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January 8, 2013

Via Electronic Filing

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board 1103M
1200 Pennsylvania Avenue, N.W.
East Building
Washington, D.C. 20460-0001

Re: Town of Newmarket Wastewater Treatment Plant
Permit Number: NH0100196
Appeal Number: NPDES 12-05

Dear Ms. Durr,

Please find the Petitioner's Reply to EPA Region 1's Opposition to Petitioner's Motion for Extension of Time to File a Supplemental Petition for Review, and accompanying Certificate of Service regarding NPDES Appeal No. 05-12.

Sincerely,



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

)	
In re:)	
Town of Newmarket)	
)	
NPDES Permit No. NH0100196)	NPDES APPEAL No. 05-12
)	

**PETITIONER’S REPLY TO EPA REGION 1’S OPPOSITION TO
PETITIONER’S MOTION FOR EXTENSION OF TIME TO FILE A SUPPLEMENTAL
PETITION FOR REVIEW**

The Petitioners have asked for additional time to file a Supplemental Petition for Review given (1) the extreme length of EPA’s Response to Comments document (177 pages), (2) EPA’s failure to respond to new information provided by the Coalition in supplemental comments, and (3) the need to document how the information excluded from the decision making process supports the Environmental Appeals Board’s (“EAB” or “the Board”) review of the Petition for Review. Granting additional time to supplement a Petition of Review is not unusual under these kinds of settings. What is unusual is EPA Region 1 (“the Region”) objecting to the motion to supplement the petition and the Region’s 11 page response to our 4 page motion. As discussed, the Region’s objections are misplaced and such a supplemental filing should be allowed for good cause and in the interests of justice.

The Region’s response acknowledged the complexity of this matter and the extensive record applicable to its review (Opp. Mot. at 1, 2) but mischaracterizes the factors relevant granting our motion. The Petitioner’s skill or knowledge of its own documents (Opp. Mot. at 8) has nothing to do with the need for additional time.¹ Likewise, to allow a supplemental filing, there is no requirement that the Petitioner’s initial Petition for Review be only in “summary”

¹ Petitioner’s appreciate the Region’s clarification as to the timing of our submission, however, 40 C.F.R. § 124.19(a) specifies the 30-day period begins to run with “the service of notice” and we received an electronic copy of the final permit (NPDES Permit No. NH0100196) on November 16, 2012 and therefore, filed 30 days from the aforementioned date.

form. Opp. Mot. at 6. As there was no assurance our motion would be granted, we attempted to file as detailed a Petition for Review as possible. However, the extent of the record and partial nature of the Region's Response to Comments prevented fully identifying and providing all of the records needed to confirm the Region's actions were clear error. The fact the Petition of Review only applies to one single effluent limitation and the Region only made one change to the draft permit (Opp. Mot. at 6) is irrelevant given the Region's shifting and confusing rationale for justifying the imposition of the stringent effluent limitation, and the Region's ultimate reliance on several detailed documents that were never even submitted as part of this permit action (e.g., DES Response to Public Comment on the Draft 2012 Consolidated Assessment and Listing Methodology (April 20, 2012)). Finally, the Region's refusal to meet and discuss scientific and technical issues with the Coalition before issuance of the final permit meant the Coalition had no idea what the Region's main focus would be for justifying the permit.

It is not enough, as the Region asserts, for one to "briefly identify[] the issues" in the Petition for Review because the Petitioners have the high burden of proof of showing clear scientific and legal error has occurred, justifying the review of the permit by the Board. Opp. Mot. at 6-7 (citing *In re City & County of Honolulu*, NPDES Appeal NO. 09-01, EPA Regions IX's Response to Motion for Extension of Time to File Petitions for Review, at 5 (Jan. 29, 2009)). Granting the Motion to File a Supplemental Petition for Review will ensure appropriate detail is provided such that the Board can understand whether or not we have provided sufficient document as to justify review of this permit. The purpose of allowing such a supplemental petition is to more clearly direct the Board to where in the record supporting evidence to our claims may be found and why the Region's responses failed to adequately consider that information.

In closing, the main issues supporting Petitioner's motion are (1) the length and breadth of EPA's Response to Comments and (2) the fact the Region has excluded hundreds of pages of data and analyses submitted by the Coalition while "EPA has relied upon numerous other documents developed by third parties after the close of the comment period, *so long as those documents supported EPA's intended approach.*" Pet. at 28. The Region's Response provides no information that shows these issues did not limit our ability to file a complete petition under

the restrictive timeframes for EAB review. Therefore, the Petitioners respectfully request that the Board grant its request to supplement the Petition for Review.

Respectfully submitted,



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1/8/13

CERTIFICATION OF SERVICE

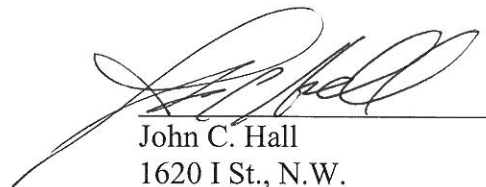
I hereby certify the copies of the foregoing Reply to EPA Region 1's Opposition to Petitioner's Motion for Extension of Time to File a Supplemental Petition for Review in connection with NPDES Appeal No. 12-5, were sent to the following persons in the manner indicated:

By Electronic Filing:

Clerk of the Board
U.S. Environmental Protection Agency
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By First Class U.S. Mail:

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