



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1 – New England
5 Post Office Square, Suite 100
Boston, MA 02109-3912

VIA ELECTRONIC FILING

November 1, 2017

Eureka Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M
Washington, DC 20460-0001

RE: Barnhardt Manufacturing Co.
NPDES Permit No. MA0003697; NPDES Appeal No. 17-07

Dear Ms. Durr:

Please find EPA Region 1 and Barnhardt Manufacturing Company's Joint Motion to Stay the Proceedings, and accompanying Certificate of Service, in connection with NPDES Appeal No. 17-07.

Sincerely,

Joshua Secunda
US Environmental Protection Agency
Office of Regional Counsel, Region 1
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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

)	
In the Matter of:)	
)	
Barnhardt Manufacturing Co.)	
)	NPDES Appeal No. 17-07
)	
NPDES Permit No. MA0003697)	
)	

JOINT MOTION TO STAY THE PROCEEDINGS

Region 1 of the United States Environmental Protection Agency (“Region”) and Barnhardt Manufacturing Co. (“Permittee” or “BMC”) respectfully request that the Environmental Appeals Board (“Board”) stay proceedings in this matter in order to allow the parties to undertake settlement negotiations. The grounds for this motion are set out below.

REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF

On September 19, 2017, the Region issued National Pollutant Discharge Elimination System Permit No. MA0003697 (“NPDES Permit”) to BMC. On October 16, 2017, BMC timely filed a Petition for Review (“Petition”) with the Board requesting review of certain conditions of the NPDES Permit. The parties have conferred several times since the filing of the Petition, and have concluded that a negotiated resolution of the issues raised in the Petition is likely and have agreed to enter into settlement discussions. In order to resolve the issues on appeal, the parties must coordinate discussions between their respective technical representatives. Assuming satisfactory

resolution of the issues, the parties must then come to agreement on the terms of a permit modification, which the parties, at this juncture, believe will be the appropriate mechanism to implement a settlement. Once in agreement on the terms of a permit modification, the permittee will move to voluntarily dismiss its Petition with prejudice. The Region must consult with EPA's Office of General Counsel and the Massachusetts Department of Environmental Protection prior to finalizing a settlement.

To provide the parties sufficient time to conclude negotiations in light of the above, the Region and BMC respectfully request the Board to stay the proceedings for 90-days, and to hold in abeyance the deadline for the Region to file its Response to Petition and the certified index to the administrative record. Finally, the parties request that the Board defer the deadline for the parties to respond to its offer of Alternative Dispute Resolution for the pendency of settlement discussions. The parties are optimistic that the contested points can be resolved without Alternative Dispute Resolution, but wish to reserve their right to participate in the Alternative Dispute Resolution process should negotiations fail.

Under the proposed stay, the parties will file a report with the Board at 30-day intervals describing the status of the matter. These reports will include a discussion of recommended next steps for the efficient resolution of the pending Petition. The parties will, in addition, either inform the Board of the expected timeframe for concluding settlement discussions and dismissing the appeal, or will request the Board to lift the stay and establish a new deadline for the Region to file its Response and certified index.

CONCLUSION

For these reasons, and to conserve administrative and judicial resources, the parties respectfully request that the Board issue an order that: (1) stays the proceedings for 90 days; (2) stays the deadline for the parties to accept or decline the Board's offer of Alternate Dispute Resolution pending settlement discussions; (3) holds the deadlines for the Region to file its Response to Petition and certified index to the administrative record in abeyance pending settlement discussions; and (4) requires a joint status report at 30 day intervals.

Respectfully submitted,

For US EPA Region 1:

/s/Joshua Secunda

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For Barnhardt Manufacturing Co., Inc.:

/s/Joshua Secunda for Gregory R. Morand

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Dated: November 1, 2017

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Motion to Stay the Proceedings, in connection with Barnhardt Manufacturing Company, NPDES Appeal No. 17-07, was sent to the following persons in the manner indicated:

By Electronic Filing:

Eurika Durr
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Via electronic mail, by agreement between the parties:

For Barnhardt Manufacturing Co., Inc.:

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Dated: November 1, 2017

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