish a schedule
8 that contemplated hearing back from counsel,
9 that, in your view, you've arrived at a
10 resolution of -- of the issues, recognizing
11 that that's the subject of approval and
12 ratification and that sort of thing.

13 Is that something you would be
14 comfortable with? So, in other words, if we
15 were to say in a scheduling order that we
16 would be looking to hear from you by July 13
17 or so in terms of whether counsel believed
18 they resolved the issues, subject to
19 follow-up approval, and then set the end of
20 July as kind of a -- a second milestone, is
21 that an arrange -- an approach that would --
22 that would be consistent with your working

1 relationship with the City?

2 MR. BLAKE: Yes, Your Honor. I
3 could certainly -- I could certainly do that.

4 JUDGE FULTON: Okay. Okay, well, I
5 think we'll plan an order around that, so it
6 sounds like the parties both believe that
7 this is likely to settle and that a lot of
8 the material issues have been addressed
9 already and but there's confidence that --
10 that there will be a resolution.

11 The remaining issues, and we'll --
12 we'll look to hear back from you by July 13
13 in terms of whether the -- whether counsels
14 believe they resolved the remaining issues
15 with the recognition that it will take a
16 little time beyond that to get the necessary
17 approvals lined up with the City.

18 Does that sound satisfactory?

19 MR. BLAKE: That's satisfactory to
20 the City.

21 MR. CADITZ: Yes, Your Honor. To
22 the Region, as well.

1 JUDGE FULTON: And I -- I take it
2 the issues that remain are of the nature that
3 it -- you don't need the services of a
4 third-party neutral or mediation process.
5 You all are pretty confident you can resolve
6 this between you?

7 MR. CADITZ: I think that's true,
8 Your Honor.

9 JUDGE FULTON: Okay. In the event
10 that things should prove to work differently
11 here and if you think there would be any
12 value in having mediation, I just want you to
13 know that we do have the capacity here on the
14 board to -- to conduct mediation. We have a
15 number of trained mediators, including
16 several of the judges, and that's a service
17 we can provide in the event that you need it.

18 We're not going to impose it on
19 you. At least not at this stage, but if --
20 if you do reach an impasse on your interim
21 measures and you think that would be
22 beneficial or helpful, let us know and we'll

1 -- we'll try to play a role in that regard.

2 MR. CADITZ: Thank you, Your Honor.

3 MR. BLAKE: Thank you, Your Honor.

4 JUDGE FULTON: Okay, very well
5 then. We'll go ahead and issue an order
6 probably later today that -- that addresses
7 the points that have been discussed here and
8 I appreciate, again, your time and your
9 flexibility in getting together, and we'll
10 forward to hearing from you in a few weeks.

11 MR. CADITZ: Thank you, Your Honor.

12 MR. BLAKE: Thank you, Your Honor.

13 JUDGE FULTON: Any further
14 questions?

15 MR. CADITZ: No.

16 JUDGE FULTON: Okay. Very well
17 then. We'll adjourn. Thank you, Mr. Bryce.

18 THE REPORTER: Thank you.

19 MR. CADITZ: Thank you.

20 JUDGE FULTON: Bye now.

21 (Whereupon, at 11:19 a.m., the

22 HEARING was adjourned.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

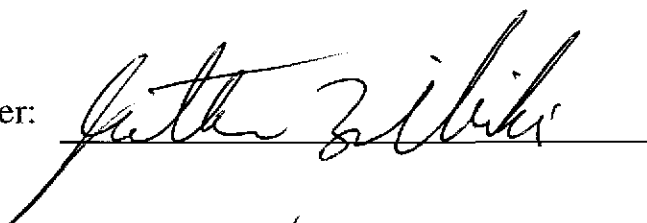
* * * * *

CERTIFICATION OF TRANSCRIPT

I certify that the attached transcribed hearing in the matter of Leominster Water Pollution Control Facility before the Environmental Appeals Board held on June 21, 2007 as herein appears and that this is the original transcript.

I, the undersigned, do certify that this is a true, accurate and complete transcript prepared from the electronic recordings taken by M. Bryce Hixson of Beta Reporting Services, on the aforementioned date, and that I have verified the accuracy of the transcript by comparing the typewritten transcript against the verbal recordings.

Transcriber/Proofreader:



Date:

