

## HALL & ASSOCIATES

Suite 701  
1620 I Street, NW  
Washington, DC 20006-4033  
Telephone: (202) 463-1166      Web: <http://www.hall-associates.com>      Fax: (202) 463-4207

Reply to E-mail:  
jhall@hall-associates.com

February 21, 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 attached the Petitioner's Reply to New Hampshire Department of Environmental Services' Objection to Motion to Strike Non-Party Amicus Brief and accompanying Certificate of Service regarding NPDES Appeal No. 12-05.

Sincerely,



---

John C. Hall  
1620 I St., N.W.  
Suite 701  
Washington, D.C. 20006  
Tel: (202) 463-1166  
Fax: (202) 463-4207  
jhall@hall-associates.com

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

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

**Petitioners Reply to New Hampshire Department of Environmental Services’ Objection to  
Strike Non-Party Amicus Brief**

Petitioners, the Great Bay Municipal Coalition (“the Coalition”), respectfully submit this Reply to New Hampshire Department of Environmental Services (“NHDES”) Objection to Motion to Strike Non-Party Amicus Brief (“NHDES Motion Objection”) with the Environmental Appeals Board (“EAB” or “the Board”). For the reasons specified below, the relief requested should be granted in full.

First, NHDES’s four line “substantive” response did not provide a scintilla of objective evidence to support their one line rebuttal that the serious, well-documented allegations in the Motion for Reconsideration were “unfounded”. NHDES Mot. Objection at 2. Therefore, these allegations should be deemed true.

Second, there is no response to the Petitioners allegations that the amicus brief was just unsupported assertions of counsel, which as a matter of law, cannot serve as evidence in this case. Thus, the amicus brief cannot serve to “correct some of the most important misrepresentations” as NHDES originally alleged. Mot. to File Non-Party Amicus Brief at 2.

Finally, NHDES' assertion that "[s]triking an amicus brief based on these alleged deficiencies is not an appropriate remedy" (NHDES Motion Objection at 2) is unsupported and false. The Board is allowed to consider and rule upon motions as it sees fit. *See e.g. In re Peabody W. Coal Co.*, CAA Appeal No. 10-01, slip op at 7 (EAB Aug. 13, 2010), 14 E.A.D. \_\_\_ ("In the part 124 context, despite the lack of detailed procedures in the regulations, the Board has exercised broad discretion to manage its permit appeal docket by ruling on motions presented to it for various purposes . . . ."). It is well within the Board's authority to consider and grant a motion to strike an amicus brief when "justice requires it." *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970) ("[I]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.") (citing *Nat'l Labor Relations Bd. v. Monsanto Chem. Co.*, 205 F.2d 763, 764 (8th Cir. 1953)).<sup>1</sup> In this case, justice requires the brief to be struck because fraud on the court has been demonstrated and duty of candor has been violated. *See e.g., Demjanjuk v. Petrovsky*, 10 F.3d 338, 348 (6<sup>th</sup> Cir. 1993).

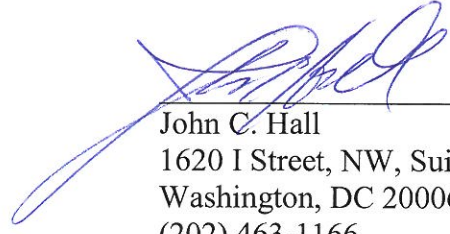
Therefore, as the requested relief has been thoroughly justified by Petitioners and not disputed by the amicus proponent with any specificity or objectively reliable information, the relief should be granted in full.

---

<sup>1</sup> 40 C.F.R. Part 124 and the Board's guidance documents only require service on a party to the proceeding and to the Board. *See* EAB Practice Manual at 47-48, 49. Therefore, Petitioners did not err by only serving EPA Region 1 with the Motion for Reconsideration of the Order Granting New Hampshire Department of Environmental Services' Motion to File Non-Party Amicus Brief and Motion to Strike the Amicus Brief date February 8, 2013 ("Motion for Reconsideration"). Even if the Board finds that Petitioners erred by not providing proper service to NHDES, the error was harmless and had no adverse effects as NHDES obtained a copy through the Board's active docket website for this case.

Respectfully submitted,

Date : Feb 21, 2013



---

John C. Hall  
1620 I Street, NW, Suite 701  
Washington, DC 20006  
(202) 463-1166  
(202) 463-4207 fax  
jhall@hall-associates.com  
Attorney for Petitioner

## CERTIFICATION OF SERVICE

I hereby certify the copies the Petitioner's Petitioners Reply to New Hampshire Department of Environmental Services' Objection to Strike Non-Party Amicus Brief in connection with NPDES Appeal No. 12-05, were sent to the following persons in the manner indicated:

By Electronic Filing:

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

By First Class U.S. Mail:

Mr. Samir Bukhari  
U.S. Environmental Protection Agency  
Office of Regional Counsel, Region 1  
5 Post Office Square- Suite 100  
Mail Code: ORA 18-1  
Boston, MA 02109-3912

Mr. Evan J. Mulholland  
Assistant Attorney General  
New Hampshire Department of Justice  
33 Capitol St.  
Concord, NH 03301



John C. Hall  
1620 I St., N.W.  
Suite 701  
Washington, D.C. 20006  
Tel: (202) 463-1166  
Fax: (202) 463-4207  
jhall@hall-associates.com

Date: File 21, 2013