



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

**VIA FAX AND 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, D.C. 20460-0001

Re: NPDES Appeal Nos. 08-26, 08-27  
NPDES Permit No. MA0039853  
Town of Wayland Wastewater Management District Commission

October 14, 2009

Dear Ms. Durr,

Enclosed please find the original of the Region's Final Status Report and Motion to Dismiss in the above-captioned case, with an attached certificate of service. The motion and the certificate of service have also been mailed to the Board and to counsel of record today. In lieu of five additional paper copies for the Board, an electronic copy has been posted to the CDX system.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Fein".

Ronald A. Fein, Assistant Regional Counsel  
U.S. Environmental Protection Agency Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114  
617-918-1040  
Fax: 617-918-0040

cc: Adam P. Kahn, Esq.  
Robin Lepore, Esq.  
Deirdre C. Menoyo, Esq.  
Thomas B. Arnold

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

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In re: Town of Wayland,	)	
Wastewater Management District Commission	)	NPDES Appeal Nos.
	)	08-26, 08-27
NPDES Permit No. MA0039853	)	
	)	

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**FINAL STATUS REPORT AND MOTION TO DISMISS**

Region 1 of the U.S. Environmental Protection Agency (“Region”), with the assent of petitioner United States Department of the Interior, petitioner Thomas B. Arnold, and intervenor-permittee Town of Wayland Wastewater Management District Commission, provides this final status report to the Environmental Appeals Board and moves to dismiss both petitions for review. As explained below, both petitioners have withdrawn their petitions for review of the challenged permit, and no dispute remains for the Board to adjudicate.

**BACKGROUND**

As set forth in the Region’s prior status reports, all proceedings in these petitions for review of the Region’s September 30, 2008 National Pollutant Discharge Elimination System (“NPDES”) permit for the Town of Wayland Wastewater Management District Commission have been stayed pending settlement discussions. Most recently, the Board stayed the proceedings until October 15, 2009, to enable the Region to complete a final permit modification which, in combination with a written settlement executed by the parties, would resolve all outstanding issues in both petitions. *See* Doc. No. 78 (Order Extending Stay of Proceedings) (Sept. 23, 2009). As of September 15, the date of the Region’s most recent filing, the Region had withdrawn certain contested conditions,

issued a proposed permit modification, and conducted a public comment period, but had not yet issued a final permit modification. *See* Doc. No. 75 (Response to Order to Show Cause Why Petitions Should Not Be Dismissed) (Sept. 15, 2009).

### STATUS REPORT

The Region did not receive any comments requesting a change in the draft permit modification. Consequently, on October 9, 2009, the Region issued a final permit modification modifying the challenged permit. *See* Ex. A (Final Permit Modification, cover sheet only).

According to the parties' settlement agreement, petitioners must submit notices to the Board dismissing their respective petitions within 30 days after issuance of the final permit modification "so long as the final Permit modification is substantially similar to the draft Permit modification [attached to the settlement agreement] in Exhibit A." Doc. No. 69.1 (Fourth Status Report and Motion to Extend Stay of Proceedings, Exhibit 1) (Settlement Agreement) (filed Aug. 12, 2009), at 12 ¶ 4. The final permit modification differed from the draft permit modification only in the correction of typographical errors and (in light of the lack of adverse comment) the effective date;<sup>1</sup> none of the substantive provisions that were the subject of Exhibit A to the settlement agreement have been revised. Consequently, the petitioners were required by the settlement agreement to file notices with the Board withdrawing their appeals.

On October 14, 2009, the Region received electronic copies of such notices from petitioners U.S. Department of the Interior and Thomas Arnold.

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<sup>1</sup> Because the September 30, 2008 permit has not yet taken effect, the effective date for the final permit modification has been defined as the date on which the September 30, 2008 permit becomes effective. *See* Ex. A, at 1. After the Board has dismissed the appeal in its entirety, the Region intends to issue a final permit decision pursuant to 40 C.F.R. § 124.19(f)(1)(i) making both the September 30, 2008 permit and October 9, 2009 permit modification effective.

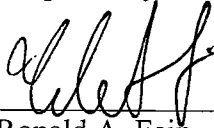
### MOTION TO DISMISS

The petitions should be dismissed because the parties have submitted notices of withdrawal of their petitions in accordance with the settlement agreement. Once a party has withdrawn its petition, dismissal is appropriate. *See, e.g., In re Lee Wastewater Treatment Facility*, NPDES Appeal No. 08-22 (Order Dismissing Petition for Review) (EAB, Aug. 4, 2009).

### CONCLUSION

For the reasons above, the Region, with the assent of all parties, respectfully requests that the Board dismiss both petitions for review.

Respectfully submitted,



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Ronald A. Fein, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114  
617-918-1040  
Date: October 14, 2009

Of counsel:  
Peter Ford, Assistant General Counsel  
Office of General Counsel  
Environmental Protection Agency  
Washington, D.C.

# **EXHIBIT A**

## **Final Permit Modification (Cover Sheet Only)**

MODIFICATION OF  
AUTHORIZATION TO DISCHARGE UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Clean Water Act as amended, (33 U.S.C. §§1251 et seq.; the "CWA"), and the Massachusetts Clean Waters Act, as amended, (M.G.L. Chap. 21, §§26-53),

Town of Wayland  
Wastewater Management District Commission  
41 Cochituate Road  
Wayland, MA 01778

is authorized to discharge from the facility located at

Town of Wayland Wastewater Treatment Plant  
430/440 Boston Post Road  
Wayland, MA 01778

to receiving water named

~~Wetland adjacent to the Sudbury River (Concord River Watershed - MA-82)~~

or to receiving water named

**Sudbury River (Concord River Watershed - MA82)**

in accordance with effluent limitations, monitoring requirements and other conditions set in the permit issued September 30, 2008, except as described below:

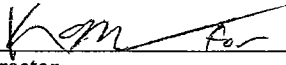
- page 1 - added clarification that the permit authorizes the discharge to the Sudbury River.
- page 2 - added more stringent total phosphorus limit, deleted orthophosphorus monitoring requirement
- page 3 - corrected a typographical error in WET test frequency
- page 6 - added more stringent total phosphorus limit
- page 7 - deleted orthophosphorus monitoring requirement, added copper monitoring requirement
- page 8 - corrected a typographical error in footnote 6
- ~~pages 9-10 - corrected typographical errors in numbering~~
- page 10 - added instream monitoring requirement

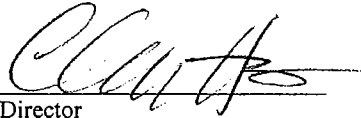
This modifies the permit issued on September 30, 2008. This permit modification only affects the permit conditions identified in the preceding paragraph.

This permit modification shall become effective on the same date that the September 30, 2008 permit becomes effective.

This permit modification does not affect the expiration date of the September 30, 2008 permit. Therefore, this permit modification expires at the same time as the September 30, 2008 permit.

Signed this 9<sup>th</sup> day of OCTOBER, 2009

  
\_\_\_\_\_  
Director  
Office of Ecosystem Protection  
Environmental Protection Agency  
Boston, MA

  
\_\_\_\_\_  
Director  
Division of Watershed Management  
Department of Environmental Protection  
Commonwealth of Massachusetts  
Boston, MA

CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that copies of the foregoing Final Status Report and Motion to Dismiss were sent on the 14th day of October 2009 to the following persons in the manner described below:

Original by first class mail  
Copy by fax  
Copy posted to CDX electronic system

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

Copy by first class mail  
Copy by fax  
Copy by e-mail

Deidre C. Menoyo, Esq.  
388 Willis Road  
Sudbury, MA 01776


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Department of the Interior  
One Gateway Center, Suite 612  
Newton, MA 02458

Copy by first class mail  
Copy by fax  
Copy by e-mail

Adam P. Kahn, Esq.  
Foley Hoag, LLP  
155 Seaport Blvd.  
Boston, MA 02210

Signed: October 14, 2009



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