



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

VIA 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

August 12, 2009

Dear Ms. Durr,

Enclosed please find the original of the Region's Fourth Status Report and Motion to Extend Stay of Proceedings 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.

**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.  
NPDES Permit No. MA0039853 ) 08-26, 08-27

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**FOURTH STATUS REPORT AND  
MOTION TO EXTEND STAY OF PROCEEDINGS**

Respondent Region 1 of the U.S. Environmental Protection Agency (“Region”), with the assent of the Town of Wayland Wastewater Management District Commission (“Town”), Thomas Arnold (“Mr. Arnold”) (the Petitioner in NPDES Appeal No. 08-26), and the U.S. Department of the Interior (“DOI”) (the Petitioner in NPDES Appeal No. 08-27), respectfully requests that the Environmental Appeals Board (“Board”) extend the stay of proceedings to January 13, 2010 to allow the Region to modify the appealed NPDES permit. As set forth in more detail below, all four parties have executed a written settlement agreement, and the Region has recently submitted a proposed permit modification for public notice.

**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. *See, e.g.*, Doc. No. 64 (Region’s Third Status Report and Motion to Extend Stay of Proceedings) (July 9, 2009).

In the Region's last status report, to which the Town, Mr. Arnold, and DOI assented, the Region stated that the Region, the Town, and DOI were near (but not yet in) full agreement. *Id.* at 3-4. The Region further stated that ongoing discussions pertaining to an amended monitoring protocol offered the possibility that Mr. Arnold's appeal could be settled as well. *Id.* at 4. The Region also noted that it had issued a Notice of Withdrawal of Conditions Pursuant to 40 C.F.R. § 124.19(d), withdrawing the permit's phosphorus effluent limits and advising the Board and the parties that the Region intends to propose revised phosphorus permit conditions in a draft permit modification to be submitted for public notice in the near future. *Id.* The Region requested a stay of proceedings by approximately six months, to January 13, 2010, to enable the Region to develop the draft permit modification in parallel with continued discussions over the text of the written settlement agreement. *Id.* at 4, 6-7.

On July 21, 2009 the Board granted the Region's motion in part, and stayed the proceedings in both petitions until August 20, 2009. *See In re Town of Wayland Wastewater Dist. Mgmt. Comm'n*, NPDES Appeal Nos. 08-26, 08-27 (EAB, July 21, 2009) (Order Extending Stay of Proceedings) at 2. The Board noted that, as of the date of its order, "predictions by the parties of further progress with respect to the formalization of a three-party agreement have not been fulfilled, and success in reaching a four-party agreement is still in doubt." *Id.* at 2. The Board instructed the parties to provide a status report of their settlement progress by August 20, 2009, and stated that "[i]f some or all parties by then reach a final agreement, then the Board will be open to discuss a further time extension to allow the necessary time for the permit modification

process to take place,” but that if no agreement was reached by August 20, then “further requests for extension [would] be subject to very close scrutiny by the Board.” *Id.* at 2-3.

## STATUS REPORT

### 1. Status

All four parties have concluded a written settlement agreement (“Agreement”), which is attached hereto as Exhibit 1.<sup>1</sup> By its terms, the Agreement became effective on August 10, 2009. *See* Ex. 1, ¶¶ 33-34. The Agreement includes the terms of the draft permit modification to which the parties have agreed, and provides that the Region will modify the NPDES permit pursuant to 40 C.F.R. part 124. *See id.* ¶¶ 6-8. The Agreement provides that the Region will use its best efforts to issue a draft permit modification within forty-five days of the date of the Agreement. *See id.* ¶ 6. The Agreement further provides, *inter alia*, that the Town, DOI, and Mr. Arnold agree not to comment adversely on the draft permit modification assuming it conforms to the Agreement, and that DOI and Mr. Arnold will, upon finalization of a permit modification substantially similar to the anticipated agreed-to draft permit modification, withdraw their appeals. *See id.* ¶¶ 11-12.

In parallel with the conclusion of negotiations over the text of the Agreement, the Region completed the draft permit modification, and submitted the permit modification for public notice on August 12, 2009. *See* Ex. 2 (public notice); *see also* <http://epa.gov/ne/npdes/permits/draft/2009/draftma0039853permitmod.pdf>. As specified in the public notice, the comment period closes on September 10, 2009, unless extended pursuant to 40 C.F.R. part 124.

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<sup>1</sup> The Agreement itself includes four exhibits designated A through D therein.

## 2. Projected schedule

The Region is pleased to report that it is currently well ahead of the Agreement's schedule for the NPDES permit modification. As noted above, the Agreement's effective date is August 10, 2009, and the Agreement states that the Region will use its best efforts to issue a draft permit modification within forty-five days of the date of the Agreement, i.e., by September 24, 2009. Since the Region actually submitted the draft permit modification for public notice just two days after the Agreement's effective date, it is approximately forty-three days ahead of schedule.

As noted above, the public notice specifies a public comment period of 30 days, pursuant to 40 C.F.R. § 124.10(b)(1). However, a commenter may request a longer comment period in order to have a reasonable opportunity to comply with the obligation to raise issues and provide information during the public comment period, and if such a request is made, the Region must grant additional time to the extent that the requestor demonstrates the need for such time. *See id.* § 124.13. Moreover, any interested person may request a public hearing, *see id.* § 124.11, and if the Region decides to grant any such request, it must give public notice of such a hearing at least 30 days in advance, *see id.* § 124.10(b)(2). Thus, it is conceivable that the comment period could last 60 days or longer, depending on the nature and timing of requests received.

The Agreement provides that the Region will use good faith efforts to issue a final permit modification within 90 days after the issuance of the draft permit modification, with the explicit proviso that this timeframe may need to be extended based on the volume or nature of public comments received, any requests for extension of the comment period, or any requests for a public hearing. *See Ex. 1 ¶ 8.* Notwithstanding

this possibility of extension, the timeframes provided by the Agreement envision that a final permit modification would be issued by November 10, 2009.

### **REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF**

The Region, with the assent of the Town, Petitioner DOI, and Petitioner Arnold, respectfully requests that the Board extend the stay of the proceedings for both Appeal Nos. 08-26 and 08-27 by approximately five months, to January 13, 2010. This term includes: (1) one month for public comment, (2) two months for the Region to respond to public comments, and to issue a final permit modification after consideration of such comments, (3) one month for DOI and Mr. Arnold to dismiss their existing appeals and for any parties that adversely comment on the draft permit modification to file petitions for review of the final permit modification pursuant to 40 C.F.R. § 124.19, and (4) three weeks for the Region, in consultation with the Town, DOI, and Mr. Arnold to prepare a status report advising the Board on whether DOI and Mr. Arnold have dismissed their appeals, and to propose a course of action for addressing any new petitions for review.

The Region proposes to submit a status report to the Board no later than January 13, 2010, advising the Board regarding the status of the permit modification, whether DOI has dismissed its appeal, whether Petitioner Arnold has dismissed his appeal, whether the Region has received any petitions for review of the final permit modification, and how best to consolidate any new petitions with any remaining existing petitions. The Region has selected January 13, 2010 because it is approximately three weeks after the estimated December close of the appeal period for the final permit modification, and this interval (given two intervening federal holidays and common vacation times) is necessary

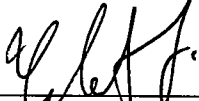
to allow the Region, in consultation with the existing parties, adequate time to attempt to formulate an assented-to status report.

For the reasons stated above, the Region, with the assent of the Town and Petitioners DOI and Arnold, respectfully requests that the Board extend the stay of the proceedings for both appeals to January 13, 2010.

Respectfully submitted,

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1**

By its attorney,



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Ronald A. Fern, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114  
617-918-1040  
Date: August 12, 2009

CERTIFICATE OF SERVICE

I, Ronald Fern, hereby certify that copies of the foregoing Fourth Status Report and Motion to Extend Stay of Proceedings were sent on the 12th day of August 2009 to the following persons in the manner described below:

Original by first class mail  
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.  
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Signed: August 12, 2009



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