



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 1  
1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

OFFICE OF THE  
REGIONAL ADMINISTRATOR

October 20, 2005

**VIA ELECTRONIC AND EXPRESS MAIL**

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

Re: Status Report and Third Motion to Extend Stay of the Proceedings  
City of Brockton, Brockton Advanced Water Reclamation Facility  
NPDES Appeal No. 05-04  
NPDES Permit No. MA0101010

Dear Ms. Durr:

Enclosed is a Status Report and Third Motion to Extend Stay of the Proceedings in connection with NPDES Appeal No. 05-04. Please file this status report and motion in your usual manner.

If you should have any questions, please do not hesitate to contact me at 617-918-1095.

Sincerely,

Samir Bukhari  
Attorney Advisor  
Office of Regional Counsel  
US EPA-Region 1

Enclosures

cc:

Timothy A. Watts  
Douglas H. Watts  
George Olson

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

In the Matter of: )

Brockton Advanced Water )  
Reclamation Facility, )  
City of Brockton, Massachusetts )

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NPDES Appeal No. 05-04

**STATUS REPORT AND THIRD MOTION TO EXTEND STAY OF THE PROCEEDINGS**

The New England Region of the Environmental Protection Agency ("EPA" or "Region") respectfully submits to the Environmental Appeals Board ("Board") this status report and motion to further extend the stay of the proceedings in the above-referenced appeal. Timothy Watts and Douglas Watts ("Petitioners," together with EPA, "Parties") have informed EPA of their assent to the motion. The City of Brockton ("Permittee"), although not a party to the appeal, is participating in settlement discussions and has also informed EPA of its support of the motion.

**BACKGROUND**

On May 11, 2005, EPA reissued a National Pollutant Discharge Elimination System Permit, No. MA0101010, to the City of Brockton authorizing discharge of treated wastewater effluent from the Brockton Advanced Water Reclamation Facility ("Facility"). On June 9, 2005, Petitioners filed a petition for review by the Board contesting, inter alia, the permit's flow, chlorine and phosphorus limits ("Petition"). The

Board directed the Region to submit a response by July 25, 2005 that addresses Petitioners' contentions and whether Petitioners have satisfied the requirements for obtaining review.

On July 19, 2005, the Parties filed a Joint Motion for Stay of the Proceedings. In the Joint Motion, the Parties reported that they had entered into settlement negotiations and, accordingly, requested a stay of the proceedings before the Board until September 18, 2005. The Board granted the Joint Motion on July 21, 2005.

On September 19, 2005, the Region again motioned the Board to extend the stay until November 1, 2005. On September 21, 2005, the Board issued an Order Granting Second Motion for Stay of Proceedings and instructed the Region to file a report by November 1, 2005 to describe the status of settlement negotiations and to suggest a future course of action.

#### **GROUND FOR STAY**

The Region, the Petitioners and the Permittee continue to be engaged in settlement discussions and continue to believe that there is a substantial likelihood of resolution of the issues raised in the Petition. The basis for this motion is to allow sufficient time to conclude such discussions.

As the Region informed the Board in its September 19, 2005 motion, the Petitioners would be willing to drop their appeal of the Permit if the Permittee were to adopt an ultra-violet disinfection system and agree to conduct an in-stream water quality monitoring program for the Salisbury Plain and Taunton Rivers. The Region indicated that additional time was needed to develop a cost estimate for the monitoring program and to determine the appropriate mechanism to implement it.

Brockton has indicated its willingness to implement ultraviolet disinfection in an effort to address the Petitioners' concerns. The cost estimate for the study has been completed, and EPA, Petitioners and Permittee have agreed that it would be most efficient to perform the study as a supplemental environmental project to be implemented through a consent decree that is being entered into by Permittee to resolve an ongoing enforcement action brought by EPA.<sup>1</sup> The Region, Petitioners and Permittee are continuing their discussions regarding the nature and scope of the study. Brockton has also recently raised the prospect of pursuing an alternative to the in-stream water quality study, specifically a regional wastewater planning study. Petitioners and Permittee have each reiterated their preference to resolve the pending appeal through negotiation in order to avoid the risks and delay associated with continued litigation.

Absent a stay, the Parties will be required to divert their time and effort from settlement discussions to the proceeding before this Board. Therefore, in an effort to conserve resources and to encourage efficiency and promote judicial economy, the Region requests that these proceedings be stayed for 60 days in order to allow sufficient time for the Region, the Petitioners and the Permittee to resolve the outstanding issues regarding the settlement and to memorialize whatever agreement emerges in the consent decree, which is expected to be finalized within the next two months. On, or as soon as possible before that date, the Parties will submit a status report to advise the Board whether it appropriate to continue the stay, dismiss the Petition, or establish a schedule for EPA's response to the Petition.

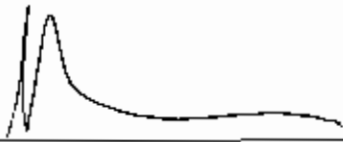
#### **REQUESTED RELIEF**

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<sup>1</sup> Negotiation of the consent decree to resolve the enforcement matter is being conducted by another attorney in the Region's Office of Environmental Stewardship, while the permit appeal is being handled by an attorney in the Region's Office of Regional Counsel.

Accordingly, the Region requests that this matter be stayed to allow the Parties to resolve the issue through settlement discussions.

Respectfully submitted,



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U.S. Environmental Protection Agency,  
New England Region

By its Attorney,  
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Dated: October 20, 2005