



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

ENVIR. APPEALS BOARD

2007 SEP -5 AM 11:39

RECEIVED
U.S. E.P.A.

September 4, 2007

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G Street, N.W. Suite 600
Washington, D.C. 20005

Re: Massachusetts Port Authority, Logan International Airport; NPDES Appeal No. 07-16

Dear Clerk:

Enclosed for filing in the above-captioned matter please find the (a) Respondent's Memorandum in Opposition to Petition for Review, and (b) Certification of the Index to the Administrative Record Regarding the Permit Documents and Public Comment Process and Index to the Administrative Record Regarding the Permit Documents and Public Comment Process.

Please note that the Region is requesting that the Board give expedited consideration to its request for denial of this petition for review, so that this permit can take effect on schedule at the end of September. This petition for review is clearly meritless and does not comply with this Board's basic rules. Promptly dismissing this petition is in the public interest, since it will allow important environmental improvement efforts to move forward. **We would appreciate it if the Clerk would bring this request for expedited consideration to the prompt attention of the Board.**

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffry Fowley".

Jeffry Fowley
Senior Assistant Regional Counsel

cc: Joseph Cappuccio
William Lahey, Esq.

ENVIRONMENTAL APPEALS BOARD
U.S. ENVIRONMENTAL PROTECTION AGENCY

RECEIVED
U.S. E.P.A.

2007 SEP -5 AM 11:39

ENVIR. APPEALS BOARD

In the Matter of:

NPDES Appeal No. 07-16

MASSACHUSETTS PORT AUTHORITY,
LOGAN INTERNATIONAL AIRPORT
NPDES PERMIT NO. MA0000787

RESPONDENT'S MEMORANDUM IN OPPOSITION TO PETITION FOR REVIEW

On July 31, 2007, EPA Region I issued NPDES Permit No. MA0000787 to the Massachusetts Port Authority (Massport) and various co-permittees to regulate stormwater discharges from Logan International Airport in Boston, Massachusetts. By letter dated August 3, 2007, Mr. Joseph J. Cappuccio, a resident of South Boston, has petitioned the Environmental Appeals Board to review the permit. The sole grounds for appeal stated in the letter are that Mr. Cappuccio is "opposed to the issuance of the permit" since it "allows storm water to be discharged into the Boston Harbor" which is "an assault on a very fragile ecosystem." The letter goes on to say that "[t]he issuance of this permit shows a flawed process that allows polluted fluids and liquids to be discharged into Boston Harbor." Mr. Cappuccio is the only person who has appealed this permit.

The Board should deny this petition for review. Mr. Cappuccio did not file comments during the public comment period on this permit and did not participate in the public hearing on this permit. See Index to the Administrative Record Regarding the Permit Documents and Public Comment Process, items C.1 - 27. Thus, under the regulations governing this proceeding, Mr. Cappuccio may petition for review "only to the extent of the changes from the draft to the final permit decision." 40 C.F.R. § 124.19(a). The letter filed by Mr. Cappuccio does not point to any issues arising from changes made from the draft permit to the final permit. Rather, Mr. Cappuccio asserts that no permit should have been issued. This issue was one that Mr. Cappuccio had every opportunity to raise and should have raised during the public comment period. No explanation is offered in his letter for his failure to do so. The Region provided a public comment period, and gave notice about the draft permit, including individual notice by mail to Mr. Cappuccio, who was on the mailing list for this permit. See Index to the Administrative Record Regarding the Permit Documents and Public Comment Process, items B.5. and 7. The permit Fact Sheet - which was made available to citizens upon request - clearly stated that "[a]ll persons ... who believe that any condition of the Draft Permit is inappropriate must raise all issues and submit all available material for their arguments in full by the close of the public comment period...." *Id.* at item A.3. (page 46). Thus there is no excuse for Mr. Cappuccio's failure to comment, and this permit appeal should be denied on procedural grounds.

Following the rule that a person may not appeal a permit after failing to participate in the public comment period serves important public policy concerns. As noted by this Board, "In NPDES proceedings, as well as other permit proceedings, the broad purpose behind the requirement of raising an issue during the public comment period is to alert the permit issuer to potential problems with the draft permit and to ensure that the permit issuer has an opportunity to address the problems before the permit becomes final." In re City of Phoenix, 9 E.A.D. 515, 526 (EAB 2000). Years of effort went into the issuance of this permit. It is not reasonable to allow someone who failed to timely raise any concern to first challenge the issuance of the permit (which has the effect of staying the permit) only after the final issuance by the Region has occurred.

This petition for review also should be denied on substantive grounds. The regulations specify that any petition for review "shall" include "a showing that the condition in question is based on: (1) A finding of fact or conclusion of law which is clearly erroneous, or (2) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review." 40 C.F.R. § 124.19(a). Mr. Cappuccio's petition does not meet this requirement. No specific information is included in Mr. Cappuccio's letter regarding any factual or legal problems with this permit. Also, Mr. Cappuccio's contention that no permit whatsoever should have been issued clearly does not raise an important policy issue meriting review by this Board.

As noted by this Board, a petition for review must specifically identify disputed permit conditions and demonstrate why review is warranted. In re LCP Chemicals - N.Y., 4 E.A.D. 661, 665 n.9 (EAB 1993). Indeed, even when petitioners have timely raised their issues during public comment periods (unlike here), the petitioners "must include specific information supporting their allegations. Petitions for review may not simply repeat objections made during the comment period; instead they must demonstrate why the permitting authority's response to those objections warrants review." In re Knauf Fiber Glass, GMBH, 9 E.A.D. 1, 5 (EAB 2000). Mr. Cappuccio's letter clearly fails to meet these tests.

Indeed, Mr. Cappuccio's position that no permit should be issued appears to be based on a fundamental mischaracterization of what has occurred. By issuing a new permit for Logan Airport, the Region has sought to better protect Boston Harbor, not to allow "assaults" on the Harbor to occur. The new permit contains substantial requirements for monitoring and controlling the discharges from the airport. It is significantly more stringent than the prior NPDES permit under which Massport has been operating. For example, it contains new effluent limits for oil and grease and total suspended solids, and requires monitoring for the first time of the outfalls that drain the runways. It also requires Massport to develop a comprehensive Storm Water Pollution Prevention Plan to control pollutants, and to conduct a Water Quality Study to assess any impacts on Boston Harbor resulting from aircraft and runway deicing. See Index to the Administrative Record Regarding the Permit Documents and Public Comment Process, item A.1.

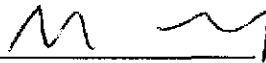
Not issuing the permit actually would result in less environmental protection. If a new permit simply was not issued, Massport would be able to continue to discharge in accordance with its less stringent prior NPDES permit. If EPA denied Massport the right to discharge under any individual permit, Massport (and the co-permittees) would be able to seek coverage under the general permits that have been issued covering stormwater discharges. This also would result in a less stringent level of controls. The new permit issued to Logan Airport more specifically addresses local concerns than would a general permit. If EPA somehow was able to deny Massport the right to discharge under either individual or general permits, then in order to avoid discharging without a permit, the Airport might need to be closed. But there still would be stormwater runoff from the area, when there was precipitation, but now without a permit's careful controls.

Thus this petition for review should be denied. The Region also requests that the Board quickly issue any denial order so that the new permit can take effect on schedule. The new permit is scheduled to take effect on September 29, 2007. If Mr. Cappuccio's permit appeal is not denied prior to that time, the new permit will need to be stayed at the federal level pending decision and this could delay the implementation of the many more stringent requirements established by the new permit.¹

¹ This permit also was issued under State law by the Massachusetts Department of Environmental Protection. Since Mr. Capuccio did not appeal the permit at the State level, it will take effect under State law on schedule. However, delaying the permit at the federal level would mean that its many more stringent features would not be federally enforceable, and could cause confusion.

Finally, the Region requests that the Board act on the Region's request for denial without waiting for the Region to file the entire Certification of the Index to the Administrative Record (due October 2, 2007). The Region has filed a Certified Index of all records relevant to this appeal, i.e., all records relating to the public comment process, as well as the draft and final permits. The Region believes that this record is sufficient to enable the Board to rule on Mr. Cappuccio's entirely cursory appeal, which plainly violates the requirements of 40 C.F.R. § 124.19. Since Mr. Cappuccio has not pointed to any specific problems with any specific permit provisions, the Region hopes that the burdensome task of indexing all records relating to the various specific permit provisions will not be necessary. The Board recently denied a similarly clearly meritless appeal from the Town of Marshfield, Massachusetts (NPDES Appeal No. 07-03, dated March 27, 2007), without waiting for the filing of the Index to the Administrative Record. The Board similarly should promptly deny the clearly meritless appeal filed here.

Respectfully submitted,



Jeffrey Fowley
Senior Assistant Regional Counsel
U.S. EPA, Region I
One Congress St.
Boston, MA 02114
(617) 918-1094

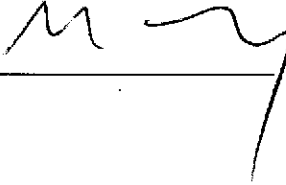
Dated: 9/9/07

OF COUNSEL:
Mary Ellen Levine
Office of General Counsel
MC-2355(A)
1200 Penn. Ave., N.W.
Washington, D.C. 20460

CERTIFICATE OF SERVICE

I, Jeffry Fowley, hereby certify that on the date below, I served a copy of the foregoing RESPONDENT'S MEMORANDUM IN OPPOSITION TO PETITION FOR REVIEW, by first class mail to: (a) the petitioner, Mr. Joseph J. Cappuccio, 746 East Fourth Street, South Boston, MA 02127, and (b) William Lahey, counsel for the Massachusetts Port Authority, Anderson & Krieger, One Canal Park, Suite 200, Cambridge, MA 02141.

Dated: 9/4/07



INDEX TO THE ADMINISTRATIVE RECORD
REGARDING THE PERMIT DOCUMENTS AND PUBLIC COMMENT PROCESS
MASSACHUSETTS PORT AUTHORITY,
LOGAN INTERNATIONAL AIRPORT
NPDES PERMIT NO. MA0000787
APPEAL NUMBER NPDES 07-16

PERMIT FILE No. MA0000787

A. PERMIT DOCUMENTS

1. Final National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0000787 issued to Massachusetts Port Authority (Massport) and the Co-Permittees for discharge from Logan International Airport, East Boston, Massachusetts, 02128, dated July 31, 2007, including Part I, Part II General Requirements, and Attachments (the "Final Permit").
2. Public Notice Draft Permit, National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0102695 sent to Massachusetts Port Authority (Massport) and the Co-Permittees for discharge from Logan International Airport, East Boston, Massachusetts, 02128, including Part I, Part II General Requirements, and Attachments.
3. Fact Sheet for Public Notice Draft Permit, National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0000787 and Attachments.
4. Logan International Airport NPDES Permit MA0000787, Response to Comments and Attachment.

B. NOTIFICATION

1. PowerPoint used at public informational meeting, East Boston Public Library, June 5 2006.
2. Written Correspondence regarding mailing of Draft Permit and Fact Sheet to Massport and 23 Co-Permittees from David M. Webster, Re: Public Notice, Informal Public Meeting, and Public Hearing, Logan International Airport, NPDES Application No. MA0000787, Dated July 21, 2006.
3. Public Notice of Draft Permit and of Public Hearing, published in Boston Globe, July 25, 2006.
4. Press release, Re: Release of Draft Permit for public comment and details of Public Hearing and meeting, July 25, 2006.
5. Written Correspondence regarding mailing of Public Notice to interested community members on permit mailing list from David M. Webster, Dated July 25, 2006.

6. Written Correspondence regarding mailing of Public Notice, Fact Sheet, and Draft Permit to 2 additional individuals by request.
7. Mailing list of interested community members to receive Public Notice, plus additional individuals by request.
8. PowerPoint used at public informational meeting, East Boston High School, 86 White Street, East Boston, Massachusetts, August 24, 2006.
9. Written Correspondence, Re: Public Notice Extension, NPDES Application No. MA0000787 sent to Keith Beasley from David M. Webster, August 29, 2006.
10. Written Correspondence, Notice of 45 day extension of comment period, informational meeting in Winthrop on October 5, 2006, and denial of request for additional public hearing, sent to Mr. John Vitagliano from David M. Webster, Dated September 11, 2007.
11. Written Correspondence, Notice of 45 day extension of comment period, informational meeting in Winthrop on October 5, 2006, and denial of request for additional public hearing, sent to Mr. Nick DelVento from David M. Webster, Dated September 11, 2007.
12. Written Correspondence, Notice of 45 day extension of comment period and informational meeting in Winthrop on October 5, 2006, sent to interested community members on permit mailing list from David M. Webster, Dated September 12, 2006.
13. Mailing list of interested community members to receive notice of 45 day extension of comment period and informational meeting in Winthrop on October 5, 2006.
14. Written Correspondence, Revised notice of 45 day extension of comment period and informational meeting in Winthrop on October 5, 2006, sent to interested community members on permit mailing list from David M. Webster, Dated September 20, 2006.
15. Flyer announcing informational meeting in Winthrop on October 5, 2006, sent to Carla Vitale, Town of Winthrop, from Nicole Kowalski, for posting in Winthrop Town Hall and distribution to Town Council Members.
16. PowerPoint used at public informational meeting, Winthrop Town Hall, October 5, 2006.
17. Written Correspondence, Mailing of notification postcard Re: Notice of availability of the final NPDES permit for Logan International Airport, sent to interested community members on permit mailing list and commenters, mailed July 31, 2007.
18. Mailing list of interested community members and commenters to receive notification postcard of availability of final NPDES permit for Logan International Airport.
19. Written Correspondence regarding mailing of final permit, response to comments, and attachments to 8 interested parties including DMF, CZM, municipal officials who commented, interested community

- member, and de-listed Co-Permittee from David M. Webster, Dated July 31, 2007.
20. Written Correspondence regarding mailing of final permit, response to comments, and attachments to Massport and 27 Co-Permittees from David M. Webster, Dated July 31, 2007.
 21. Press Release regarding final permit, Re: Updated Storm Water Permit for Logan Airport Provides Better Protections for Boston Harbor, Dated July 31, 2007.

C. COMMENTS

1. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from John Daly, Sr. Contracts Manager, Siemens Energy & Automation, Inc., Dated October 25, 2006.
2. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Cindy Delpapa, Stream Ecologist, MA Riverways Program, Dated October 18, 2006.
3. Written Correspondence, Attachment A – Logan International Airport (Logan) Storm Water Co-Permittee Application from Richard Whitman, General Manager, Aramark Aviation, Dated October 19, 2006.
4. Written Correspondence, Attachment A – Logan International Airport (Logan) Storm Water Co-Permittee Application from John P. Debonis, Jr., Operations Manager, Oxford Airport Technical Services, Dated September 28, 2006.
5. Written Correspondence, Attachment A – Logan International Airport (Logan) Storm Water Co-Permittee Application from Ken Ripley, Manager, OneSource Facility Services, Dated September 26, 2006.
6. Written Correspondence, Attachment A – Logan International Airport (Logan) Storm Water Co-Permittee Application from Kevin S. Carll, Lead Aircraft Mechanic, ASTAR Air Cargo, Dated October 4, 2006.
7. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Catherine W. Wetherell, Assistant Director Capital Programs, Environmental Manager, Massachusetts Port Authority, Dated October 23, 2006.
8. Written Correspondence, Public Notice Comment Letter given by hand to Nicole Kowalski from Gail C. Miller, Dated August 24, 2006.
9. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Richard Marchi, Senior Advisor, policy and Regulatory Affairs, Airports Council International – North America (ACI-NA), Dated October 20, 2006.
10. Written Correspondence, email sent to Nicole Kowalski from Richard Marchi, Senior Advisor, policy and Regulatory Affairs, Airports Council International – North America (ACI-NA), Re: Correction to ACI-NA comments, Dated October 21, 2006.

11. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Scott Thomas, REM, Program Manager – Environmental Systems, LSG Sky Chefs, Dated September 5, 2006.
12. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Catherine W. Wetherell, Assistant Director Capital Programs, Environmental Manager, Massachusetts Port Authority, Dated August 14, 2006.
13. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from John Davis, PE, Engineer, Corporate Safety, USAirways, Dated October 23, 2006.
14. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Andrew F. Matuson, JetBlue Airways, Dated October 23, 2006.
15. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Chris Marcellotti, Manager, Environmental Affairs, Continental Airlines, Inc., Dated October 23, 2006.
16. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Michael E. Morgan, Manager – Environmental Services, Delta Air Lines, Inc., Dated October 23, 2006.
17. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Daniel D. Tisoncik, Director, Environmental Safety, United Airlines, Dated October 23, 2006.
18. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Robert A. DeLeo, Massachusetts State Representative, Dated October 5, 2006.
19. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Douglas Siska, Manager Maintenance Safety and Environmental, AirTran Airways, Dated October 21, 2006.
20. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Christopher J. Lough, Corporate Environmental Programs, Northwest Airlines, Inc., Dated October 23, 2006.
21. Written Correspondence, Public Notice Comment Letter sent to Nicole Kowalski from Paul Diodati, Director, Division of Marine Fisheries, Dated August 28, 2006.
22. Written Correspondence, email sent to Nicole Kowalski with attached Public Notice Comment Letter addressed to Directors Murphy and Haas, from Anjie Preston, East Boston resident & activist, Dated October 23, 2006.
23. Written Correspondence, email sent to Nicole Kowalski from Todd Callaghan, Coastal Zone Management, Dated July 31, 2006.
24. Written Correspondence, email sent to Nicole Kowalski from Todd Callaghan, Coastal Zone Management, Dated September 26, 2006.
25. Written Correspondence, email sent to Nicole Kowalski from Keith Beasley, PE, Environmental Project Manager, Massachusetts Port Authority, Dated September 20, 2006.

26. Written Correspondence, Late Public Notice Comment Letter (received after close of comment period, but still considered) sent to Nicole Kowalski from Tucker M. Cornwell, Manager, Environmental Compliance, Swissport Fueling, Inc., Dated October 25, 2006.
27. Public Hearing Transcript, Re: Proposed Draft NPDES Discharge Permit for the Massachusetts Port Authority at Logan International Airport, East Boston High School, 86 White Street, East Boston, Massachusetts, Dated August 24, 2006.

CERTIFICATE OF SERVICE

I, Jeffry Fowley, hereby certify that on the date below, I served a copy of the foregoing CERTIFICATION OF THE INDEX TO THE ADMINISTRATIVE RECORD REGARDING THE PERMIT DOCUMENTS AND PUBLIC COMMENT PROCESS and INDEX TO THE ADMINISTRATIVE RECORD REGARDING THE PERMIT DOCUMENTS AND PUBLIC COMMENT PROCESS, by first class mail to: (a) the petitioner, Mr. Joseph J. Cappuccio, 746 East Fourth Street, South Boston, MA 02127, and (b) William Lahey, counsel for the Massachusetts Port Authority, Anderson & Krieger, One Canal Park, Suite 200, Cambridge, MA 02141.

Dated: 9/4/07

M J