



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

VIA FAX AND 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

April 7, 2009

Dear Ms. Durr,

Enclosed please find the original of the Region's 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 blue 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
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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.**

In re: Town of Wayland,)	
Wastewater Management District Commission)	NPDES Appeal Nos.
)	08-26, 08-27
NPDES Permit No. MA0039853)	
)	

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

Respondent Region 1 of the U. S. Environmental Protection Agency (“Region”), with the assent of Thomas Arnold (the Petitioner in NPDES Appeal No. 08-26) and the U.S. Department of the Interior (the Petitioner in NPDES Appeal No. 08-27), respectfully requests that the Environmental Appeals Board (“Board”) extend the stay of proceedings by an additional two months, to June 10, 2009, in light of ongoing settlement negotiations.

BACKGROUND

The Region reissued NPDES Permit No. MA0039853 (“Permit”) to the Town of Wayland Wastewater Management District Commission (“Town”) on September 30, 2008. Mr. Arnold filed an Initial Petition for Review dated November 17, 2008 contesting certain conditions of the Permit. Mr. Arnold also filed a supplemental Petition for Review dated November 27, 2008 also contesting certain conditions of the Permit. The U.S. Department of the Interior also filed a Petition for Review dated November 14, 2008 contesting certain conditions of the Permit. By letter dated November 25, 2008, the Board directed the Region to prepare a response addressing Petitioner Arnold’s contentions (as set forth in his Initial Petition for Review) by January 8, 2009. Also by letter dated November 25, 2008,

the Board directed the Region to prepare a response addressing Petitioner U.S. Department of the Interior's contentions by January 8, 2009.

On December 12, 2008, the Region and both Petitioners filed a joint motion requesting that the proceedings be stayed so that the parties could explore resolution through settlement, that the two proceedings be consolidated, and that certain supplemental materials be allowed before the Board. On December 24, 2008, the Board issued an order staying the proceedings until April 8, 2009, and reserving any decision regarding the other requested relief. *See In re Town of Wayland Wastewater Dist. Mgmt. Comm'n*, NPDES Appeal Nos. 08-26, 08-27 (EAB, Dec. 24, 2008) (Order Granting Joint Motion to Stay the Petition). On February 6, 2009, the Board issued an order granting the Town's motion to intervene, file a response to the petitions, and participate as a party in these appeals. *See In re Town of Wayland Wastewater Dist. Mgmt. Comm'n*, NPDES Appeal Nos. 08-26, 08-27 (EAB, Feb. 6, 2009) (Order Granting Motion to Intervene).

STATUS REPORT

All four parties—the Region, the Town, the Department of Interior, and (through counsel) Thomas Arnold—have engaged in extensive settlement discussions over the past several months. These discussions have included one in-person meeting between the Region, the Massachusetts Department of Environmental Protection (“MassDEP”),¹ and Petitioners, and three in-person meetings between the Region, MassDEP, the Town, and Petitioners.² These meetings have included detailed discussions of potential settlement options (pertaining to phosphorus discharge, outfall location, and other issues) and have

¹ MassDEP is not a party to this appeal but it co-issued the Permit with the Region and its agreement might be required to effectuate a final settlement.

² Counsel for Mr. Arnold was invited to, but unable to attend, the most recent such meeting due to bereavement.

generated further factual investigation by the Region, MassDEP, and the Town. The Region and assenting parties believe that they have made progress and are closer to settlement now than when the motion for a stay was filed, but due to the number and complexity of issues involved, and the number and differing interests of parties involved, the parties have not yet reached an agreement. The Region and assenting parties still believe that resolution of these appeals by settlement may be possible, and wish to continue settlement discussions in the hope of reaching agreement.

REQUESTED RELIEF AND GROUNDS FOR SUCH RELIEF

The Region, with the assent of Petitioners Thomas Arnold and U.S. Department of the Interior, respectfully requests that the Environmental Appeals Board (“Board”) extend the stay the proceedings by an additional two months to allow further settlement discussions. The Region proposes to submit a status report no later than June 10, 2009, advising whether the Board should further extend the stay, establish a revised schedule for the litigation, or take other appropriate action.

An extension of this length is reasonable and necessary given the need to resolve complex technical issues pertaining to point and nonpoint sources in the Town, and the Department of Interior’s interest in further evaluation of potential impacts of a proposed new outfall at or near a designated wild and scenic river.

If a stay is not granted, the Region and the Board will be forced to divert their time and effort to legal proceedings, when there is a substantial possibility that all or some of the issues raised in the petitions for review may be resolved through settlement discussions. Accordingly, to conserve administrative and judicial resources, and to

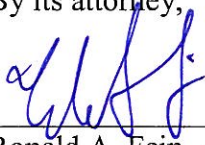
encourage efficiency and promote judicial economy, the Region, with the assent of the other parties, requests that the Board grant this motion and extend the stay.

On March 25, 2009, the Region's undersigned counsel provided a draft copy of this Status Report and Motion to Extend Stay of Proceedings to counsel for each of the parties in this matter. The Region's counsel received communications from counsel for Petitioner Thomas Arnold and counsel for Petitioner U.S. Department of the Interior confirming that each Petitioner assents to this motion. With regard to the Town, the Region's counsel and the Town's counsel discussed this motion extensively, but the Region was unable to obtain the Town's assent by the time of this filing.

Respectfully submitted,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1

By its attorney,



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
Date: April 7, 2009

CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that copies of the foregoing Status Report and Motion to Extend Stay of Proceedings were sent on the 7th day of April 2009 to the following persons in the manner described below:

Original by first class mail
Copy by fax
Copy posted to CDX electronic system

Eurika Durr, Clerk of the Board
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Signed: April 7, 2009