

**CLARK, BALBONI & GILDEA**  
72 Main Street, Bridgewater, MA 02324  
Tel. 508.697.6211 -- Fax 508.697.8611

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U.S. E.P.A.

2016 NOV 22 PM 12: 28

**MARK C. GILDEA LAW OFFICE, P.C.**

**MARK C. GILDEA\*\***  
**JOHN L. KOWALSKI\***  
**MEGAN D. BRIDGES\***  
**SHANNON D. RESNICK\***

\*MEMBER MASSACHUSETTS BAR  
\*\*MEMBER MASSACHUSETTS & RHODE ISLAND BARS

Of Counsel: **RICHARD M. CLARK**

**CAPE COD OFFICE**  
**ENVIRONMENTAL APPEALS BOARD**

Great Neck Road, South  
P.O. Box 1769  
Mashpee, MA 02649  
Tel. 508.477.5567  
Fax 508.477.5866

ROBERT G. CLARK, JR. (1923 - 1976)  
FREDERICK H. BALBONI (1939 - 1996)  
ROBERT G. CLARK, III. (1963-2013)

Reply To **Bridgewater**

November 15, 2016

Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
U.S. EPA East Building, Room 3334  
Washington, DC 20004

**RE: Town of Bridgewater Wastewater Treatment Plant**  
**NPDES Permit Appeal No. 16-\_\_ ; NPDES Permit NO. MA0100641**

Dear Ms. Durr,

Enclosed for filing in the above referenced matter, please find:

1. The Town of Bridgewater's Opposition to EPA Region 1's Motion to Dismiss, and Attachments; and
2. Affidavit of Mark C. Gildea, Esq.

Kindly file in your usual manner. Should you have any questions, please contact me.

Very truly yours,



Mark C. Gildea, Esq.

Enc.

cc. Samir Bukari, US Environmental Protection Agency, Office of Regional Counsel, Region 1  
David R. Ferris, Director, Massachusetts Wastewater Treatment Program - DEP Commonwealth of Mass.

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

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ENVIR. APPEALS BOARD

\_\_\_\_\_  
In the Matter of: )  
)  
Bridgewater Wastewater Treatment )  
Plant )  
)  
NPDES Permit No. MA0100641 )  
\_\_\_\_\_ )

NPDES Appeal No. 16-\_\_

**THE TOWN OF BRIDGEWATER'S OPPOSITION TO EPA REGION 1'S MOTION TO  
DIMISS THE TOWN'S PETITION**

**I. INTRODUCTION**

NOW COMES the Petitioner, the Town of Bridgewater, and hereby requests that the Clerk of the Board for the Environmental Appeals Board for the U.S. Environmental Protection Agency deny EPA Region 1's Motion to Dismiss the Town of Bridgewater's Petition. As grounds therefore the Petitioner states that its Petition for Review – Appeal to NPDES Permit No. MA0100641 was timely submitted and as such the EPA Region's Motion to Dismiss claiming that the Town's Petition was untimely should be dismissed. Further, the Clerk of the Board should deny EPA Region 1's request to stay the filing of the response to the Town of Bridgewater's Petition and Certified Index of the Administrative Record. In support of its opposition, the Town of Bridgewater submits the Affidavit of Attorney Mark Gildea.

**II. BACKGROUND AND ARGUMENT**

Through Counsel, the Town of Bridgewater informed EPA Region 1 on November 14, 2016 that the Town opposed its Motion to Dismiss and informed Region 1 that contrary to the

Region's contention that the Town failed to serve the original Petition with the Clerk of Environmental Appeals Board, the Town did effectuate such service as required by 40 C.F.R. § 124.19(a)(3) ("A petition for review must be filed with the Clerk of the Environmental Appeals Board within 30 days after the Regional Administrator serves notice of the issuance of a[n]...NPDES...final permit decision[.]") as described below.

In support, the Town references the Affidavit of Attorney Mark C. Gildea enclosed with this Opposition and marked as Attachment A. The Town submits that the following facts are true and supported by the record:

1. To the best of the Town of Bridgewater's knowledge, Region 1 mailed the Final NPDES Permit on or about October 3, 2016 (See Page 3, ¶ 3 to EPA Region 1's Motion to Dismiss).
2. The Town of Bridgewater had no knowledge of the date Region 1 mailed the Final NPDES Permit until receiving the Region's Motion to Dismiss on November 15, 2016.
3. Region 1 states in its Motion to Dismiss that it served the Final Permit to the following:
  - Jonas Kazlauskas, Superintendent of Facility, Town of Bridgewater Wastewater Treatment Facility (delivered on October 5, 2016) (See Attachment 5 to EPA Region 1's Motion to Dismiss).
  - Charles Kane, Board of the Water and Sewer Commission (delivered on October 11, 2016) (See Attachment 6 to EPA Region 1's Motion to Dismiss).
4. Despite Region 1's contention that it mailed the EPA Permit on October 3, 2016, the Board of the Water and Sewer Commission did not receive the Permit until October 11, 2016, eight (8) days later.
5. Mr. Kazlauskas is an employee of the Facility and is not an appointed Commissioner for the Board of the Water and Sewer Commission for the Town of Bridgewater. The Commissioner, Charles Kane, did not receive the Permit until October 11, 2016 (See Attachment 6 to EPA Region 1's Motion to Dismiss).
6. The Commissioner, Charles Kane passed away suddenly days later on October 29, 2016.

7. On Friday November 4, 2016, Attorney Gildea caused a copy of the Town of Bridgewater's Petition for Review to be served on the EPA Region 1 In-Hand at their office in Boston, Massachusetts.
8. On Friday November 4, 2016, EPA Region 1 received notice of the Town of Bridgewater's Petition for Review, within the time period prescribed by 40 C.F.R. § 124.19.
9. Region 1 acknowledges receipt of the Petition within the appropriate time period (See Page 3, ¶ 7 to EPA Region 1's Motion to Dismiss).
10. On Friday November 4, 2016, Attorney Gildea caused the original and two (2) copies of the Town's Petition for Review to be delivered to the Clerk of the Board *via* Fed Ex Standard Overnight shipping, to Clerk of the Board, US EPA, 1200 Pennsylvania Ave NW, Washington DC, 20460 US. A copy of the FedEx Express Shipment Detail is enclosed with this Opposition and marked as Attachment B.
11. The FedEx Express Shipment Detail transcribes that the mailing was delivered to the Clerk of the Board at the address described above on November 7, 2016. See Attachment B.
12. Counsel for the Town of Bridgewater received formal notice that the package had been delivered to the Clerk of the Board at the address described above on or about November 10, 2016. See Attachment B.
13. On Tuesday November 15, 2016, counsel for the Town of Bridgewater received the returned package sent to the Clerk of the Board at the address above. See Attachment A.
14. Thereafter, counsel for the Town of Bridgewater re-served the returned package to the Clerk of the Board at 1201 Constitution Avenue, NW, WJC East Building, Room 3334, Washington, D.C., 20004. See Attachment A.
15. As stated in its Petition for Review, and affirmed by Region 1 in their Motion to Dismiss, the Town of Bridgewater remains option to engagement with Region 1 to amicably resolve the requests for relief sought by the Town of Bridgewater in its Petition for Review to the Environmental Appeals Board.

The Environmental Appeals Board will excuse a late-filed appeal if it finds that special circumstances existed to justify the delay. *In re B&L Plating, Inc.*, 11 E.A.D. 183, 190 (EAB 2003); *see also In re Outboard Marine Corp.*, 6 E.A.D. 194, 196 (EAB 1995). Further, the Environmental Appeals Board may grant an extension for filing the appeal brief if good cause is shown and there is no prejudice to the opposing parties. *In re B & B Wrecking and Excavating, Inc.*, 4 E.A.D. 16, 17 (EAB 1992).

### III. REQUESTED RELIEF

As stated and argued above, the Town of Bridgewater submits that any alleged procedural error did not create any prejudice to EPA Region 1, which received the Town of Bridgewater's Petition to Review within the prescribed timeline in 40 C.F.R. § 124.19. The Town of Bridgewater submits that the Board of Water and Sewer Commission did not receive the Permit until October 11, 2016, eight (8) days after the Region mailed the Final Permit. The Town of Bridgewater respectfully requests that the Clerk of Board deny Region 1's Motion to Dismiss and accept the Town's filing of the Petition for Review.

Respectfully Submitted  
The Town of Bridgewater, Massachusetts  
Through its Counsel,



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Mark C. Gildea, Esq.  
Clark, Balboni & Gildea  
markgildea@cbglawfirm.com  
72 Main Street, Bridgewater, MA 02324  
Tel: 508-697-6211 Fax: 508-697-8511

Dated: November 15, 2016

**STATEMENT OF COMPLIANCE**

The undersigned, **Mark C. Gildea, Esq.**, counsel for the Town of Bridgewater, hereby certifies that the Petition for Review complies with the word and pagination limitations pursuant to 40 C.F.R. § 124.19.

Dated: November 15, 2016



Mark C. Gildea, Esq.

**CERTIFICATE OF SERVICE**

The undersigned, **Mark C. Gildea, Esq.**, counsel for the Town of Bridgewater, hereby certifies that the Town of Bridgewater's Opposition to EPA Region 1's Motion to Dismiss, and Attachments, were served by first class mail, postage prepaid, or in-hand, to the following:

Sam Bukhari  
US Environmental Protection Agency  
Office of Regional Counsel, Region 1  
5 Post Office Square – Suite 100  
Mail Code: ORA 18-1  
Boston, MA 02109-3912

David R. Ferris, Director  
Massachusetts Wastewater Management Program  
DEP– Commonwealth of Massachusetts  
One Winter Street  
Boston, MA 02108

Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
U.S. EPA East Building, Room 3334  
Washington, DC 20004

Dated: November , 2016



Mark C. Gildea, Esq.

# Attachment A

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

2016 NOV 22 PM 12: 29

ENVIR. APPEALS BOARD

\_\_\_\_\_  
In the Matter of: )  
)  
Bridgewater Wastewater Treatment )  
Plant )  
)  
NPDES Permit No. MA0100641 )  
\_\_\_\_\_ )

NPDES Appeal No. 16-\_\_

**AFFIDAVIT OF MARK C. GILDEA, ESQ.**

I, Mark C. Gildea, Esq., on oath do depose and say as follows:

1. I am the counsel for record for the Town of Bridgewater with respect to the Petition for Review for the NPDES Permit No. MA0100641 for the Bridgewater Wastewater Treatment Plant.
2. To the best of my knowledge, Commissioner Charles Kane for the Bridgewater Board of Water and Sewer Commission received the Final Permit from EPA Region 1 on or about October 11, 2016.
3. Mr. Kane passed away suddenly shortly thereafter on October 29, 2016.
4. On behalf of the Town of Bridgewater, I served the Town's Petition for Review of the NPDES Permit In-Hand to the EPA Region 1 at their office in Boston, Massachusetts on November 4, 2016.
5. On November 4, 2016, I sent by FedEx the original Petition and two (2) copies to the Clerk of the Board for the Environmental Appeals Board to 1200 Pennsylvania Ave NW, Washington DC, 20460 US.
6. A copy of the FedEx Shipment Detail is attached with the Town's Opposition to Region 1's Motion to Dismiss and marked as Attachment B.
7. I received a copy of Region 1's Motion to Dismiss *via* e-mail on November 14, 2016.



8. On November 15, 2016, I received the return package from FedEx of the documents I served to the Clerk of the Board on November 4, 2016.
9. On November 15, 2016, I re-served the package to the Clerk of the Board for the Environmental Appeals Board to 1201 Constitution Avenue, NW, WJC East Building, Room 3334, Washington, D.C., 20004.
10. EPA Region 1 received a true copy of the original Petition for Review on November 4, 2016 within the prescribed timeline under 40 C.F.R. § 124.19.

Signed this 15<sup>th</sup> day of November 2016, under the pains and penalties of perjury.

A handwritten signature in blue ink, appearing to read "Mark Gildea", written over a horizontal line.

Mark C. Gildea

**CERTIFICATE OF SERVICE**

The undersigned, **Mark C. Gildea, Esq.**, counsel for the Town of Bridgewater, hereby certifies that the Affidavit of Mark C. Gildea, Esq., was served by first class mail, postage prepaid, or in-hand, to the following:

Sam Bukhari  
US Environmental Protection Agency  
Office of Regional Counsel, Region 1  
5 Post Office Square – Suite 100  
Mail Code: ORA 18-1  
Boston, MA 02109-3912

David R. Ferris, Director  
Massachusetts Wastewater Management Program  
DEP– Commonwealth of Massachusetts  
One Winter Street  
Boston, MA 02108

Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
U.S. EPA East Building, Room 3334  
Washington, DC 20004

Dated: November 19, 2016

  
\_\_\_\_\_  
Mark C. Gildea, Esq.

# Attachment B

**Invoice Number**  
5-606-47554

**Invoice Date**  
Nov 10, 2016

**Account Number**  
1109-5668-1

**FedEx Express Shipment Detail By Payor Type (Original)**

**Ship Date:** Nov 04, 2016      **Cust. Ref.:** NO REFERENCE INFORMATION      **Ref.#2:**  
**Payor:** Shipper      **Ref.#3:**

- Fuel Surcharge - FedEx has applied a fuel surcharge of 2.00% to this shipment.
- Incorrect recipient address.
- Distance Based Pricing, Zone 4
- Undeliverable Package.

<b>Automation</b>	AWB	<b>Sender</b>	<b>Recipient</b>
<b>Tracking ID</b>	808902704900	CLARK BALBONI & GILDEA	CLERK OF THE BOND
<b>Service Type</b>	FedEx Standard Overnight	72 MAIN ST	US EPA
<b>Package Type</b>	FedEx Large Box	BRIDGEWATER MA 02324-1408 US	1200 PENNSYLVANIA AVE NW
<b>Zone</b>	04		WASHINGTON DC 20460 US
<b>Packages</b>	1		
<b>Rated Weight</b>	14.0 lbs, 6.4 kgs	<b>Transportation Charge</b>	110.40
<b>Delivered</b>	Nov 07, 2016 22:18	<b>Discount</b>	-72.81
<b>Svc Area</b>	A1	<b>Fuel Surcharge</b>	0.75
<b>FedEx Use</b>	030961376/1327/14	<b>Total Charge</b>	<b>USD \$38.34</b>

**Ship Date:** Nov 07, 2016      **Cust. Ref.:** NO REFERENCE INFORMATION      **Ref.#2:**  
**Payor:** Shipper      **Ref.#3:**

- Fuel Surcharge - FedEx has applied a fuel surcharge of 2.25% to this shipment.
- Distance Based Pricing, Zone 6

<b>Automation</b>	USAB	<b>Sender</b>	<b>Recipient</b>
<b>Tracking ID</b>	808902704910	CLARK BALBONI & GILDEA	NIKE RLC WINCHESTER
<b>Service Type</b>	FedEx Standard Overnight	72 MAIN ST	NIKE RLC WINCHESTER CL 1610280
<b>Package Type</b>	FedEx Large Box	BRIDGEWATER MA 02324-1408 US	3552 AVENUE OF COMMERCE
<b>Zone</b>	06		MEMPHIS TN 38125 US
<b>Packages</b>	1		
<b>Rated Weight</b>	2.0 lbs, 0.9 kgs	<b>Transportation Charge</b>	59.19
<b>Delivered</b>	Nov 08, 2016 08:47	<b>Discount</b>	-40.54
<b>Svc Area</b>	A1	<b>Fuel Surcharge</b>	0.42
<b>Signed by</b>	A.CHAVANNES	<b>Total Charge</b>	<b>USD \$19.07</b>
<b>FedEx Use</b>	031279384/1371/_		

<b>Shipper Subtotal</b>	<b>USD</b>	<b>\$57.41</b>
<b>Total FedEx Express</b>	<b>USD</b>	<b>\$57.41</b>

