

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

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In re: City of Fitchburg	)	
Wastewater Treatment Facilities Commission	)	
	)	NPDES Appeal No. 10-14
NPDES Permit No. MA 0100986	)	
	)	

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**STATUS REPORT AND  
MOTION TO EXTEND STAY**

Region 1 (“Region”) of the United States Environmental Protection Agency (the Respondent), with the assent of the City of Fitchburg (Massachusetts) Wastewater Treatment Facilities Commission (the permittee and Petitioner), respectfully requests that the Environmental Appeals Board (“Board”) stay the proceedings in the above-captioned matter for an additional thirty days to August 12, 2011, so that the parties may complete settlement negotiations that are proceeding constructively and which may lead to a resolution of this appeal without the need for litigation before the Board.

**BACKGROUND**

On July 22, 2010, the Region issued a final National Pollutant Discharge Elimination System (“NPDES”) permit to the City of Fitchburg Wastewater Treatment Facilities Commission (“City”) for the Fitchburg East Wastewater Treatment Facility and certain combined sewer overflows, NPDES Permit No. MA0100986 (“Permit”). On August 26, 2010, the City filed a Petition for Review of the Permit. On September 23, 2010, the Board granted the Region’s motion to stay the proceedings until January 14,

2011 to allow the parties to undertake settlement negotiations. On January 7, 2011, the Board granted the Region's request for an extension of the stay to April 14, 2011.

On April 7, 2011, the Board granted the Region's request for a further extension of the stay to July 13, 2011, and further ordered that the Region submit a status report by July 6, 2011, "to advise the Board as to whether a revised scheduling order should be entered, or whether some other Board action is appropriate." *In re City of Fitchburg Wastewater Treatment Facilities Comm'n*, NPDES Appeal No. 10-14, slip op. at 2 (EAB Apr. 7, 2011) (Third Order Granting Stay). The Board noted its expectation that "any request for further extension of the stay would be based on significant progress made." *Id.* at 2-3.

### **STATUS REPORT**

The Region is pleased to report that significant progress has been made. The parties have reached an agreement in principle on the material elements of a settlement under which the City would withdraw its appeal, and the Region would issue an administrative compliance order setting forth a schedule for reaching compliance with the Permit's contested effluent limits, including milestones and interim effluent limits.

On June 30, 2011, the Region sent to the City a draft administrative order intended to implement the agreement in principle. The City is presently reviewing that draft and expects to provide the Region with any change requests shortly. Since the Region's draft implements a mutually acceptable compliance schedule (with mutually acceptable interim limits and schedule milestones), any further negotiations or iterative revisions are likely to be focused and prompt.

**REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF**

The Region, with the assent of the City, requests that the Board extend the stay of proceedings by thirty days to August 12, 2011. The parties propose that, by August 5, 2011, either (1) having reached a settlement, the City will submit a request to dismiss its petition, or (2) having concluded that settlement is impossible, the parties will submit a status report so stating, and propose a revised schedule to litigate the appeal.

This thirty-day extension is reasonable and necessary for the parties to finalize the text of a draft administrative order. Since the parties have already agreed in principle to the material terms (i.e., compliance schedule, milestones, and interim limits), it is likely that the parties can resolve all remaining issues within thirty days.

If a stay is not granted, the parties will be forced to divert their time and effort to the proceedings before this Board, when there is a high probability that the issues raised in the Petition can be resolved in the next month through settlement. Accordingly, the Region, with the assent of the City, requests that the Board grant this motion and stay all proceedings in this matter until August 12, 2011. In the meantime, the Region does not believe a status conference is likely to materially advance the resolution of this appeal.

The Region's undersigned counsel has discussed this Status Report and Motion to Extend Stay with the City's counsel and represents that the City assents to the motion.

Respectfully submitted,

*Ronald A. Fein*

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Date: July 6, 2011

CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that copies of the foregoing **Error! Reference source not found.** were sent on the 6th day of July 2011 to the following persons in the manner described below:

Electronic posting to CDX system

Eurika Durr, Clerk of the Board  
Environmental Appeals Board

Copy by e-mail

David E. Evans, Esq.  
McGuireWoods LLP

Signed: July 6, 2011

*Ronald A. Fein*