



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1 – New England
5 Post Office Square, Suite 100
Boston, MA 02109-3912

VIA ELECTRONIC FILING

October 18, 2013

Eureka Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M
Washington, DC 20460-0001

RE: Town of Concord Department of Public Works
NPDES Permit No. MA0100668; NPDES Appeal No. 13-08

Dear Ms. Durr:

Please find a Motion for Extension of Time to File Region 1's Response to Petition Due to the Government Shutdown, and accompanying Certificate of Service, in connection with NPDES Appeal No. 13-08.

Sincerely,

Samir Bukhari
US Environmental Protection Agency
Office of Regional Counsel, Region I
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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In the Matter of:)	
)	
Town of Concord)	
Department of Public Works)	
)	
NPDES Permit No. MA0100668)	NPDES Appeal No. 13-08
_____)	

**MOTION FOR EXTENSION OF TIME TO FILE REGION 1’S
RESPONSE TO PETITION DUE TO THE GOVERNMENT SHUTDOWN**

Region 1 of the United States Environmental Protection Agency (“Region”) respectfully requests that the Environmental Appeals Board (“Board”) re-establish a date by which the Region is required to file a response to the above-referenced petition for review in light of the sixteen-day government shutdown. The basis for this motion is set out below.

BACKGROUND, REQUESTED RELIEF AND GROUNDS FOR RELIEF

On September 9, 2013, the Town of Concord, Massachusetts, timely petitioned the Board for review of a National Pollutant Discharge Elimination System (“NPDES”) Permit issued by the Region to the Town for discharges to the Concord River from its wastewater treatment facility. Under the regulations governing NPDES permit appeals, “the Regional Administrator must file a response to the petition, a certified index of the administrative record, and the relevant portions of the administrative record within 30 days after the filing of a petition.” 40 C.F.R § 124.19(b)(2). In accordance with the regulation, the Region was prepared to file its response and the required administrative

record materials by October 9, 2013. However, on October 1, 2013, normal EPA operations shut down due to a lapse in funding. On that same day, the Board informed the public by notice on their website that the “[p]arties need not file extension motions in advance of the potential shutdown[,]” and that, “The Board will address extension motions as appropriate when the shutdown has ended and will consider any motion filed commensurate with the circumstances presented.”

To ensure that the Region has sufficient time to adequately address the claims in the petition, the Region requests that the Board grant it a three week extension to file a response and associated record materials in this matter. The shutdown has both dislocated resources and disrupted planning in the Region to a significant degree. As a result of the shutdown, virtually all legal and programmatic activity in the Region, including the response to this permit appeal, came to a halt. Region 1 legal and technical staff assigned to respond to the Town’s appeal were administratively furloughed for the duration of the sixteen-day funding hiatus. EPA staff performed no work on the case for the length of the shutdown, as they were legally prohibited from doing so. Going forward, EPA staff will be required to address not only this pending matter, but to attend to other existing commitments that matured over the course of the shutdown, and to triage new obligations that have accrued during that period. The extension proposed by the Region is, in general, designed to mitigate the impacts the shutdown has had on planning and resources by allowing the Region to re-order priorities and address its workload in an orderly and efficient manner; more specifically, the extension is intended to ensure that the Region is afforded the necessary time to respond to the numerous legal and technical claims in the Town’s petition in a manner that will

most fully assist the Board in its deliberations. To this latter point, critical staff in both the Region and Headquarters will be unavailable for periods between now and the proposed extension date due to the pre-existing vacation plans that were previously presumed to fall after the original filing date for the Region's response. (Nevertheless, the Region will also endeavor to file its response earlier if that should prove feasible given the circumstances.) Finally, the Region notes the contested conditions of the permit are stayed pending final agency action, 40 C.F.R. § 124.16(a)(2)(i), and therefore the Town will not suffer any harm as a result of this proposed extension.

In light of the foregoing, the Region respectfully requests that the Board extend the Region's response date to no later than Friday, November 8, 2013.¹

Dated: October 18, 2013

Respectfully submitted,

Samir Bukhari
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¹ The Region has sought the Town's position on the proposed extension of time but has not been informed whether the Town concurs or objects as of the time of this filing.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for an Extension of Time To File Region 1's Response to the Petition Due to the Government Shutdown, in connection with In re Town of Concord, Department of Public Works, NPDES Appeal No. 13-08, was sent to the following persons in the manner indicated:

By Electronic Filing:

Ms. Eurika Durr
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

By U.S. Mail and Electronic Mail:

Robert D. Cox, Jr., Esq.
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Dated: October 18, 2013

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